TOWN OF PORTSMOUTH

WASTEWATER MANAGEMENT DISTRICT ORDINANCE
ORDINANCE # 2015-09-21

SECTION 1.0 - AUTHORITY

This Ordinance has been drafted in accordance with and under the authority of the R.I.G.L. Title 45, Chapter 24.5-1 et seq. entitled "Wastewater Management Districts," also identified as the "Rhode Island Septic System Maintenance Act of 1987." This law sets forth the basic powers and duties of a municipality in its operation of a wastewater management district.

Nothing in this Ordinance replaces or precludes any obligation of the owner to notify the Rhode Island Department of Environmental Management ("RIDEM"), the Rhode Island Department of Health ("DOH"), the Coastal Resources Management Council ("CRMC"), or their successors of Onsite Wastewater Treatment Systems' ("OWTS") failures.

SECTION 2.0 - FINDINGS

The Portsmouth Town Council hereby finds the following evidence in support of the establishment of an Onsite Wastewater Management District and Ordinance:

a) The legislative findings set forth in State of R.I.G.L. Title 45, Chapter 24.5-2 are incorporated in this Ordinance by reference.

b) In accordance with the R.I.G.L. Title 45, Chapter 42-17.1-2, RIDEM's rules and regulations for OWTS are set forth to provide minimum standards for the location, design, construction and maintenance of individual sewage disposal systems.

c) When properly located, designed, constructed and maintained, OWTSs are an effective and environmentally sound method of wastewater treatment and provide a viable and cost-effective alternative to municipal sewers.

d) The cumulative effects of improperly maintained and malfunctioning OWTSs contribute to the contamination of surface and ground waters and pose a risk to the health, safety and welfare of the public.

e) In accordance with the R.I.G.L. Title 45, Chapter 45-24.5-3, municipally-created Wastewater Management Districts are designated to eliminate and prevent the contamination of surface and groundwater caused by malfunctioning OWTSs through the implementation of OWTS inspection and maintenance programs designed to operate as an alternative to municipal sewer systems.

f) To be truly effective, municipally-created Wastewater Management Districts must operate in a spirit of coordination and cooperation with RIDEM in order to accomplish the common goals of protecting the public health and the quality of the environment.

g) The creation of a town-wide Wastewater Management District is consistent with and advances the goals of the Portsmouth Comprehensive Community Plan to ensure the rural character of the Town and the quality of the natural environment are not degraded and the impacts of onsite wastewater treatment on the social, aesthetic and cultural environment are minimized.

SECTION 3.0 – PURPOSE

The declaration of purpose set forth in the R.I.G.L. Title 45, Chapter 45-24.5-3 is incorporated in this Ordinance by reference. The purpose of this Ordinance is to establish the Portsmouth Wastewater Management District (the "District") to ensure that all OWTSs within the District are properly operated, regularly inspected, routinely maintained and administratively managed to prevent system malfunction and to operate as an alternative to municipal sewer systems.

This Ordinance provides a framework for the efficient inspection, repair and maintenance of OWTS within the District and recognizes the homeowners' responsibility to ensure that their system is well maintained and properly functioning.

Applicability: This Ordinance shall be applicable to every owner of property that has an OWTS of any type, including cesspools and holding tanks, within the Town of Portsmouth.

SECTION 4.0 – DEFINITIONS

Any terms not defined herein, and pertaining to OWTSs shall be governed by the definition as it appears in the current RIDEM "Rules Establishing Minimum Standards Relating to Location, Design, Construction and Maintenance of Onsite Wastewater Treatment Systems," dated July 16, 2014 and as amended.

Any terms defined herein that do not appear in RIDEM's OWTS Rules, indicated by an asterisk, are set forth by the Town of Portsmouth for the purposes of implementation of this ordinance.

Alternative /Experimental Technology (or "A/E Technology") means any OWTS technology for which design parameters are not specified in RIDEM Rules, but has been demonstrated through field testing, calculations and other engineering evaluations to comply with performance standards consistent with RIDEM's OWTS Rules, and for which a certification from RIDEM has been issued. RIDEM maintains a list of approved A/E Technology systems at http://www.dem.ri.gov.

Building Sewer means the pipe that begins outside the building foundation wall and extends to the septic tank, the pipe that begins outside the building foundation wall and extends to the grease tank, the pipe from a grease tank to a septic tank, or the pipe carrying laundry wastes directly to a leachfield.

Cesspool means any buried chamber, including, but not limited to, any perforated metal tank, perforated concrete vault or covered hollow or excavation, which receives discharges of wastewater from a building sewer for the purpose of collecting solids and discharging liquids to the surrounding soil.

***Design Guidance** – means RIDEM design guidance established for septic systems in the neighborhoods of Island Park and Portsmouth Park as established in *Design Guidance for OWTS Repairs – Island Park and Portsmouth Park Neighborhoods, Portsmouth*, effective date July 11, 2013, Revision Date January 9, 2015 and as amended.

Drain means storm drains, foundation drains, and subsurface drains as defined in the OWTS Rules.

Effluent means septage, water or other liquid, partially or completely treated or in its natural state, flowing out of any component of an OWTS or flowing over the ground's surface or beneath the ground in groundwater.

Failed OWTS means any OWTS that does not adequately treat and disperse wastewater so as to create a public or private nuisance or threat to public health or environmental quality, as evidenced by, but not limited to, one or more of the following conditions:

(1) Failure to accept wastewater into the building sewer;
(2) Discharge of wastewater to a basement; subsurface drain; stormwater collection, conveyance, or treatment device; or watercourse unless expressly permitted by RIDEM;
(3) Wastewater rising to the surface of the ground over or near any part of OWTS or seeping from the absorption area at any change in grade, bank or road cut;
(4) The top of the inlet or the top of the outlet for a septic tank, distribution box, or pump tank is submerged;
(5) The liquid depth in a cesspool is less than six (6) inches from the inlet pipe invert;
(6) Pumping of the cesspool or septic tank is required more than two (2) times per year;
(7) OWTS is shown to have contaminated a drinking water well, watercourse, groundwater, surface water, wetlands and estuarine waters;
(8) If a septic tank, pump tank, distribution box, or cesspool is pumped and groundwater seeps into it; or
(9) Any deterioration, damage, or malfunction relating to any OWTS that would preclude adequate treatment and dispersal of wastewater;
(10) Excessive solids are evident in the distribution box or distribution lines.

Groundwater Table means the upper surface of the zone of saturation in an unconfined aquifer; includes a perched groundwater table.

***Handbook** means the current edition of the Rhode Island Department of Environmental Management's *Septic System Check-Up: The Rhode Island Handbook for Inspection.*

Holding Tank means a closed watertight structure used to contain wastewater prior to being removed from the premises. A holding tank does not discharge wastewater to the surface of the ground or to the subsurface.

Invert means the lowest portion of the interior of a pipe or fitting.

***Island Park** – The neighborhood bordered by The Sakonnet River to the south and east, Boyd's Lane to the west and The Cove to the north up to the bridge over the channel connecting the The Cove with the Sakonnet River.

***Inspector** means a private OWTS inspector who is a Registered System Inspector with the University of Rhode Island Onsite Wastewater Training Center or an equivalent training program both for conventional and A/E Systems (URI's INSP 100 and 200 courses).

Leachfield means a group of one or more dispersal chambers or trenches designed for the final treatment and dispersal of wastewater into the underlying soil. The leachfield shall be held to mean the horizontal and vertical lines circumscribing the outermost edges including the area between the chambers or trenches and the depth to the bottom of stone.

Maintenance (Maintain) means the regular cleaning of any concrete chamber, cesspool, septic tank, building sewer, distribution lines or any other component of an OWTS for the purpose of removing accumulated liquid, scum or sludge. The term, "maintenance," shall also be held to include regularly required servicing or replacement of any related mechanical, electrical, or other component equipment.

***Maintenance Agreement** means a current operation and maintenance contract between an OWTS owner and a manufacturer-approved service provider.

Onsite Wastewater Treatment System (OWTS) means any system of piping, tanks, dispersal areas, alternative toilets or other facilities designed to function as a unit to convey, store, treat or disperse wastewater by means other than discharge into a public wastewater system.

***OWTS Inspections** means one of three types of OWTS inspections undertaken to gather baseline information, identify failed OWTS, to assess maintenance needs and to determine the overall condition of an OWTS.

1. **First Maintenance Inspection** means the initial inspection performed on an OWTS and system site to assess whether any repairs and/or replacement are necessary. The septic tank and/or other components of the system are usually pumped as part of this inspection to facilitate the evaluation of the current condition of the OWTS. First maintenance inspections involve the location of OWTS components and more detailed data gathering that are not usually necessary for subsequent routine inspections.

2. **Functional Inspection** means an inspection used to determine the overall condition and functioning of an OWTS and using standard RIDEM-approved flow trial methods, evaluate whether a system is adequate to serve the wastewater treatment needs of the household and to meet the Design Guidance, if applicable. This type of inspection may use standard dye tracing methods if needed to confirm suspected septic bypasses or seeps where identified.

3. **Routine Maintenance Inspection** – means an inspection performed at a period of time after the first maintenance inspection of an OWTS and system site to determine the need for pumping, establish future inspections schedules and to assess whether any repairs and/or replacement are necessary.

Owner means any person who holds legal title to any real property; or has possession or control of any real property through any agent, executor, executrix, administrator, administratrix, trustee or guardian of the estate of a holder of a legal title. Each such person is bound to comply with the provisions of this Ordinance.

***Portsmouth Park** – The neighborhood bordered by Morningside Lane to the south, East Main Road and Chase Road to the west, Boyd's Lane to the north, and the Sakonnet River to the east.

Repair means any work performed on an OWTS in order to mend or renovate a specific defect or deficiency after the failure, injury, deterioration or partial destruction of a previously existing

OWTS or component thereof as permitted by RIDEM. A repair shall include any upgrade or modification of an OWTS (e.g., replacement of a cesspool). A repair shall not include any work performed on an existing OWTS that increases the flow capacity of the system.

***RIDEM** – RIDEM is defined as the State of Rhode Island Department of Environmental Management or its successor organization.

Septage means any solid, liquid or semi-solid removed from septic tanks, cesspools, privies, domestic wastewater holding tanks or other similar onsite wastewater treatment systems.

***Septage Transporter** means any person lawfully authorized to transport Septage.

Septic Tank means a watertight receptacle which receives the discharge of wastewater from a building sewer, and is designed and constructed to permit the deposition of settled solids, the digestion of the matter deposited, and the discharge of the liquid portion into the next treatment component or distribution box.

Storm Drain means any pipe or structure designed to collect, carry and divert surface water runoff.

Structure means any residence (as defined herein), building, garage, shack, trailer or other permanent or semi-permanent facility, whether commercial or non-commercial in use, which is proposed to be placed or has been built or otherwise placed on a parcel of real property.

Transfer means a transfer of real property except between the following relationships:

1) Between current spouses;
2) Between parents and their children;
3) Between full siblings; or,
4) Where the grantor transfers the real property to be held in a revocable or irrevocable trust, where at least one of the designated beneficiaries is of the first degree of relationship to the grantor.

***Violation** means failure to comply with and adhere to the rules and regulations set forth in this ordinance.

Wastewater means human or animal excremental liquid or substance, putrescible animal or vegetable matter or garbage and filth, including, but not limited to, water discharged from toilets, bath tubs, showers, laundry tubs, washing machines, sinks, and dishwashers. Both blackwater and graywater are considered wastewater under this Ordinance.

***Wastewater Appeals Board** means a five (5) member board appointed by the Town Council to hear appeals of decisions of the Wastewater Manager. Tenure and rules of conduct of the Board shall be determined by the Town Council at the time of the Board's appointment. The Board shall elect, at a minimum, a Chairman and a recording secretary to take responsibility for all administrative duties.

***Wastewater Manager** means the Town employee whose duty it is to supervise the day-to-day administration of the Wastewater Management District and the provisions of this Ordinance. The Wastewater Manager or his/her designee shall serve as the enforcement officer pursuant to the authority granted under this Ordinance and any regulations adopted pursuant to this Ordinance. The Wastewater Manager shall report directly to the Town Administrator and be subject to direction and management by the Town Administrator.

SECTION 5.0 – PROGRAM ADMINISTRATION

5.1 Boundaries and Jurisdiction

The Wastewater Management District shall encompass the entire Town of Portsmouth. Under this Ordinance, the Town shall have jurisdiction to ensure the proper inspection, operation and maintenance of all existing and future OWTSs and the phased removal of all cesspools and unpermitted systems within the District per Section 6.10 in this Ordinance.

5.2 Administrative Responsibilities

a) The day-to-day administration and enforcement of the Wastewater Management District and the provisions of this Ordinance shall be the responsibility of the Wastewater Manager. The Wastewater Manager shall report directly to the Town Administrator.

b) The Town Administrator shall develop the qualification requirements for the Wastewater Manager. At a minimum, the Wastewater Manager, or his/her designee should have a demonstrated competency in the areas of soil science, OWTS functioning, inspection and repair procedures, including alternative/experimental technology, and shall have attended and passed the courses to be accredited through the University of Rhode Island Onsite Wastewater Training or an equivalent training program both for conventional and A/E systems (URI's INSP 100 and 200 courses) within 6-months of his/her appointment confirmation by the Town Council.

c) Should the Wastewater Manager, by reason of conflict of interest or extended illness, be unable to act in a specific situation, the Town Administrator may appoint a designee to act on his/her behalf.

d) The Tax Collector shall be responsible for collecting all fees and fines associated with this Ordinance. The Tax Collector may attach a lien on the property for any unpaid fees and fines to enforce the payment of such fees or fines.

e) A five (5) member Wastewater Appeals Board shall be appointed by the Town Council to hear appeals of decisions of the Wastewater Manager.

5.3 Powers and Duties of the Wastewater Manager

It shall be the duty of the Wastewater Manager, without limitation, to:

a) Supervise the administration of this Ordinance

b) Develop any and all rules and regulations necessary for the implementation of this Ordinance for review and approval by the Town Council.

c) Render decisions regarding the rights and obligations of any owner of property that is subject to the requirements of this ordinance.

d) Establish and manage a pump out/inspection schedule to ensure every septic system in Portsmouth undergoes a First Maintenance Inspection and subsequent regular Routine Maintenance Inspections.

e) Issue Notices of Violation and levy fines pursuant to this Ordinance.

f) Contract, through the Town Administrator, for services of licensed septage transporters, private OWTS inspectors, licensed OWTS installers and others as necessary.

g) Provide for the passage of authorized personnel onto private property when necessary and in accordance with the notice provisions of this Ordinance for the purpose of investigations, periodic inspections, pumping, maintenance and repair of OWTSs as necessary.

h) Provide technical and administrative assistance to homeowners on all matters pertaining to OWTS maintenance, repair, upgrade and replacement.

i) Maintain a list of inspectors and licensed septage transporters and make such list available to property owners for the purpose of arranging the inspection of their own OWTS.

j) Maintain an electronic database of available information for each on-site septic system in the Wastewater Management District along with timeline tracking of system inspections and the status of violations of this ordinance and the replacement of failed systems.

k) Enforce the phased removal of all cesspools and unpermitted systems in the District per the timetables established in Section 6.10.

SECTION 6.0 – OWTS INSPECTION AND MAINTENANCE

6.1 Purpose of the OWTS Inspection Program

The purpose of the OWTS inspection program for each OWTS in the District is to determine a) the overall condition of the system and whether the required permits for the system are in place, b) when and at what frequency subsequent inspections should be performed, c) the date of the next inspection, d) the need for system repair or replacement, e) where appropriate, whether the system conforms to RIDEM Design Guidance, f) whether a system has failed, and g) where required by this Ordinance, the system's functionality. Information from the inspections will also be used to complete a town-wide OWTS inventory and to track system inspections, maintenance and upgrades.

6.2 General Program Description, Requirements, and Procedures

a) Each OWTS within the District shall be required to have a First Maintenance inspection, or baseline inspection. This initial baseline inspection shall meet the criteria set forth in the *Septic System Checkup: The Rhode Island Handbook for Inspection* (the "Handbook"). The inspection should reflect critical site conditions such as high groundwater and is designed to assess the condition of the OWTS, and to determine whether any repairs and/or replacement is necessary. This initial baseline inspection involves some data gathering and locating of system components not usually necessary for subsequent routine inspections. If a septic system is found to be a cesspool or if required permits for the system are not in place, a

determination shall be made as to whether the system is within fifty (50) feet of any component of a Town or State storm drain system to determine compliance with Section 6.10 of this Ordinance. At the time of this initial inspection, the owner of the OWTS shall provide the Inspector with any pertinent information the owner may have regarding the use, age, location, maintenance history, design, plat and lot number, RIDEM and/or CRMC permit number, engineering plans, etc. of the OWTS. For the neighborhoods of Island Park and Portsmouth Park, the First Maintenance Inspection must be sufficient to document and evaluate compliance with RIDEM Design Guidance for these neighborhoods and compliance with Section 6.10 of this Ordinance. The First Maintenance inspection shall be accompanied by a system pump out in order to determine before-and-after pump out conditions.

b) A Functional Inspection shall be conducted instead of a First Maintenance Inspection for each OWTS within the District a) at the Point of Sale or transfer if prior to the inspection phasing schedule referenced in section 6.2 (d), or b) if the system is unpermitted and is < 200 feet from a coastal feature or < 50 feet from a Town or State-owned storm drain, or c) as needed at the discretion of the Inspector or Wastewater Manager at the time of inspection.

c) For the neighborhoods of Island Park and Portsmouth Park, the Functional Inspection, if required, must be sufficient to document and evaluate compliance with RIDEM Design Guidance for these neighborhoods and compliance with Section 6.10 of this Ordinance. The Functional inspection shall be accompanied by a system pump out in order to determine before-and-after pump out conditions.

d) First Maintenance Inspections or Functional Inspections of all OWTSs within in the District will take place by December 31, 2022 in accordance with an inventory and inspection phasing schedule developed by the Wastewater Manager and the Planning Department. First Maintenance or Functional Inspections of all OWTSs in the Island Park and Portsmouth Park neighborhoods will take place by July 1, 2017. The remainder of Town will be divided into management areas with the goal of completing approximately 800 inspections per year. The inspections shall begin in areas of the Town identified as having a dense concentration of cesspools, a history of OWTS failure, high seasonal OWTS use, or frequent pumping. The next inspections will be in areas of known high seasonal groundwater conditions or areas adjacent to other critical natural resources and finally in areas not included in the above.

e) OWTS owners who have an Alternative/Experimental Technology system, an active, valid Maintenance Agreement recorded in the Town Clerk's office, and documentation that the OWTS is monitored and maintained by a professional service provider, are exempt from the First Maintenance inspection requirements. Annual service records, shall be submitted to the Wastewater Manager and may substitute for subsequent Routine Inspections as long as the Maintenance Agreement remains valid and in force. In Island Park and Portsmouth Park, the Wastewater Manager, examining records on file in Town Hall, shall determine compliance with the Design Guidance and report such to the RIDEM Office of Water Resources OWTS Program.

f) If a property owner has had an inspection performed by an inspector within one (1) year prior to being required to do so by this Ordinance, and the inspector completes and signs the town-required form, the system need not undergo a Functional or First Maintenance inspection. A schedule for subsequent Routine Maintenance inspections will be established for such

systems by the Wastewater Manager per Section 6.4 (b) of this Ordinance. In Island Park and Portsmouth Park, the Wastewater Manager, examining records on file in Town Hall, shall determine compliance with the Design Guidance and report such to the RIDEM Office of Water Resources OWTS Program.

g) After an OWTS has undergone a Functional or First Maintenance inspection, the owner will receive an inspection report from the Wastewater Manager or his/her designee detailing the condition of the system and a scheduled date for subsequent Routine Maintenance inspections. All costs of inspections, including any pumping and/or incidental maintenance, shall be the responsibility of the OWTS owner.

h) If a Functional or First Maintenance or Routine Maintenance inspection reveals a failed OWTS or cesspool subject to the R.I. Cesspool Act, the Wastewater Manager, shall send a copy of the Inspection form to the Portsmouth Building Official and the RIDEM Office of Water Resources OWTS Program and shall issue a Notice of Violation requiring the property owner to submit an OWTS Application to RIDEM within a specified timeframe, and to implement the immediate temporary measures required pursuant to Section 6.8(c).

6.3 Who May Inspect

a) All OWTSs must be inspected by an OWTS inspector as defined in this ordinance. All inspections shall follow the criteria and procedures outlined in the Handbook.

b) An inspector must satisfactorily complete a training course in the use of the handbook through the University of Rhode Island's Onsite Wastewater Training (OWT) Center and must at a minimum have attended and passed the courses to be accredited through the University of Rhode Island Onsite Wastewater Training or an equivalent training program both for conventional (URI's INSP 100 course) and, if applicable, innovative systems (URI's INSP 200 course). The Wastewater Manager shall also be qualified to perform inspections, but shall only do so in special circumstances. To inspect systems with A/E technology an inspector, in addition to the above, must satisfactorily complete the course in alternative and experimental system operation and maintenance offered through the University of Rhode Island's Onsite Wastewater Training (OWT) Center or similar program approved by the Town.

c) The Wastewater Manager shall maintain a list of inspectors and licensed septage transporters and make such lists available to property owners for the purpose of arranging the inspection of their own OWTSs. The Wastewater Manager reserves the right to remove an inspector or septage transporter from the list if the inspections and subsequent reports or pump out activities are not performed in accordance with the criteria outlined in the Handbook and this Ordinance.

6.4 Inspection Frequency

a) Functional or First Maintenance Inspections shall take place in accordance with the inspection phasing schedule referenced in 6.2(d), above. All OWTS owners will be mailed notification of the requirement for a Functional or First Maintenance inspection, along with a list of approved inspectors and OWTS educational material. OWTS owners will have sixty (60)

days after receipt of this notification to have the Functional or First Maintenance inspection performed.

b) Subsequent Routine Maintenance Inspections, shall take place once every five (5) years or more frequently if required by the Wastewater Manager. Subsequent Routine Maintenance inspections for cesspools, including a pump out, shall take place once every two (2) years unless otherwise indicated in the Wastewater Manager's Functional or First Maintenance Inspection Report. Subsequent Routine Maintenance inspections for holding tank systems, including a system pump out, shall take place annually. Routine maintenance inspections for systems other than cesspools and holding tanks need not include a pump out, unless recommended by the previous inspection or if the combined depth of the sludge and scum layer in the septic tank is greater than 25% of the depth of the tank. OWTS owners will have sixty (60) days after notification to have a Routine Maintenance inspection performed.

6.5 Inspection Forms and Reports

a) Inspectors must use the Town-authorized and RIDEM-approved field inspection forms for all inspections. Forms shall be provided by the Wastewater Manager. A copy of all completed field inspection forms shall be given by the inspector to the OWTS owner and to the Wastewater Manager within five (5) days of inspection.

b) The Wastewater Manager shall keep the completed inspection forms on file (electronically stored) for each OWTS inspected and shall provide such forms to RIDEM upon request.

c) After an OWTS has undergone an inspection and the Wastewater Manager has reviewed the field inspection form, the owner will receive an Inspection Report from the Wastewater Manager or his/her designee detailing the condition of the system, any maintenance recommendations, and a scheduled date for subsequent Routine Maintenance inspections. In Island Park and Portsmouth Park, the Inspection Report shall also indicate whether the OWTS meets the Design Guidance. All Inspection Reports shall be stored electronically and provided to RIDEM upon request.

d) The Town shall summarize and submit to RIDEM the results of all inspections in the Island Park and Portsmouth neighborhoods no later than December 31, 2017.

6.6 OWTS Maintenance and Owner's Responsibility

a) The OWTS owner shall assume all responsibility for hiring a licensed septage transporter and inspector to complete the inspection procedures directed by the Wastewater Manager within the time frame required.

b) OWTS owners who have an A/E Technology System are required to have a Maintenance Agreement recorded in the Town Clerk's office and must provide documentation to the Wastewater Manager that the OWTS is monitored and maintained by a professional inspector on an annual basis.

6.7 Changes in Inspection Schedule

The Wastewater Manager, upon written notification to the OWTS owner, shall have the authority to change the inspection schedule of an OWTS, where such a change is deemed necessary for the proper functioning of the system. Likewise, the OWTS homeowner may petition the Wastewater Manager to alter the inspection schedule. The OWTS owner must demonstrate, through the use of appropriate site data and household information, that such a change in the schedule would still ensure the proper operation of the OWTS and fulfill the intent of this Ordinance. Information to be used by a homeowner in the petition may include, but is not limited to, OWTS inspection records and site data, such as soils, water table, household information, seasonal use, water use and proximity to a critical resource. For OWTS in Island Park or Portsmouth Park, any change in inspection schedule must be approved by RIDEM.

6.8 Immediate Need to Pump or Implement Other Immediate Temporary Actions

a) If an inspection or other evidence reveals that an OWTS requires immediate pumping, the Wastewater Manager shall immediately notify the homeowner. The Wastewater Manager will attempt to contact the owner by phone and send the owner a written notice by certified mail, allowing the owner five (5) working days to pump the system, and to present evidence of such pumping to the Wastewater Manager in the form of a receipt from a licensed septage transporter. The Wastewater Manager will also send a copy of this written notice to RIDEM.

b) In the event of a system failure that poses an immediate public health and/or environmental hazard, and where Wastewater Manager has been unable to contact the owner using all reasonable means, the Wastewater Manager is hereby authorized to enter private property without the consent of the property owner, and to effectuate a pump out and/or immediate repairs to the system, at the owner's expense.

c) The Wastewater Manager is also hereby authorized to direct the OWTS owner to effect immediate temporary measures to redirect flow, provide temporary mobile sanitation, isolate the contamination from human contact or any other measures and actions as the Wastewater Manager deems appropriate until the condition is remedied. Failure on the part of the OWTS owner to comply with any notices or directions issued under Section 6.8 shall be deemed a violation of this Ordinance.

d) If observation or other evidence reveals an OWTS may be malfunctioning but the situation does not require immediate pumping or does not pose an immediate public health and/or environmental hazard, the Wastewater Manager is hereby authorized to direct the OWTS owner to have a Functional Inspection of the system performed by a specified date.

6.9 Septage Disposal

Septage or contents pumped from an OWTS shall be discharged at a State-approved septage disposal facility.

6.10 Cesspools and Unpermitted Systems

a) Subsequent to the Functional or First Baseline Inspection, all cesspools and unpermitted systems in the Town of Portsmouth shall be inspected every two (2) years.

b) Cesspools and Unpermitted Systems located within fifty (50) feet of a drain: All cesspools and unpermitted systems in the Town of Portsmouth within fifty (50) feet of a Town or State storm drain must be replaced by the earlier of the following:

    1) Immediately, if the system is determined to be failed;
    2) Prior to the deadline specified in R.I.G.L §23-19.15 (the Rhode Island Cesspool Act of 2007), if applicable and as amended;
    3) Within twelve (12) months of the date of sale or transfer of the property; or,
    4) Prior to January 1, 2020.

c) All other cesspools and unpermitted systems: All other cesspools and unpermitted systems in the Town of Portsmouth must be replaced by the earlier of the following:

    1) Immediately, if the system is determined to be failed;
    2) Prior to the deadline specified in R.I.G.L §23-19.15 (the Rhode Island Cesspool Act of 2007), if applicable and as amended;
    3) Within twelve (12) months of the date of sale or transfer of the property; or,
    4) Prior to January 1, 2025.

6.11 Holding Tanks

a) Holding tank owners must have the holding tank inspected annually by an approved inspector. The tank shall be pumped completely as part of the annual inspection. The inspector shall certify in writing, at minimum, the integrity of the tank, alarm and telemetry functioning, and that the system has not been bypassed or otherwise tampered with. Inspection results shall be submitted by the inspector to the Wastewater Manager and to the RIDEM Office of Water Resources as required by the RIDEM holding Tank Policy. Failure to complete inspections and pump outs in accordance with this section shall be deemed a violation of this ordinance.

b) All holding tank owners are responsible for maintaining a regular pump out schedule as needed and shall maintain records of pump outs from the holding tank for the most recent four years. These records shall be provided to the Wastewater Manager and/or RIDEM upon request. All pump out receipts shall include the date and volume pumped during each service visit and shall be reported to the Wastewater Manager by both the holding tank owner and by the licensed septage transporter.

c) All holding tank owners are required to hold a valid pumping contract for the holding tank with a licensed septage transporter at all times. It is the owner's responsibility to provide the Wastewater Manager and RIDEM with a copy of this pumping contract.

d) If the number of pump outs exceeds twelve (12) in any calendar year, the Wastewater Manager shall notify RIDEM.

SECTION 7.0 – ENFORCEMENT

The purpose of this Section is to provide an efficient means of alleviating the public health and environmental problems associated with failed OWTSs and non-compliance with the inspection requirements of this Ordinance. It is also designed to provide the owners of failed systems with the opportunity for technical and administrative assistance in repairing their failed systems. Failure to comply with any requirements of this ordinance shall be deemed a violation. The Wastewater Manager shall be responsible for the enforcement of the provisions of this Ordinance.

7.1 Failure to Apply

Failure to submit an OWTS Application to RIDEM for repairs to or replacement of a failed system or a cesspool subject to the Rhode Island Cesspool Act within the timeframe established in a Notice of Violation shall be deemed a violation of this ordinance. Town enforcement shall be limited to failure to submit an OWTS Application and to implement the immediate temporary measures required pursuant to Section 6.8(c). The Wastewater Manager shall notify RIDEM of said non-compliance and RIDEM shall be responsible for further enforcement against said OWTS owners for the failure to repair or replace.

7.2 Failure to Pump and Inspect

Failure to have an OWTS pumped and inspected as directed by the Wastewater Manager and/or as required by this Ordinance shall be deemed a violation of this Ordinance, and the Wastewater manager shall take appropriate enforcement action, including issuance of a Notice of Violation seeking injunctive relief and penalties as described in Sections 7.6 and 7.7 of this ordinance.

If proof of system pumping and inspection is not received by the Wastewater Manager within sixty (60) days of notification, the Wastewater Manager may, after written notice to the owner and after no response or appeal within two weeks on the part of the OWTS owner, hire an inspector and licensed septage transporter to complete the required activity and the OWTS owner will be billed by the Town. The OWTS owner will be notified by certified mail, return receipt requested, of the intended date and time of such actions. The bill will include the actual cost of pumping and inspection as well as associated administrative costs.

7.3 Failure to Pay Bill

Failure to pay a bill incurred by the Wastewater Manager for the pumping and inspection of the OWTS shall be deemed a violation of this Ordinance and constitute a lien on the owner's property. The OWTS owner shall be responsible for any associated interest, administrative and court costs.

7.4 Failure to Replace a Cesspool or Unpermitted System

Failure to cause the removal of a cesspool or unpermitted system per the timetables outlined in Section 6.10 above shall be deemed a violation of this Ordinance.

7.5 Failure Specific to Holding Tanks

Failure of a holding tank owner to a) provide holding tank pump out receipts including the date and volume pumped during each service visit and b) provide a copy of a current valid pumping contract with a licensed septage transporter to the Wastewater Manager shall be deemed violations of this Ordinance.

7.6 Notice of Violation

The Wastewater Manager may issue a Notice of Violation to any owner of an OWTS deemed to be in violation of any of the provisions of this Ordinance. The Notice shall be in writing, and shall be issued by regular mail, and by certified mail, return receipt requested, and contain an explanation of the nature of the violation, required actions, any assistance that is available from the Town, a reasonable time frame for compliance, and the possible consequences for noncompliance.

7.7 Penalties

Any OWTS owner may be subject to a penalty of not more than $100 (One Hundred Dollars) per violation per day for noncompliance with any provision of this Ordinance. Each day of continuing violation shall constitute a separate and distinct violation. Fines issued under this Ordinance shall not exceed $500 (Five Hundred Dollars) per day for combined violations of this ordinance. Each day of a continuing violation constitutes a separate and distinct violation.

7.8 Administrative Conference

All OWTS owners are encouraged to resolve disputed Notices of Violation or Inspection Reports issued by the Wastewater Manager or inspection forms completed by Inspectors at an informal administrative level before appealing to the Wastewater Appeals Board. Any owner of an OWTS who is aggrieved by any action or finding of the Wastewater Manager or Inspector shall have the right to an administrative conference. Request for an administrative conference shall be submitted in writing to the Portsmouth Town Clerk who shall in turn notify the Wastewater Manager to convene the meeting. The request shall be in writing, within thirty (30) days of the disputed action and shall state clearly the factual and/or legal issue(s) or decision to be resolved, the reason for requesting the conference, and the relief sought. Representatives at the administrative conference shall include the Wastewater Manager, the Building Official, the Inspector, if needed, the Town Administrator and a designated member of the Town Council. An administrative conference shall be convened within thirty (30) days following the request and earlier whenever possible. A written consent agreement, signed by the Town and the OWTS owner, shall outline the specifics of any agreement developed as a result of an administrative conference.

7.9 Hearings and Appeals

a) Any owner of an OWTS who receives a Notice of Violation of this ordinance shall have the right to a hearing before a quorum of the Wastewater Appeals Board. A request for such a hearing must be made within thirty (30) days of receipt of the notice, and shall be filed with the Town Clerk's Office.

b) The appeal shall be in writing and shall state clearly the factual and/or legal issue(s) or decision that is being appealed, the reason for the appeal and the relief sought.

c) Upon receipt of an appeal, The Town clerk shall notify the Wastewater Appeals Board who in turn shall require the Wastewater Manager to transmit forthwith to the Wastewater Appeals Board all papers, documents and plans, or a true copy thereof, constituting the record of the action which is being appealed.

d) An appeal shall stay all proceedings in furtherance of the action being appealed. Under no circumstances, however, shall an OWTS that presents an imminent or potential endangerment to the environment, and/or the public's health be allowed to continue to do so during the appeal process.

e) The Wastewater Appeals Board shall schedule a hearing on such an appeal within sixty (60) days of receipt of the notice of appeal. Notice of the hearing shall be sent to the appellant at least ten (10) days prior to the date set.

f) A quorum is hereby defined as a minimum of three (3) Wastewater Appeals Board members.

g) At the hearing, the appellant and any other interested party shall be permitted to present evidence and argument on all issues involved.

h) The Wastewater Appeals Board shall cause minutes to be kept of each hearing, and shall provide for an audio recording of each hearing. Hearings may be recorded by stenographer at the request of any party, provided that said party pays for the stenographer and the transcript.

i) Any final order and/or decision by the Wastewater Appeals Board shall be stated on the record at the conclusion of the hearing and shall be made in writing. The final order and/or decision shall include findings of fact and conclusions of law, separately stated. All final orders and/or decisions shall be sent by certified mail, return receipt requested, to the appellant and shall be recorded in the Town Clerk's Office. The Wastewater Appeals Board final order and/or decision shall be considered a final administrative action for purposes of judicial review.

j) In exercising its powers, the Wastewater Appeals Board may, in conformity with the provisions of this ordinance, reverse or affirm wholly or partly and may modify the order, requirement, decision, or determination appealed from and may make any orders, requirements, decisions, or determinations that ought to be made, and to that end has the powers of the administrative officer from whom the appeal was taken.

7.10 Appeals to District Court

a) Any person or owner aggrieved by a decision of the Wastewater Appeals Board may seek, judicial review of the decision.

b) Proceedings for review are instituted by the filing of a complaint in the Second Division District Court within thirty (30) days of the date the decision was issued.

c) The filing of a complaint shall not stay the decision of the Wastewater Appeals Board. The Wastewater Appeals Board may grant, or the Court may order, a stay upon appropriate terms.

d) Within thirty (30) days after service of the complaint, or within further time allowed by the Court, the Wastewater Appeals Board shall transmit to the Clerk of the Court the entire record of the proceedings under review.

e) If, before the date set for hearing, application is made to the Court for leave to present additional evidence and it is shown to the satisfaction of the Court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the Wastewater Appeals Board, the Court may order that the additional evidence be taken before t the Wastewater Appeals Board upon conditions determined by the Court. The Wastewater Appeals may modify its findings and decision by reason of the additional evidence and shall file that evidence and any modifications, new findings or decisions with the District Court.

f) The review shall be conducted by the Court without a trial and shall be confined to the records. Only in cases of alleged irregularities in the procedure before the Wastewater Appeals Board not shown on the record, proof thereof may be taken by the Court. The Court, upon request, shall hear oral argument and receive written briefs.

g) The Court shall not substitute its judgment for that of the Wastewater Appeals Board as to the weight of the evidence on questions of fact. The Court may affirm the decision of the Wastewater Appeals Board or remand the case for further proceedings, or it may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions or decisions are:
    1) In violation of constitutional or statutory provisions;
    2) In excess of statutory authority of the Wastewater Appeals Board;
    3) Made upon unlawful procedure;
    4) Affected by other error of law;
    5) Clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
    6) Arbitrary or capricious or characterized by an abuse of discretion or clearly unwarranted exercise of discretion.

SECTION 8.0 – FINANCING

8.1 Fines Collected

Any funds collected in the course of implementing this Ordinance shall be kept as an enterprise account, separate from the Town's general fund, to be used in furtherance of the purposes of this Ordinance.

8.2 Program Financing

The Town Council shall have the authority to raise funds for the administration, operation, contractual obligations, and services of the District.

8.3 Septic Loan Program

The Town under the authority of the state legislature shall have the authority to issue bonds or notes, or to receive grants for the purpose of establishing a revolving fund. This fund may be used to make low interest loans or grants available to qualified property owners for the improvement, correction, or replacement of a

failed OWTS. The Finance Director, in conjunction with the Wastewater Manager, Planning Department and Town Administrator shall establish specific criteria to define eligibility for grants or loans. These criteria are subject to approval by the Town Council.

8.4 Pump out Subsidies

The Town shall have the authority to establish a pump out subsidy program to incentivize OWTS owners to maintain a proper pump out schedule under the direction of the Wastewater Manager. Criteria and funding sources for this program are at the discretion of the Town Council.

SECTION 9.0 – EDUCATION

a) A public education program shall be established and overseen by the Wastewater Manager, with technical assistance from other appropriate sources, to inform people about the benefits and goals of the Wastewater Management District and this ordinance. The public education program may include public presentations, public awareness programs, written materials, and other programs incorporating print, radio, or television media as necessary and appropriate. The educational program shall include, but not be limited to the following:

    1) The operations and management framework of the Wastewater Management District.
    2) The proper operation and maintenance of OWTS;
    3) The proper disposal of hazardous waste, including household hazardous waste;
    4) Water conservation and the development of a water conservation program;
    5) The protection of Critical Resource Areas;
    6) The use of environmentally-sensitive cleaning products.

b) In addition to the general public education described above, each notice sent to an OWTS owner shall contain educational materials specific to the notice and the actions that must be taken.

c) The Wastewater Manager shall prepare a written report submitted to the Town Administrator at the end of each fiscal year describing the public education program as implemented during the previous 12 months and an implementation plan for the next 12 months.

SECTION 10.0 – SEVERABILITY

If any provision of this ordinance or any rule or determination made hereunder, or application hereof to any person, agency, or circumstances is held invalid by a court of competent jurisdiction, the remainder of this ordinance and its application to any person, agency, or circumstance shall not be affected thereby. The invalidity of any section or sections of this ordinance shall not affect the validity of the remainder of this ordinance.

SECTION 11.0 – EFFECTIVE DATE

This ordinance shall become effective upon passage.

ADOPTED BY TOWN COUNCIL
ACTION ON SEPTEMBER 21, 2015

Joanne M. Mower

Joanne M. Mower, Town Clerk