

Memo regarding Mosquito Control

The Village of Mamaroneck, at its own cost and expense, for 30+ years, administered a mosquito control program that successfully mitigated the mosquito population so that it would not cause a public health nuisance. The program or the expenditure of funds was not challenged during that time. The program was disbanded and a resurgence of mosquito activity has happened to the level where it was brought to the attention of the Westchester County Board of Health. The Village of Mamaroneck has on file studies identifying mosquito breeding grounds and, within the last weeks, the Westchester County Board of Health conducted a site visit and identified mosquito breeding grounds. Some of the breeding grounds are identified on private property and some of Village owned property.

Resolutions from the BOT:

Policy regarding mosquito abatement which shall consist of larvicide as well as adulticide.

We ask the BOT to acknowledge that the Village of Mamaroneck faces unique circumstances and challenges regarding mitigation of mosquitoes and ask that the BOT resolve that mosquitoes are a public nuisance as defined by New York State Public Health law Section 1500 Chapter 43, Article 15 Title 1, item 2 (attached) and take all steps necessary to protect the safety, health, comfort, and general welfare of Village inhabitants and by doing so there may be an incidental benefit to private land owners. (See NYCOM publication regarding gift and loan loans law and letter from Nelson R. Sheingold, Counsel to the Comptroller for incidental benefit language case law)

Resolution for mosquito breeding grounds identified on Village owned properties:

Beginning January 2027 and each year forward, the Village of Mamaroneck, at its own cost and expense shall

1. Obtain a permit from the DEC for the purpose of applying BTI to all Village owned properties where mosquitoes breed including but not limited to Guion Creek, catch-basins, and storm drains. The permit shall be applied for no later than January 15 of each year.
2. Contract with a licensed professional for the application of BTI Contract to be in place on or before March 1st of each year so that applications can begin immediately as per breeding schedule.
3. On or before January 15th of each year obtain any necessary permits from the DEC and contract with a licensed professional for the application of adulticide in the event this measure must be used.

Resolution for mosquito breeding grounds identified in Westchester County Health Department report that are on private property:

Beginning January 2027 and each year forward, the Village of Mamaroneck, at its own cost and expense shall

1. Obtain a permit from the DEC for the purpose of applying BTI to mosquito breeding sites as identified in the report from the Westchester County Department of Health which are located around Otter Creek. If the VOM is unable to obtain a permit from the DEC as agent, then it is resolved that the VOM will work with the property owner(s) for the purpose of receiving a permit from the DEC for larvicide application and reimburse the private landowner(s) for the permit. The permit process shall begin no later than January 15th each year.
2. Obtain written permission from the Westchester Land Trust (Otter Creek) allowing the VOM's contractor to enter upon the property as needed, for the sole purpose of applying BTI larvicide. This permission shall remain in place until otherwise amended by the BOT.
3. Contract with a licensed professional for the application of BTI. Contract shall be in place on or before March 1st of each year so that applications can begin immediately as per breeding schedule.

★ Also resolve to reimburse WLT
for all money expended this year
for their BTI treatment.

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SECTION 1500

Municipal insect control

Public Health (PBH) CHAPTER 45, ARTICLE 15, TITLE 1

§ 1500. Municipal insect control. 1. The board of health of a municipality may take all necessary and proper steps for the control of mosquitoes, flies, black flies, punkies, ticks, and other insects detrimental to health within its jurisdiction which may require community action for the destruction or control of such insects.

2. Any accumulation of water in which mosquitoes are breeding, or are likely to breed, is hereby declared to be a nuisance.

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§ 1501. Municipal mosquito control; costs to owner and municipality.

1. Whenever the board of health of a municipality shall determine that any accumulation of water wherein mosquito larvae breed, constitutes a nuisance or a danger or injury to life or health, the owner or owners of the premises on which the breeding place is located shall bear the expense of its suppression or removal, or so much thereof as the local board of health shall determine to be equitable as hereinafter provided.

2. If the local board of health of a municipality shall determine that, owing to the natural conditions which are favorable to the breeding of mosquitoes and owing to the benefit to be secured to the public by the suppression of such conditions, a part of the expense of such suppression or removal shall be borne by the owner of such premises and a part thereof by the municipality wherein the premises are situated, such owner or occupant may proceed to suppress or remove such breeding place and shall be reimbursed by the municipality for such proportion of the reasonable expense of such suppression or removal as the board of health shall have determined should be borne by the municipality.

3. For the purpose of ascertaining the actual cost of such suppression or removal, the board of health of the municipality or its duly authorized agents may at all times have access to the premises whereon the work is being carried on; and the owner of the premises shall furnish to such board of health such information as the board of health may deem necessary or desirable for the purpose of ascertaining such actual cost.

4. If in any such case the owner of the premises shall not proceed, within a reasonable time, to suppress or remove such breeding place, the board of health of the municipality may proceed to suppress and remove the same, and for such proportion of the expense of such suppression and removal as the board of health shall have determined to be equitable, an action may be maintained against such owner, and the same shall become a first lien upon the premises.

RE: Mosquito Determination in Mamaroneck

From Nelson R. Sheingold <nsheingold@osc.ny.gov>

Date Fri 8/7/2026 3:49 PM

To Kushnick, Dan <dkushnick@vomny.org>

Cc Mayor and Board <MayorandBoard@vomny.org>; Kathleen Gill <KGill@vomny.org>; Steven Pambianchi <spambianchi@vomny.org>; Shelley Mayer <smayer@nysenate.gov>; Steve Otis <otiss@nyassembly.gov>; Nambiar, Anant <aaxn@westchestercountyny.gov>

 1 attachment (144 KB)

Informal Opinion Request - Village of Mamaroneck Mosquito Suppression.pdf;

⚠ EXTERNAL EMAIL WARNING

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Dear Trustee Kushnick:

I am glad that we had the opportunity to speak today and clarify the Office of the State Comptroller's role and involvement in this matter. As I mentioned, the Office of the State Comptroller (OSC) wrote the Village of Mamaroneck Attorney for the sole purpose of removing an inaccurate rendition of our conversation with him from the Village's website, which erroneously stated that we had rendered a verbal finding to him and that written guidance would be forthcoming, neither of which is true. In fact, we have made no findings regarding the underlying issue and informed the Village Attorney that for the reasons below we would not be providing a written opinion.

In general, although OSC provides guidance to local officials as to the interpretation of generally applicable state law, our office may neither usurp nor supplant determinations lawfully vested in local officials based upon their assessment of particular circumstances presented. As we discussed, OSC does not interpret local laws and charters, a function within the purview of the respective municipal attorneys. Here, by email dated April 6, 2026 (attached), the Village Attorney informed our office that the Village had already determined the year prior that it was inappropriate and unlawful for the Village to continue to engage in its mosquito control program and sought confirmation of this decision in the wake of public opposition. In our role in providing legal opinions and guidance, our office does not validate or invalidate actions already taken by local governments within their lawful discretion.

Regarding the relevant board of health under Public Health Law § 1500, this issue was not raised by the Village Attorney in his request or during our conversation. Rather, the Village Attorney's letter references the absence of a determination by a "local board of health" or an "order of a local health officer" as a reason why he believed the program to be unlawful. As we also discussed, resolution as to the appropriate body to make an assessment under Public Health Law Article 15, Title 1 (Municipal Insect Control) requires interpretation of local law and the County Charter, a determination that properly falls within the purview of the Village and County attorneys, to whom we defer. (See Pub. Health Law § 302: "In villages the board of health shall consist of the board of trustees of the village"; Pub. Health Law §

341(3): "The governing authorities of any city, village or town or the governing authorities of the cities, villages or towns within a consolidated health district may abolish such city, village, town or consolidated health district as a local health district, whereupon all the powers and duties of the local board of health of such local health district shall devolve upon the board of health of the county or part-county health district and all the powers and duties of the local health officer of such local health district shall devolve upon the county health commissioner.").

Relatedly, in regard to New York State Constitutional Gift and Loan clause (N.Y. Const. Article VIII, §1) implications, the Village Attorney in his correspondence noted the Village's decision that the program was "inappropriate and without legal authority" and his "concern" that spraying on private property primarily benefits certain property owners, not the general public, and that these affected property owners could pay for their own mosquito control. The New York Court of Appeals has explicitly held that when conducting a constitutional gift and loan analysis it is the duty and prerogative of the appropriate legislative body to weigh the public interest against any incidental private benefit, and this determination is entitled to great deference. (See Bordeleau v. State of New York, 18 N.Y.3d 305 [2011]). Under the law, the appropriate municipality's determination, after review of the specific facts and circumstances, that the private benefit is not merely incidental compared to the public benefit is not subject to the Comptroller's ratification and may not be overruled by our office.

From our conversation, it appears that Village officials have already been in contact with the relevant County officials. I encourage the Village Attorney to continue to review applicable local laws, to the extent he has not already done so, and for local officials to continue their discussions to address the public health concerns. As to your question regarding the necessity of a declaration of a public health nuisance or emergency, please note that under state law the relevant standard to remediate mosquito breeding is whether conditions present "a nuisance or a danger or injury to life or health" and "[a]ny accumulation of water in which mosquitoes are breeding, or are likely to breed, is hereby declared to be a nuisance." (See Pub. Health Law §§ 1501(1), 1500(2)).

Finally, regarding the New York State Department of Environmental Conservation rules, regulations, and approvals, this matter is properly within the purview of that state agency.

Once again, thank you for contacting me to discuss this matter. I trust our conversation and this information clarifies OSC's role. Please feel free to contact me if you have any remaining questions.

Sincerely,

Nelson

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