

Zoning Update Housing Code Revisions. October 13, 2026

Chapter ~~47~~212 Sanitary Flow Credits

Commented [LH1]: Change the number to preserve the alphabetical order of the Town Code

§ ~~47~~212-1 Title.

This chapter shall be known and may be cited as the "Transfer of Sanitary Flow Credits Law of the Town of Southold."

§ ~~47~~212-2 Purpose and intent.

- A. As set forth in numerous comprehensive planning documents, the Town's goals include:
- (1) The preservation of open space, agricultural lands and recreational landscapes;
 - (2) Preservation of the rural, cultural, and historic character of the hamlets and surrounding countryside;
 - (3) Preservation of the natural environment and prevention of further deterioration of resources;
 - (4) Preservation and promotion of a broad range of housing and business opportunities to support a socioeconomically diverse community; and
 - (5) Increased transportation efficiency.
- B. To achieve these goals it is the intent and purpose of this chapter to provide for the transfer of sanitary flow credits, if certain conditions are present, and thereby transfer development potential from areas designated for preservation to areas designated as more appropriate for higher-density residential development.
- C. Unless expressly permitted herein, the transfer of sanitary flow credits shall not occur in the Town of Southold.

§ ~~47~~212-3 Definitions.

[Amended 8-25-2020 by L.L. No. 8-2020]

Unless otherwise expressly stated, the following terms shall, for the purpose of this chapter, have the meanings as herein defined. Any word or term not noted below shall be used with a meaning as defined in Webster's Third New International Dictionary of the English Language, Unabridged (or the latest edition).

ELIGIBLE PROJECT

The following projects are eligible to receive sanitary flow credits:

Policy Decision:

Should the use of sanitary flow credits be narrowed to community housing only given the scarcity of the credits? The code used to say affordable housing only, and was expanded in 2020 to other uses. Maybe the only other uses can be narrowed to include only municipal projects (such as Town Hall Annex).

- A. Projects located in a receiving district where the credits are needed to create community housing that are permitted uses in the zoning district in which the subject property is located.
- B. Projects in an Affordable Community Housing Overlay Zoning District.
- C. Town of Southold municipal buildings.

RECEIVING DISTRICT

An area of the Town that is desirable to be developed more intensively than areas outside the district.

RECEIVING PARCEL

Land within a receiving district to which sanitary flow generated from one or more sending parcels is transferred.

SANITARY FLOW CREDITS

A sanitary flow credit shall correspond to per 20,000 square feet of lot area which is the equivalent of 300 gallons per day (gpd) of sanitary flow. (e.g., a one-acre lot in an R-40 Zone could send two density flow credits).

SANITARY FLOW RIGHT

The right to discharge to the groundwater 300 gallons of wastewater per day pursuant to the Suffolk County Sanitary Code.

SENDING DISTRICT

An area of the Town that is desirable to be preserved as open space.

SENDING PARCEL

Land from which sanitary flow credits are transferred for use in one or more receiving districts in the Town of Southold.

TRANSFER OF SANITARY FLOW CREDITS

The process by which sanitary flow credits are transferred from a sending parcel to a receiving parcel, one lot, parcel, or area of land to another lot, parcel, or area of land in one or more receiving districts. Sanitary flow shall be transferred from a lot, parcel or area of land to another area of land in one or more receiving districts at rate of 300 gallons per day (gpd) of flow

§ ~~117~~212-4 Applicability; general prohibitions.

- A. Applicability. Any and all sanitary flow credit transfers within the Town of Southold shall be in accordance with this chapter.
- B. General prohibitions.
 - (1) If not expressly permitted within this chapter, the transfer of sanitary flow credits is prohibited.

Commented [LH2]: Look at the previous definition. Prior to the amendments done by local law 8-2020. Also look at the calculation as approved by SCDHS. And send a draft of new regulations about our bank to SCDHS for review before completing.

Commented [LH3]: Look this up to see any guidance there might be.

- (2) All transfers of sanitary flow credits from parcels located outside of the Town of Southold's boundaries are prohibited.
- (3) All transfers of sanitary flow credits from or to properties that are not recognized pursuant to § 280-9 of the Town Code or that do not contain sufficient buildable land area, as defined in § 280-4 of the Town Code, are prohibited.

§ ~~117~~212-5 Sanitary flow credit bank.

The Town hereby establishes a sanitary flow credit bank (SFC bank) in which sanitary flow credits may be received, retained and distributed to sold eligible projects by the Town Board in the best interests of the Town. All sanitary flow credits transferred into the bank must first be accepted by Town Board resolution in accordance with the terms of this chapter. All receipts and proceeds from sales of sanitary flow credits sold from the Town bank shall be deposited into a special municipal account known as the "Community Preservation Fund," to be used in a manner specified in Chapter 17 of the Town Code.

- A. The only development right that may be transferred into and out of the SFC bank is a sanitary flow credit.
- B. The lands from which sanitary flow credits are to be transferred into the bank shall remain preserved in perpetuity by a permanent conservation easement or other instrument that similarly preserves community character as defined and set forth in the definition of "community preservation" in Chapter 17 of the Town Code. The easement or other document shall be in a form approved by the Town Attorney. [Amended 8-25-2020 by L.L. No. 8-2020]

§ ~~117~~212-6 Sanitary flow credit transfer.

[Amended 8-25-2020 by L.L. No. 8-2020]

The sanitary flow credit transfer will allow the Town to bank sanitary flow credits from preserved land in the SFC bank and later sell or give those credits to for use exclusively on eligible projects ~~parcels within a receiving district~~. The sale price of the credits shall be determined by resolution of the Town Board, and such factors as the appraised value of the sanitary flow credit and the public benefit provided to the community shall be considered. All transfers of sanitary flow credits within the Town of Southold must pass through the SFC bank.

- A. Designation of sending and receiving districts.
 - (1) The sending district shall be any zoning district in the Town of Southold that is not defined as a receiving district.
 - (2) The receiving district shall be any land designated as General Business (B). Hamlet Business (HB) or Residential Office (RO), or land ~~designated as an in the Affordable-HALO zones or hamlet centers as designated by the Town Board on an official map, or in the Community Housing Overlay District (CHOAHD), after March 1, 2005.~~
 - (3) Sending and receiving areas shall be in the same groundwater management zone.

- (4) Nothing herein shall prevent the transfer of sanitary flow credits from a lot, parcel or area of land within a receiving district to another lot, parcel or area of land within the same receiving district,

B. Project criteria.

- (1) ~~In order to~~To qualify for the transfer of sanitary flow, a project must be an "eligible project" as defined in section § ~~117~~212-3.
- (2) For any mixed-use project that includes housing, at least half of the dwelling units proposed must meet the criteria for community housing pursuant to Chapter 112 Community Housing Administration~~be proposed as affordable housing units as defined by § 280-30.~~
- (3) For any project that is strictly a ~~proposed~~ residential project, at least half~~all~~ of the dwelling units must meet the criteria for community housing pursuant to Chapter 112 Community Housing Administration~~be proposed as affordable dwelling units as defined by section § 280-30.~~

Policy Question

Should 100% residential developments that request sanitary flow credits be required to have at least half the units meet the community housing requirements? Already in code for mixed use. Keeping in mind a future proposal for the HB district is going to be a permitted use of apartments that would allow half to be market rate.

§ ~~117~~212-7 Determination of credits to be deposited; duties of Clerk.

- A. Upon receipt of a contract (executed by the seller) for the Town's acquisition of a parcel of property or the development rights thereon, and prior to the public hearing on the purchase, the Land Preservation ~~Coordinator~~Department shall provide to the Town Board a calculation of the sanitary flow credits available, subject to survey, for transfer from the parcel of property upon the closing of the contract in accordance with its terms.
- B. Following the closing on the parcel, the Land Preservation ~~Coordinator~~Department shall send the calculation of the sanitary flow credits to be transferred from the property to the Town SFC bank to the Suffolk County Department of Health Services (SCDHS) Office of Wastewater Management for their review and approval.
- ~~B.C.~~ Upon receipt of the approval of the SCDHS as to the number of SFC that have been generated from the parcel, the SFC shall be placed into the Town SFC bank by resolution of the Town Board, which resolution shall set forth the number of sanitary flow credits and the source of the credits. The Town ~~Clerk~~Planning Department shall maintain a log detailing the credits transferred into the bank, ~~as provided by the Land Preservation Coordinator~~, in a form approved by the Town Board.

[Amended 8-25-2020 by L.L. No. 8-2020]

~~C.D.~~ The Town Clerk shall forward the resolution to the Tax Assessor's office, the Land Preservation Department, ~~the Special Projects Coordinator and the Planning Department, and other relevant Town staff~~ for inclusion in the Town database and geographic information system (GIS).

§ ~~117~~212-8 Irreversible transfer.

No sanitary flow credits shall be transferred back to the sending parcel once the development rights have been transferred. No sanitary flow credits may be transferred out of a parcel which has previously had all of its development rights extinguished under the Town of Southold, Suffolk County, or New York State acquisition of development rights program or other easement, transfer, restrictive covenant or otherwise.

§ 212-9 Fee.

The Town Board may set a fee for the transfer of a sanitary flow credit. For projects where at least 50% of the dwelling units are set aside for household at or below 80% AMI, the transfer of sanitary flow credits shall be at no cost to the applicant.

Policy Decision

Consider whether to incentivize development for a range of household AMI by providing free sanitary flow credits only to projects that provide some percentage of units to household at or below 80% AMI. Providing credits at no charge to any project may result in them only generating dwelling units for the highest AMI of 120%.

Also:

Appraise them so we can demonstrate its value as a subsidy to community housing.

§ ~~117~~212-9-10 Procedure for transfer from bank to receiving district.

Upon application by the owner of an individual parcel in a receiving district, the Town Board may permit the transfer of a sanitary flow credit to such parcel by proceeding in the manner set forth below:

~~A. Notice to adjacent property owners shall be given by the applicant in the same manner as set forth in § ~~280-159~~ relating to change of zone applications.~~

~~B.A.~~ The Town Board, before publishing notice for a public hearing, shall comply with all State Environmental Quality Review Act (SEQRA)¹¹ requirements, and costs associated with review shall be paid by the applicant.

~~C.B.~~ The Town Board, before publishing notice for a public hearing, shall, in a written request, instruct the Town Planning Board and the Building Inspector to prepare an

official report regarding the proposed transfer, including the Planning Board recommendations. The Building Inspector report shall certify the use in the zone proposed and comment on the proposed project. The Planning Board shall consider the factors set forth in § ~~H7212-9E~~ below in its report and recommendations. [Amended 8-25-2020 by L.L. No. 8-2020]

~~D.C.~~ The Town Board, by resolution adopted at a stated meeting, shall fix the time and place of a public hearing on the proposed transfer and cause at least 10 days' notice of such hearing to be published in the official newspaper.

~~E.D.~~ Before the transfer of sanitary flow credits may be authorized to any receiving district, the Town Board shall determine, after evaluating the effects of potential increased development that would result from the proposed transfer of sanitary credits, that the district contains adequate resources, environmental quality and public facilities, including adequate transportation, water supply, waste disposal and fire protection; that there will be no significant environmentally damaging consequences; and that such increased development is compatible with comprehensive planning and the development otherwise permitted by the Town and by the federal, state and county agencies having jurisdiction to approve permissible development within the district. [Amended 8-25-2020 by L.L. No. 8-2020]

~~F.E.~~ The Town Board ~~may shall~~ condition the transfer of sanitary flow credits on the applicant filing covenant and restrictions against the receiving parcel imposing conditions on the receiving parcel that the Town Board deems appropriate and necessary to ensure that the criteria ~~in Subsection E of this section~~ are met. ~~In projects involving affordable housing, the applicant shall be required to file covenants and restrictions stating that the affordable housing created shall remain affordable in perpetuity. [Added 8-25-2020 by L.L. No. 8-2020^[2]]~~

~~[2] Editor's Note: This ordinance also redesignated former Subsections F and G as Subsections G and H, respectively.~~

~~G.F.~~ Sanitary flow credits shall not be transferred out of the school, special assessment or tax districts unless the Town Board determines that there is no other available lot within said districts to which sanitary flow credit may reasonably be transferred and that the transfer does not unreasonably transfer the tax burden between the taxpayers of such districts.

~~H.G.~~ Following the public hearing, the Town Board may, by resolution, authorize the transfer of sanitary flow credits. The resolution shall state that the applicant shall receive a sanitary flow credit certificate, which shall not be signed by the Supervisor and released

by the Town Clerk to the applicant until the covenants and restrictions as set forth at § ~~117~~12-11 have been filed and such filing has been approved by the Town Attorney.

§ ~~117~~12-~~11~~10 Sanitary flow credit certificate.

- A. An applicant must obtain and present ~~the~~a sanitary flow credit certificate to the Suffolk County Department of Health Services. ~~Building Department prior to receiving a building permit.~~
- B. The sanitary flow credit certificate shall state the number of credits and the specific use for the transferred credit and may be used only for construction of the project listed on the certificate.
- C. The Town ~~Clerk~~Planning Department shall maintain a log detailing the sanitary flow credit certificates that have been issued by the Town Board, and such log shall contain the source and location of the transferred credit.
- D. The Town Clerk shall provide notice of the issuance of a sanitary flow credit certificate to the Town Attorney, the Tax Assessor's office, the Land Preservation Department, the ~~Special Projects Coordinator and~~ the Planning Department and other relevant Town staff.
- ~~D.E.~~ Once approved, the SCDHS will return the sanitary flow credit certificate acknowledging its use with a signature. The Town Planning Department will forward these to the Town Clerk for the Town records.

§ ~~117~~12-~~12~~11 Covenants and restrictions.

- A. Following the Town Board resolution granting a transfer of a sanitary flow credit to a recipient pursuant to the procedures set forth in this chapter, the applicant shall file in the office of the Suffolk County Clerk ~~any the~~ required covenants and restrictions in a form approved by the Town Attorney. The covenants and restrictions shall contain terms and conditions as the Town Board and the Planning Board deem necessary to ensure the following:
 - (1) ~~that~~ ~~1)~~ the criteria for approving the transfer of sanitary flow credits contained in Subsection ~~E~~ of § 117-9 this chapter are met,
 - (2) ~~2)~~ that in any affordable community housing dwelling unit created by the transferred credit remains affordable in perpetuity,
 - (3) ~~3)~~ that the affordable community housing dwelling unit shall be leased or sold to low-moderate or middle income households pursuant to Chapter 112 Community Housing Administration, only to eligible individuals registered with the Town of Southold Housing Registry, and
 - A. ~~(4)~~ ~~4)~~ that the sale and/or lease of the community housing dwelling unit that has been constructed with the transferred credit shall be administered through the Town of Southold Housing Department pursuant to the provisions of Chapter 112 Community Housing Administration, Chapter ~~34~~, Housing Fund, and §§ ~~280-24~~ through 280-33, Affordable Housing (AHD) District, and the sale and/or lease price shall be set by resolution of the Town Board. [Amended 8-25-2020 by L.L. No. 8-2020]

- B. A copy and proof of filing of the ~~filed~~ covenants and restrictions must be filed with the Town Clerk and the Southold Town Housing Department within 30 days of the approving resolution. No sanitary flow credit certificate shall be issued until the covenants and restrictions have been filed and such filing has been approved by the Town Attorney.
- C. The Town Clerk shall forward the covenants and restrictions to the Town Attorney, the Tax Assessor's office, the Land Preservation Department, ~~the Special Projects Coordinator~~ and the Planning & Housing Department for inclusion in the Town database.

§ ~~117-132~~ Revocation.

Failure to comply with any of the requirements set forth in this chapter may result in revocation of the transferred sanitary flow credit. A sanitary flow credit may be revoked by Town Board resolution following a public hearing after 10 days' written notice of the hearing, by personal service or certified mail, has been given to the property owner.

§ ~~117-134~~ Expiration.

[Amended 8-25-2020 by L.L. No. 8-2020]

Any sanitary flow credit transferred to a recipient for construction of a community housing ~~affordable~~ dwelling unit shall expire and be returned to the bank ~~three~~ years after transfer if the dwelling unit has not been issued a certificate of occupancy unless an extension of time has been requested by the property owner and granted by the Town Board. A request for an extension of time shall be made one month in advance of the expiration. A sanitary flow credit shall be returned to the bank by resolution of the Town Board, and notice thereof shall be given by the Town Clerk to those Town departments referenced in ~~§ 117-10D~~ this chapter.

§ ~~117-154~~ Return of credit to bank.

In the ~~non-residential~~ ~~B, HB or RO~~ Zoning Districts, a property owner may apply to the Town Board to return the transferred sanitary flow credit to the bank and extinguish the affordable housing covenants and restrictions applicable to the property. The Town Board shall hold a public hearing on the application, and notice shall be given in accordance with Chapter 55, Public Hearings, Notice of. A sanitary flow credit shall be returned to the bank by resolution of the Town Board, and notice thereof shall be given by the Town Clerk to those Town departments referenced in ~~§ 117-10D~~ this chapter.