

RESOLUTION NO. 2015215

RE: LOCAL LAW NO. OF 2015, A LOCAL LAW FOR WELL TESTING TO PROTECT PROPERTY BUYERS, TENANTS, AND CUSTOMERS OF COMMERCIAL ESTABLISHMENTS IN DUTCHESS COUNTY FROM DRINKING CONTAMINATED WATER

Legislators TYNER, FARLEY, STRAWINSKI, and PERKINS offer the following and move its adoption:

WHEREAS, the County Attorney has stated that the Water Regulations issued by the Dutchess County Board of Health were not enforceable, and

WHEREAS, the County Attorney and County Executive have stated that mandating the testing of private wells can only be done through the legislative branch, and

WHEREAS, it is imperative to ensure that when people buy homes in Dutchess County that they know the status of the water quality of the well serving their home, and

WHEREAS, the Water Regulations also include provisions for well testing by landlords in order to protect renters, and also includes provisions for employers with private wells to comply with well testing to protect employees and customers, and

WHEREAS, it is important to have a water standard for both public and private water sources across the County to ensure public safety, and

WHEREAS, additionally, the information obtained by having private wells tested will help track the path of contamination and alert homeowners of possible water problems, now, therefore, be it

RESOLVED, that the Legislature of the County of Dutchess adopts Local Law No. of 2015, which has been submitted this day for consideration by said Legislature, and, be it further

RESOLVED, that a copy of this resolution with its attachment be forwarded to the Department of Health Interim Commissioner Kari Reiber and members of the Board of Health.

STATE OF NEW YORK

ss:

COUNTY OF DUTCHESS

This is to certify that I, the undersigned Clerk of the Legislature of the County of Dutchess have compared the foregoing resolution with the original resolution now on file in the office of said clerk, and which was adopted by said Legislature on the 13<sup>TH</sup> day of October 2015, and that the same is a true and correct transcript of said original resolution and of the whole thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of said Legislature this 13<sup>th</sup> day of October 2015.

CAROLYN MORRIS, CLERK OF THE LEGISLATURE

LOCAL LAW NO. OF 2015

RE: A LOCAL LAW FOR WELL TESTING TO PROTECT PROPERTY BUYERS, TENANTS, AND CUSTOMERS OF COMMERCIAL ESTABLISHMENTS IN DUTCHESS COUNTY FROM DRINKING CONTAMINATED WATER

BE IT ENACTED by the County Legislature of the County of Dutchess as follows:

Section 1: Title.

The Title of this Local Law shall be, "Private Water Supplies".

Section 2: Legislative Finding, Intent, and Purpose.

The Dutchess County Legislature enacts this Local Law for purposes of providing mandatory private well testing on all properties that rely upon a private water supply that is utilized for purposes of human consumption in the County of Dutchess. The intent of this law is to provide a water quality standard for both public and private water sources across the County to ensure the public's safety against contaminated water sources. Towards that end, this local law will ensure that when people buy residential homes in Dutchess County that they know the status of the water quality of the well serving their home, and that all residential rental properties in Dutchess County that fail the test for water quality compliance provide corrective action for the benefit of tenants. This local law also will provide the same assurances of water quality for employees, tenants, and the public at commercial establishments.

Section 3: Definitions.

- A. The term "private water supply" shall mean 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.
- B. The term "residential rental property" shall mean 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 occupied by other than an owner thereof and for use or occupation of which rent or consideration is periodically paid to the owner.
- C. The term "commercial building" shall mean any structure which is wholly or partially used or intended to be used for commercial purposes, including, but not limited to, office buildings, stores, markets, shops, malls, marinas, restaurants, clubs, gas stations, or car dealerships.
- D. The term "commercial rental property" shall mean any "commercial building or commercial unit which is occupied by other than an owner thereof and for use or occupation of which rent or consideration is periodically paid to the owner.

Section 4: Periodic Well Testing and Maximum Contaminant Levels.

A. That the test parameters and associated maximum contaminant levels for private water supplies shall be New York State Sanitary Code Part 5 parameters for public water supplies as modified and specifically targeted by this Local Law in Section 9 for the needs of the County's private water supplies.

B. The Dutchess County Commissioner of Health will make available to the public within Dutchess County, the private water supply test parameters and associated maximum contaminant levels.

Section 5: Residential Rental Property Well Permit.

Within six months of the passage of this local law every owner of residential rental property with a private well in Dutchess County, which serves a residential rental property's water supply, shall be required to possess a valid residential rental property permit issued by the Dutchess County Commissioner of Health, or appointed designee.

Private wells in operation as of January 1, 2015, shall be deemed to possess such permit, however, such grandfathered permits for existing wells shall not signify that such wells have been tested or are in compliance with current Health Department parameters and such permits shall expire January 1, 2017.

Owners of residential rental property serviced by private wells put into operation subsequent to January 1, 2015, shall be required to apply for a valid residential rental property permit, which shall expire six years from issuance. The issuance of such permit shall be conditioned upon demonstration that the water supply has been tested and falls within the acceptable test parameter limits established by the Dutchess County Commissioner of Health, which shall have been performed within one year prior to issuance or renewal of the permit.

Water sample analysis shall be performed by a laboratory as per Section 9. Water sample collection shall be conducted in a manner approved by the Dutchess County Commissioner of Health. All test results must be filed with the Department of Health by the laboratory. In the event that test results indicate that tenants' drinking water is not in compliance with current approved Health Department parameters, the Department of Health will immediately notify the Department of Environmental Conservation.

In the event that test results of residential rental properties indicate that tenants' drinking water is not in compliance with current approved Health Department parameters, tenants shall be so notified in writing by the Landlord within seven days. In addition, if the Department of Conservation is not taking investigative action and/or remediation after thirty days of notification by the Department of Health, then, enforcement action will be taken by the Dutchess County Department of Health pursuant to Dutchess County Sanitary Code Article 4 to compel corrective action by Landlord.

Corrective action may include, but is not limited to, requiring the Landlord to install a filtration system to bring water quality into compliance and/or requiring the Landlord to provide an alternative source of potable water to tenants.

Failure to provide proof of remediation within thirty days of enforcement taken by the Department of Health will result in the Department of Health levying a \$1,000 fine. For each succeeding thirty day periods, where no proof of corrective action has been provided, an additional \$1,000 fine will be levied by the Department of Health for each additional thirty day period. If the property owner can prove beyond doubt that they have made a good-faith effort to contact a firm to test the well water there, the Department of Health will take this into consideration and no fine will be levied.

Residential Rental Property Wells currently being tested as though they were on a public water supply are exempt from this local law as long as the wells are being tested to the same standards as public water supplies.

Section 6. Dwelling Well Permit Requirement: Permit non-transferable.

Within six months of the passage of this local law and contingent upon the Dutchess County Legislature providing sufficient resources to enable the Dutchess County Health Department to provide for enforcement of this regulation, every owner of a private well in Dutchess County, which serves a private water supply, shall be required to possess a valid permit issued by the Dutchess County Commissioner of health, or appointed designee. Private wells in operation as of January 1, 2015 shall be deemed to possess such permit and shall be deemed grandfathered to possess such permit until such time that title to the real property for which the private well provides water for human consumption is transferred at which time the existing well shall be tested by the seller before the closing to determine if it is in compliance with currently approved Health Department parameters as per Section 4. The approved laboratory doing the water testing shall be directed by the seller to provide the full test results to the seller and to file the results with the Department of Health. Full test results must be given to the buyer and the Department of Health prior to the closing.

If a well test meeting the Department of Health collection specifications has been done within three years of the home's sale and if those results are on file with the Department of Health and have been given to the buyer, another full test will not be required, except for testing of bacteria, e-coli, nitrates, nitrites and POC (Principal Organic Chemicals); the exceptions should be done within six months.

If the test results are satisfactory, the Department of Health will then issue the appropriate well permit prior to closing.

If the test results do not meet the required standards, it will be the responsibility of the buyer and seller to agree on appropriate action before the closing of the sale and issuance of the well permit.

Owners of new private wells put into operation subsequent to January 1, 2015 shall be required to meet the standards set in Section 4, before being granted a valid permit. Water sample analysis shall be performed by a laboratory as per Section 9. Water sample collection shall be conducted in a manner approved by the Dutchess County Commissioner of Health.

If the property owner can prove beyond doubt that they have made a good-faith effort to contact a firm to test the well water there, the Department of Health will take this into consideration and no fine will be levied.

Section 7: Commercial Property Well Permit.

Within six months of the passage of this local law every commercial business property with a private well in Dutchess County, where said water from that well is used for consumption by employees and/or the public, that commercial property shall be required to possess a valid permit for such well issued by the Dutchess County Commissioner of Health, or appointed designee.

Private wells in operation as of January 1, 2015, shall be deemed to possess such permit, however, such grandfathered permits for existing wells shall not signify that such wells have been tested or are in compliance with current Health Department parameters, and such permits shall expire January 1, 2015.

Owners of commercial property serviced by private wells put into operation subsequent to January 1, 2015 shall be required to apply for a valid commercial property permit, which shall expire six years from issuance. The issuance of such permit shall be conditioned upon demonstration that the water supply has been tested and falls within the acceptable test parameter limits established by the Dutchess County Commissioner of Health, which shall have been performed within one year prior to issuance of renewal of the permit.

Water sample analysis shall be performed by a laboratory as per Section 9. Water sample collection shall be conducted in a manner approved by the Dutchess County Commissioner of Health. All test results must be filed with the Department of Health by the laboratory. In the event that test results indicate that the drinking water is not in compliance with current approved Health Department parameters, the Department of Health will immediately notify the Department of Environmental Conservation.

In the event that test results of such properties indicate that the drinking water is not in compliance with current approved Health Department parameters, commercial property owners will post in a visible location within seven days the test results.

In addition if the Department of Conservation is not taking investigative action and/or remediation after thirty days of notification by the Department of Health, then enforcement action will be taken by the Dutchess County Department of Health pursuant to Dutchess County Sanitary Code Article 4 to compel corrective action by the owner. Corrective action may include, but is not limited to, requiring Owner to install a filtration system to bring water quality into compliance and/or requiring the Owner to provide an alternative source of potable water to employees and/or the public.

Failure to provide proof of remediation within thirty days of enforcement taken by the Department of Health will result in the Department of Health levying a \$1,000 fine. For each succeeding thirty day periods, where no proof of corrective action has been provided, an additional \$1,000 fine will be levied by the Department of Health for each additional thirty day period. If the property owner can prove beyond doubt that they have made a good-faith effort to contact a firm to test the well water there, the Department of Health will take this into consideration and no fine will be levied.

Commercial Property Wells currently being tested as though they were on a public water supply are exempt from this local law as long as the wells are being tested to the same standards as public water supplies.

## Section 8: Commercial Rental Property Well Permit

Within six months of the passage of this local law every owner of commercial rental property with a private well in Dutchess County, which serves a commercial rental property's water supply, shall be required to possess a valid commercial rental property permit issued by the Dutchess County Commissioner of Health, or appointed designee.

Private wells in operation as of January 1, 2015, shall be deemed to possess such permit, however, such grandfathered permits for existing wells shall not signify that such wells have been tested or are in compliance with current Health Department parameters and such permits shall expire January 1, 2107.

Owners of commercial rental property serviced by private wells put into operation subsequent to January 1, 2015, shall be required to apply for a valid residential rental property permit, which shall expire six years from issuance. The issuance of such permit shall be conditioned upon demonstration that the water supply has been tested and falls within the acceptable test parameter limits established by the Dutchess County Commissioner of Health, which shall have been performed within one year prior to issuance or renewal of the permit.

Water sample analysis shall be performed by a laboratory as per Section 9. Water sample collection shall be conducted in a manner approved by the Dutchess County Commissioner of Health. All test results must be filed with the Department of Health by the laboratory. In the event that test results indicate that the drinking water is not in compliance with current approved Health Department parameters, the Department of Health will immediately notify the Department of Environmental Conservation.

In the event that test results of commercial rental properties indicate that the drinking water is not in compliance with current approved Health Department parameters, commercial property owners will notify tenants in writing and have posted in a visible location within seven days the test results. In addition, if the Department of Conservation is not taking investigative action and/or remediation after thirty days of notification by the Department of Health, then enforcement action will be taken by the Dutchess County Department of Health pursuant to Dutchess County Sanitary Code Article 4 to compel corrective action by Landlord. Corrective action may include, but is not limited to, requiring the Landlord to install a filtration system to bring water quality into compliance and/or requiring the Landlord to provide an alternative source of potable water to tenants, employees, and/or the public.

Failure to provide proof of remediation within thirty days of enforcement taken by the Department of Health will result in the Department of Health levying a \$1,000 fine. For each succeeding thirty day periods, where no proof of corrective action has been provided, an additional \$1,000 fine will be levied by the Department of Health for each additional thirty day period.

Commercial Rental Property Wells currently being tested as though they were on a public water supply are exempt from this local law as long as the wells are being tested to the same standards as public water supplies.

Section 9: Testing Requirement, Procedures, and Minimum Parameters.

Laboratory requirements

All analysis shall be performed by a Laboratory approved by the New York State Department of Health, "Environmental Laboratory Approval Program".

Collection Requirements and Testing Procedures

Water Samples shall be collected either by a Laboratory approved by the New York State Department of Health, "Environmental Laboratory Approval Program", a Certified Home Inspector or a Licensed Water Treatment Plant Operator.

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

Existing Wells- Samples should be taken of the raw water after any existing treatment has been bypassed.

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

Minimum Parameters

The following list of substances and conditions shall be included in the water well test:

Fluoride, Total coliform/E. coli, Antimony, Arsenic, Barium, Chloride, Hardness, Iron, Lead, Manganese, Mercury, Nitrate, Nitrite, pH, Sodium, Sulfate, Turbidity, Principal Organic Chemicals (including MTBE), and zinc

The substances and conditions were selected based on the possibility of their presence in Dutchess County and could present a health hazard if found to be higher than specified parameters.

The Department of Health shall determine the recommended parameter for each substance. This may vary from each location as deemed appropriate by the Department of Health based on conditions and exposures for a particular locality.

Section 10: Fees

The Department of Health is authorized to charge up to \$100 for a well permit and/or well certification.

Section 11: Waiver from Testing for Specific Parameters.

The Dutchess County Commissioner of Health may grant a waiver from testing for a specific test parameter or parameters established by this article, provided that prior to the granting of any such waiver the applicant shall establish that:

- (a) testing for a specific parameter or parameters is not necessary for the protection of the health of the consumers of the drinking water and that such testing would not be cost effective for the applicant; or
- (b) other factors which would render testing for a complete regimen of established parameters unreasonable.

Section 12: Water Test Results Data.

It shall be the responsibility of the Dutchess County Commissioner of Health to make available to the public, a general compilation of water test results data, arranged or identified by municipality, locations, or appropriate geographic areas. Such general compilation shall not include the names of specific property owners or their particular numerical street address, although street names in general and identification by tax map number shall be permissible.

Section 13 Severability.

If any part or provision of this Local law or the application thereof to any person or circumstance be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part or provision or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this Local Law or the application thereof to other persons or circumstances, and the Dutchess County Legislature hereby declares that it would have passed this Local Law or the remainder thereof had such invalid application or invalid provision been apparent.

Section 14: Supereession.

This Local Law is enacted under the authority of the Municipal Home Rule Law Section 10(1) subparagraphs (i) and (ii)(a)(12), and Municipal Home Rule Law Section 22. To the extent that Sections of the Dutchess County Sanitary Code are inconsistent with this Local law, it is the intent of the Dutchess County Legislature to supersede these Sections by virtue of this Local Law.

Section 15: Effective Date.

This local law shall take effect immediately upon full compliance with all the requisite statutes and laws applicable to its adoption and promulgation, and following the filing with the Secretary of State.

WELL-TESTING LAW

No Fiscal Impact

FISCAL IMPACT STATEMENT

APPROPRIATION RESOLUTIONS

Total Current Year Cost \$ [not being implemented next year]  
Total Current Year Revenue and Source \$

Source of County Funds (check one):  Existing Appropriations  
 Contingency  
 Transfer of Existing Appropriations  
 Additional Appropriations  
 Other (explain)

Identify Line Item (s): → P. 199 Medical Examiner \$100,000 from A. 1185  
Related Expenses: → P. 369 Tourism \$100,000 from A. 8020 4400.4422

Nature of Expenses: to help publicize law and beef up staffing & account for law

Anticipated Savings to County: [eventually - from protecting public health]

Net county Cost (this year): \$ 0  
(over five years): \$ 0

Additional Comments:

★ ALLOCATE \$200,000 TO:  
CP. 199) A. 4010.29 Health Dept. (Environmental Health [staffing/materials])

[money saved on Tourism/Medical Examiner from cleaner water in county?]

McKinney's Consolidated Laws of New York Annotated  
Municipal Home Rule Law (Refs & Annos)  
Chapter 36-a. Of the Consolidated Laws  
Article 2. General Powers of Local Governments to Adopt and Amend Local Laws; Restrictions (Refs & Annos)

McKinney's Municipal Home Rule Law § 10

§ 10. General powers of local governments to adopt and amend local laws

Effective: March 31, 2011

Currentness

1. In addition to powers granted in the constitution, the statute of local governments or in any other law,

(i) every local government shall have power to adopt and amend local laws not inconsistent with the provisions of the constitution or not inconsistent with any general law relating to its property, affairs or government and,

(ii) every local government, as provided in this chapter, shall have power to adopt and amend local laws not inconsistent with the provisions of the constitution or not inconsistent with any general law, relating to the following subjects, whether or not they relate to the property, affairs or government of such local government, except to the extent that the legislature shall restrict the adoption of such a local law relating to other than the property, affairs or government of such local government:

a. A county, city, town or village:

(1) The powers, duties, qualifications, number, mode of selection and removal, terms of office, compensation, hours of work, protection, welfare and safety of its officers and employees, except that cities and towns shall not have such power with respect to members of the legislative body of the county in their capacities as county officers. This provision shall include but not be limited to the creation or discontinuance of departments of its government and the prescription or modification of their powers and duties.

(2) In the case of a city, town or village, the membership and composition of its legislative body.

(3) The transaction of its business.

(4) The incurring of its obligations, except that local laws relating to financing by the issuance of evidences of indebtedness by such local government shall be consistent with laws enacted by the legislature.

(5) The presentation, ascertainment, disposition and discharge of claims against it.

(6) The acquisition, care, management and use of its highways, roads, streets, avenues and property.

(7) The acquisition of its transit facilities and the ownership and operation thereof.

(8) The levy and administration of local taxes authorized by the legislature and of assessments for local improvements, which in the case of county, town or village local laws relating to local non-property taxes shall be consistent with laws enacted by the legislature.

(9) The collection of local taxes authorized by the legislature and of assessments for local improvements, which in the case of county, town or village local laws shall be consistent with laws enacted by the legislature.

(9-a) The fixing, levy, collection and administration of local government rentals, charges, rates or fees, penalties and rates of interest thereon, liens on local property in connection therewith and charges thereon.

(10) The wages or salaries, the hours of work or labor, and the protection, welfare and safety of persons employed by any contractor or subcontractor performing work, labor or services for it.

(11) The protection and enhancement of its physical and visual environment.

✓ (12) The government, protection, order, conduct, safety, health and well-being of persons or property therein. This provision shall include but not be limited to the power to adopt local laws providing for the regulation or licensing of occupations or businesses provided, however, that:

(a) The exercise of such power by a town shall relate only to the area thereof outside the village or villages therein.

(b) Except in a case where and to the extent that a county is specifically authorized to regulate or license an occupation or business, the exercise of such power by a county shall not relate to the area thereof in any city, village or area of any town outside the village or villages therein during such time as such city, village or town is regulating or licensing the occupation or business in question.

(13) The apportionment of its legislative body and, only in connection with such action taken pursuant to this subparagraph, the composition and membership of such body, the terms of office of members thereof, the units of local government or other areas from which representatives are to be chosen and the voting powers of individual members of such legislative body. Except for the equal apportionment requirements in subclause (i.) of clause (a.) and clause (c.) of this subparagraph, which shall apply generally to any local government, the power granted by this subparagraph shall be in addition to and not in substitution for any other power and the provisions of this subparagraph shall apply only to local governments which adopt a plan of apportionment thereunder.

(a.) A plan of apportionment adopted under this subparagraph shall comply with the following standards, which shall have priority in the order herein set forth, to the extent applicable:

McKinney's Consolidated Laws of New York Annotated  
Municipal Home Rule Law (Refs & Annos)  
Chapter 36-a. Of the Consolidated Laws  
Article 3. Procedure for Adoption of Local Laws; Referenda; Filing and Publication (Refs & Annos)

McKinney's Municipal Home Rule Law § 22

§ 22. Effect of local laws on acts of legislature or prior local laws or ordinances

Currentness

1. In adopting a local law changing or superseding any provision of a state statute or of a prior local law or ordinance, the legislative body shall specify the chapter or local law or ordinance, number and year of enactment, section, subsection or subdivision, which it is intended to change or supersede, but the failure so to specify shall not affect the validity of such local law. Such a superseding local law may contain the text of such statute, local law or ordinance, section, subsection or subdivision and may indicate the changes to be effected in its text or application to such local government by enclosing in brackets, or running a line through, the matter to be eliminated therefrom and italicizing or underscoring new matter to be included therein.

2. No local law shall supersede any provision of a state statute except as authorized by the constitution, this chapter or any other state statute.

**Credits**

(L.1963, c. 843.)

Notes of Decisions (20)

McKinney's Municipal Home Rule Law § 22, NY MUN HOME RULE § 22

Current through L.2015, chapters 1 to 99.

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