

Intro. Res. No. 1262-2017

Laid on Table 3/28/2017

Introduced by Presiding Officer, on request of the County Executive and Legislators Browning, Fleming

RESOLUTION NO. 329 -2017, ADOPTING LOCAL LAW NO. -2017, A LOCAL LAW TO ESTABLISH A GRANT ASSISTANCE PROGRAM FOR THE INSTALLATION OF INNOVATIVE AND ALTERNATIVE ONSITE WASTEWATER TREATMENT SYSTEMS

WHEREAS, there was duly presented and introduced to this County Legislature at a meeting held on March 28, 2017, a proposed local law entitled, "**A LOCAL LAW TO ESTABLISH A GRANT ASSISTANCE PROGRAM FOR THE INSTALLATION OF INNOVATIVE AND ALTERNATIVE ONSITE WASTEWATER TREATMENT SYSTEMS**"; now, therefore be it

RESOLVED, that said local law be enacted in form as follows:

LOCAL LAW NO. -2017, SUFFOLK COUNTY, NEW YORK

A LOCAL LAW TO ESTABLISH A GRANT ASSISTANCE PROGRAM FOR THE INSTALLATION OF INNOVATIVE AND ALTERNATIVE ONSITE WASTEWATER TREATMENT SYSTEMS

BE IT ENACTED BY THE COUNTY LEGISLATURE OF THE COUNTY OF SUFFOLK, as follows:

Section 1. Legislative Intent.

This Legislature finds and determines that in 2016, the Suffolk County Sanitary Code was amended to include Article 19, "Management of Innovative and Alternative Onsite Wastewater Treatment Systems", in an effort to address the negative impact that nitrogen has contributed to the degradation of water quality in Suffolk County since the biggest contributor to said degradation has been outdated, non-performing onsite sanitary systems and cesspools, as recommended in the 2015 Suffolk County Comprehensive Water Resources Management Plan prepared by the Suffolk County Department of Health Services ("Department"). Article 19 of the Suffolk County Sanitary Code has authorized the voluntary installation and the Department management of certain approved Innovative and Alternative Onsite Wastewater Treatment Systems ("I/A OWTS") technologies as the first step to reversing water quality degradation where existing systems are replaced at the initiative of a property owner.

This Legislature also finds and determines that the SUFFOLK COUNTY CHARTER was amended by Local Law No. 31-2014, to authorize, in accordance with section 12-2(D)(3) of the SUFFOLK COUNTY CHARTER, the use of the excess Assessment Stabilization Reserve Fund balance, as defined therein, for among other things, the installation of residential and commercial enhanced nitrogen removal septic systems.

This Legislature also finds that in addition, Local Law No. 31-2014, provides that in Fiscal Year 2011 or in any subsequent fiscal year through 2021, no less than \$2 million of the excess Assessment Stabilization Reserve Fund balance will be appropriated via duly approved

resolutions in each fiscal year for the installation of residential and commercial enhanced nitrogen removal septic systems.

This Legislature also finds and determines that I/A OWTS technologies that have been approved and certified by the Suffolk County Department of Health Services in accordance with Article 19 of the Suffolk County Sanitary Code, and such other technologies to be approved in the future by the Department also in accordance with the Suffolk County Sanitary Code are a type of such enhanced nitrogen removal systems consistent with the intent and use of that term pursuant to Article XII of the SUFFOLK COUNTY CHARTER.

This Legislature further finds and determines that the Suffolk County Sewer Infrastructure Committee, which was established in accordance with Local Law No. 31-2014, has recommended, at a meeting held on March 24, 2017, that a voluntary grant program, to be administered by the Department, be established to utilize the funding authorized in accordance with section 12-2(D)(3) of the SUFFOLK COUNTY CHARTER by assisting property owners who wish to voluntarily install I/A OWTS on residential property to defray the costs of such enhanced systems. The Suffolk County Sewer Infrastructure Committee has also recommended that the grant program be supplemented by allowing Suffolk County to refer residential owners to the CDCLI Funding Corporation, a non-profit organization, which has the ability to offer certain Suffolk County residents who would qualify under the County's grant program, loans at competitively priced interest rates, should residents need or wish to supplement the cost of an I/A OWTS through loan assistance.

This Legislature further finds and determines that as these new technologies become more and more available and utilized throughout Suffolk County and as additional changes and revisions to the Suffolk County Sanitary Code are made, it is the intent that additional programs will be included under this proposed article to the SUFFOLK COUNTY CODE, including commercial assistance programs, as anticipated under the Charter.

Therefore, the purpose of this law is to provide a financial incentive to Suffolk County residents to install enhanced nitrogen removal systems by making such systems more affordable with the goal of improving water quality in Suffolk County.

Section 2. Amendment.

The SUFFOLK COUNTY CODE is hereby amended to add a new Chapter 839 to the ADMINISTRATIVE LOCAL LAWS entitled "WASTEWATER TREATMENT SYSTEMS" to read as follows:

Chapter 839
Wastewater Treatment Systems
ARTICLE I
RESIDENTIAL INNOVATIVE AND ALTERNATIVE ONSITE WASTEWATER TREATMENT
SYSTEM GRANT ASSISTANCE PROGRAM

§ 839-1. Definitions.

As used in this Article, the following terms shall have the meanings indicated and words of the masculine gender shall mean and include correlative words of the feminine and neutral genders and words importing the singular number shall mean and include the plural number and vice versa:

Commissioner – The Commissioner of the Suffolk County Department of Health Services.

Department – The Suffolk County Department of Health Services.

Design Professional – A professional engineer or registered architect licensed by the New York State Education Department.

Grant Awardee – A Property Owner that has been approved for a Grant by the Sewer Infrastructure Committee.

Innovative and Alternative Onsite Wastewater Treatment System (or “I/A OWTS” or the “System”) – An onsite decentralized wastewater treatment system that meets the requirements and standards for nitrogen removal as set forth in the Sanitary Code.

Manufacturer/Installer – A manufacturer, dealer or seller of innovative and alternative onsite wastewater treatment systems that has been approved for use by the Department in accordance with the Sanitary Code who, in addition, whether directly or through contracted services, provides comprehensive installation of such systems in accordance with all state and local laws and regulations.

Property Owner – A natural person that is the current owner in fee and occupant of the Residence for which a grant application is made.

Residence – An existing dwelling unit that is constructed on a Residential Parcel and designed for single family occupancy that is owner-occupied as a primary residence.

Residential Parcel - Any parcel located wholly or partially in the County of Suffolk, and may legally be used for permanent residential purposes under the local town or village code, as the case may be, or the Sanitary Code.

Sanitary Code – The Suffolk County Sanitary Code, and any duly enacted amendments thereto.

Sewer Infrastructure Committee – The Suffolk County Sewer Infrastructure Committee established in accordance with Local Law No. 44-2011, section 12-2(D)(4) of the Suffolk County Charter.

§ 839-2. Residential Program established.

A.) The Department is hereby authorized, empowered and directed to establish a grant assistance program to be known as the “RESIDENTIAL INNOVATIVE AND ALTERNATIVE ONSITE WASTEWATER TREATMENT SYSTEM GRANT ASSISTANCE PROGRAM” (the “Residential Septic Incentive Program” or “the Program”) to provide funding assistance (the “Grant”) to eligible residential Property Owners for the design, purchase and installation of an I/A OWTS.

B.) Funds for the Program may be appropriated in Fiscal Year 2017 through Fiscal Year 2021 pursuant to Charter § 12-2(D)(3). Such funds when appropriated shall be dedicated to the Program exclusively for Grants and deemed to be used even if not expended in the fiscal year

appropriated. Such funds shall be deposited by the Suffolk County Comptroller in a nonlapsing account for the Program consistent with this Article. No Grant approved shall exceed \$11,000 per Residence.

§ 839-3. Powers and duties.

A.) The Program shall be administered by the Department. The Commissioner is authorized, empowered and directed to promulgate such rules and/or regulations as may be necessary to carry out the intent of this Article and to govern the administration and functions of the Program.

B.) The County Executive and the County Executive's designee(s) are hereby further authorized, empowered and directed to execute and deliver, on behalf of the County, such other agreements, instruments or authorizations, and to perform all acts as may be contemplated, necessary or advisable to consummate, or otherwise give full effect to this Article, any Grant agreement executed pursuant to § 839-7, and any agreement, instrument or authorization approved, contemplated or authorized by any rule or regulation promulgated pursuant to this Article.

C.) The County Comptroller and the Comptroller's designees are hereby further authorized, empowered, and directed to take all actions to create such funds or open such accounts, make deposits and transfers, approve and make payments, execute and deliver other agreements, instruments or authorizations and perform all acts as may be contemplated, necessary or advisable to consummate, or otherwise give full effect to this Article, any Grant agreement executed pursuant to § 839-7, and any agreement, instrument or authorization approved, contemplated or authorized by any rule or regulation promulgated pursuant to this Article.

D.) Pursuant to Charter § C12-2(D)(4)(B), the Sewer Infrastructure Committee is authorized, empowered and directed to promulgate such rules and/or regulations as may be necessary to carry out the administration and functions of the Program pursuant to § 839-5.

§ 839-4. Grant eligibility.

A.) Income. Subject to the provisions of subdivision (A) of section 839-3, and all other provisions of this Article, an applicant is eligible to receive a Grant in the amount of up to \$11,000 where:

(a) the federal adjusted gross income of a Property Owner who is married and filing a joint tax return, is less than \$300,000, or

(b) the combined federal adjusted gross income of a Property Owner who is married and filing individually, is less than \$300,000, or

(c) the federal adjusted gross income of a Property Owner who is not married and filing single is less than \$300,000; or

in an amount up to \$5,500 where:

(a) the federal adjusted gross income of a Property Owner who is married and filing a joint tax return, is \$300,000 or greater but less than \$500,000, or

(b) the combined federal adjusted gross income of a Property Owner who is married and filing individually, is \$300,000 or greater, but less than \$500,000 or

(c) the federal adjusted gross income of a Property Owner who is not married and filing single is greater than \$300,000 but less than \$500,000.

B.) Geography. Subject to the provisions of subdivisions (A), (B), and (C) of section 839-5, a Property Owner residing in any area of the County may submit an application for a Grant to install a System, provided, however, the Commissioner may authorize, in his sole discretion, preferential review of an application for a Grant before all other submitted applications if the Grant application is for a Residence in an area specified by the Department as set forth in § 839-3 (A) as environmentally sensitive.

§ 839-5. Application process.

A.) An application for a Grant to install a System may be made by any resident of the County of Suffolk, except as set forth in subdivisions (B) and (C) of this section, in a form determined by the Department, for a Residence that:

(1) has a valid certificate of occupancy issued by the pertinent town or village;

(2) is served by an existing septic system or cesspool and is not connected to a public or private sewer or located within an existing sewer district; and

(3) is not used as a place of business, other than a home office which does not allow access to clients, customers or members of the public.

B.) No application shall be considered by the Department from any resident who is a current employee of Suffolk County, is an elected official of the State of New York or any political subdivision therein, or a party officer. For purposes of this Article, a party officer shall mean one who holds any party position or any party office, whether by election, appointment or otherwise, including committee members. For purposes of this Article, party shall mean any political organization which, at the last preceding election for Governor, polled at least 50,000 votes for candidate for Governor.

C.) The Program shall not be available for any Residential Parcel that has outstanding or open real property tax liens.

D.) Applications shall be reviewed in the order in which they are received by the Department in final form, subject to any preferential review of an application directed by the Commissioner pursuant to § 839-4(B). The final form of an application shall be determined in the sole discretion of the Commissioner.

E.) The Sewer Infrastructure Committee shall approve all applications for Grant funding prior to the disbursement of any funds, based upon the written recommendation from the Department in accordance with this Article.

F.) The Sewer Infrastructure Committee shall issue a certificate evidencing its approval of a Grant award to each Grant Awardee.

G.) All Grant awards shall be subject to the execution of a Grant agreement in accordance with section 839-7 below and subject to availability of funds for the Program in the fiscal year in which an application is made.

H.) Any Property Owner who is not approved for a Grant award because of the unavailability of funds under the Program in any fiscal year, may, upon request, have his application carried over and reconsidered by the Department and the Sewer Infrastructure Committee when funds become available in the next fiscal year.

§ 839-6. Scope of Grant.

A.) The Grant award authorized to be given to a Property Owner shall be limited to the costs actually incurred by a Property Owner in connection with the design, purchase and installation of an I/A OWTS. Specific items that will be reimbursed shall include:

(1) the total cost of the purchase of I/A OWTS materials and necessary components;

(2) the purchase of electrical components;

(3) labor costs incurred in connection with installation of the I/A OWTS and any necessary leaching fields and structures,

(4) a three-year warranty for the I/A OWTS;

(5) three-years of operation and maintenance of the I/A OWTS purchased through the Manufacturer/Installer;

(6) excavation and backfilling;

(7) design services including the preparation of a site plan, installation inspection, as-built surveys, and applicable permitting;

(8) pumping and decommissioning of an existing on-site system.

B.) Grant funds shall not be used for irrigation repairs, electrical improvements unrelated to I/A OWTS installation, and post installation design and landscaping.

§ 839-7. Execution of Grant Agreement; Condition of Grant; Claw Back Provisions.

A.) Disbursement of Grant funds shall be contingent upon the execution of an agreement between the County of Suffolk with each Grant Awardee, the terms of which shall be set by the Commissioner with the approval of the Department of Law. Each agreement shall be recorded in the Office of the Clerk of the County. The agreement shall be a continuing covenant running with the land that binds the owner of the subject property and his heirs, successors and/or assigns.

B.) Any Property Owner that has, in the determination of the Sewer Infrastructure Committee based upon the recommendation of the Commissioner, negligently or intentionally failed to operate and maintain the System to the point that it is damaged beyond repair, or has

removed the System without the prior written approval of the Department, shall repay to the County the full amount of the Grant.

§ 839-8. Authorization of Payment to Design Professional and Manufacturer/Installer.

The Department is authorized, with the consent of the Property Owner who is approved for a Grant award, to make direct payment of the Grant proceeds to the Design Professional contracted by the Property Owner, the Manufacturer/Installer of the System contracted by the Property Owner, or a combination of the two, to the extent that the Grant award allows, and allocated in such a manner as determined by the Department.

§ 839-9. Authorization for Loan Referral.

The Commissioner is hereby authorized to enter into an agreement with the CDCLI Funding Corporation, upon such terms and conditions as are acceptable to the Department of Law, for the non-exclusive referral of Grant Awardees for loan assistance in connection with the design and installation of an I/A OWTS.

§ 839-10. No Liability to County.

Other than the Grant funds awarded to an applicant in accordance with this Article, the County shall not enter into any agreement or otherwise obligate the County of Suffolk to bear any additional expense, unless approved in advance by the Suffolk County Legislature.

Section 3. Applicability.

This law shall apply to all actions occurring on or after the effective date of this law.

Section 4. Severability.

If any clause, sentence, paragraph, subdivision, section, or part of this law or the application thereof to any person, individual, corporation, firm, partnership, entity, or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section, or part of this law, or in its application to the person, individual, corporation, firm, partnership, entity, or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

Section 5. SEQRA Determination.

This Legislature, being the State Environmental Quality Review Act (SEQRA) lead agency, hereby finds and determines that this law constitutes a Type II action pursuant to Section 617.5(c)(20), (21), and (27) of Title 6 of the NEW YORK CODE OF RULES AND REGULATIONS (6 NYCRR) and within the meaning of Section 8-0109(2) of the NEW YORK ENVIRONMENTAL CONSERVATION LAW as a promulgation of regulations, rules, policies, procedures, and legislative decisions in connection with continuing agency administration, management and information collection. The Suffolk County Council on Environmental Quality (CEQ) is hereby directed to circulate any appropriate SEQRA notices of determination of non-applicability or non-significance in accordance with this law.

Section 6. Effective Date.

This law shall take effect immediately upon filing in the Office of the Secretary of State.

___ Underlining denotes addition of new language.

DATED: May 16, 2017

APPROVED BY:

/s/ Steven Bellone
County Executive of Suffolk County

Date: May 31, 2016