

ORDINANCE NO. O-2015- \_\_\_\_\_

BE IT ENACTED BY THE QUORUM COURT OF THE COUNTY OF BENTON,  
STATE OF ARKANSAS, AN ORDINANCE TO BE ENTITLED:

AN ORDINANCE REQUIRING THE OWNER OF ANY PROPERTY, NOT CONNECTED TO A PUBLIC SEWER SYSTEM, PRIOR TO ANY TRANSFER OF TITLE, TO HAVE AN INSPECTION DONE OF ANY ONSITE WASTEWATER TREATMENT SYSTEM OR FOR APPROVAL OF A NEW SYSTEM BY AN ARKANSAS LICENSED DESIGNATED REPRESENTATIVE OR BY A SEPTIC SYSTEM INSTALLER APPROVED BY THE BENTON COUNTY UNIT OF THE ARKANSAS DEPARTMENT OF HEALTH ON A FORM APPROVED BY AND REVIEWED BY THE BENTON COUNTY UNIT OF THE ARKANSAS DEPARTMENT OF HEALTH .

WHEREAS, the Arkansas Department of Health requires owners with Onsite Wastewater Treatment Systems to maintain them in good working order, and can demand compliance or deny use of a failing septic system, and

WHEREAS, exposure to sewage through ingestion or bodily contact can result in disease, severe illness, and in some instances death from the bacteria, viruses and parasites contained in the waste, and

WHEREAS, the karst geology of Benton County makes drinking water highly vulnerable to pollutants entering wells from contaminated ground water or into Beaver Lake, the area's water source, and

WHEREAS, sewage contains the nutrient phosphorus which can cause excessive aquatic plant growth leading to degradation in water quality in area watersheds; and

WHEREAS, levels of phosphorous have focused on agriculture without adequately addressing other sources that contribute to this problem exacerbated by the rapid growth in Benton County, and

WHEREAS, currently existing procedures are inadequate and inconsistent in protecting buyers and sellers of property and protecting property values, which can result in Increased expense and litigation for them, when a wastewater system's location is unknown and whether it is functioning properly and adequately; and

WHEREAS, our area lakes, streams, and rivers are the economic engine for the area that relies heavily on the quality of the Lake for tourism, recreation, and the enhancement of property values that requires preventing contamination entering ground and surface waters especially since Beaver Lake is already classified as a nutrient enriched lake, and

WHEREAS, all onsite wastewater treatment systems have a lifespan that can be altered by use, inadequate installation, quality of materials, lack of maintenance, and other factors; and

WHEREAS, it is the desire of the Quorum Court that adequate water quality protection be afforded from onsite wastewater treatment systems.

NOW, THEREFORE, BE IT ORDAINED BY THE QUORUM COURT OF THE COUNTY OF BENTON, STATE OF ARKANSAS:

ARTICLE 1. Upon title change, the owner of an improved property, the septic system for which is not connected to a public sewer system, regardless of the size of the tract, is required to have an inspection done of any existing onsite wastewater treatment system.

ARTICLE 2. Inspections must be conducted by Benton County certified inspectors in good standing who are Arkansas Licensed Septic System Installers or DRs. Certification will be issued by Benton County.

ARTICLE 3. Said onsite wastewater treatment system inspection shall comply with regulations of the Arkansas Department of Health and the Benton County Health Unit for proper functioning of existing systems, so that a failing system does not contribute to a danger to public health, safety, and welfare or water quality as well as to provide for protection of the consumer.

ARTICLE 4. The onsite wastewater treatment system inspection form shall be provided to the Benton County Health Unit, the buyer, and the seller.

ARTICLE 5. Prior to the transfer of title, a completed Onsite Wastewater Treatment System Inspection Form and a Certificate of Inspection for an onsite wastewater treatment system from the Benton County Health Unit, and completed repairs to any faulty system, will be required.

ARTICLE 6. That violations of this ordinance will be punished in accordance with § 1-9 of the Code of Ordinances of Benton County, which currently reads as follows:

Sec. 1-9. - Penalty for violations.

- (a) In this section the term "violation of this Code" means:
- (b)
  - (1) Doing an act that is prohibited or made or declared unlawful, an offense or a misdemeanor by ordinance or by rule or regulation authorized by ordinance.
  - (2) Failure to perform an act that is required to be performed by ordinance or by rule or regulation authorized by ordinance.
  - (3) Failure to perform an act if the failure is declared a misdemeanor or an offense or unlawful by ordinance or by rule or regulation authorized by ordinance.
- (c) In this section the term "violation of this Code" does not include the failure of a county officer or county employee to perform an official duty unless it is provided that failure to perform the duty is to be punished as provided in this section.
- (d) Except as otherwise provided, a person convicted of a violation of this Code shall be punished by a fine not exceeding \$500.00 or double such sum for each repetition thereof. If the violation is, in its nature, continuous in respect to time, the penalty for allowing the continuance thereof is a fine not to exceed \$250.00 for each day that the same is unlawfully continued.
- (e) If a violation of this Code is also a misdemeanor under state law, the penalty for the violation shall be as prescribed by state law for the state offense.
- (f) The imposition of a penalty does not prevent revocation or suspension of a license, permit or franchise.
- (g) Violations of this Code that are continuous with respect to time are a public nuisance and may be abated by injunctive or other equitable relief. The imposition of a penalty however does not prevent the simultaneous granting of equitable relief in appropriate cases.

## ARTICLE 7. Definitions

Certificate of Inspection for an onsite wastewater treatment system – a form issued by the Benton County Health unit that verifies that the system was inspected and that the system is not a failing system that needs immediate repair. Necessary repairs are required to be completed before transfer of title

Certified inspectors – Arkansas Licensed Septic System Installers or Arkansas Designated Representatives (DRs) trained by the Benton County Health Unit and issued a certificate by Benton County

DR – licensed designated representative by the State of Arkansas

Failing System - an onsite wastewater treatment system which does not function properly that includes one or more of the following deficiencies: surfacing sewage, sewage being discharged directly onto the ground or into water, sewage backing up into the home, a collapsed septic tank, a tank with no lid or an open lid, a non-water tight or leaking septic tank, or a pump or other components not working

“Improved property” means a parcel of real estate having an occupiable structure located on it. “Improved property” includes real estate where a motor home, mobile home, trailer, or similar living unit is located if the motor home, mobile home, trailer, or similar living unit is intended to be or is actually occupied as a permanent or temporary dwelling.

Inspectors in “good standing” – inspectors who have completed all requirements needed to become licensed by the Arkansas Department of Health

Onsite wastewater treatment system (OWTS) – known as an individual sewage disposal system or commonly known as a septic system or a STEP system.

Onsite wastewater treatment system inspection form – a form developed by the Benton County Health Unit for inspection of onsite wastewater treatment systems which is sent to the Benton County Health Unit and to current title holders and prospective title holders prior to title transfers

Onsite Wastewater Treatment System Disclosure Form – a form developed by the Benton County Health Unit to be completed prior to a title transfer

Property owner - the person(s) who have legal title to the real estate

“Title change” means intentional transfer of title by deed or anticipated future transfer of title by Contract for Deed between two or more parties. “Title change” specifically does not include 1) transfers of title where an individual or couple is transferring property to or from their own grantor-type trust (commonly called revocable trusts or living trusts) or 2) transfers of property between parents and children or step-children.

ARTICLE 8. That in the event any portion of the “Amendment to the Planning and Development Ordinance of Benton County – July, 2014” is declared unconstitutional or otherwise invalid by any court, the remaining unaffected provisions shall remain effective.

ARTICLE 9. This ordinance will take effect 180 days following its passage and approval.

APPROVED:

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ROBERT CLINARD, COUNTY JUDGE  
DATE SIGNED: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
TENA O'BRIEN, COUNTY CLERK  
SPONSOR: JP  
DATE ADOPTED: \_\_\_\_\_  
Votes For: \_\_\_\_\_ Against: \_\_\_\_\_  
Abstain: \_\_\_ Present: \_\_\_ Absent: \_\_\_