

Date of Hearing: October 11, 2023

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**BOARD OF SUPERVISORS
PUBLIC HEARING
STAFF REPORT**

SUBJECT: Proposed Amendments to the Codified Ordinances of Loudoun County, Chapter 1066 – Onsite Sewage Treatment Systems

2011 ELECTION DISTRICT(S): Countywide.

2022 ELECTION DISTRICT(S): Countywide.

CRITICAL ACTION DATE: At the pleasure of the Board.

STAFF CONTACT(S): Robert Sproul, County Attorney’s Office
Leo Rogers, County Attorney
George Khan, Health Department
David Goodfriend, Health Department

PURPOSE: To consider the adoption of proposed amendments to Chapter 1066 (Onsite Sewage Treatment Systems) of the Codified Ordinances of Loudoun County (LCCO).

RECOMMENDATION(S): Staff recommends that the Board of Supervisors (Board) adopt the proposed amendments to Chapter 1066 of the LCCO, as provided in Attachment 1.

BACKGROUND: At the September 5, 2023, Board Business Meeting, the Board directed staff (9-0) to advertise the proposed amendments, provided at Attachment 1, to the September 5, 2023, Board Business Meeting Action Item, for the October 11, 2023, Board Public Hearing.

As the County has now transitioned to a locally administered Health Department, staff from the Environmental Health division of the Loudoun County Health Department (LCHD) have worked to identify areas of the LCCO which require amendments. One of the areas identified was the chapter(s) governing onsite sewage treatment systems.

The proposed amendment includes adding a definition for “maintenance” in Chapter 1066.01 that serves to identify sewage treatment system components which, when replaced, will require a permit issued by LCHD. Currently, the LCCO does not reference maintenance; and therefore, any

repair to correct an existing onsite sewage treatment system requires a permit subject to Virginia Department of Health (VDH) requirements and procedures. Since mid-1990, LCHD has issued a permit, identified as a Minor Repair permit, for system components that needed repair for system correction. In 2018, the [Title 32.1 of the Code of Virginia](#) was amended to increase the scope of system component corrections that are considered maintenance and no longer require a permit from VDH. Some of these components require a higher degree of knowledge, skill, and ability to repair or correct, and in order to maintain oversight of existing onsite sewage treatment system infrastructure and protect public health, LCHD identified these components and continued to issue a permit for their repair or correction. The text amendment codifies the identified components that fall under [the Code's definition of maintenance](#) that would require a permit issued by LCHD to repair or correct.

The authority for the amendment is found in [Va. Code § 32.1-163](#), which defines maintenance and states:

“Maintenance” means, *unless otherwise provided in local ordinance* (i) performing adjustments to equipment and controls or (ii) in-kind replacement of normal wear and tear parts that do not require a construction permit for adjustment or replacement of the component such as light bulbs, fuses, filters, pumps, motors, sewer lines, conveyance lines, distribution boxes, header lines, or other like components. “Maintenance” includes pumping the tanks or cleaning the building sewer on a periodic basis. *Notwithstanding any local ordinance*, “maintenance” does not include replacement of tanks, drainfield piping, subsurface drainfields, or work requiring a construction permit and installer. *Unless otherwise prohibited by local ordinance*, a conventional onsite sewage system installer or an alternative onsite sewage system installer may perform maintenance work limited to in-kind replacement of light bulbs, fuses, filters, pumps, sewer lines, conveyance lines, distribution boxes, and header lines [emphasis added].”

The emphasized portions of the above code section provide the County with the authority to deviate from the definition of “maintenance” found in the Code. The definition of maintenance in the proposed amendment serves as much to establish what is *not* considered maintenance by the LCHD, as much as what is. The practical effect of the amendment is that it establishes a boundary between maintenance and more complicated and consequential procedures. This is important because, generally, maintenance items are not required to be permitted (*See* [Va. Code § 32.1-164; LCCO 1066.03](#)). By defining maintenance in the LCCO, and excluding these certain procedures, LCHD can require permits for the excluded procedures.

Further, [Va. Code § 32.1-34](#) states: “[n]o county, city or town ordinance or regulation shall be less stringent in the protection of the public health than any applicable state law or any applicable regulations of the Board.” The proposed amendment is more stringent than the applicable State regulations and is therefore permitted.

ISSUES: There are no known issues with the proposed amendment.

FISCAL IMPACT: There will be no immediate fiscal impact to the County, as the Health Department will continue to review applications and issue permits with their current staffing levels.

ALTERNATIVES:

1. The Board may adopt the proposed amendments to Chapter 1066 of the Codified Ordinances, as provided in Attachment 1.
2. The Board may adopt the proposed amendments to Chapter 1066 of the Codified Ordinances, as provided in Attachment 1, with modifications.
3. The Board may not adopt the proposed amendments to Chapter 1066 of the Codified Ordinances, as provided in Attachment 1, in which case, the County would be without the authority to require the issuance of permits for certain component replacements.

DRAFT MOTIONS:

1. I move that the Board of Supervisors forward the Proposed Amendments to the Codified Ordinances of Loudoun County, Chapter 1066 – Onsite Sewage Treatment Systems, as provided in Attachment 1, to the November 15, 2023, Board of Supervisors Public Hearing for action.

OR

- 2a. I move that the Board of Supervisors suspend the rules.

AND

- 2b. I move that the Board of Supervisors approve Proposed Amendments to the Codified Ordinances of Loudoun County, Chapter 1066 – Onsite Sewage Treatment Systems, as provided in Attachment 1, to the October 11, 2023, Board of Supervisors Public Hearing Staff Report.

OR

3. I move an alternative motion.

ATTACHMENT(S):

1. Proposed Amendments to Chapter 1066, Onsite Sewage Treatment System

**PROPOSED AMENDMENTS TO CHAPTER 1066,
ONSITE SEWAGE TREATMENT SYSTEMS**

1066.01 Definitions

...

"Maintenance" means, (i) performing adjustments to equipment and controls or (ii) in-kind replacement of normal wear and tear parts that do not require a construction permit for adjustment or replacement of the component such as light bulbs, fuses, filters, pumps, motors, or other like components. "Maintenance" does not include replacement of tanks, drainfield piping, subsurface drainfields, or work requiring a construction permit; it also does not include replacement of sewer lines, inlet and outlet structures, conveyance lines, distribution boxes, or header lines.

...

1066.03 PERMIT REQUIRED FOR INDIVIDUAL SYSTEMS.

General. No person shall install, construct, alter, repair or extend, or allow to be installed, constructed, altered, repaired or extended, any onsite sewage treatment system in the County without first applying for and obtaining a valid permit therefor in the name of a specific person for a specific location. Permits for installation, construction, alteration, repair or extension of onsite sewage treatment systems shall be issued by the Health Department. **As defined in this Chapter, the replacement of building sewers, inlet and outlet structures, conveyance lines, distribution boxes, or header lines are not considered maintenance and require a permit issued by the Health Department.** In addition, no person shall change, renovate, alter or remodel any structure served by an onsite sewage treatment system unless and until such is done in accordance with a valid health permit or under written approval of the Health Department stating such will not cause damage to or exceedance of the onsite sewage treatment system design capacity.

State Code for Reference only:

"Maintenance" means, unless otherwise provided in **local ordinance**, (i) performing adjustments to equipment and controls or (ii) in-kind replacement of normal wear and tear parts that do not require a construction permit for adjustment or replacement of the component such as light bulbs, fuses, filters, pumps, motors, sewer lines, conveyance lines, distribution boxes, header lines, or other like components. "Maintenance" includes pumping the tanks or cleaning the building sewer on a periodic basis. Notwithstanding any **local ordinance**, "maintenance" does not include replacement of tanks, drainfield piping, subsurface drainfields, or work requiring a construction permit and installer. Unless otherwise prohibited by **local ordinance**, a conventional onsite sewage system installer or an alternative onsite sewage system installer may perform maintenance work limited to in-kind replacement of light bulbs, fuses, filters, pumps, sewer lines, conveyance lines, distribution boxes, and header lines.