

THE CORPORATION OF THE TOWN OF MIDLAND

BY-LAW 2014-10

A By-law to amend By-law 2005-51 being a By-law under the *Building Code Act* respecting permits and related matters.

WHEREAS Council of the Town of Midland passed By-law 2005-51 on June 27, 2005 being “the Building Permit By-law” for the Town;

AND WHEREAS Section 7 of the *Building Code Act* authorizes a municipal council to pass by-laws concerning establishing a Sewage System Maintenance Inspection Program and related matters including the adoption of fees and charges related to recovering costs associated with administration of said program;

AND WHEREAS the Council of the Corporation of the Town of Midland deems it desirable to establish fees and charges for the administration and enforcement of the Sewage System Maintenance Inspection Program;

AND WHEREAS Council deems it necessary to amend Schedule “B” of By-law 2005-51 to provide for additional permit fees;

AND WHEREAS notice has been placed on the Town’s website and newspaper in accordance with By-law 2009-20 being the Notice By-law;

AND WHEREAS Council has held the Public Meeting as required under the *Building Code Act*;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWN OF MIDLAND HEREBY ENACTS AS FOLLOWS:

1. That By-law 2005-51 be amended to include the Sewage System Maintenance Inspection Program as Schedule “H”, as shown as Schedule “A” attached hereto and forming part of this By-law.
2. That By-law 2005-51 be amended to include Sewage System Maintenance Inspection Program fees and charges in Schedule “B”, as shown on Schedule “B” attached hereto and forming part of this By-law.

3. That Section 9 of By-law 2005-51 is hereby further amended by adding a new sub-section 9.4 as follows:

“9.4 Collection

In addition to every other remedy available in law, fees that are owed and unpaid may be added to the tax roll of the property owner who is responsible for paying the fee and may be collected in like manner as municipal taxes.”

4. That this By-law shall come into full force and effect immediately upon final passage.

BY-LAW READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED THIS 28TH DAY OF APRIL, 2014.

MAYOR

CLERK

SCHEDULE “A” to By-law 2014-10

SCHEDULE “H” to By-law 2005-51

SEPTIC SYSTEM MAINTENANCE INSPECTION PROGRAM

Introduction

The *Building Code Act, 1992* (the Act) and Ontario Building Code (OBC) regulate the design, construction and renovation of treatment systems which are located wholly on the property which they serve having a design sewage capacity of 10,000 litres/day or less. These types of systems generally provide on-site sewage treatment for smaller buildings such as houses and small businesses.

On January 1, 2011 the OBC was amended by Ontario Regulations 315/10 to establish and govern mandatory and discretionary on-site sewage system maintenance inspection programs. The programs are administered by local enforcement bodies. In the Town of Midland the Building Department is responsible to enforce the Act and the OBC on behalf of the Town.

To assist municipalities in implementing an inspection program, a guideline called *On-Site Sewage Maintenance Inspections – March 2011* was released by the Province as a non-regulatory appendix note to the Building Code. This Schedule to the Town’s Building By-law is based on the guideline and amended to suit the Town of Midland.

Authority for Inspections

Inspections are undertaken by Inspectors appointed by the Town in respect to maintenance inspection programs required under Division C, Article 1.10.2.3. of the OBC (“Mandatory Programs”).

Sewage system maintenance inspections are generally intended to determine whether a sewage system is in substantial compliance with the operation and maintenance requirements outlined in Division B, Section 8.9. of the OBC.

Section 15.10.1. of the Act sets out the authority for an Inspector to enter upon land and into buildings at any reasonable time without a warrant for the purpose of conducting a maintenance inspection.

Despite the provision of Section 15.10.1., an Inspector shall not enter or remain in any room or place actually being used as a dwelling unless:

- a) the consent of the occupier is obtained, the occupier first having been informed that the right of entry may be refused and entry made only under the authority of a warrant issued under this Act;
- b) a warrant issued under this Act is obtained;
- c) the delay necessary to obtain a warrant or the consent of the occupier would result in an immediate danger to the health or safety of any person; or
- d) the entry is necessary to terminate an immediate danger.

Inspection Notification

The OBC requires that all systems be inspected every five (5) years from the date of construction or from the date of the most recent maintenance inspection.

Owners of on-site sewage systems within the mandatory inspection areas will be contacted first by letter, then by site visits. Owners are also invited to be proactive by calling the Building Department to arrange inspections.

Staff will provide information packages to educate owners on the purpose of the program and the importance of protecting our drinking water and the waters of Georgian Bay and Little Lake including:

- a) any application fees to be charged;
- b) procedural information;
- c) that the Town accepts third-party certificates as an alternative to conducting an inspection and requesting owners to notify the Town if they have retained a third party for this purpose;
- d) contact information in the Building Department, and;
- e) the legislative authority for the inspection program.

Maintenance Inspections

Overview

This schedule sets out a progressive audit approach to maintenance inspections for on-site sewage systems as with most inspections under the *Building Code Act, 1992*.

Under this approach initial inspections are designed to be non-intrusive tests and will generally avoid significant disturbance to the system and the surrounding soil area. Where concerns are identified, more tests may follow.

A Phase I maintenance inspection may be sufficient to establish compliance with Section 8.9. of the Building Code or with the standards enforced under a discretionary program. A follow-up Phase II inspection (described below) is required where the Phase I inspection indicates a defect or failure of the system.

The owner of the on-site sewage system is responsible for all costs related to inspections, investigations, tests, reports and other services required to determine the condition of an on-site sewage system.

Phase I

Inspections generally begin with a review of available material including material collected in the identification phase and reports from previous inspections.

The purpose of Phase I maintenance inspections are to:

- a) locate the sewage systems' components;
- b) identify any obvious or outward signs of malfunction or failure;
- c) identify systems that are at risk of malfunction or failure; and
- d) evaluate the condition of the septic tank.

Phase I maintenance inspections generally avoid significant disturbance to the system and the surrounding soil area. During the course of a Phase I maintenance inspection, the Inspector may:

- a) make observations and take photographs of surface conditions and features such as structures, surface drainage, ponding, trees, vegetation, patios, swimming pools, etc.;
- b) require confirmation of the general nature of the systems (class, components, type, layout, etc.);
- c) require confirmation of the location of the systems' components with respect to wells, surface water, and other environmental features;
- d) require confirmation of the size, material and the condition of the septic tanks or the holding tank;
- e) require confirmation of the frequency of tank pump-out and the last time the tank was cleaned;
- f) require confirmation of any indication of sewage system failure, including:
 - i. evidence of backup of effluent;
 - ii. signs of hydraulic failure (breakout of sewage, wetting conditions in the leaching bed area);
 - iii. condition of surface vegetation; and

- iv. odour problems;
- g) the existence of a maintenance agreement for tertiary treatment system and the date of latest service; and
- h) give consideration of a report completed by a qualified third-party contractor hired by the owner, on a Ministry prescribed form or other form as deemed necessary by the Chief Building Official.

Phase II – Follow-Up Maintenance Inspections

It may be appropriate to undertake more intensive follow-up maintenance inspections where:

- a) the Phase I maintenance inspection has identified that the septic system is at risk of future malfunction or failure, or;
- b) the Phase I inspection detected a malfunction or failure but did not reveal the reason (e.g., location or nature) of malfunction or failure.

Where used in sewage systems, distribution boxes, dosing tanks and pumps may be required to be uncovered, at the owner's expense, to be inspected to determine their condition and functionality.

Phase II inspections of on-site sewage systems may also consider:

- a) soil type and its permeability;
- b) additional sources of hydraulic loading (e.g. surface discharge, roof drains);
- c) trees and deep rooting shrubs in the vicinity of the sewage system;
- d) require documentation of previous effluent sampling test results where required (i.e., under Article 8.9.2.4. of the Building Code);
- e) evaluation of in-home plumbing and estimates of water usage;
- f) conducting a leak diagnostics;
- g) conducting a flow trial;
- h) conducting a dye tracing test, or;
- i) excavating a cross section of the leaching bed.

A Phase I or Phase II inspections may result in an Order being issued by the Inspector and require remedial work to be undertaken by the owner at the cost of the owner.

Inspection Reports

The Building Department will maintain documentation in respect of maintenance inspections, including:

- a) identification of the property attended;
- b) identification of any pertinent information collected as part of the inspection; and
- c) deficiencies identified and remedial action required, if any.

A copy of the report will be provided to the owner.

Enforcement

If code violations or signs of possible future problems are detected, the Inspector will follow-up on those matters with the owner. This may involve undertaking some or all of the steps pertaining to Phase II maintenance inspection.

If an Inspector finds that an on-site sewage system is malfunctioning, failing or has malfunctioned or failed, the Inspector will assess the severity of the matter. The Inspector may require additional inspections, investigations, tests, reports or other services, at the cost of the owner, to determine the condition of an on-site sewage system. The Inspector may issue an Order to notify the owner of the problem and provide direction to the owner to correct the deficiency. Where an on-site sewage system is beyond repair, a new system may need to be constructed.

In all cases, the Inspector's first approach will be to encourage the owner to remedy any deficiencies.

On-site Sewage Systems and Property Sales

The Act does not require re-inspection of on-site sewage systems upon the sale of a property. Lenders, realtors and lawyers involved in the sale of properties with on-site sewage systems should be knowledgeable about operation and maintenance issues.

Owners and purchasers should determine if there is an on-site sewage system on the property and satisfy themselves that it is working properly. If up-to-date on-site sewage system records are available to potential property buyers (either from the previous owner or on file with the Town), then purchasers should be able to investigate an on-site sewage systems' health further, based on such risk factors as age, previous orders, etc. Based on the investigation and availability of records, a professional inspection by a contractor retained by a person and at the person's cost may be appropriate.

SCHEDULE "B" to By-law 2014-10

18.6	Re-inspection Fee	\$100.00 + HST
18.7	Re-inspection on any Order issued regarding the septic re-inspection program	\$350.00 + HST if applicable

In addition to every other remedy available at law, fees that are due and unpaid may be added to the tax roll of the property owner who is responsible for paying the fee and may be collected in like manner as municipal taxes.