

# **TITLE 3**

## **HEALTH AND ENVIRONMENT**

### Chapters:

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# CHAPTER 1

## EMERGENCY MEDICAL SERVICES (EMS)

### 3-1-1. Definitions.

Ambulance means any privately- or publicly-owned motor vehicle or aircraft (including helicopter or fixed wing aircraft) that is specially designed or constructed, and equipped, and is intended to be used for and is maintained or operated for the transportation of patients, including dual purpose police patrol cars and funeral coaches or hearses which otherwise comply with the provision of this ordinance, except any such motor vehicle or aircraft (including helicopter or fixed wing aircraft) owned by, or operated under the direct control of the United States.

Emergency medical technician shall mean any individual certified by the Emergency Medical Services Commission as eligible for engaging in the administration of emergency care procedures as to emergency patients and for the handling and transportation of such patients.

Driver means an individual who drives or pilots an ambulance.

Dual purpose police patrol car means a vehicle, operated by a police department, which is equipped as an ambulance, even though it is also used for patrol or other police purposes.

License officer means the Delaware county health officer or his/her designated representative.

Patient means an individual who is sick, injured, wounded, or otherwise incapacitated or helpless.

Person means an individual, firm, partnership, association, corporation, company, group or individuals acting together for a common purpose or organization of any kind, including any governmental agency other than the United States.

#### EMS Commission

**(Section deleted, Ordinance No. 2005-023, Commissioners, 9/6/05)**

Certificate or certification shall mean authorization in written form issued by the commission to a person to operate and maintain an emergency ambulance, to act as an ambulance service provider or to exercise the privileges of an emergency medical technician as defined in these rules and regulations.

#### EMS Board

**(Section deleted, Ordinance No. 2005-023, Commissioners, 9/6/05)**

### 3-1-2. Creation and Composition of EMS Board.

**(Section deleted, Ordinance No. 2005-023, Commissioners, 9/6/05)**

### 3-1-3. Duties and Responsibilities of the EMS Board.

**(Section deleted, Ordinance No. 2005-023, Commissioners, 9/6/05)**

### 3-1-4. Organization of EMS Board.

**(Section deleted, Ordinance No. 2005-023, Commissioners, 9/6/05)**

3-1-5. License Required.

**(Section deleted, Ordinance No. 2005-023, Commissioners, 9/6/05)**

3-1-6. Application for Ambulance License.

**(Section deleted, Ordinance No. 2005-023, Commissioners, 9/6/05)**

3-1-7. Standards for Ambulance License.

**(Section deleted, Ordinance No. 2005-023, Commissioners, 9/6/05)**

3-1-8. Standards for Ambulance License-Liability Insurance.

**(Section deleted, Ordinance No. 2005-023, Commissioners, 9/6/05)**

3-1-9. Duties of License Officer.

**(Section deleted, Ordinance No. 2005-023, Commissioners, 9/6/05)**

3-1-10. Standards for Ambulance Equipment.

**(Section deleted, Ordinance No. 2005-023, Commissioners, 9/6/05)**

3-1-11. Applications for Drivers and Emergency Medical Technicians License.

**(Section deleted, Ordinance No. 2005-023, Commissioners, 9/6/05)**

3-1-12. Standards for Drivers, and Emergency Medical Technicians.

**(Section deleted, Ordinance No. 2005-023, Commissioners, 9/6/05)**

3-1-13. Renewal of License.

**(Section deleted, Ordinance No. 2005-023, Commissioners, 9/6/05)**

3-1-14. Revocation of License.

**(Section deleted, Ordinance No. 2005-023, Commissioners, 9/6/05)**

3-1-15. Reports.

**(Section deleted, Ordinance No. 2005-023, Commissioners, 9/6/05)**

3-1-16. Penalties.

**(Section deleted, Ordinance No. 2005-023, Commissioners, 9/6/05)**

3-1-17. EMS Fees.

A. (See 1-8-4 of this code)

**(Ordinance No. 11-1994, Commissioners' passed, 8/15/94)**

B. In the event the county EMS is requested to provide coverage for special events, the county EMS shall charge thirty-five dollars (\$35.00) per ambulance and crew and fifteen dollars (\$15.00) per hour for each additional medical personnel needed.

C. Any monies received under this agreement will be deposited in a special account in which it will then be appropriated for reimbursements to the overtime account of the county EMS, and any funds remaining in the account at the close of the year will revert to the county general fund.

- D. The county EMS reserves the right to bill for regular charges for any and all patients transported to the hospital.
- E. The board of commissioners may waive these fees if voted and decided at a public meeting.  
**(Ordinance No. 1997-022 and 1997-022A, Commissioners' meeting, 7/14/97)**

3-1-18. Disaster.

In the event of a disaster, the Delaware County Medical Director, the Delaware County Emergency Medical Service Director, or their designee shall be the highest medical authority in charge at the scene of said disaster.

**(Ordinance No. 1998-018; Commissioners' meeting, 4/20/98)**

3-1-19. Effective Date.

This ordinance shall become effective on September 1, 1977.

3-1-20. Ordinances Repealed.

All ordinances and part of ordinances in conflict with the provision of this ordinance are hereby repealed.  
**(Ordinance, Commissioners' meeting, 6/13/77).**

3-1-21. Adoption of Aero Medical Transport Protocol.

The Aero Medical Transport (Life Line) Protocol is hereby adopted for Emergency Services and Public Safety Officers in the County and is incorporated by reference into this code.

**(Resolution No. 2003-011, Commissioners' meeting, 6/30/03).**

3-1-22. Emergency Communications Center.

1. ESTABLISHMENT OF THE EMERGENCY COMMUNICATIONS CENTER. There is hereby established a Delaware County Communications center, which shall be known as "The Delaware County Emergency Communications Center" (DCECC).
2. GOVERNING BOARD. There is hereby established a governing board of the DCECC, which shall be known as The Delaware County Emergency Communications Center Board.
3. MEMBERSHIP OF THE EMERGENCY COMMUNICATIONS CENTER BOARD. The board shall consists of five members, three of whom shall be appointed by the Board of Commissioners of Delaware County and two of whom shall be appointed by the Mayor of The City of Muncie for a four year term. The members of the Delaware County Emergency Communications Center Board shall be residents of Delaware County and eligible voters. Ex-officio non-voting members of the Board shall be the Sheriff of Delaware County, the Director of the EMS services of Delaware County, the Chief of Police of the Muncie Police Department, the Chief of the Muncie Fire Department and one (1) representative of the volunteer fire departments that service any area of Delaware County as selected by the volunteer fore departments. Ex-officio members shall be permitted to attend all meeting, interact on all topics and offer their expertise and opinions in the operation of the DCECC.

The terms of the members of the Board shall be staggered. The initial terms shall be as follows:  
**(Ordinance No. 2009-028A, Commissioners, 7/6/09)**

One member appointed by the Mayor of the City of Muncie shall expire on December 31, 2006.

One member appointed by the Board of Commissioners shall expire on December 31, 2007.

One member appointed by the Mayor of the City of Muncie shall expire on December 31, 2007.

One member appointed by the Board of Commissioners shall expire on December 31, 2009.

All subsequent board members shall serve a full 4 year term. All terms expire on December 31. A board member may be removed for just cause as determined by the appointing authority. There shall be no more than 3 members from the same political party. Members shall not have the authority to make appointments to the Board for the purpose of filling vacancies. Appointments for vacancies shall revert back to the original appointing entity.

4. **DUTIES OF THE BOARD.** The Board of the Emergency Communications Center shall have the following duties:

- A. Prepare an annual budget for conducting the business of the DCECC which shall be submitted to the Delaware County Council for their approval and passage.
- B. Propose policies for the conduct of the business and operations of the DCECC to the Delaware County Commissioners.
- C. Create uniform and objective standards for the hiring and discipline of all employees of the DCECC.  
**(Ordinance No. 2009-028A, Commissioners, 7/6/09)**
- D. Propose contracts for services, employees, and purchased related to the operation of the DCECC to the Delaware County Commissioners for their approval.
- E. Recommend the hiring and discharge of employees of the DCECC in compliance with Delaware County Human Resources Department.
- F. Generally oversee the operations of the DCECC.
- G. Conduct all meetings of the Board pursuant to the Indiana Open Meetings law.
- H. Maintain all records of the operation of the DCECC pursuant to the Indiana Open Records law.

The Board may not acquire or own real or personal property. Any and all personal or real property obtained for the benefit of the DCECC shall be owned by Delaware County.

5. DCECC DIRECTOR AND COLLECTIVE BARGAINING AGREEMENT. The Commissioners hire and replace the Director of the DCEDD and the director works at the pleasure of the Commissioners. Also, the Commissioners negotiate the collective bargaining agreement of the DCECC.  
**(Ordinance No. 2009-028A, Commissioners, 7/6/09)**
6. DUTIES OF THE DIRECTOR. The Director and the Assistant Director are, at all times, responsible to the Board of the Emergency Communications Center and the Board of County Commissioners. The Director shall implement the policies set by the Board of Emergency Communications Center and shall assist in the preparation of any budgetary matters.
7. COST OF THE EMERGENCY COMMUNICATIONS CENTER. Employees of the DCECC shall be considered employees of Delaware County, Indiana. The cost to run and maintain the DCECC shall be as been in past agreements equally allotted between Delaware County and the City of Muncie.
8. ADDITIONAL PARTICIPANTS. In the event that any other user of the DCECC or governmental entity desires to be included in the operation of the DCECC as either an appointing or ex officio member shall contact the Delaware County Commissioners. The Delaware County Commissioners shall be obligated to discuss any and all requests for participant by a user or other governmental agency with the Mayor of the City of Muncie.
9. REPEAL OF PRIOR ORDINANCES OR INTERLOCAL AGREEMENTS. In the event that this ordinance is in conflict with any other resolution or ordinance, duplicates any prior ordinance or creates another board or commission with similar duties or responsibilities, said prior resolution or ordinance is specifically repealed and replaced with this ordinance. In the event that there exists any interlocal agreement with any governmental entity executed by the Delaware County Commissioners pursuant to I.C. 36-1-7 *et.seq.* which pertain to any similarly constituted or empowered board or commission, said interlocal agreement is hereby cancelled, rescinded to terminated by adoption of this Ordinance.  
**(Ordinance No. 2005-011, 6/20/05)**

3-1-23. EMS Collection of Certain EMS Accounts.

- a. The account balance is less than One Hundred (\$100.00) dollars, OR
- b. The individual is deceased and is not covered by insurance, Medicaid or Medicare coverage, OR
- c. The Individual is a County employee, OR
- d. The individual is covered by the County Health Insurance plan, OR
- e. The individual is a jail inmate and does not have insurance, Medicaid or Medicare coverage, OR
- f. The individual is a jail inmate and has been declared indigent by the Court, OR
- g. On a case by case basis, the individual is found indigent.

Be it further resolved that the Commissioners will generally exercise their discretion by forwarding unpaid EMS accounts to a collection agency if none of the foregoing factors are found applicable.  
**(Resolution No. 2007-003, Commissioners, no date)**

3-1-24. Establish Emergency Management Advisory Council (EMAC).

1. The 911 DISPATCH COMMUNICATIONS SENTER BORAD, adopted under County ordinance 2009-028A will be dissolved.
2. The EMAC Board will be the advisory board for the 911 Dispatch Center.
3. The EMAC Board will review the annual budget and will make recommendations for changes and direction.
4. The EMAC Board will also be the avenue for discussion on concerns and ideas to improve the functions of the 911 Dispatch Center.
5. **REPEAL OF PRIOR ORDINANCES OR INTERLOCAL AGREEMENTS,** In the event this ordinance is in conflict with any other resolution or ordinance, duplicates any prior ordinance, or creates another board or commission with similar duties or responsibilities; said prior ordinance is specifically repealed and replaced with this ordinance. In the event there are any InterLocal agreements with any governmental entity executed by the Delaware County Commissioners pursuant to IC 36-1-7 et. Seq. which pertains to any similar constituted or empowered board or commission; said InterLocal agreement is hereby cancelled, rescinded or terminated by adoption of this Ordinance.  
**(Ordinance no. 2010-006, Commissioners, 3/1/10)**



## CHAPTER 2

### RETAIL FOOD SERVICE ESTABLISHMENTS

#### 3-2-1. Adoption of State Regulations.

Delaware County hereby adopts by reference the Retail Food Establishment Sanitation Requirements from the Indiana State Department of Health, 410 IAC 7-20 in its entirety. Said regulations shall govern all definitions, standards, inspection criteria, compliance and enforcement of the state regulations in Delaware County. Said regulations shall also include any and all federal statutes or regulations incorporated by reference.

#### 3-2-2. Permits.

- A. Permits. It shall be unlawful for any person to operate a retail food establishment, temporary retail food establishment, mobile retail food establishment, push cart, retail food store or vending machine in Delaware County, who does not possess a valid permit from the health officer. Such permit shall be posted in a conspicuous public place in retail food establishment.

Only persons who comply with the applicable requirements as specified by Indiana State Department of Health laws and rules shall be entitled to receive and retain such a permit.

- B. Term of Permit. A permit for a retail food establishment shall be for a term of one year beginning January 1, and expiring December 31, of the same year and shall be renewed annually. Any permit issued by the health officer shall contain the name and address of the person to whom the permit is granted, the form of ownership of the establishment, the address of the premises for which same is issued, and such other pertinent data as may be required by the health officer.

- C. Permits, Separate and Transferability.

1. A separate permit shall be required for each retail food establishment operated or to be operated by any person. A permit issued under this ordinance is not transferable.
2. A permit shall be issued to any person on application after inspection and approval by the health officer or an authorized representative; provided, that the retail food establishment complies with applicable requirements.

#### 3-2-3. Permit Fees.

- A. Each and every retail food establishment shall obtain a retail food establishment permit from the Delaware County Health Officer. No person shall operate, offer for sale, offer for consumption at any establishment without a valid retail food establishment permit.
- B. The annual permit fee for retail food establishments shall be as follows:

Square feet of establishment	Annual permit fee
less than 1000 square feet	\$48.00
1000 square feet to 1999 square feet	\$72.00
2000 square feet to 2999 square feet	\$85.00
3000 square feet to 4999 square feet	\$96.00

5000 square feet and more

\$100.00

- C. Permit fee for temporary retail food establishment shall be \$48.00.
- D. Permit fee for vending machines shall be \$4.50 for each machine.
- E. Exemption of Permit and Standards.
  - 1. No permit shall be required and no fee shall be paid for retail food establishments operated by religious, educational, charitable organizations or persons operating vending machines that dispense only prepackaged, non-perishable foods such as candy, chewing gum, nut meats, potato chips, pretzels, popcorn and soft drink beverages.
  - 2. An organization that is exempt from the Indiana gross income tax under IC 6-2.1-3-20 through IC 6-2.1-3-22 and that offers food for sale to the final consumer at an event held for the benefit of the organization is exempt from complying with the requirements of the ordinance that may be imposed upon the sale of food at that event if:
    - a. members of the organization prepare the food that will be sold;
    - b. Events conducted by the organization under this section take place for no more than thirty (30) days in any calendar year; and
    - c. The name of each member who has prepared a food item is attached to the container in which the food item has been placed.
  - 3. This section does not prohibit an exempted organization from waiving the exemption and applying for license under this chapter.
- F. Permits Issued After July 1. Any new retail food establishment permit (except temporary) applied for and issued after June 1 of any year shall have the permit fees abated in one half (1/2) the total annual permit fee for the year of issuance only.

#### 3-2-4. Sale, Examination, and Condemnation of Unwholesome, Adulterated or Misbranded Food.

- A. It shall be unlawful for any person to sell through a retail food establishment, mobile food establishment, temporary food establishment or any vending machine, any food which is unwholesome, adulterated or misbranded as provided in the Indiana Food, Drug, and Cosmetic Act, IC 16-1-28 through IC 16-1-31.
- B. Samples of food may be taken and examined by the Health Officer as often as may be necessary to determine freedom from contamination, adulteration or misbranding. The health officer may, on written notice to the owner or operator, impound and forbid the sale of any food which is unwholesome, adulterated or misbranded, or which he/she has probable cause to believe is unfit for human consumption, unwholesome, adulterated, or misbranded; provided that in the case of misbranding which can be corrected by proper labeling, such food be released to the operator for correct labeling under the supervision of the health officer. The health officer may also cause to be removed or destroyed any dairy product, meat product, seafood, poultry, poultry product, confectionery, bakery product, vegetable, fruit or other perishable item.

### 3-2-5. Inspection of Food Service Establishments.

- A. Frequency of Inspection. At least three (3) times per year the health officer or agent shall inspect each retail food establishment, except for vending machines shall be inspected at least once each six (6) months, for which a permit is required under the provisions of this ordinance.
- B. Procedure when Violations Noted. If during the inspection of any retail food establishment the health officer or agent discovers a violation of any of the requirements of this ordinance, they shall issue a written order listing such violations to the proprietor or, in their absence, to the person in charge as defined in the following Indiana State Board of Health Rules: 410 IAC 7-20, and fixing a time within which the proprietor of the retail food establishment shall abate and remedy such violations. A copy of the written order shall be filed with the records of the health department.
- C. Final Inspection - Prosecution or Hearing for Violators. If upon a second and final inspection the health officer or agent finds that a retail food establishment, person, or employee is violating any of the provisions of this ordinance which were in violation on the previous inspection, and concerning which a written order was issued, the health officer shall furnish evidence of the violation to the prosecutor having jurisdiction in the county in which the violation occurs, and he/she shall prosecute all persons violating the provisions of this ordinance; or the health officer may promptly issue a written order to the permittee of the retail food operation to appear at a certain time, no later than ten (10) days from the date of final inspection, and at a place in the county fixed in the order to show cause why the permit issued should not be revoked.
- D. Procedure to follow when any Violation is noted. If during the inspection of any retail food establishment the health officer or their agent discovers the violation of any of the requirements of this ordinance, they may order the immediate correction of the violation.
- E. Revocation of Permit and Penalties for Continued Operation. Upon failure of any person maintaining or operating a retail food establishment to comply with any order of the health officer, it shall be the duty of the health officer summarily to revoke the permit of the person and establishment and to forbid the further sale or serving of food therein.
- F. Posting of Inspection Report. The most recent retail food establishment inspection report shall be posted adjacent to the retail food establishment permit in each place of business.
- G. Assistance with Inspection. Each retail food establishment permit holder shall assist and cooperate with the inspection of their facility by the health officer or their designee. Failure to cooperate and/or assist in the inspection of the facility will result in the immediate suspension and revocation of the retail food establishment permit.
- H. Authority to Inspect and to Copy Records. The retail food establishment permit holder shall, upon the request of the health officer, permit the health officer or his authorized representative to collect evidence and or exhibits and to copy any or all records relative to the enforcement of this ordinance.
- I. Approval of Plans. All retail food establishments which are hereafter constructed or altered shall conform with applicable requirements of the Indiana State Board of Health and by the Indiana Department of Fire and Building Services. Properly prepared plans and specifications shall be submitted to and approved by the Health Officer or in the absence of a local plan review program by the Indiana State Board of Health, is required before starting any construction work.

### 3-2-6. Suspension of Permit.

- A. The health officer may order the immediate suspension of any permit without a hearing if the health officer determines that the suspension is in the immediate best interests of the public. Upon the suspension of any retail food establishment permit, the owner and/or proprietor shall immediately cease all retail operations until such time as the suspension is vacated by the Health Officer or a court of competent jurisdiction.

Any person affected by an immediate suspension order without a hearing may challenge said order of the health officer in a court of competent jurisdiction within seventy-two (72) hours after the order was made. Failure to seek judicial relief within seventy-two (72) hours shall waive the right of the permit holder to obtain immediate judicial review of the immediate suspension order.

Any other suspension order issued by the Health officer is subject to review by the Board of Health. Any person aggrieved by an order of the Health Officer suspending their retail food establishment permit (other than an immediate suspension) shall file a written request for a hearing and review with the Health Department. Said request must be filed within fifteen (15) days of the date the suspension order was issued by the health Officer. The Board of Health shall consider any request received at its next meeting. Decisions of the Board of Health may be reviewed as an order from any administrative agency pursuant to the Administrative Orders and Procedures Act. Failure to timely file a written request for review with the Health Department shall waive any objections.

- B. Revocation of Permit. The health officer may revoke a retail food establishment permit upon a hearing. The health officer shall preside at a hearing. The permit holder may request a hearing in writing concerning the revocation no later than ten (10) days from the date of the notice of intent to revoke permit. Failure to make a written request for a hearing shall waive the right to a hearing before the health officer.

The decision of the health officer may be appealed to the Board of Health. The permit holder shall submit a written request to the Health Department of their intent to appeal the decision of the health officer within fifteen (15) days of the date of the decision. Failure to file a written request within the time limits shall waive any appeal of the decision of the health officer.

The Board of Health shall consider the appeal of the permit holder based upon the record of the hearing in front of the health officer and upon any additional evidence the board determines is relevant. The Board shall notify the permit holder of the date and time of the meeting to consider the appeal. Continuances may not be granted except by majority vote of the Board. Decisions of the Board may be appealed pursuant to the Administrative Orders and Procedures Act.

- C. Reinstatement of Permit. Any person whose permit has been suspended or revoked may make application to the health officer for reinstatement of this permit. A person may not request reinstatement more frequently than twice a year.

### 3-2-7. Penalties.

The health officer may enforce any provision of this ordinance by injunction. Additionally, the responsible party shall be subject to a fine up to the amount of \$2,500.00 per violation. Each day in which a violation occurs shall constitute a separate violation.

The responsible party found to be in violation of this ordinance shall also be required to pay the attorney fees incurred by the health officer for enforcing this ordinance.

3-2-8. Repeal and Date of Effect.

All ordinances and parts of ordinances in conflict with this ordinance are hereby repealed, and this ordinance shall be in full force and effect ten (10) days from adoption of its publication as provided by law.

**(Ordinance No. 2000-032, Commissioners' meeting, 12/26/00)**

## CHAPTER 3

### FOOD AND BEVERAGE VENDING

#### 3-3-1. Purpose.

An ordinance to protect the public health by regulating the sale of food or beverage through vending machines; defining vending machine, operator, machine location, health officer, person, food and other items; requiring permits and licenses and fixing license fees for the installation and operation of vending machines; prohibiting the sale of adulterated, unwholesome, or misbranded food through vending machines; regulating the inspection of vending machines and operations connected therewith; providing for the enforcement of this ordinance; and fixing penalties.

#### 3-3-2. Definitions.

The following definitions as used here shall apply in the interpretation and enforcement of this ordinance:

Delaware County shall mean all of Delaware County, Indiana, including all incorporated cities and towns located therein, all of which is under the jurisdiction of Delaware County Health Department.

Vending machine shall mean any self-service device offered for public use which, upon insertion of a coin, coins or token, or by other similar means dispenses unit servings of food and beverage, either in the bulk or in package, without the necessity of replenishing the device at each vending operation.

Machine location shall mean the room, enclosure, space or area where one or more vending machines are installed and operated.

Commissary shall mean commissary, catering establishment, restaurant, or any other place in which food, beverages, ingredients, containers or supplies are kept, handled, prepared or stored, and directly from which vending machines are serviced.

Food shall mean any raw, cooked or processed edible substance, beverage or ingredient thereof used or intended for use in whole, or in part, for human consumption.

Readily perishable food shall mean any food, beverage or ingredient consisting in whole or in part of milk, milk products, eggs, meat, fish, poultry, or other food capable of supporting rapid and progressive growth of micro-organisms which can cause food infections or food intoxication, provided products in hermetically sealed containers processed by heat or other methods approved by the health officer to prevent spoilage, and dehydrated, dry or powdered products so low in moisture content as to preclude development of micro-organisms are excluded from the terms of this definition.

Hot liquid food shall mean liquid food or beverage, the temperature of which at the time of service to the consumer is at least 150° F.

Single-service article shall mean any utensil, container, implement or wrapper intended for use only once in the preparation, storage, display, service or consumption of food or beverage.

Product contact surface shall mean any surface of vending machine, appurtenance or container which comes into direct contact with any food.

Adulterated-misbranded shall have the meanings as provided in Article 5, Chapter 157, Acts of 1949 known as the Indiana Food, Drug and Cosmetic Act.

Sale means any and every sale and includes (1) manufacture, processing, transporting, handling, bottling, or any other production, preparation or putting up; (2) exposure, offer or any other proffer; (3) holding, storing or any other possession; (4) dispensing, giving, delivering, serving or any other supplying; and (5) applying, administering or any other use.

Utensils shall mean any kitchenware, tableware, glassware, cutlery, utensils, containers, cleaning brushes or other equipment which comes in contact with food or product contact surfaces during cleaning of vending machines or commissary equipment, or during storage, preparation, serving, dispensing, or consumption of food.

Health officer shall mean the health authority having jurisdiction in the county or his/her authorized representative.

Operator shall mean any person who by contract, agreement, or ownership is responsible for furnishing, installing, servicing, operating or maintaining one or more vending machines.

Person means an individual, partnership, corporation, company, firm, institution, trustee, association, or any other public or private entity.

Employee shall mean any operator or any person employed by him who handles any food to be dispensed through vending machines or who comes in contact with product contact surfaces of containers, equipment, utensils or packaging materials used in connection with vending machine operations or who otherwise services or maintains one or more machines.

Approved shall mean approved by the health officer.

### 3-3-3. Operator's Permits and Licenses.

- A. Permits: It shall be unlawful for any person to engage in the operation of one or more vending machines in the county who does not possess a valid operator's permit from the health officer. Only persons who comply with applicable provisions of this ordinance shall be entitled to receive and retain such a permit. Such a permit shall be for a term of one year beginning January 1 and expiring December 31 of the same year; to be renewed annually.

Any person desiring to operate one or more vending machines in the county shall make application in writing for a permit from the health officer on forms provided by the health officer. Such applicant shall provide the following information:

1. The applicant's full name, residence and post office address, whether such applicant is an individual, firm or corporation. If a partnership exists, the names of the partners, together with their addresses, shall be included.
2. The location of the commissary or commissaries and of other establishments operated by the applicant where supplies are kept and where vending machines are repaired or renovated.
3. The type and form of food to be dispensed through vending machines and the number of each type vending machine in his/her possession.

4. The signature of the applicant or applicants.

Upon receipt of a satisfactorily completed application and such inspection of the commissary and vending machines as the health officer shall deem necessary, a numbered operator's permit shall be issued to the applicant by the health officer after compliance by the operator with the applicable provisions of this ordinance. Such permit shall not be transferable. The health officer may refuse to issue a permit if, on inspection, the commissary, vending machines or method of operation are found to be in violation of this ordinance.

The operator's permit number, of a size and style approved by the health officer, shall be conspicuously displayed on each vending machine operated by such operator. The health officer may further require the permit to bear the number of machine.

In order to secure and retain an operator's permit, the operator shall maintain, within the jurisdiction of the health officer, a list of all vending machines operated by him/her, including the types and their location and of all commissaries or other establishments from which his/her machines are serviced. This information shall be made available to the health officer upon request.

In order to retain an operator's permit, the operator shall notify the health officer within five days of any change in operations involving new types of vending machines, or conversion of existing machines to dispense products other than those for which the permit was issued.

- B. License and License Fee: It shall be unlawful for any person to engage in the operation of one or more vending machines in the county, who does not possess a valid license for the operation of such machines. The license shall be for a term of one year beginning January 1 and expiring December 31 of the same year and shall be renewed annually.

Such license shall be provided by the county health department after a valid permit is obtained from the health officer as provided in section 3-3-3-A of this ordinance.

1. A person applying for a license shall pay an annual fee to the county health department as prescribed in one of the following classes:
  - a. One to one hundred machines.....\$2.00 each
  - b. One hundred or more machines.....\$1.50 each
2. The aforesaid fees shall be turned over to the county auditor to be placed in the county health department fund.

- C. Permit, License and License Fee Exemption: Vending machines which dispense only prepackaged, non-readily-perishable foods such as candy, chewing gum, nut meats, potato chips, pretzels, popcorn and soft drink beverages shall be exempt from the provisions of section 3-3-3-B of this ordinance, but shall be subject to all of the other applicable provisions of this ordinance.

#### 3-3-4. Sanitation Requirements for Vending Machine Operations.

- A. Food, Consumer Containers, Equipment, Equipment Maintenance and Operations: Food intended for sale through vending machines shall be obtained from sources complying with applicable ordinances of Delaware County, and with applicable regulations of the Indiana State Board of Health



and with other applicable state and federal laws and regulations. Such food shall be clean and wholesome, free from spoilage, and shall be processed, prepared, handled, transported and stored in such manner as to be protected against contamination and adulteration. All product contact surfaces of containers and equipment shall be protected from contamination. Packaged food shall be properly labeled. If food or condiments are provided by the operator for service in conjunction with food vended by a vending machine, such food or condiment shall be clean and wholesome and shall be served by individual portions in single service containers. If the food or condiment is a readily perishable food, it shall be refrigerated during transportation, storage and serving.

Readily perishable food within the vending machine is maintained at a temperature not higher than 50°F. For food which is to be kept cold; or a temperature not lower than 150°F for hot foods. Vending machines dispensing readily perishable food are provided with controls which insure the maintenance of these temperatures at all times; provided that an exception may be made for the actual time required to fill or otherwise service the machine and for a maximum recovery period of 30 minutes following completion of filling or servicing operations. Such controls shall also place the machine in an inoperative condition until serviced by the operator, in the event of power failure or other condition, which permits the food storage compartment to attain a temperature above 50° F, or below 150°F, whichever is applicable. Readily perishable food in a food storage compartment which has obtained a temperature above 50°F or below 150°F, whichever is applicable, because of power failure or other cause, shall be removed from the machine, denatured or otherwise rendered unusable as food for human consumption. Vending machines dispensing readily perishable food are provided with a thermometer which, to an accuracy of  $\pm 2^{\circ}\text{F}$ , indicates the air temperature of the food storage compartment.

The vending of non-food items (such as marbles, trinkets, souvenirs or drugs) commingled with food or through a bulk food dispensing orifice is prohibited.

- B. Machine Location: The machine location shall be such as to minimize the potential for contamination of the food; it shall be well lighted, easily cleanable, and shall be kept clean.
- C. Exterior Construction and Maintenance: The exterior construction of the vending machine shall be such as to facilitate cleaning and to minimize the entrance of insects and rodents, and the exterior of the machine shall be kept clean. Service connections shall be such as to protect against unintentional or accidental interruption of service to the machine.
- D. Interior Construction and Maintenance: All interior surfaces and component parts of the vending machine shall be so designed and constructed as to permit easy cleaning, and shall be kept clean. All product contact surfaces of the machine shall be of smooth, nontoxic, corrosion-resistant, and relatively nonabsorbent material, and shall be capable of withstanding repeated cleaning and bactericidal treatment by normal procedures. Such surfaces shall be protected against contamination.
- E. Waste Disposal: All wastes are properly disposed of and, pending disposition, shall be kept in suitable containers so as to prevent creating a nuisance.
- F. Water Supply: Water used in vending machines shall be from an approved source, and shall be of a safe and sanitary quality. Vending machines shall be so constructed and installed as to prevent the production of toxic substances in the water.
- G. Delivery of Foods, Ingredients, Equipment and Supplies to Machine Location: Foods, beverages and ingredients, and product contact surfaces of containers, equipment and supplies shall be protected

from contamination while in transit to machine location. Readily perishable foods and beverages, while in transit, shall be maintained at a temperature not higher than 50°F, or not lower than 150°F., whichever is applicable.

- H. Personnel Cleanliness: Employees shall keep hands and fingernails clean and shall wear clean outer garments while engaged in handling foods or beverages, or product contact surfaces of utensils or equipment.

### 3-3-6. Sales, Examination and Condemnation of Adulterated or Misbranded Food or Beverage.

- A. It shall be unlawful for any person to sell through vending machines within the county, any food, beverage or ingredient which is adulterated or misbranded.
- B. Samples of food, beverage or ingredient may be taken and examined by the health officer as often as may be necessary to determine freedom from adulteration or misbranding. The health officer may, on written notice to the operator, impound and forbid the sale of any food or beverage which is adulterated or misbranded, or which he/she has probable to believe to be adulterated or misbranded. The health officer may cause to be removed or destroyed any food or beverage which is adulterated or misbranded; provided, that in the case of misbranding which can be corrected by proper labeling, such food or beverage may be released to the operator for correct labeling under the supervision of the health officer.

### 3-3-7. Inspection of Vending Machines and Commissaries.

- A. Frequency of Inspection. At least once each three months, the health officer shall inspect the servicing, maintenance and operation of vending machines dispensing readily perishable food and commissaries servicing and supplying such machines (for which a permit and/or license is required under the provisions of the ordinance). Vending machines dispensing other than readily perishable food and commissaries servicing and supplying such machines may be inspected by the health officer as often as he/she deems necessary to insure compliance with the provisions of this ordinance.
- B. Procedure when Violations Noted. If, during the inspection of any servicing, maintenance and operation of a vending machine or commissary, the health officer discovers the violation of any of the sanitation requirements in section 3 of this ordinance, he/she shall issue a written order listing such violation to the operator or, in his/her absence, to the person in charge and fixing a time within which the said operator of said vending machine or commissary shall abate and remedy such violations. A copy of the written order shall be filed with the records of the county health department.
- C. Authority to Inspect and to Copy Records. The person operating the vending machine or commissary shall, upon the request of the health officer, permit access to all parts of such vending operation and locations of all vending machines owned or serviced by the operator and shall permit copying any or all records of food purchased. The confidentiality of such records shall be maintained by the health officer.
- D. Final Inspection - Prosecution or Hearing for Violators. If, upon a second and final inspection, the health officer finds that such a vending machine or commissary, person, or employee is violating any provisions of this ordinance which were in violation on the previous inspection, and concerning which a written order was issued, the health officer shall furnish evidence of the violation to the prosecutor having jurisdiction in the county in which the violation occurs, and he/she shall prosecute

all persons violating said provisions of this ordinance; or the health officer may promptly issue a written order to the permittee and/or licensee of such vending operation to appear at a certain time, no later than ten days from the date of final inspection, and a place in said city fixed in said order to show cause why the permit issued under the provisions of section 3-3-3-A should not be revoked.

- E. **Revocation of Permit and Voiding of License.** The health officer upon such hearing, if the permittee and/or licensee should fail to show cause, shall revoke said permit and promptly give written notice to the permittee. Upon the revocation of any permit by the health officer, the license of the permittee shall automatically be considered revoked, null and void. The health officer shall maintain a permanent record of his/her proceedings file in the office of the county health department.

The health officer may bring a procedure in equity against any person to whom a final order has been issued to compel compliance therewith and petition the court having jurisdiction in such action to enforce such order by prohibitory or mandatory injunction.

Notwithstanding any other provisions of this ordinance, whenever the health officer finds insanitary or other conditions involving the operation of any vending machine or commissary which, in his/her opinion, endangers the public health, he/she may, without notice or hearing, issue a written order to the operator citing the existence of such condition and specifying corrective action to be taken and, if deemed necessary, require immediate discontinuance of operation. Such order shall be effective immediately and shall apply only to the vending machine, commissary or product involved. Any operator to whom such order is issued shall comply therewith, but upon petition to the health officer shall be afforded a hearing as soon as possible. When necessary corrective action has been taken and, on the request of the operator, the health officer shall make a re-inspection to determine whether operations may be resumed.

#### 3-3-8. Commissaries Outside Jurisdiction of the Health Officer.

- A. Foods from commissaries and other sources outside the jurisdiction of the county health officer of the county may be sold within the county, if such commissaries or other sources of supply conform to the provisions of the food establishment sanitation ordinances of the county or to substantially equivalent provisions.
- B. To determine the extent of compliance with such provisions, the health officer may accept reports from the responsible authority in the jurisdiction where the commissary or commissaries are located.

#### 3-3-9. Enforcement Interpretation.

This ordinance shall be enforced by the health officer in accordance with the interpretations thereof contained in the state board of health regulation HFD #21, or amendments thereto, which regulation governs the sanitation of food and beverage dispensed through vending machines. Such interpretations are included in regulation HFD #21 in each item of sanitation as "Satisfactory Compliance". A certified copy of regulation HFD #21 shall be on file in the office of the county health department.

#### 3-3-10. Penalties.

Any person who violates the provisions of this ordinance shall be guilty of an infraction and shall, upon conviction, be punished by a fine of not more than three hundred dollars (\$300.00) for the first offense, and for the second offense by a fine of not more than three hundred dollars (\$300.00) to which may be added

imprisonment for any determinate period not exceeding six (6) months. Each day of operation of a vending machine or commissary in violation of this ordinance shall constitute a distinct and separate offense.

3-3-11. Repealer.

All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

3-3-12. Severability Clause.

If any section, provision, or part of this ordinance shall be adjudged invalid or unconstitutional, such adjudication shall not affect the validity of the ordinance as a whole or any section, provision or part thereof not adjudged invalid or unconstitutional.

**(Ordinance, Commissioners' meeting, 1/18/92)**

## CHAPTER 4

### **PRIVATE SEWAGE DISPOSAL**

#### 3-4-1. Purpose.

An ordinance regulating the installation, construction, maintenance and operation of private sewage disposal systems in closely built-up areas of Delaware County and providing penalties for violations thereof.

#### 3-4-2. Definitions.

Unless the context specifically indicates otherwise, the meaning of terms used in this ordinance shall be as follows:

Sewage means any combination of human excreta and waste water from water closets, laundries, sinks, dishwashers, bathing facilities, septic tank effluent and other objectionable waste waters.

Public sewer means any sewer terminating at a sewage treatment plant constructed, installed, maintained, operated and owned by a municipality, regional sewer district, or taxing district established for that purpose.

Sewer means a pipe or conduit for carrying sewage.

Health officer means the health officer having jurisdiction in Delaware County, or his/her authorized representative.

Board of health means the board of health having jurisdiction in Delaware County.

Privy means a fly-tight and rodent-proof structure designed for the disposal of human waste erected on or over a properly constructed vault or pit.

Combined sewer means a sewer receiving both surface water run-off and sewage.

Sanitary sewer means a sewer which carries sewage and to which storm, surface and ground waters are not intentionally admitted.

Sewage disposal system means any arrangement of devices and/or structures used for receiving, treating and disposing of sewage.

Public sewage disposal system means any sewage disposal system not constructed, installed, maintained, operated and/or owned by a municipality, regional sewer district, or a taxing district established for that purpose.

Person means an individual, partnership, association, joint venture, syndicate, trust, firm, corporation, city, town or other governmental department, bureau or agency, or any other entity recognized by law.

Septic tank means a watertight tank designed to retain sewage solids long enough for bacterial decomposition of the solids to take place.

Aeration type tank means any tank or device designed to receive and treat sewage by causing or inducing air to circulate or combine with the contents creating an aerobic bacterial condition to exist.

Subsurface absorption system means any arrangement of components designed to disperse or dispose of sewage effluent by allowing it to be absorbed into the subsurface soil.

Bulletin No. S. E. 8. means State Board of Health Bulletin No. S. E. 8 entitled "Septic Tank Sewage Disposal Systems for Farm and Suburban Homes," as updated or amended from time to time, and any bulletin or publication which may hereafter be published by the State Board of Health as a supplement or successor to said Bulletin No. S. E. 8. Copies of said Bulletin No. S. E. 8, and of any supplemental or successor publication shall be on file both in the office of the county auditor and in the office of the county health officer for public inspection during regular business hours.

Bulletin No. S. E. 11. means State Board of Health Bulletin No. S. E. 11 entitled "The Sanitary Privy" as updated or amended from time to time, and any bulletin or publication which may hereafter be published by the State Board of Health as a supplement or successor to said Bulletin No. S. E. 11. Copies of said Bulletin No. S. E. 11, and of any supplemental or successor publication shall be on file both in the office of the county auditor and in the office of the county health officer for public inspection during regular business hours.

Bulletin No. S. E. 13. means Indiana State Board of Health Bulletin No. S. E. 13 entitled "Planning Guide for Private Water Supply and Sewage Disposal for Small Public, Commercial and Place of Employment Buildings Minimum Requirements," as updated or amended from time to time, and any bulletin or publication which may hereafter be published by the State Board of Health as a supplement or successor to said Bulletin No. S. E. 13. Copies of said Bulletin No. S. E. 13, and of any supplemental or successor publication shall be on file both in the office of the county auditor and in the office of the county health officer for public inspection during regular business hours.

Soil survey means the book entitled "Soil Survey of Delaware County, Indiana" published by the U.S. Department of Agriculture, Soil Conservation Service as updated or amended from time to time. Copies of said publication and of any supplemental or successor publication shall be on file both in the office of the county auditor and in the office of the county health officer for public inspection during regular business hours.

Rule 410 IAC 608 means State Board of Health regulation entitled "Residential Sewage Disposal Systems" as updated or amended from time to time, and any bulletin or publication which may hereafter be published by the State Board of Health as a supplement or successor to said publication. Copies of said rule and of any supplemental successor publication shall be on file both in the office of the county auditor and in the office of the county health officer for public inspection during regular business hours.

### 3-4-3. Private Sewage Disposal Systems.

- A. Where a public sanitary or combined sewer is not available in the county, all persons owning or leasing property in closely built-up areas shall comply with the following provisions of this ordinance for private sewage disposal systems.
- B. It shall be unlawful for any person to place, deposit or permit to be deposited in an unsanitary manner upon any public or private property, river, stream or ditch within the county, or in any area under the jurisdiction of said County, any human excrement, sewage or the overflow drainage and/or contents of a septic tank or aeration type treatment tank.
- C. At any public, commercial or business building situated within the county, where private sewage disposal systems may be approvable and where no public sewer system is available, said private

sewage disposal systems as may be installed, constructed and maintained shall comply with the minimum requirements of Bulletin No. S. E. 13, Rule 410 IAC 6-8, or such other standards as may be adopted from time to time by the State Board of Health which standards are incorporated herein by reference. Plans and specifications for such disposal systems shall be submitted to the State Board of Health and, where required, to the Indiana Stream Pollution Control Board for their examination and approval. Final acceptance, inspection and approval of said systems shall be granted at the discretion of the county health officer.

- D. Any privy situated within the county shall be of the sanitary type and shall be installed, constructed, maintained and disposed of at least in accordance with the minimum standards as set forth in Bulletin No. S. E. 11 or such other standards as may be adopted from time to time by the State Board of Health, which said standards are incorporated herein by reference. All privies shall be kept in a clean condition so that insects and rodents cannot enter the vault and shall be located properly to protect water supplies from contamination.
- E. All private residential sewage disposal systems shall be installed, constructed and maintained in a manner approved by the county health officer and in compliance with the minimum standards set forth in Bulletin No. S. E. 8, Rule 410 IAC 6-8 or such other standards as may be adopted from time to time by the State Board of Health which said standards are incorporated herein by reference.
- F. The installation of any other private sewage disposal systems not described in Bulletin No's. S. E. 8, S. E. 11 or S. E. 13 and Rule 410 IAC 6-8, which operate by mechanical, chemical or other means shall be approved in advance by the Indiana State Board of Health, the Indiana Stream Pollution Control Board, or its successor, (where required) and the county health officer.
- G. Should any defect or malfunction exist or occur in any private sewage disposal system or privy which would cause said sewage disposal system or privy to fail to meet the standards and requirements in sub-sections B, C, D or E hereof, the defect or malfunction shall be corrected without delay and in the shortest reasonable time by the owner or the occupant of the premises or their agents in a manner as shall meet the approval of the county health officer. Failure of the owner or occupant to do so shall constitute a violation of this ordinance and the violator or violators shall be subject to the penalties prescribed in section 3-4-8 of this ordinance.
- H. Wherever a public combined or sanitary sewer or community combined or sanitary sewer, approved by the Indiana State Board of Health, becomes available and is within three hundred (300) feet of the property line of the residential or business property served by a private sewage disposal system or privy, situated within the county, a direct connection shall be made to said sewer (provided that said sewer is of sufficient capacity) and any septic tanks, seepage pits, outhouses, privy pits and similar sewage disposal and treatment facilities shall be abandoned and filled in a safe and sanitary manner as approved by the county health officer. Such direct connection shall be completed by the owner and/or the occupant of the premises or their agents within ninety (90) days after receipt of written notice ordering such action. Failure of the owner or the occupant to comply with the provisions of this section shall constitute a violation of this ordinance and the violator shall be subject to the penalties prescribed in section 3-4-8 of this ordinance.
- I. Notwithstanding any other provisions of this ordinance, where a residence or business building is constructed in any areas situated outside the corporate limits of any city or town within the county which will utilize septic tanks and subsurface absorption systems, each building site shall consist of an area of not less than twenty thousand (20,000) square feet if public sewers are not available to

serve such a residence or business building. Sewage therefore shall be disposed of in accord with the provisions as described in subsections B, C, D, E and F of this ordinance.

The provisions of section 1 hereof shall not be applicable to lots platted and duly recorded before July 15, 1974. Lots shall be considered platted on the date that final plat approval is granted by the plan commission having jurisdiction over said lot or lots.

- J. Notwithstanding any other provisions of this ordinance, the county health officer may limit or prohibit the use of septic tanks and subsurface absorption systems for residences or businesses in areas that are seasonally wet, pond water, or which periodically flood during any part of the year, or in areas where the size or topography of the site, or where information contained in the soil survey or obtained from percolation tests conducted or properly supervised by the county health officer indicates a reasonable likelihood that septic tanks and subsurface absorption systems will not function properly and will dispose of sewage in an unsanitary manner in violation of the terms of this ordinance.

#### 3-4-4. Permits to Install, Permit Fees and Inspections, Registering and Bonding of Installers.

- A. Before commencement of construction of any public, commercial or business building or private residence where a private sewage disposal system or privy is to be installed or where any alternation, repair or addition of an existing private sewage disposal system is planned, the owner or agent of the owner shall first obtain a written permit signed by the county health officer. The application for such permit shall be made on a form provided by the county health officer. Said application shall be supplemented by any plans, specifications and other information as is deemed necessary by all county health officers.

An application fee for each repair of an existing septic tank system or the installation of a new system shall be collected at the time the initial application is submitted. The fee for the application concerning the repair of an existing facility shall be twenty-five dollars (\$25.00). The fee for the installation of a new system shall be fifty dollars (\$50.00).

After inspection by the health officer or their designated representative and a permit is issued, there shall be an additional permit fee of twenty-five dollars (\$25.00) prior to issuance of the permit.

New system shall include the installation of any septic tank and/or finger system for any construction or the installation of any septic tank and/or finger system of an existing septic system.

Payments shall be made to the county health officer for deposit in the county health fund at the time the application is filed.

**(Ordinance No. 1992-23, Commissioners' meeting, 6/8/92)**

- B. The county health officer shall examine said application together with all information accompanying same, and if he/she determines, consistent with the provisions of this ordinance, that such application should be approved, he/she shall issue a permit. Otherwise, he/she shall deny such application and shall notify the applicant in writing of the reason or reasons for such denial. In any case, an application shall be denied if the information submitted therewith is incomplete or inaccurate.

The permit, if issued, shall be posted prior to commencement of construction in a conspicuous place at or near the building site where the sewage disposal system is under construction. The permit shall be plainly visible from the public thoroughfare serving the building site.



- C. If the sewage disposal system for which the permit was issued has not been constructed, installed, altered, repaired or extended within one year from the date of issuance, the permit shall automatically expire and become void.
- D. A permit for the construction, installation, alteration or repair of a private sewage disposal system or privy shall not constitute final approval of such system until the same is completed to the satisfaction of the county health officer. He/she, or his/her agent, shall be permitted to inspect the work at any stage of construction; and, in any event, before any underground portions are covered, the applicant for the permit shall notify the county health officer when the work is ready for final inspection. Said notification shall be on a form provided by the county health officer. The final inspection shall be made within the shortest reasonable time, but not to exceed two (2) working days of receipt of notice to the county health officer, excluding weekends, legal holidays and days when the weather is unfit to make an inspection as reasonable determined by the county health office.
- E. The county health officer shall maintain a register of all persons engaged in or intending to engage in the installation, construction or repair of sewage disposal systems or equipment within the county.
- F. Any person engaged in or intending to engage in the installation, construction or repair of sewage disposal systems or equipment shall make application to the county health officer to have his/her name placed on the "Register for those engaged in the installation, construction and repair of sewage disposal systems or equipment." The application form shall contain the name and address of the firm or place of business such person is associated with, and such other information as the county health officer may reasonably require to aid him/her in the administration and enforcement of these regulations, or to help him/her determine whether there is any reason why he/she should not approve the application.
- G. Any person making application to have his/her name placed on the "Register for those engaged in the installation, construction and repair of sewage disposal systems or equipment" shall submit with such application a fee of thirty-five dollars (\$35.00) per calendar year or twenty dollars (\$20.00) after June 30 for any part less than six (6) months thereof. Only one application need be submitted pursuant to section E and F of this section, if such person is a firm, partnership, association or corporation (1/18/82).
- H. Upon acceptance of the applicant's registration, such person shall post a surety bond with the county board of health in the penal sum of not less than one thousand dollars (\$1,000) in favor of the county board of health conditioned upon registrant's faithful compliance with this ordinance and with rules and regulations which may from time to time be established by the county board of health relating to the installation of sewage disposal devices or equipment.
- I. The county health officer may remove the name of any person from the "Register of persons engaged in the installation, construction and repair of sewage disposal systems or equipment" who have demonstrated inability or unwillingness to comply with these regulations. Such person may have his/her name reinstated on said register by the county board of health after satisfactory demonstration of ability or willingness to comply with these regulations.
- J. All fees collected under the terms of this ordinance shall be receipted monthly into the county treasury and credited to the county health fund for services rendered in enforcing this ordinance.

- K. Failure of any person to obtain a permit or to register or to otherwise comply with the requirements of section 3-4-4 shall constitute a violation of this ordinance and the violator or violators shall be subject to the penalties prescribed in section 3-4-8 of this ordinance.

#### 3-4-5. Power for Inspection.

- A. The county health officer or his/her agent bearing proper credentials and identification shall be permitted to enter upon all properties subject to the provisions of this ordinance at reasonable times for purposes of inspections, observations, measurements, sampling and testing necessary to carry out the provisions of this ordinance.
- B. The county health officer or his/her agent may compel the immediate suspension of any work, completed or in process or planned, that is in violation of any provisions of this ordinance. Such suspension order shall be posted at the construction site and confirmed by written notice to the owner or occupant of the premises and any person engaged in the performance of said work or any person causing said work to be done. Failure to comply with such suspension order shall constitute a violation of this ordinance and the violator shall be subject to the penalties prescribed in section 3-4-8 of this ordinance.

#### 3-4-6. Notices.

Any person in violation of any of the provisions of this ordinance shall be served a written notice by the county health officer stating the nature of the violation and providing a time for satisfactory correction thereof.

#### 3-4-7. Appeals and Exceptions.

- A. Appeals shall lie from any of the following decisions made or action taken by the county health officer:
1. Denial of an application for a permit to construct, install, alter or repair a private sewage disposal system or privy;
  2. Failure to approve an application to have name placed on "Register for those engaged in the installation, construction and repair of sewage disposal systems or equipment";
  3. Removal of name from "Register for those engaged in the installation, construction and repair of sewage disposal systems or equipment";
  4. Prohibition or limitation of the use of septic tanks and subsurface absorption systems for any reason set forth in section 3-4-3-J of this ordinance;
  5. A determination pursuant to section 3-4-5 or section 3-4-6 of this ordinance that work completed, in process or planned is in violation of any of the provisions of this ordinance, or that any other violation of the provisions of this ordinance exists.

Requests for an exception may be made from any of the following decisions made or actions taken by the county health officer:

1. Order to make direct connection with sewer and to abandon private sewage disposal system or privy under section 3-4-3-H of this ordinance;
  2. Prohibition against use of septic tanks and subsurface absorption systems where building site consists of less than twenty thousand (20,000) square feet as set forth in section 3-4-3-I of this ordinance.
- B. An appeal or request for an exception may be filed with the county board of health by any person aggrieved or affected by any decision of the county health officer as set forth in subsection A above. Such appeal or request for an exception shall be submitted in writing within ten (10) days after the applicable decision of the county health officer (unless the appellant obtains an extension of time in writing from the county board of health); and shall specify the adverse decision appealed from or from which an exception is requested and the grounds therefore. The county health officer shall forthwith transmit to the county board of health all of the papers in his/her office constituting the record of the case. The county board of health, upon receipt of such notice and record shall immediately select a reasonable time and place for the hearing of the appeal or request for an exception and shall give notice in writing to the appellant of the time and place thereof.
- The hearing of the appeal or request for an exception may be continued from time to time, but following the conclusion of the hearing, a decision on the appeal or request for an exception shall be rendered by the board within twenty (20) days thereafter. Any person may appear and testify at such hearing either in person or by counsel.
- C. The county board of health shall hear and decide the appeal or request for an exception and, in the case of an appeal, may overrule or modify the decision or determination of the county health officer appealed from if the board determines that the matter was incorrectly decided by the county health officer. Requests for exceptions may be granted by the county board of health only if the person requesting the exception shows the board that:
1. strict compliance with the provisions of the ordinance will impose upon such person unusual difficulties and/or particular hardships; and
  2. granting of an exception will constitute substantial justice, is in harmony with the general purpose, intent and spirit of this ordinance, will not serve merely as a convenience to said person, and will alleviate a demonstrable hardship and surrounding property and the public in general will not be harmed thereby.
- D. The concurring vote of a majority of the members of the county board of health shall be necessary to reverse or modify any determination or decision of the county health officer, or to grant an exception hereunder.

#### 3-4-8. Penalties.

Any person, firm or corporation who shall violate any provision of this ordinance shall be guilty of an infraction. On conviction the violator shall be punished for the first offense by a fine of not more than five hundred dollars (\$500.00); for the second offense by a fine of not more than one thousand dollars (\$1,000.00); and for the third and each subsequent offense by a fine of not more than one thousand dollars (\$1,000.00), and each day after the expiration of the time limit for abating insanitary conditions and completing improvements to abate such conditions as ordered by the county board of health, or by the duly appointed health officer of the county, shall constitute a distinct and separate offense.

3-4-9. Repealer.

All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

3-4-10. Severability Clause.

If any section, provision or part of this ordinance shall be adjudged invalid or unconstitutional, such adjunction shall not affect the validity of the ordinance as a whole or any section, provision or part thereof not adjudged invalid or unconstitutional.

**(Ordinance, Commissioners' meeting, 1/18/82)**

## CHAPTER 5

### WEED CUTTING

#### 3-5-1. Purpose.

This ordinance provides for regulation of unsightly growth of weeds, grass or other vegetation within the jurisdiction of Delaware County.

#### 3-5-2. Neglect of Litter and Waste.

All persons owning or controlling houses or premises or vacant lots abutting any public way and physically and financially able to do so shall maintain such premises in a reasonably clean and orderly manner and to a standard conforming generally to other orderly premises in that vicinity. It shall be a violation of this section to abandon, neglect or disregard any such premises so as to permit the same to become unclean with an accumulation of litter or waste thereon.

#### 3-5-3. Weed and Grass Control.

- A. No person owning or controlling premises in the county shall allow a rank growth of grass, weeds or other vegetation to remain thereon, or permit the same to become unsightly, unsanitary or obnoxious, or a blight to the vicinity, or offensive to the senses of users of the public way abutting same, or so continue thereon for a period longer than thirty days in any calendar year; or fail to comply with these requirements after a written order of any county or health authorities to remedy such conditions.
- B. Every owner or agent of the owner of any lot or ground within the county shall, cut or allow to be cut all weeds and rank vegetation growing on such lot or ground and remove same after being cut from the lot or ground, and if the owner or agent of the owner shall fail to cut and remove the weeds or other rank vegetation growing on such lot or ground, the board of health shall at once proceed to cut and remove the weeds and rank vegetation and shall keep an accurate and itemized statement of the cost of the removal of such weeds and rank vegetation on each lot, tract or parcel of land and charge the cost thereof against the owner of the lot and ground, which cost shall be a lien thereon, and upon the completion of the work, the board of health shall thereupon certify the cost to the treasurer of the county. The treasurer shall keep a record in which he/she shall enter the name of the owner, the description of the lot, tract or parcel of land from which such weeds or rank vegetation was removed and the cost of removal as certified to him/her by the board of health.  
**(Mending Ordinance No. 2008-021, Commissioners, 7/7/08)**

#### 3-5-4. Enforcement.

- A. Upon the entry of the cost in the record the same shall be a lien upon the lot, tract or parcel of land the same as taxes are a lien, and such sum shall be due and payable on or before the first Monday of the following November. In the event the same is not paid, a penalty of the percent shall be added and the real estate shall be sold at the same time and in the same manner as the law provides for the sale of property for delinquent taxes, and the laws governing the sale of real estate, time of redemption, penalties, interest, deeds and all other laws concerning the sale of real estate for delinquent taxes shall apply and govern sales hereunder, as fully as if the same were incorporated herein.

- B. The description of the real estate and the name of the owner of the same appears on the transfer records in the office of the auditor of the county shall be a sufficient description of the real estate and of the owner in the record.
- C. Any person allowing trash or garbage to accumulate or remain on premises which he/she occupies or which he/she owns or for which he/she is legally responsible may be given two weeks' notice in writing by the county health department. If at the end of the notice period, corrective action has not been taken, the county health department shall have the duty of having workers gather and remove it, making accurate record of the expenses involved. If the responsible person does not reimburse the county within sixty (60) days for such removal, the same shall be charge to the owner of such property on the next regular tax bill forwarded to such owner by the treasurer. The procedure for such charge shall be the same as that provided herein, providing for the same to be a lien on real estate collected by the treasurer of the county, and the description and names provided herein shall be followed and be binding upon said violator.

#### 3-5-5. Repealer.

All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

#### 3-5-6. Severability Clause.

In any section, provision or part of this ordinance shall be adjudged invalid or unconstitutional, such adjudication shall not affect the validity of the ordinance as a whole or any section, provision or part thereof not adjudged invalid or unconstitutional.

**(Ordinance, Commissioners' meeting, 7/10/72)**

## CHAPTER 6

### **REIMBURSEMENT FOR HAZARDOUS MATERIALS EMERGENCY**

#### 3-6-1. Reimbursement of the Cost of a Response to a Hazardous Materials Emergency.

- A. This ordinance does not apply to an occurrence involving the release or imminent release of less than twenty-five (25) pounds of active ingredient of a substance or combination of substances that:
1. was commercially produced and sold as a fertilizer, fungicide, herbicide, or pesticide; and
  2. is, at the time of occurrence, in the possession of an individual who acquired the substance or combination of substances with the intent to use it for the purpose intended by the commercial producer:
    - a. in a dwelling owned or occupied by the individual;
    - b. in the year adjacent to or surrounding a dwelling owned or occupied by the individual; or
    - c. on a farm owned by the individual.

#### 3-6-2. Definitions.

Emergency action means any action taken at or near the scene of hazardous materials emergency to prevent or minimize the harm to human health, to the environment, or to property from the uncontrolled release of a hazardous material.

Emergency response agency means:

1. the state police;
2. the environmental response branch of the department of environmental management;
3. a police department established under IC 36-8-2-2;
4. a fire department established under IC 36-8-2-3;
5. a volunteer fire company organized under IC 36-8-12;
6. any agency of a governmental entity, or any combination of agencies of governmental entities, that provides
  - a. fire fighting services
  - b. emergency rescue services; or
  - c. any agency of a governmental entity that provides manpower, equipment, or supplies at the scene of a hazardous material emergency.

Hazardous material means a material or waste that has been determined to be hazardous or potentially hazardous to human health, to the environment, or to property by:

1. the United States Environmental Protection Agency, Nuclear Regulatory Commission, Department of Transportation, or Occupational Safety and Health Administration; or
2. the solid waste management board;
3. the term includes all of the hazardous materials identified in 49 CFR 172.101.

Hazardous materials emergency means an occurrence that involves the controlled release or imminent uncontrolled release of a hazardous material into the environment and that creates the possibility of harm to human health, to the environment, or to property.

Health officer means any employee of the county health department.

Person means an individual, a corporation, a partnership, or an unincorporated association.

Pesticide includes a substance or a combination of substances commercially produced for use as an insecticide, a rodenticide or a nematocide.

Responsible party means a person who:

- 1.a. owns hazardous material that is involved in a hazardous material incident; or
- 1.b. owns a container or owns or operates a vehicle that contains hazardous material that is involved in a hazardous material emergency; and
2. who causes or substantially contributes to the cause of the hazardous material emergency.

### 3-6-3. Reimbursement.

- A. The persons who are responsible parties in connection with a hazardous material emergency shall reimburse an emergency response agency or governmental entity served by an emergency response agency for reasonable and necessary expenses incurred by the emergency response agency in taking emergency action at or near the scene of the hazardous material agency. Reimbursement is available under this section for expenses that are incurred by the emergency response agency in taking the emergency action, except for expenses of a type that the agency normally incurs in responding to emergencies that do not involve hazardous materials. Reimbursement for expenses is not available under this section if those expenses may be reimbursed by the federal government under Section 123 of the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. 9623.
- B. An emergency response agency or governmental entity may obtain reimbursement, as noted above, by filing an action for reimbursement in court of general jurisdiction of a county in which a hazardous materials emergency arose.
- C. No responsible party shall fail to comply with this section. Each day that a person is in noncompliance with this section shall constitute a separate violation hereunder, and any person who violates this section shall pay a civil penalty of not more than two thousand five hundred dollars (\$2,500.00) for each such violation.
- D. Delaware County shall have responsibility of enforcing the provisions of this ordinance and may bring an action, as authorized under this ordinance, in court of jurisdiction of a county. The county may assign responsibility of enforcement to the health officer. The attorney for the commissioners shall assist the health officer in enforcement and representation.
- E. Any civil penalties imposed above shall be paid to the county auditor for deposit into an account maintained for the use and benefit of the Local Emergency Response Planning Committee.  
**(Ordinance No. 96-010, Commissioner's meeting, 5/20/96)**



## CHAPTER 7

### SAFE WATER

#### 3-7-1. Definitions.

Health officer means the duly appointed health officer for Delaware County, Indiana, or a person designated by the health officer to act in or on their behalf. The term shall also mean the Delaware County health department.

Private well means a water well that serves a family or business for their potable water needs. This shall not apply to any well used solely to monitor the quality or quantity of ground water.

Public water source means any source of water that provides potable water to more than one person, firm or entity for which there is a charge assessed against the user for water consumed.

Work on any private well means the installation of any new water well and/or pump to bring the water from below the surface of the ground to be used by the owner for their potable water needs. This term also includes the breaking of any sanitary seal of a private water well. This term shall also include uncovering the buried upper terminal.

Installer means any person, firm or entity that performs maintenance or installs private water wells for any person or business whether for a fee or without a fee. This term also includes well installers and any person that performs any service to abandon a private well for another person.

Person means any person, firm, or entity without respect to any particular gender or type.

Maintenance means the repair or replacement of any pump, pressure tank, piping, well or well casing wherein the well seal is broken, compromised or removed by an installer or any other person. Maintenance shall also include the installation of any private well that is intended to serve as a replacement for and existing private well.

All other words and phrases shall have their usual and customary meaning.

#### 3-7-2. Contaminated Private Well.

- A. If the health officer determines that water from a private well used by humans for drinking, food preparation, washing or other direct human contact presents a chemical, biological or radiation threat for the persons served by the private well, then the health officer shall order the owner of said well to cease and desist from its continued use. The health officer shall also order the well to be abandoned pursuant to this ordinance.

This shall include the homeowner or occupant of a residence that performs any activity or service for installation and/or maintenance for their own property or residence.

In an emergency situation as approved by the health officer, a home owner may drill a new water well prior to obtaining a permit as required in this ordinance. The well may not be used for human consumption until such time as the well and its water shall be inspected and approved by the health officer as per this ordinance. This does not excuse the installer from obtaining all of the necessary

permits within two (2) business days. The installer operating under this emergency provision shall notify the Health Office within two business days of the installation of a private well.

- B. In the event that a private well is contaminated and ordered abandoned by the health officer and a public water main becomes available within one hundred (100) feet of any property line of the residential or business property served by a private well, the owner of the property shall establish a direct connection for the property to the public water main as soon as reasonable.
- C. After connection to the public water system the owner of the property shall abandon the private well pursuant to 312 IAC 13 *et seq.* and report the abandonment of the private well to the health officer within two business days.

#### 3-7-3. Permit for New Private Wells.

- A. Prior to the commencement of any work to install a new private well, the owner shall obtain a permit from the health officer.
- B. The owner shall submit an application for a permit provided by the health officer to install a new private water well. This application shall be returned to the Health Department.
- C. The permit shall be obtained no later than two (2) business days prior to the commencement of any work on the private well.
- D. The health officer shall charge a fee of sixty dollars (\$60.00) for all permits for new private wells. The fee shall be submitted at the same time as the application is submitted by the owner. This permit shall apply only to new home construction and shall include both the well and the pump installation.
- E. Prior to the use of the private water well for human consumption, the health officer shall inspect the well and its water for compliance with all state and federal regulations.
- F. This ordinance shall not apply to any well used solely to monitor the quality or quantity of ground water.
- G. The installer shall not commence work on the private well until the Owner has provided a copy of the permit to the installer.

#### 3-7-4. Process for Installation of a New Well.

- A. The installer shall inform the health officer at least two (2) days prior to the installation of the pump in any new well.
- B. The health officer shall be permitted to inspect a private water well installation at any stage of construction.
- C. The health officer shall submit a sample of the water from the new pump for a laboratory analysis to determine if the bacterial content is satisfactory.
- D. The cost for the testing of the first water sample shall be paid by the health department from the permit fees.

- E. The water from a new water well shall not be used for human consumption until such time as the well has been approved by the health officer and the water analysis is acceptable to the health officer.
- F. Other than the permit fee there shall be no additional charge to the installer for the first water analysis. In the event that it shall be necessary for any additional water testing, the owner shall be responsible for conducting and obtaining any subsequent testing.
- G. All well construction must be performed in accordance with the Department of Natural Resources Rule 312 IAC 13 *et seq.* and Indiana Department of Health Bulletin PWS 2 and Indiana Department of Health Bulletin S. E. 13.
- H. In the event that any subsequent testing is required to be performed after installation of a new private well, the installer may obtain a water sample from the private well bladder tank and then submit that sample for analysis.
- I. If a subsequent acceptable water sample is obtained from the private well bladder tank and a sample is otherwise determined to be unacceptable to the Health Officer, the water may not be consumed by the owner or occupant of the dwelling until such time as the owner of property has performed any and all necessary treatment or taken adequate maintenance or repair to the water system to result in an acceptable water test result will be obtained by the owner or occupant from an outlet other than the private well bladder tank.
- J. The installer shall, thirty (30) days after completion of the installation of the well, provide to the health officer and the owner of the property a copy of the well record submitted to the Indiana Department of Natural Resources.

#### 3-7-5. Well Pumps and Well Standards.

- A. All hand pumps, stands or similar devices shall be installed so that there is no unprotected openly connected to the interior of the pump. The pump spout shall be a closed, downward directed type. All hand pumps shall be bolted to a mounting flange securely fastened to the well casing. The top of the casing shall extend at least one (1) inch above the face of the flange.
- B. All power driven pumps located over wells shall be mounted on the well casing, a pump foundation, or a pump stand, so as to provide an effective well seal at the top of the well. There is an effective seal if the well casing extends at least one (1) inch into the pump base, provided the pump is mounted on a base plate or foundation in such a manner to prevent the entry of dust and insects, and the top of the well casing is at least two (2) feet above any known flood water level. Where the pump unit is not located over the well and pump deliver or suction pipe emerges from the top of the pump, a watertight expanding gasket or an equivalent well seal shall be provided at the terminal of a conduit containing a cable for a submersible pump.
- C. All submersible pumps shall have one (1) check valve located on the discharge line above the pump and inside the well casing. If the discharge pipe is at least twelve (12) inches above the ground and slopes to drain into the well, the check valve may be located in the dwelling unit.
- D. Unless a power-driven pump is weatherproof or frost proof, a pumphouse providing access to the pump for maintenance and repair work shall be constructed to house the pump. The pumphouse floor shall be constructed of impervious material and shall slope away in all directions from the well or suction pipe.

- E. Discharge lines and vacuum lines from the well to the foundation of heated buildings shall be protected against freezing.
- F. All well vents shall be piped water-tight to a point not less than twenty-four (24) inches above any known flood water level, and, in any event to the top of the well casing. Such vent opening and piping shall be of sufficient size to prevent clogging by frost and in no case less than one-quarter inch (1/4") diameter. The terminals of vent pipes shall be shielded and screened to prevent the entrance of foreign matter and preferably should be turned down. If toxic or inflammable gases are vented from the well, the vent shall extend to the outside atmosphere at a point where the gases will not provide a hazard. Openings in pump bases shall be sealed water-tight.
- G. All pressure water systems shall have a faucet on the discharge side of, and as close as possible to, the pump for the collection of water samples. The sampling faucet shall have a smooth, turned-down nozzle. A hose bib shall not be used.
- H. No material will be used in the well or pump installation that will result in the delivered water being toxic or having an objectionable taste or odor. All metallic and non-metallic materials shall have sufficient structural strength and other properties consistent with the purpose for which they were installed. Flexible or non-rigid plastic pipe shall not be used for suspending submersible pumps, unless the piping has the physical properties to withstand the torque and load to which it is subjected.
- I. Offset pumps and sampling faucets shall be located where they are readily accessible.
- J. Pressure tanks or approved substitutes used as a part of the water system shall be of such size as to prevent excessive wear of the pump due to frequency of starting or stopping.

#### 3-7-6. Maintenance of Well.

- A. After the well repair wherein the water quality has been compromised or after the well seal of an existing well has been broken, or a private well is drilled to replace the existing well, the well shall be disinfected by the installer pursuant to the procedures set forth in 312 IAC 16-9-1. The upper terminal of a well located in a well pit that is not properly drained to the ground surface in the immediate area or is subject to flooding shall be deemed buried for the purposes of this section. If the well seal is broken, a pitless adapter shall be installed pursuant to 312 IAC 16-4-3(d).
- B. The installer shall notify the health department, whenever possible, one (1) day prior to the maintenance of any well.
- C. The owner shall be responsible for obtaining a permit for maintenance of their well.
- D. The health officer shall charge a fee of thirty dollars (\$30.00) for maintenance of existing private wells. The fee shall be submitted at the same time as the application supplied by the property owner.
- E. There shall be no human consumption of any water derived from a private well until such time as the health department has determined that the water is safe for human consumption.
- F. The owner shall submit an application for maintenance of a private well on the form provided by the health officer.

- G. The installer shall not commence work on the private well until the Owner has provided a copy of the permit to the installer.
- H. The health officer shall be permitted to inspect a private water well maintenance at any time.
- I. The health officer shall submit a sample of water after maintenance of the water well for analysis at a laboratory to determine if the bacterial content is satisfactory.
- J. Other than the permit fee there shall be no additional charge to the property owner for the first water analysis. In the event that it shall be necessary for any additional water testing, the property owner shall be responsible for the cost of standards the additional tests. All water tests performed shall be performed at a lab that is certified by the Indiana Department of Health. The health department shall provide, at the request of the installer or property owner, a list of those labs certified by the Indiana Department of Health.
- K. In the event that any subsequent testing is required to be performed by the owner after installation of a replacement private well, the owner or installer may obtain a water sample from the private well bladder tank and then submit that sample for analysis. If the subsequent test result is acceptable to the Health Officer, then the installer shall be relieved from any further responsibility for the water quality at this location.
- L. If a subsequent acceptable water sample is obtained from the private well bladder tank and a sample is otherwise determined to be unacceptable to the Health Officer, the water may not be consumed by the owner or occupant of the dwelling until such time as the owner of property has performed any and all necessary treatment or taken adequate maintenance or repair to the water system to result in a acceptable water test result will be obtained by the owner or occupant from an outlet other than the private well bladder tank.
- M. Installers who maintain or perform maintenance on private water wells shall be registered with the county health officer as a licensed plumber or a licensed well driller.

#### 3-7-7. Installers Registration.

- A. No person may install, maintain, perform maintenance work or abandon any private well in the county unless they have registered with the health officer. Owners of real property that perform installation or maintenance on their own real estate are not required to register.
- B. The person shall supply their name, address, phone number, business name or employer as well as any license number issued by the state.
- C. The health officer may request additional information of any person registering to perform well drilling or pump repair in the county as the health officer may reasonably determine if necessary.
- D. The registration of a person shall not be an indication of their competence or professionalism of the person that registers with the county.
- E. The county shall not assume responsibility for any person that is registered or their work that performs well drilling or water pump repair services.

- F. The registration of an installer may be revoked by the health officer, if the installer fails to comply with any provision of this ordinance or any rule or regulation enacted by the state or federal government concerning the maintenance, installation of private wells, pumps or the abandonment of any well.
- G. In the event that a registration shall be suspended or revoked by the health officer, the well installer may appeal said suspension or revocation to the board of health for consideration at its next regularly scheduled meeting. The well installer must file their notice of intent to appeal the revocation of the registration within ten (10) business days from the action of the health officer.
- H. Upon request, the health department shall provide a complete list of currently registered well drillers.

3-7-8. Penalties and Enforcement.

- A. Violation of this ordinance may result in a fine against the offending person or entities not to exceed two thousand five hundred dollars (\$2,500.00) plus all court costs, including the cost of enforcement, reasonable attorney fees and the cost of investigation.
- B. Each day shall constitute a separate offense.
- C. The Health Officer shall be responsible for enforcement of this ordinance.
- D. In addition to any fine and other costs, the health officer may enforce this ordinance by injunction. The violating party shall be responsible for all costs including reasonable attorney fees incurred by the county in the enforcement of this ordinance.
- E. This ordinance is effective ten (10) days after it is published.  
**(Ordinance No. 2001-003, Commissioner's Meeting 5/07/01, Replacing Ordinance No. 1998-037, Commissioner's Meeting 12/21/98 and Ordinance No. 1990-013, Commissioner's Meeting 3/19/90).**

## CHAPTER 8

### TATTOOS AND TATTOO PARLORS

#### 3-8-1. Regulation of Tattoos and Tattoo Parlors.

All places, individuals and businesses that offer to affix any type of permanent tattoo to a person shall be regulated by this ordinance and shall maintain the premises in which tattoos are performed and equipment used in the tattoo process in a sanitary manner.

#### 3-8-2. Definitions.

The following definitions in this rule apply throughout this rule.

Blood means human blood.

Bloodborne pathogens means pathogenic microorganisms that are present in human blood and can cause disease in humans. These pathogens include, but are not limited to, the following:

1. HBV
2. HCV
3. HIV

Cleaned means removal of all visible dust, soil, or any other foreign material.

Contaminated means the presence or reasonably anticipated presence of blood or OPIM on an item or surface.

Decontaminated means the use of physical or chemical means to remove, inactivate, or destroy bloodborne pathogens on a surface or item which does not require sterilization to the point where they are no longer capable of transmitting infectious particles and the surface or item is rendered safe for handling, use, or disposal.

Department means the Delaware County department of health. The Delaware County board of health shall be considered part of the Department except for the purpose of conducting any type of administrative hearing for the appeal of any decision of the department or health officer.

HBV means the hepatitis B virus.

HCV means the hepatitis C virus.

HIV means the human immunodeficiency virus.

Infectious waste means waste that epidemiologic evidence indicates is capable of transmitting a dangerous communicable disease. Infectious waste includes, but is not limited to, the following:

- A. Contaminated sharps or contaminated objects that could potentially become contaminated sharps.
- B. Infectious biological cultures, infectious associated biologicals, and infectious agent stock.
- C. Pathological waste.

- D. Blood and blood products in liquid and semi-liquid form.
- E. Carcasses, body parts, blood, and body fluids in liquid and semi-liquid form, and bedding of laboratory animals.
- F. Other waste that has been intermingled with infectious waste.

Other potentially infectious materials (OPIM) means the following:

- A. Human body fluids as follows:
  - 1. Semen.
  - 2. Vaginal secretions.
  - 3. Cerebrospinal fluid.
  - 4. Synovial fluid.
  - 5. Pleural fluid.
  - 6. Pericardial fluid.
  - 7. Peritoneal fluid.
  - 8. Amniotic fluid.
  - 9. Saliva in dental procedures.
  - 10. Any body fluid that is visibly contaminated with blood.
  - 11. All body fluids where it is difficult or impossible to differentiate between body fluids.
- B. Any unfixed tissue or organ, other than intact skin, from a human, living or dead.
- C. HIV-containing cell or tissue cultures, and HIV or HBV-containing culture medium or other solutions; and blood, organs, or other tissues from experimental animals infected with HIV or HBV.

Parenteral means piercing the mucous membranes or the skin barrier through such events as needlesticks, human bites, cuts, or abrasions.

Personal protective equipment means specialized clothing or equipment worn for protection against contact with blood or OPIM.

Secure area means an area that is designated and maintained to prevent the entry of unauthorized persons.

Semi-liquid blood, blood products means blood, blood products that have intermediate fluid properties and are capable of flowing in a manner similar to liquid.

Sterilize means the use of a physical or chemical procedure to destroy all microbial life, including highly resistant bacterial endospores.

Store means the containment of infectious waste in such a manner as not to constitute collection, treatment, transport, or disposal.

Tattoo means

- A. any indelible design, letter, scroll, figure, symbol, or other mark placed with the aid of needles or other instruments; or



- B. any design, letter, scroll, figure, or symbol done by scarring; upon or under the skin.
- C. any piercing of the mucous membranes or the skin through which needles or other items are inserted for temporary or permanent placement upon a person.

Tattoo artist means any person who provides a tattoo to an individual or who performs any type of piercing the mucous membranes or the skin through which needles or other objects are inserted for temporary or permanent placement.

Tattoo operator means any person who controls, operates, conducts, manages, or owns any tattoo parlor.

Tattoo parlor means any room or space where tattooing is provided or where the business of tattooing is conducted.

Universal precautions means an approach to infection control in which all human blood and certain human body fluids are treated as if known to be infectious for HIV, HBV, HCV, and other bloodborne pathogens.

Health officer means the duly appointed health officer as set forth in IC 16-20-2-16. The county health officer or designee shall be designated as the official in charge of enforcing this ordinance. The health officer may designate a representative in the health department to perform those duties and responsibilities of the health officer.

### 3-8-3. Tattoo Operator Training Responsibilities.

An individual or entity that is a tattoo operator shall comply with the following training responsibilities:

- A. Ensure that the training described in the Indiana occupational safety and health administration's bloodborne pathogens standard (as found in 29 CFR 1910.1030) is provided to all tattoo artists, anyone employed by the tattoo parlor, or anyone acting on behalf of the tattoo parlor who has a reasonably anticipated risk for skin, eye, mucous membrane, or parenteral contact with blood or OPIM.
- B. Ensure that training on the handling of infectious waste is provided to all tattoo artists, anyone employed by the tattoo parlor, or anyone acting on behalf of the tattoo parlor who has a reasonably anticipated risk for skin, eye, mucous membrane, or parenteral contact with blood or OPIM.
- C. Ensure that a record of training described in subdivision one (1) is maintained, as required under the Indiana occupational safety and health administration's bloodborne pathogens standard (as found in 29 CFR 1910.1030) of an individual's participation in the training that is provided. The record shall be made available to the department for inspection upon request.
- D. Ensure that a record of training described in subdivision two (2) is maintained.

### 3-8-4. Reserved for future use.

### 3-8-5. Tattoo Operator Responsibilities.

The tattoo operator shall:

- A. ensure that tattoo artists, anyone employed by the tattoo parlor, or anyone acting on behalf of the tattoo parlor who has a reasonably anticipated risk for skin, eye, mucous membrane, or parenteral contact with blood are provided personal protective equipment and expendables needed to implement the precautions required by this rule and the Indiana occupational safety and health administration's bloodborne pathogens standard (as found in 29 CFR 1910.1030).
- B. require tattoo artists, anyone employed by the tattoo parlor, or anyone acting on behalf of the tattoo parlor who has a reasonably anticipated risk for skin, eye, mucous membrane, or parenteral contact with blood to provide evidence of compliance with the universal precautions education requirements contained in section 27 of this rule.
- C. display a description of compliance with the requirements contained in subsection (d).
- D. display written materials prepared or approved by the department explaining universal precautions and patrons' rights under this rule. These materials shall include information on how to report violations of universal precautions and shall include information regarding the department's duties to investigate.
- E. insure that no illicit drugs or alcohol are consumed or permitted in the tattoo parlor.
- F. insure that no tattoo shall be affixed to any person that is intoxicated.

#### 3-8-6. Tattoo Operator Policies.

The tattoo operator shall develop a written policy in compliance with this rule and the requirements of the Indiana occupational safety and health administration's bloodborne pathogen standard (as found in 29 CFR 1910.1030) that:

- A. requires the use of universal precautions when performing tattooing and any activity or duty that includes any reasonably anticipated skin, eye, mucous membrane, or parenteral contact with blood or OPIM;
- B. includes the safe handling of infectious waste; and
- C. provides sanctions, including discipline and dismissal, if warranted, for failure to use universal precautions and/or handle infectious waste safely.

#### 3-8-7. Tattoo Artist Minimum Training and Certification Requirements.

- A. All tattoo artists, anyone employed by the tattoo parlor, and anyone acting, on behalf of the tattoo parlor who has a reasonably anticipated risk for skin, eye, mucous membrane, or parenteral contact with blood or OPIM shall complete the training program that is required under the requirements of the Indiana occupational safety and health administration's bloodborne pathogen standard (as found in 29 CFR 1910.1030). The programs under this section shall be as follows:
  - 1. A bloodborne pathogen training session provided by the tattoo operator meeting the requirements under the Indiana occupational safety and health administration's bloodborne pathogens standard (as found in 29 CFR 1910.1030).

2. Any bloodborne pathogen continuing education program accredited by a health care licensing entity.
- B. All tattoo artists, anyone employed by the tattoo parlor, and anyone acting, on behalf of the tattoo parlor who has a reasonably anticipated risk for skin, eye, mucous membrane, or parenteral contact with blood or OPIM must be trained in the tattoo parlor's policies on the handling of infectious waste.

#### 3-8-8. Patron Records.

Records of each patron shall be maintained for two (2) years. The record shall include the following:

- A. Patron's name.
- B. Address.
- C. Age. Age must be verified by two items of identification, one of which must be a valid government issued identification.
- D. Date tattooed.
- E. Design of the tattoo.
- F. Location of the tattoo on the patron's body.
- G. The name of the tattoo artist who performed the work.
- H. Parental consent must be in writing when performed on any minor as permitted by law.

#### 3-8-9. Illness.

Records also shall be maintained on tattoo artists who are experiencing symptoms of acute disease that include, but are not limited to:

- A. diarrhea;
- B. vomiting;
- C. fever;
- D. rash;
- E. productive cough;
- F. jaundice; or
- G. draining (or open) skin infections, boils, impetigo, or scabies;

and they shall refrain from providing tattoos.

#### 3-8-10. Handwashing.

- A. Hand washing facilities shall be readily accessible in the same room where tattooing is provided.
- B. Hands shall be washed with soap and running water immediately before putting on gloves and after removal of gloves or other personal protective equipment.
- C. Only single use towels shall be used.

#### 3-8-11. Personal Protective Equipment.

Appropriate personal protective equipment shall be worn as follows:

- A. A clean protective clothing layer shall be worn whenever there is a reasonably anticipated risk of contamination of clothing by blood or OPIM.
- B. Masks in combination with eye protection devices, such as goggles or glasses with solid side shield, or chin length face shield, shall be worn whenever splashes, spray, splatter, or droplets of blood or OPIM may be generated and eye, nose, or mouth contamination can be reasonably anticipated.
- C. Disposable gloves shall be worn during the tattooing process. Gloves shall be changed and properly disposed of each time there is an interruption in the application of the tattoo, when the gloves become torn or punctured, or whenever the ability to function as a barrier is compromised. Disposable gloves shall not be reused.
- D. Gloves shall be worn when decontaminating environmental surfaces and equipment.

#### 3-8-12. Tattooing Equipment.

- A. Only single use razors shall be used to shave the area to be tattooed.
- B. All stencils shall be properly disposed of after a single use.
- C. If the design is drawn directly onto the skin, it shall be applied with a single use article only.

#### 3-8-13. Needles.

- A. Needles shall be individually packaged and sterilized prior to use.
- B. Needles shall be single use only.
- C. Needles shall be discarded in sharps containers immediately after use.
- D. Contaminated needles shall not be bent or broken or otherwise manipulated by hand.

#### 3-8-14. Reusable Equipment.

- A. Heating procedures capable of sterilization must be used when heat stable, nondisposable equipment is sterilized. Equipment used for the piercing of ears which cannot tolerate heating procedures may be sterilized using a technique that is approved by the health officer.
- B. Records must be maintained to document the following:
  - 1. Duration of sterilization technique.
  - 2. Determination of effective sterility, such as use of a biological indicator, is performed monthly.
  - 3. Equipment is maintained as recommended by the owners manual and proof is available that the owners manual recommendations are reviewed monthly.
- C. Reusable contaminated equipment shall not be stored or processed in a manner that requires any person to reach by hand into the containers where these sharp items have been placed.
- D. Reusable contaminated equipment shall be:
  - 1. placed in puncture-resistant containers;
  - 2. labeled with the biohazard symbol;
  - 3. leakproof on both sides and bottom; and

- 4. stored in a manner that does not require reaching by hand into the container where the equipment is stored until cleaning prior to sterilization.
- E. Contaminated reusable equipment shall be effectively cleaned prior to sterilization.
- F. Reusable tubes shall be effectively cleaned and sterilized before reuse.

3-8-15. Dyes or Pigments.

- A. All dyes or pigments in tattooing shall be from professional suppliers specifically providing dyes or pigments for the tattooing of human skin.
- B. In preparing dyes or pigments to be used by tattoo artists, only nontoxic sterile materials shall be used. Single use or individual portions of dyes or pigments in clean, sterilized containers shall be used for each patron.
- C. After tattooing, the remaining unused dye or pigment in single use or individual containers shall be discarded along with the container.

3-8-16. Work Environment.

- A. No tattooing shall be conducted in any room used as living quarters or in any room that opens directly into living or sleeping quarters.
- B. Live animals shall be excluded from areas where tattooing is being conducted. This exclusion does not apply to the following:
  - 1. Patrol dogs accompanying security or police officers.
  - 2. Guide dogs accompanying the following:
    - a. Blind persons.
    - b. Partially blind persons.
    - c. Physically disabled persons.
    - d. Guide dog trainers.
    - e. Persons with impaired hearing.
- C. Eating, drinking, smoking, or applying cosmetics shall not be allowed in work areas where there is a likelihood of exposure to blood or OPIM.
- D. Food and drink shall not be kept in areas where there is a reasonably anticipated risk of exposure to blood or OPIM.
- E. All equipment and environmental surfaces shall be cleaned and decontaminated after contact with blood or OPIM.
- F. Environmental surfaces and equipment not requiring sterilization that have been contaminated by blood shall be cleaned and decontaminated.
- G. All work surfaces shall be:

1. nonabsorbent;
2. easily cleanable;
3. smooth; and
4. free of:
  - a. breaks;
  - b. open seams;
  - c. cracks;
  - d. chips;
  - e. pits; and
  - f. similar imperfections.

H. Disinfectant solutions shall be:

1. a hospital grade, tuberculocidal Environmental Protection Agency (EPA) registered disinfectant; or
2. sodium hypochlorite, five-tenths percent (0.5%) concentration, by volume (common household bleach is ten percent (10%) concentration in water); the solution shall be dated and shall not be used if it is more than twenty-four (24) hours old.

3-8-17. Infectious Waste Containment.

- A. Contaminated disposable needles or instruments shall be stored in leak-resistant, puncture-resistant containers, tightly sealed to prevent expulsion, labeled with the biohazard symbol, and effectively treated in accordance with this rule prior to being stored in an unsecured area and sent for final disposal.
- B. Infectious wastes that are contaminated sharps or objects that could potentially become contaminated sharps shall be placed in containers that meet the following requirements:
  1. Impervious to moisture.
  2. Sufficient strength and thickness to prevent expulsion.
  3. Secured to prevent leakage expulsion.
  4. Labeled with the biohazard symbol.
  5. Effectively treated in accordance with this rule prior to being placed in an unsecured area and sent for final disposal.
- C. If infectious waste is stored prior to final disposal, all persons subject to this rule shall store infectious waste in a secure area that:
  1. is locked or otherwise secured to eliminate access by or exposure to the general public;
  2. affords protection from adverse environmental conditions and vermin; and
  3. has a prominently displayed biohazard symbol.
- D. Infectious waste shall be stored in a manner that preserves the integrity of the container, and is not conducive to rapid microbial growth and putrefaction.

- E. Disinfect reusable containers for infectious waste each time that they are emptied unless the surfaces of the reusable containers have been protected from contamination by disposable liners, bags, or other devices that are removed with the infectious waste.

#### 3-8-18. Treatment and Transport of Infectious Waste.

- A. All tattoo operators shall ensure that infectious waste is either treated on-site in accordance with this rule or transported off-site for treatment in accordance with this rule.
- B. A treatment is effective if it reduces the pathogenic qualities of infectious waste for safe handling, is designed for the specific waste involved, and is carried out in a manner consistent with this rule. Effective treatment may include:
  - 1. incineration in an incinerator designed to accommodate infectious waste;
  - 2. steam sterilization;
  - 3. chemical disinfection under circumstances where safe handling of the waste is assured;
  - 4. thermal inactivation;
  - 5. irradiation; or
  - 6. discharge in a sanitary sewer or septic system that is properly installed and operating in accordance with state and local laws.
  - 7. All persons subject to this rule shall:
    - a. transport infectious waste in a manner that reasonably protects waste haulers and the public from contracting a dangerous communicable disease; and
    - b. effectively treat infectious waste in accordance with this rule before it is compacted.
- C. The tattoo operator shall ensure that infectious waste, effectively treated or not is transported off-site in compliance with 410 IAC 1-3.

#### 3-8-19. Permits.

- A. Business. Each tattoo parlor operation shall obtain a permit from the county health department. The permit shall provide the name and address of the owner of the business and the name and address of each and every tattoo artist located at each location. The cost for this permit shall be two hundred fifty dollars (\$250) and shall not be transferable. The permit expires on December 31 of each year. Any holder of a permit shall be subject to inspection as set forth herein. The county health department shall provide the appropriate forms for this permit. Said permit shall be posted at the tattoo parlor in the place where the tattoos are performed and clearly visible to the public.
- B. Tattoo artist. Every person that desires to perform any tattoo shall obtain a tattoo artist permit from the county health department. This permit must be obtained before any tattoos are affixed to any person and after the requisite training. The applicant must satisfy the minimum requirements as set forth herein in section 7. The cost of said permit shall be fifty dollars (\$50.00) and shall not be transferable. The permit expires on December 31 of each year. Any holder of a permit shall be subject to inspection as set forth herein. The county health department shall provide the appropriate forms for this permit. Said permits shall be posted at the tattoo parlor in the place where the tattoos are performed and clearly visible to the public.

- C. Owner/Operator. In the event that a tattoo parlor is a sole proprietorship and the owner shall also perform tattooing for their business, the owner shall only be required to obtain a business permit as described in this section.
- D. Pro Ratio of Fees. In the event that a business or tattoo artist shall apply for a permit any time prior to June 1 of any year, they shall be responsible for the total annual fee as described in this section. In the event that a business and/or tattoo artist shall apply for a permit any time after June 1, 1998, they shall be required to pay one-half (1/2) of the annual fee. All permits shall expire on December 31 of the year in which they were issued.

### 3-8-20. Inspections.

The county health department shall conduct inspections of each and every tattoo parlor located in the county. The health department shall conduct a minimum of three (3) inspections per year. Additional inspections may be conducted by the health department as they determine and/or in response to complaints submitted. The results of the inspections shall be provided to each operator. Violations noted by the health department shall be corrected immediately. The department shall conduct follow up inspections to determine compliance with this ordinance.

### 3-8-21. Revocation of Permit.

The health officer may suspend or revoke the permit of any tattoo artist or operator for any period of time for any violation of this ordinance, state or federal regulations concerning bloodborne pathogens, tattoos or work place regulations (OSHA). The suspension and/or revocation shall be effective upon issuance by the health officer. The operator or artist may have the permit reinstated upon compliance with this ordinance, state or federal regulations concerning bloodborne pathogens, tattoos or work place regulations (OSHA) and to the satisfaction of the health officer. Appeals of orders of revocation shall be conducted pursuant to IC 4-21.5-3-1, et. seq. The board of health shall conduct administrative hearings concerning the suspension or revocation of any permit issued herein as set forth in IC 4-21.5-3, et. seq.

### 3-8-22. Fines.

- A. If a tattoo artist or operator shall fail to obtain a permit prior to the conduct of their business or at any time after one has been issued, but has expired, the tattoo artist and/operator may be subject to a fine of not more than two thousand five hundred dollars (\$2,500.00). Each day the tattoo artist and/or operator shall be in violation of this ordinance shall constitute a separate offense.
- B. The health officer may bring an action in the Circuit or Superior Court to enforce this ordinance.

The health officer shall be entitled to recover all costs and expenses associated with any action for enforcement of this ordinance including reasonable attorney fees.

**(Ordinance No. 98-007-A A-1, supersedes Ordinance Nos. 1998-007-A and 1998-007, Commissioners' meeting 12/21/98)**



## CHAPTER 9

### **PUBLIC HAULING AND DISPOSAL OF GARBAGE AND RUBBISH**

#### 3-9-1. Purpose.

Regulating the public hauling and disposal of garbage and rubbish on any land which is situated outside the corporate limits of any city or town in Delaware County, requiring permits and provided penalties for violation.

#### 3-9-2. Definitions.

The following words used in this chapter shall have the meanings respectively ascribed to them in this section, unless a different meaning is clearly indicated.

Garbage shall mean those putrescible wastes resulting from the growing, handling, storage, preparation, cooking, and consumption of food.

Ground water means water in the ground that is in the zone of saturation.

Hazardous material includes, but is not limited to, explosives, pathological wastes, radioactive materials and chemicals.

Health officer shall mean the Delaware County Health Officer, or his duly authorized representative.

IDEM shall mean the Indiana Department of Environmental Management.

Person shall mean an individual, partnership, association, syndicate, company, firm, trust, corporation, government corporation, department, bureau, agency, or any entity recognized by law.

Public disposal shall mean relate to disposal of refuse which has been removed from premises used, owned or leased by one or more persons, firms, corporations, or associations, and transported to other premises and disposed either with or without the payment of a fee.

Refuse shall mean all putrescible and nonputrescible solid wastes, and shall include garbage, rubbish, ashes, street sweepings, dead animals and industrial and construction wastes.

Rubbish shall mean all nonputrescible wastes including such matter as ashes, cans, metalware, broken glass, crockery, dirt, sweepings, boxes, wood, grass, weeds, or litter of any kind.

Salvaging means the controlled removal or reusable materials.

Board means the Delaware County Board of Health or the Delaware County Department of Health.

Scavenging means the uncontrolled picking of materials.

Surface water means a body of water whose top surface is exposed to the atmosphere including a flowing body as well as a pond and a lake.

Delaware County shall mean those areas in Delaware County, State of Indiana, which are under the jurisdiction of the Board.

### 3-9-3. Permits.

#### A. Operators Permit.

1. No person shall engage in the public disposal of waste without possessing an unrevoked permit from the Board, to engage in the removal and/or the transportation of refuse from the premises to a location other than the place of origin of such refuse for disposal.
  - a. No permit shall be required for any individual to dispose of his or her own waste if that waste is transported to an IDEM approved solid waste disposal site in a safe and sanitary manner. All such wastes transported in an open vehicle or trailer shall be adequately covered to prevent loss or spillage of waste. Large items such as household appliances need not be covered, but must be secured with rope, straps or wired to prevent their loss while in transit. Any law enforcement agency having jurisdiction in Delaware County, Indiana, shall enforce this subsection.
2. Before a permit is issued by the Board for the collection and transportation of refuse, all equipment and vehicles to be used shall be approved by the Director. All equipment and vehicles used to transport refuse to an IDEM approved solid waste disposal site shall be suitably constructed and sanitized to prevent all health hazards and nuisances. The Board shall not issue a permit to allow the transport of waste until it ensures that the equipment vehicle to be employed for transport complies with this subsection:
  - a. Any applicant for a permit to transport waste shall file a certificate of insurance with the Board. This certificate shall state that the applicant has a public liability and property damage insurance policy insuring the applicant against liability for damages sustained by a person other than an employee of the applicant and occasioned by the neglectful operation of the equipment or vehicles of the applicant, with coverage for at least three hundred thousand dollars (\$300,000.00) in the event of death or injury to any person or persons as a result of an accident; as well as property damage. This policy shall have been issued by a company licensed to do business in the State of Indiana.
  - b. All permits to transport waste shall state the name of the person to whom the permit is granted and shall include any other information deemed relevant by the Board and its Director.
  - c. Each vehicle used to transport waste shall have a permit which shall not be valid for any other vehicle.
  - d. Equipment and vehicles used to transport waste shall receive permits valid for a term of one (1) year commencing on January 1 and expiring on December 31 of each year. The Board shall issue a permit only after determining that the applicant has complied with all standards mandated by this subsection. No permit to transport refuse is transferable. No permit or renewal shall be denied or revoked on arbitrary and capricious grounds.

B. Permit Fees

1. The Board shall charge of fee of twenty-five dollars (\$25.00) upon the issuance of a permit to transport waste for one (1) vehicle, and an additional fifteen dollars (\$15.00) for any other vehicle. Permits are issued for a calendar year. The Board shall charge a fee of twelve dollars and fifty cents (\$12.50) upon the issuance of a permit to transport waste if that permit is issued between July 1 and December 31 inclusive. All permits shall be renewable in January of each year. The Board may alter the fees charged under this subsection by notifying the Board of Commissioners of Delaware County prior to January 1 of each year of its intention to do so. Any revision in fees shall take effect upon approval by the Board of Commissioners of Delaware County, Indiana.
  - a. Permits shall not be transferable and shall be carried on the vehicle at all times.
  - b. Operators who comply with the provisions of this ordinance and are required to pay a similar fee from another governmental agency shall be exempt from this section.
2. No state, County or municipal government or any person charged a fee by another governmental agency to transport waste shall be charged a fee under this subsection.
3. All fees collected under this subsection shall be deposited in the Delaware Health Department, and may be used for health related discretionary purposes.

C. Suspension and Revocation of Permits

1. Any permit may be temporarily suspended by the Health Officer without notice or hearing upon violation by the holder of any of the terms of this ordinance.
2. Any permit issued under the terms of this ordinance may be revoked after an opportunity for a hearing by the Health Officer upon serious or repeated violations.

3-9-4. Exceptions and Limitations.

- A. It shall be unlawful for any person to engage in public disposal of refuse on any land, premises or property which has not been approved by the Health Officer as a public disposal site.
- B. Any person who employs or permits another person, with or without compensation, to remove or transport refuse from premises to a location other than the place of origin of such refuse, shall be liable in case his refuse is discarded along public roads or any area not approved by the IDEM as a refuse disposal site, unless the original owner of the refuse is able to provide the name and address of the person who collected, transported and disposed of the refuse.
- C. It shall be unlawful for any person to dispose of or store refuse on premises at the place of origin in such quantities as to have public health significance.
- D. All items in 3-9-4 are subject to compliance with all state laws and regulations administered by IDEM.

### 3-9-5. Enforcement.

- A. The enforcement of this ordinance shall be by any law enforcement agency having jurisdiction in Delaware County, Indiana.
- B. It shall be the duty of the Delaware County Prosecuting Attorney and/or the attorney for the Delaware County Commissioners and/or attorney for the Delaware County Health Board to whom the proper enforcement authorities shall report any violations of the provisions of this ordinance, to cause proceedings to be commenced against the person violating the provisions of this ordinance and to prosecute to final termination.  
**(Ordinance No. 1999-008, Commissioners' meeting, 4/12/99).**

### 3-9-6. Penalties.

Any person, partnership, corporation or other legal entity violating the terms of this Ordinance shall, upon conviction by the court, be subject to a fine of not less than \$500 and not more than \$2,500 for the first violation and \$2,500 for each subsequent violation. Each day the violation occurs or continues to exist shall constitute a separate offense. All fines and costs collected by the city pursuant to this subchapter shall be placed in the Health Fund. Any person who, under subpoena, provides evidence leading to the successful conviction of any person under this subchapter may be entitled to an equal portion of 50% of the fines collected from such person, firm, corporation or other legal entity. No city, county, state or federal employee or their immediate family members shall be eligible to receive a reward pursuant to this provision.  
**(Ordinance No. 2003-009, Commissioners' meeting, 6/2/03).**

### 3-9-7. Repeal and Date of Effect.

All ordinances and parts of ordinances in conflict with this ordinance are hereby repealed, and this ordinance shall be in full force and effect immediately upon its adoption and its publication as provided by law.  
**(Ordinance No. 1999-008, Commissioners' meeting, 4/12/99)**

## CHAPTER 10

### PUBLIC SWIMMING AND WADING POOL OPERATION

#### 3-10-1. Definitions.

Unless the context specifically indicates otherwise, meaning of terms used in this chapter shall be as follows:

Bather shall mean any person using the facility and adjoining area for the purpose of therapy, relaxation, recreation, or related activities.

Health officer shall mean the duly appointed, qualified, and acting Health Officer of Delaware County, or their authorized representative.

Person shall mean any individual, partnership, firm, company, corporation, association, and municipality, other division of government, or his or its legal representative or agent.

Swimming pool shall mean any structure, basin, chamber, or tank containing a body of water for swimming, diving, therapeutic, or recreational bathing; however, nothing in this ordinance shall be construed as applying to any swimming or wading pool maintained by an individual for the sole use of his household and house guests or to a pool in a hospital or health facility approved by the State Board of Health, which pool is used for individual therapy only and is drained and filled prior to each individual use. "Swimming pool" shall also include auxiliary structures including dressing and locker rooms, toilets, showers, and other areas and enclosures that are intended for the use of persons using the pool, but shall not include pools and auxiliary structures and equipment at private single family residences intended only for the use of the owner, his household, and house guests.

License shall mean the permit issued by the Delaware County Health Department to operate a public swimming pool.

Water supply shall mean the commercial or private water that provides water for the swimming pool and facilities.

Sewer system shall mean the waste water system that removes waste water from the facilities.

Lifeguard shall mean the person that shall observe, supervise and provide rescue services when necessary. Lifeguard shall also mean attendant.

Suit shall mean the article or articles of clothing used by the bather while using the swimming pool.

All other words shall have their usual and customary meaning.

#### 3-10-2. License and License Fee.

- A. It shall be unlawful for any person to operate a swimming pool in Delaware County, who does not possess a valid license from the Health Officer. Such license shall be posted in a conspicuous place on the premises of such swimming pool. Only persons who comply with the applicable provisions of this ordinance shall be entitled to receive and retain such a license. Such license for a yearly operating pool shall be for a term of one (1) year, beginning May 1<sup>st</sup> of each year and expiring the

April 30<sup>th</sup> of the succeeding year and shall be renewed annually. Any license issued by the Health Officer shall contain the name and address of the person to whom a license is issued and such other information as the Health Officer may deem necessary.

- B. Swimming pools operating only during the summer months shall pay to the office of the Health Officer of Delaware County, a license fee of fifty dollars (\$50.00) each year, submitted with the initial or the annual license renewal application. Swimming pools operating year round, or for periods longer than the summer months of May, June, July, August, and September, shall pay to the office of the Health Officer of Delaware County, a license fee of seventy-five dollars (\$75.00) each year. All license fees shall be payable on or before April 30<sup>th</sup> of the year intended for licensure, as provided in Section **(was left off in original)**.
- C. Tax supported units of government shall be exempt from the payment of the above prescribed fees, but shall pay a license processing fee of twenty-five dollars (\$25.00) for each site of a swimming pool.

### 3-10-3. Construction, sanitation, and operation requirements.

- A. The requirements of the Indiana Swimming Pool Code of the Department of Fire and Building Services (DFBS) are hereby incorporated by reference as part of this ordinance and all swimming pools shall be designed, constructed, and maintained in accordance with the terms and provisions of such code. No swimming pools, as defined in this Ordinance, shall be constructed, installed, or maintained in Delaware County, unless the owner thereof shall first have obtained a permit from the Health Officer of Delaware County, or the construction or installation thereof.
- B. Permit Fee Construction: An application for such permit shall be filed with such Health Officer, or his duly authorized representative, and shall be the terms and form prescribed by said Health Officer. A permit fee of fifty dollars (\$50.00) shall be paid to the Health Officer of Delaware County, at the time of filing such application. No such permit shall be issued by the Health Officer until the plans and specifications for such swimming pools and the location of same, have been approved by the Department of Fire and Building Services of the State of Indiana, and the health department of Delaware County, Indiana. Provided, however, those swimming pools already constructed or installed prior to the effective date of this Ordinance shall not be required to comply with the permit fee terms of this paragraph. Tax-supported units of government shall be exempt from the payment of the above prescribed fee, except that a processing fee of twenty-five dollars (\$25.00) shall be paid.
- C. Plans: Plans and specifications for swimming or wading pools submitted for approval shall have been prepared by or under the supervision of a professional engineer or architect legally registered in the State of Indiana, be certified by him, and bear his official seal.
- D. Operation: The requirements of Rule 410 IAC 6-2 "Swimming and Wading Pool Operation" of the Indiana State Board of Health are hereby incorporated by reference as part of this ordinance, and all public pools shall be operated and maintained in accordance with the terms and provisions of such rule.
- E. Water Supply: The water supply serving the swimming pool and all plumbing fixtures including drinking fountains, lavatories, and showers shall be obtained from a municipal water supply system if at all possible; otherwise the water supply shall come from a source which meets the standards of 327 IAC 8-2 of the Indiana Department of Environmental Management.

- F. Water Flow: All portions of the water distribution system serving the swimming pool and auxiliary facilities shall be protected against backflow and backsiphonage. Water introduced into the pool, either directly or to the recirculation system, shall be supplied through an air gap or by other methods acceptable to the Department of Fire and Building Services in accordance with 675 IAC 20-1-7, Indiana Swimming Pool Codes.
- G. Sewer Systems; Drains: The sewer system for the swimming pool shall be adequate to serve the facility, including bathhouse, locker room, and related accommodations. The building drains and sewers shall have capacity to carry filter backwash flows without surcharging or flooding onto the equipment room floor. Filter wash water may not be discharged directly to a drain, ditch, stream, or lake if it is in violation of 327 IAC 2-1 of the Indiana Department of Environmental Management.
- H. Drains for sewers: There shall be no direct physical connection between the sewer system and any drain from the swimming pool or recirculation system. Any swimming pool or gutter drain or overflow from the recirculation system when discharged to the sewer system, storm drain, or approved natural drainage course shall connect through a suitable air gap so as to preclude possibility of backup of sewage or waste into the swimming pool piping system. All sumps, deck drainage systems, and other drainage fixtures or systems connected with the pool facility which discharge to a sewer or storm drain shall be properly trapped and vented to prevent sewer gases and odors from reaching the pool area.
- I. Discharge: The sanitary sewer serving the swimming pool and auxiliary facilities shall discharge to the public sewer system wherever possible. Where no such sewer is available, the connection shall be made to a suitable disposal plant designed, constructed, and operated in compliance with the applicable rules of the Indiana Department of Environmental Management. Treated swimming pool water or filter backwash water shall not be discharged to residential or small commercial building type sewage treatment systems.
- J. Depth of water: Depth of water shall be plainly marked at or above the water surface on the vertical wall of the swimming pool, and on the edge of the deck or walk next to the swimming pool, at maximum and minimum depths, at the points or break between the deep and shallow portions, and at intermediate two foot (2') increments of water depth. The depth in diving areas shall be appropriately marked.
- K. Depth markings: Depth markers shall be a color contrasting with background and plainly legible from the center line of the pool. Where depth markers cannot be placed on the vertical walls above the water level, other means shall be used. Said markings shall be plainly visible to persons in the swimming pool.
- L. Visitor and spectator area; food and drink areas: There shall be absolute separation between the spaces used by visitors and spectators and those spaces used by bathers. Visitors and spectators in street clothes may be allowed within the perimeter enclosure if in a separate area segregated from the space used by the bathers by a fence at least twenty-nine inches (29") high.
- M. Food and drink prohibitions: No food or drink shall be permitted in the immediate area of the swimming pool or on the decks surrounding the pool except that food and beverage will be allowed in the visitor and spectator area, or in a similarly separated snack area for bathers, if beverages are served in non-breakable containers and trash containers are provided to keep litter off of the pool decks.

- N. Safety equipment; supervision; life saving equipment: The swimming pool shall be under the supervision of a capable individual who shall assume the responsibility for compliance with all parts of 410 IAC 6-2 of the Indiana State Board of Health and any local ordinance relating to safety of bathers.
- O. Noise control: Enough acoustical treatment, including materials and ceiling design, shall be given to enclosed pool rooms to control noise levels. It is essential for safety that swimmers be able to hear signals and directions of routine supervision as well as emergency control.
- P. Lifeguard: Any swimming pool operated primarily for unorganized use and having an area of more than two thousand (2,000) square feet of water surface area shall be provided with a lifeguard or attendant to supervise the bathers present. There also shall be an elevated lifeguard platform or chair. Chairs should be placed in locations which eliminate sun glare on the water, and in positions which will give complete coverage of the pool within a field of view limited to four hundred fifty (450) on either side of a line of sight extending straight out from the chair. In pools with four thousand (4000) square feet or more of water surface area, additional elevated chairs or stations shall be provided, located so as to provide a clear unobstructed view of the pool bottom in the area under surveillance.
- Q. Lifesaving equipment: One unit of lifesaving equipment shall consist of all the following:
1. a ring or throwing buoy not more than twenty inches (20") in diameter with enough weight for accurate throwing fitted with a 45-foot length of at least 1/4-inch diameter line;
  2. a life pole, or shepherd's crook type of pole, having blunted ends with minimum length of twelve feet (12');
  3. a separate throwing line of 1/4-inch rope with length not less than sixty feet (60').
  4. Not less than one unit of equipment as listed above shall be provided at every public swimming pool. One unit shall be presumed to be adequate for two thousand (2,000) square feet of water surface area, and one additional unit shall be provided for each additional two thousand (2,000) square feet, or major fraction thereof, of water surface area. Any defective equipment listed in this section shall be discarded and replaced.
- R. First-aid kit required: Every swimming pool shall be equipped with a standard twenty-four (24) unit first-aid kit which shall be kept filled and ready for use. Availability of a kit in the office of the resident manager for a motel, apartment complex, or hotel shall satisfy this requirement for such pools.
- S. Location of lifesaving equipment: Lifesaving equipment shall be mounted in conspicuous places distributed around the swimming pool deck, and at lifeguard chairs. It shall be readily accessible, within twenty (20) feet of the pool, its function plainly marked, and kept in repair and ready condition. Bathes or others shall not be permitted to tamper with or remove such equipment from its established location for any purpose other than the intended emergency use.
- T. Access after closing: When the swimming pool is not open for use, access to the pool shall be prevented by fixed barrier with locked entrance.



- U. Signage: Whenever the pool area is opened for use and no lifeguard service is provided, warning signs shall be placed in plain view at the entrances and inside the pool area which state "Warning-No Lifeguard on Duty" with clearly legible letters, at least four inches (4") high. In addition, the signs shall also state in clearly legible letters at last two inches (2") high, "No Swimming Alone. Children Under 14 Years of Age and Non-Swimmers Shall Not Use the Pool Unless Accompanied By a Responsible Adult."
- V. Emergency care room: Every swimming pool shall have a readily accessible room or area designated and equipped for emergency care.
- W. Disinfection; water quality: Swimming pools when in use shall be continuously disinfected by a chemical which imparts an easily measured, free available residual effect. When chlorine is used, a free chlorine residual of at least 1.0 mg/i shall be maintained throughout the pool whenever it is open or in use. If other halogens are used, residuals of equivalent disinfecting strength shall be maintained. Any time that the residual disinfectant level is below the minimum designated above, the pool shall be cleared and kept free of swimmers until that minimum level has been obtained. A testing kit for measuring the concentration of the disinfectant, accurate with 0.2 mg/i and covering a minimum range of 0.3 mg/i to 5.0 mg/i, shall be used at each swimming pool.
- X. Safety apparatus: Use of gaseous chlorine for disinfection is not recommended. However, a self-contained breathing apparatus designed for use in a chlorine atmosphere, shall be provided when using gaseous chlorine. The self-contained breathing apparatus shall be kept in a closed cabinet, accessible without a key, located outside of the room in which the chlorinator is maintained.
- Y. Disinfection standards: The Health Officer may accept other disinfecting materials or methods when such materials or methods have been adequately demonstrated to provide a satisfactory residual effect which is easily measured to be otherwise equally as effective under conditions of use as the chlorine concentration required herein. Such materials and methods shall not be dangerous to public health, create objectionable physiological effects, or impart toxic properties to the water.
- Z. Chemical balance of water: The swimming pool water shall be maintained in an alkaline condition as indicated by a pH of not less than 7.2 and not over 8.2. A pH testing kit accurate to the nearest 0.2 pH unit shall be provided at each swimming pool. The alkalinity of the water shall be at least fifty (50) milligrams per liter as titrated to the methyl orange end point.
- AA. Water clarity and sampling:
  - 1. The water shall have sufficient clarity at all times so that a black disc, six (6) inches in diameter, is readily visible when placed on a white field at the deepest point of the swimming pool. Failure to meet this requirement shall constitute grounds for immediate closing of the pool.
  - 2. The owner of each swimming pool shall arrange for the collection and examination of at least one bacteriological sample per week whenever the swimming pool is open for use. Failure to met this requirement shall constitute grounds for closure. Not more than fifteen percent (15%) of the samples covering any considerable period of time shall either:
    - a. contain more than two hundred (200) bacteria per milliliter, as determined by the standard 350 Centigrade, agar plate count, or

- b. show positive test (confirmed test) for coliform organisms in any of the five IO-milliliter portions of a sample, or more than 1.0 coliform organisms per 50 milliliters when the membrane filter test is used.
  3. All samples shall be collected, dechlorinated, and examined for total plate count and coliform bacteria. Such test shall be performed in accordance with the procedures outlined in the latest edition of Standard Methods for the Examination of Water and Wastewater (APHA). Where samples are examined in laboratories other than those of the State Board of Health, copies of the report of examination shall be sent by the laboratory to the Division of Sanitary Engineering of the State Board of Health, using forms provided by that agency.
- BB. Closing of pool: The right is reserved to close any pool in the event of any epidemic or threatened epidemic of disease which the Health Officer or the State Board of Health may have reason to believe may be transmitted through the use of swimming pools, or because of continued failure to meet the standards for bacterial quality established herein, or until recommended improvements are made.
- CC. Chemicals used: Chemicals used in controlling the quality of water shall be demonstrated as imparting no toxic properties to the water. The addition of chemicals for algae control shall be approved by the State Board of Health.
- DD. Suits and towels; cleaning: All multi-use suits and towels furnished to bathers by the pool management shall be washed thoroughly with soap and hot water, rinsed, and thoroughly dried after each use. If water of less than 175 degrees Fahrenheit is used for washing, the suits shall be rinsed in a disinfectant.
- EE. Cleaning pools:
1. Clean suits and towels must be kept strictly separated from those which have been used and are unlaundered.
  2. Visible dirt on the bottom of the swimming pool shall be removed every twenty-four (24) hours or more frequently as required.
  3. Visible scum or floating matter on the swimming pool surface shall be removed continuously by skimming, flushing, or other effective means.
- FF. Records of operation; supervision: The facilities and mechanical equipment of every swimming pool shall be operated under the close supervision of a trained operator.
- GG. Record keeping: Proper operating records, which may include the following as required by the state or local board of health, shall be kept daily showing:
1. bather loads-total;
  2. peak bather load;
  3. volume of fresh water added;
  4. operating periods of recirculation pumps and filters and corresponding rate-of-flow meter readings;
  5. amounts of chemicals used;
  6. disinfectant residuals;

7. pH readings;
8. maintenance (and malfunctioning) of equipment

Such records shall be open to inspection by health authorities at all times and weekly summaries of these reports shall be submitted to the appropriate health authority on request, using forms furnished by that authority.

HH. Supervision; personal conduct regulations; Lifeguards:

1. One or more qualified attendants, trained in rescue and resuscitation, such as current training as a lifesaver by the American Red Cross, ThCA, or equivalent, shall be on duty at pool sides at all times when the swimming pool is open to use by bathers, except at pools with less than two thousand (2,000) square feet of water surface used exclusively by a motel, apartment complex, hotel, or similar occupancy.
2. Such attendant should be in full charge of bathing and have authority to enforce all rules of safety and sanitation. At least one individual trained in first-aid should be available on the grounds of each pool while it is open to use by bathers. The American Red Cross basic course in first-aid or its equivalent may be considered as a minimum.
3. In the conduct of bathers, the following personal conduct regulations shall be enforced:
  - a. All bathers shall be instructed to use the toilet, and particularly to urinate, before taking cleansing bath and entering the pool.
  - b. All persons using the swimming pool shall take a cleansing shower bath in the nude, using warm water and soap, and thoroughly rinsing off all soap suds, before entering the swimming pool rooms or enclosure. A bather leaving the pool to use the toilet shall take another cleansing bath before returning to the swimming pool room or enclosure.
  - c. Spitting, spouting of water, blowing the nose, etc., in the swimming pool shall be strictly prohibited.
  - d. No running, boisterous or rough play, except supervised water sports, shall be permitted in the pool, on the runways, diving boards, floats, platforms, or in dressing rooms, shower rooms, etc.
  - e. Suitable placards embodying the above personal conduct regulations and instructions, and those relating to suits and towels, shall be conspicuously posted in the swimming pool room or enclosure and in the dressing rooms and offices at all swimming pools which are subject to this ordinance.
  - f. Any person having an infectious or communicable disease shall be excluded from a public swimming pool. Persons having any considerable area of exposed subepidermal tissue, open blisters, cuts, etc. shall be warned that these are likely to become infected and advised not to use the pool.

II. Powers for inspection; enforcement; service of notices and ordinances; violations:

1. The Health Officer or agent, bearing proper identification, shall be permitted to enter upon all properties at purpose of monitoring and inspections, necessary to carry out this chapter.
2. Whenever the Health Officer determines that there are reasonable grounds to believe that there has been a violation of any provision of this ordinance, he shall give notice to such alleged violation to the person or persons responsible therefore, and to any known agent of such person, as hereinafter provided. Such notice shall:
  - a. Be in written form;
  - b. include statement of reasons why it is being issued;
  - c. except for emergencies, allow a reasonable time for the performance of any act it requires;
  - d. be served upon the owner or his agent, or the occupant, as the case may require, provided that such notice shall be deemed to be properly served upon such owner or agent, or upon him personally, or if a copy thereof is sent by certified mail to his last known address or if a copy thereof is posted in a conspicuous place in or about the facility affected by notice, or if he is served with such notice by any other method authorized or required under the laws of this state;
  - e. such notice must contain an outline of any and all opportunities to appeal.

JJ. Appeal to health officer:

1. Any person aggrieved by any such notice issued by the Health Officer may request in writing and shall be granted a hearing on the matter before the Health Officer provided that such person shall file in the office of the latter within ten (10) days after service of the notice, a written petition requesting such hearing and setting forth grounds therefore. Upon receipt of such petition, the Health Officer shall arrange a time (no later than ten [10] days after receipt) and place for such hearing and shall give the petitioner written notice thereof. At such hearing, the petitioner shall be given an opportunity to be heard and to show cause why compliance with this ordinance should not be met.
2. In the event that the person shall desire to appeal the decision of the Health Officer, the person shall provide a written petition requesting a hearing before the Board of Health and setting forth the grounds. Therefore, upon receipt of such petition, the Board of Health shall conduct a hearing wherein the person aggrieved by the Health Officer's order shall be permitted to present its evidence and information to the Board. The Health Officers shall also be permitted to present information and evidence to the Board.
3. The Board may sustain, modify or reverse the decision of the Health Officer. The Health Board shall consider the appeal at its next regularly scheduled meeting. The Board at its own option, may conduct a special meeting to consider the appeal at the cost of the person asking for the appeal.

KK. Appeal Order: After such hearing, the Health Officer shall sustain, modify, or withdraw the notice, depending upon his findings as to whether compliance with the provisions of this ordinance have been met. If the Health Officer shall sustain or modify such notice, it shall be deemed to be an order.

- LL. Effective order: Any notice served of this ordinance shall automatically become an order if a written petition for a hearing is not filed in the office of the Health Officer within the ten (10) days after such notice is served.
- MM. Emergency: Whenever the Health Officer finds that an emergency exists which requires immediate action to protect the public health they may, without notice or hearing, issue an order reciting the existence of such an emergency and requiring that such action be taken as they deem necessary to meet the emergency. Notwithstanding the other provisions of this ordinance, such order shall be effective immediately, but upon petition to the Health Officer shall be effective immediately, but upon petition to the Health Officer shall be afforded a hearing within three (3) days, in the manner provided in this ordinance. After such hearing, depending upon the finding as to whether the provision of this ordinance have been complied with, the Health Officer shall continue such order in effect, or modify it, or revoke it.
- NN. Violation: Any person, firm, or corporation who shall violate any provision of this ordinance shall be served by the Health Officer with a written order stating the nature of the violation and providing a time limit for satisfactory correction thereof. Any person, firm, or corporation found in violation shall be subject to the penalties set forth herein.
- OO. Penalties: Any person, firm, or corporation who shall violate any provision of this ordinance shall be subject to penalty as hereinafter prescribed in this section. On being found to have violated the provisions of this ordinance, the violator shall be punished by a fine of not more than two thousand five hundred dollars (\$2,500.00). Each day the person, firm or corporation shall be in violation shall constitute a separate offense. This ordinance may also be enforced by an injunction.
- PP. Injunction and fees: Any person violating any of the provisions of this ordinance shall become liable to said county for any expense, loss, or damage occasioned by reason of such violation.
- QQ. Enforcement; interpretation: The Health Officer may initiate any procedures as he deems necessary for proper enforcement and to carry out the purpose and intent of this ordinance.
- RR. Effective date: This ordinance shall become effective ten (10) days after publication.  
**(Ordinance No. 2000-011, Commissioners' meeting, 4/25/00)**

# CHAPTER 11

## FLOOD PLAIN MANAGEMENT

### 3.11.1. Adopted by Reference.

The Board of Commissioners of Delaware County, Indiana that Title IV, Environment and Land Use Regulations, Chapter 102, Flood Prevention Control Ordinance, Section 6-102-1 through 6-102-18 shall be amended and supplemented by deleting the existing Sections 6-102-1 through 6-102-18 and inserting new Sections 6-102-1 through 6-102-18, and by retitling the Flood Prevention Control Ordinance to the Delaware County Floodplain Management Ordinance.

**(Amended Ordinance, Commissioners, 4/11/94)**

That Title 15, Land Usage, Chapter 159, Flood Plain Management, section 159.01 through 159.12 shall be amended and supplemented by deleting the existing sections 159.01 through 159.12 and inserting new Sections numbering 159.01 through 159.12.

**(Amended Ordinance, Council meeting)**

### 3.11.2. New Floodplain Management.

Section 1. That Title XV, LAND USAGE, Chapter 159 FLOODPLAIN MANAGEMENT be deleted in its entirety.

Section 2. That a new Chapter 159 FLOODPLAIN MANAGEMENT shall be inserted, with appropriate recodification, as follow:

Article 1. Statutory Authorization, Findings of Fact, Purpose, and Objectives.

Section A. Statutory Authorization.

The Indiana Legislature has in IC 36-7-4 and IC 14-28-4 granted the power to local government units to control land use within their jurisdictions. Therefore, the County Commissioners of Delaware County does hereby adopt the following floodplain management regulations.

Section B. Findings of Fact.

(1) The flood hazard areas of Delaware County are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.

(2) These flood losses are caused by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities, and by the occupancy in flood hazard areas by uses vulnerable to floods or hazardous to other lands which are inadequately elevated, floodproofed, or otherwise unprotected from flood damages.

### Section C. Statement of Purpose.

It is the purpose of this ordinance to promote the public health, safety, and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

- (1) Restrict or prohibit uses which are dangerous to health, safety, and property due to water or erosion hazards, which result in damaging increases in erosion or in flood heights or velocities;
- (2) Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- (3) Control the alteration of natural floodplains, stream channels, and natural protective barriers which are involved in the accommodation of flood waters;
- (4) Control filling, grading, dredging, and other development which may increase erosion of flood damage;
- (5) Prevent or regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards to other lands; and,
- (6) Make federally subsidized flood insurance available for structures and their contents in the County by fulfilling the requirements of the National Flood Insurance Program.

### Section D. Objectives.

The objectives of this ordinance are:

- (1) To protect human life and health;
- (2) To minimize expenditure of public money for costly flood control projects;
- (3) To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (4) To minimize prolonged business interruptions;
- (5) To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone, and sewer lines, streets, and bridges located in floodplains;
- (6) To help maintain a stable tax base by providing for the sound use and development of flood prone areas in such a manner as to minimize flood blight areas, and;
- (7) To ensure that potential homebuyers are notified that property is in a flood area.

### Article 2. Definitions.

Unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the meaning they have in common usage and to give this ordinance its most reasonable application.

A **zone** means portions of the SFHA in which the principal source of flooding is runoff from rainfall, snowmelt, or a combination of both. In A zones, floodwaters may move slowly or rapidly, but waves are usually not a significant threat to buildings. These areas are labeled as Zone A, Zone AE, Zones A1-A30, Zone AO, Zone AH, Zone AR and Zone A99 on a FIRM or FHBM. The definitions are presented below;

Zone A: Areas subject to inundation by the one-percent annual chance flood event. Because detailed hydraulic analyses have not been performed, no base flood elevation or depths are shown. Mandatory flood insurance purchase requirements apply.

Zone AE and A1-A30: Areas subject to inundation by the one-percent annual chance flood event determined by detailed methods. Base flood elevations are shown within these zones. Mandatory flood insurance purchase requirements apply. (Zone AE is on new and revised maps in place of Zones A1-A30.)

Zone AO: Areas subject to inundation by one-percent annual chance shallow flooding (usually sheet flow on sloping terrain) where average depths are between one and three feet. Average flood depths derived from detailed hydraulic analyses are shown within this zone. Mandatory flood insurance purchase requirements apply.

Zone AH: Areas subject to inundation by one-percent annual chance shallow flooding (usually areas of ponding) where average depths are between one and three feet. Average flood depths derived from detailed hydraulic analyses are shown within this zone. Mandatory flood insurance purchase requirements apply.

Zone AR: Areas that result from the decertification of a previously accredited flood protection system that is determined to be in the process of being restored to provide base flood protection. Mandatory flood insurance purchase requirements apply.

Zone A99: Areas subject to inundation by the one-percent annual chance flood event, but which will ultimately be protected upon completion of an under-construction Federal flood protection system. These are areas of special flood hazard where enough progress has been made on the construction of a protection system, such as dikes, dams, and levees, to consider it complete for insurance rating purposes. Zone A99 may only be used when the flood protection system has reached specified statutory progress toward completion. No base flood elevations or depths are shown. Mandatory flood insurance purchase requirements apply.

**Accessory structure** (appurtenant structure) means a structure that is located on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. Accessory structures should constitute a minimal initial investment, may not be used for human habitation, and be designed to have minimal flood damage potential. Examples of accessory structures are detached garages, carports, storage sheds, pole barns, and hay sheds.

**Addition** (to an existing structure) means any walled and roofed expansion to the perimeter of a structure in which the addition is connected by a common load-bearing wall other than a firewall.

Any walled and roofed addition, which is connected by a firewall or is separated by independent perimeter load-bearing walls, is new construction.

**Appeal** means a request for a review of the floodplain administrator's interpretation of any provision of this ordinance or a request for a variance.



**Area of shallow flooding** means a designated AO or AH Zone on the community's Flood Insurance Rate Map (FIRM) with base flood depths from one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

**Base Flood Elevation (BFE)** means the elevation of the one-percent annual chance flood.

**Basement** means that portion of a structure having its floor sub-grade (below ground level) on all sides.

**Building** – See “Structure.”

**Community** means a political entity that has the authority to adopt and enforce floodplain ordinances for the area under its jurisdiction.

**Community Rating System (CRS)** means a program developed by the Federal Insurance Administration to provide incentives for those communities in the Regular Program that have gone beyond the minimum floodplain management requirements to develop extra measures to provide protection from flooding.

**Critical facility** means a facility for which even a slight chance of flooding might be too great. Critical facilities include, but are not limited to schools, nursing homes, hospitals, police, fire, and emergency response installations, installations which produce, use or store hazardous materials or hazardous waste.

**Development** means any man-made change to improved or unimproved real estate including but not limited to:

1. construction, reconstruction, or placement of a structure or any addition to a structure;
2. installing a manufactured home on a site, preparing a site for a manufactured home or installing a recreational vehicle on a site for more than 180 days;
3. installing utilities, erection of walls and fences, construction of roads, or similar projects;
4. construction of flood control structures such as levees, dikes, dams, channel improvements, etc;
5. mining, dredging, filling, grading, excavation, or drilling operations;
6. construction and/or reconstruction of bridges or culverts;
7. storage of materials; or
8. any other activity that might change the direction, height, or velocity of flood or surface waters.

“Development” does not include activities such as the maintenance of existing structures and facilities such as painting, re-roofing; resurfacing roads; or gardening, plowing, and similar agricultural practices that do not involve filling, grading, excavation, or the construction of permanent structures.

**Elevated structure** means a non-basement structure built to have the lowest floor elevated above the ground level by means of fill, solid foundation perimeter walls, filled stem wall foundations (also called chain walls), pilings, or columns (posts and piers).

**Elevation Certificate** is a certified statement that verifies a structure's elevation information.

**Emergency Program** means the first phase under which a community participates in the NFIP. It is intended to provide a first layer amount of insurance at subsidized rates on all insurable structures in that community before the effective date of the initial FIRM.

**Encroachment** means the advance or infringement of uses, fill, excavation, buildings, permanent structures or development into a floodplain, which may impede or alter the flow capacity of a floodplain.

**Existing Construction** means any structure for which the "start of construction" commenced before the effective date of the community's first floodplain ordinance.

**Existing manufactured home park or subdivision** means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the community's first floodplain ordinance.

**Expansion to an existing manufactured home park or subdivision** means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

**FEMA** means the Federal Emergency Management Agency.

**Five-hundred year flood (500-year flood)** means the flood that has a 0.2 percent chance of being equaled or exceeded in any year.

**Flood** means a general and temporary condition of partial or complete inundation of normally dry land areas from the overflow, the unusual and rapid accumulation, or the runoff of surface waters from any source.

**Flood Boundary and Floodway Map (FBFM)** means an official map on which the Federal Emergency Management Agency (FEMA) or Federal Insurance Administration (FIA) has delineated the areas of flood hazards and regulatory floodway.

**Flood Hazard Boundary Map (FHBM)** means an official map of a community, issued by FEMA, where the boundaries of the areas of special flood hazard have been identified as Zone A.

**Flood Insurance Rate Map (FIRM)** means an official map of a community, on which FEMA has delineated both the areas of special flood hazard and the risk premium zones applicable to the community.

**Hardship** (as related to variances of this ordinance) means the exceptional hardship that would result from a failure to grant the requested variance. In granting a variance, the Board of Zoning Appeals must find that there is a hardship and that the reason for the variance is exceptional, unusual, and peculiar to the property involved. Mere economic or financial hardship alone is NOT exceptional. Inconvenience, aesthetic considerations, physical handicaps, personal preferences, or the disapproval of one's neighbors likewise cannot, as a rule, qualify as an exceptional hardship. All of these problems can be resolved through other means without granting a variance, even if the alternative is more expensive, or requires the property owner to build elsewhere or put the parcel to a different use than originally intended.

**Highest adjacent grade** means the highest natural elevation of the ground surface, prior to the start of construction, next to the proposed walls of a structure.

**Historic structure** means any structure individually listed on the National Register of Historic Places or the Indiana State Register of Historic Sites and Structures.

**Increased Cost of Compliance (ICC)** means the cost to repair a substantially damaged structure that exceeds the minimal repair cost and that is required to bring a substantially damaged structure into compliance with the local flood damage prevention ordinance. Acceptable limitation measures are elevation, relocation, demolition, or any combination thereof. All renewal and new business flood insurance policies with effective dates on or after June 1, 1997, will include ICC coverage.

**Letter of Map Amendment (LOMA)** means an amendment to the currently effective FEMA map that establishes that a property is not located in a SFHA. A LOMA is only issued by FEMA.

**Letter of Map Revision (LOMR)** means an official revision to the currently effective FEMA map. It is issued by FEMA and changes flood zones, delineations, and elevations.

**Letter of Map Revision Based on Fill (LOMR-F)** means an official revision by letter to an effective NFIP map. A LOMR-F provides FEMA's determination concerning whether a structure or parcel has been elevated on fill above the BFE and excluded from the SFHA.

**Lowest adjacent grade** means the lowest elevation, after completion of construction, of the ground, sidewalk, patio, deck support, or basement entryway immediately next to the structure.

**Lowest floor** means the lowest of the following:

1. the top of the lowest level of the structure;
2. the top of the basement floor;
3. the top of the garage floor, if the garage is the lowest level of the structure;
4. the top of the first floor of a structure elevated on pilings or pillars;
5. the top of the floor level of any enclosure, other than a basement, below an elevated structure where the walls of the enclosure provide any resistance to the flow of flood waters unless:
  - a. the walls are designed to automatically equalize the hydrostatic flood forces on the walls by allowing for the entry and exit of flood waters by providing a minimum of two openings (in addition to doorways and windows) in a minimum of two exterior walls having a total net area of one (1) square inch for every one square foot of enclosed area. The bottom of all such openings shall be no higher than one (1) foot above the exterior grade of the interior grade immediately beneath each opening, whichever is higher and shall be located entirely below the BFE; and,
  - b. such enclosed space shall be usable solely for the parking of vehicles and building access.

**Manufactured home** means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term “manufactured home” does not include a “recreational vehicle.”

**Manufactured home park or subdivision** means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

**Map amendment** means a change to an effective NFIP map that results in the exclusion from the SFHA of an individual structure or a legally described parcel of land that has been inadvertently included in the SFGA (i.e., no alterations of topography have occurred since the date of the first NFIP map that shoed the structure or parcel to be within the SFHA).

**Map panel number** is the four-digit number followed by a letter suffix assigned by FEMA on a flood map. The first four digits represent the map panel, and the letter suffix represents the number of times the map panel has been revised. (The letter “A” is not used by FEMA, the letter “B” is the first revision.)

**Market value** means the building value, excluding the land (as agreed to between a willing buyer and seller), as established by what the local real estate market will bear. Market value can be established by independent certified appraisal, replacement cost depreciated by age of building (actual cash value), or adjusted assessed values.

**Mitigation** means sustained actions taken to reduce or eliminate long-term risk to people and property from hazards and their effects. The purpose of mitigation is twofold: to protect people and structures, and to minimize the cost of disaster response and recovery.

**National Flood Insurance Program (NFIP)** is the federal program that makes flood insurance available to owners of property in participating communities nationwide through the cooperative efforts of the Federal Government and the private insurance industry.

**National Geodetic Vertical Datum (NGVD) of 1929** as corrected in 1929 is a vertical control used as a reference for establishing varying elevations within the floodplain.

**New construction** means any structure for which the “start of construction” commenced after the effective date of the community’s first floodplain ordinance.

**New manufactured home park or subdivision** means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of the community’s first floodplain ordinance.

**North American Vertical Datum of 1988 (NAVD 88)** as adopted in 1993 is a vertical control datum used as a reference for establishing varying elevations within the floodplain.

**Obstruction** includes, but is not limited to, any dam, wall, wharf, embankment, levee, dike, pile, abutment, protection, excavation, canalization, bridge, conduit, culvert, building, wire, fence, rock, gravel, refuse, fill, structure, vegetation, or other material in, along, across or projecting into any watercourse which may alter, impede, retard or change the direction and/or velocity of the flow of water; or due to its location, its propensity to snare or collect debris carried by the flow of water, or its likelihood of being carried downstream.

**One-hundred year flood (100-year flood)** is the flood that has a one percent (1%) chance of being equaled or exceeded in any given year. Any flood zone that begins with the letter A is subject to the one-percent annual chance flood. See “Regulatory Flood”.

**One-percent annual chance flood** is the flood that has a one percent (1%) chance of being equaled or exceeded in any given year. Any flood zone that begins with the letter A is subject to the one-percent annual chance flood. See “Regulatory Flood”.

**Participating community** is any community that voluntarily elects to participate in the NFIP by adopting and enforcing floodplain management regulations that are consistent with the standards of the NFIP.

**Physical Map Revision (PMR)** is an official republication of a community’s FEMA map to effect changes to base (1-percent annual chance) flood elevations, floodplain boundary delineations, regulatory floodways, and planimetric features. These changes typically occur as a result of structural works or improvements, annexations resulting in additional flood hazard areas, or correction to base flood elevations or SFHAs.

**Post-FIRM construction** means construction or substantial improvement that started on or after the effective date of the initial FIRM of the community or after December 31, 1974, whichever is later.

**Pre-FIRM construction** means construction or substantial improvement, which started on or before December 31, 1974, or before the effective date of the initial FIRM of the community, whichever is later.

**Probation** is a means of formally notifying participating communities of violations and deficiencies in the administration and enforcement of the local floodplain management regulations.

**Public safety and nuisance**, anything which is injurious to the safety or health of an entire community, neighborhood or any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, by stream, canal, or basin.

**Recreational vehicle** means a vehicle which is (1) built on a single chassis; (2) 400 square feet or less when measured at the largest horizontal projections; (3) designed to be self-propelled or permanently towable by a light duty truck; and (4) designed primarily not for use as a permanent dwelling, but as quarters for recreational camping, travel, or seasonal use.

**Regular program** means the phase of the community’s participation in the NFIP where more comprehensive floodplain management requirements are imposed and higher amounts of insurance are available based upon risk zones and elevations determined in a FIS.

**Regulatory flood** means the flood having a one percent (1%) chance of being equaled or exceeded in any given year, as calculated by a method and procedure that is acceptable to and approved by the Indiana Department of Natural Resources and the Federal Emergency Management Agency. The regulatory flood elevation at any location is as defined in Article 3 (B) of this ordinance. The “Regulatory Flood” is also known by the term “Base Flood”, “One-Percent Annual Chance Flood”, and “100-Year Flood”.

**Repetitive loss** means flood-related damages sustained by a structure on two separate occasions during a 10-year period ending on the date of the event for which the second claim is made, in which the cost of repairing the flood damage, on the average, equaled or exceeded 25% of the market value of the structure at the time of each such flood event.

**Section 1316** is that section of the National Flood Insurance Act of 1968, as amended, which states that no new flood insurance coverage shall be provided for any property that the Administrator finds has been declared by a duly constituted state or local zoning authority or other authorized public body to be in violation of state or local laws, regulations, or ordinances that intended to discourage or otherwise restrict land development or occupancy in flood-prone areas.

**Special Flood Hazard Area (SFHA)** means those lands within the jurisdictions of Delaware County subject to inundation by the regulatory flood. The SFHAs of Delaware County are generally identified as such on the Delaware County and Incorporated Areas Flood Insurance Rate Map prepared by the Federal Emergency Management Agency, dated July 4, 2011. (These areas are shown on a FHBM or FIRM Zone A, AE, A1-A30, AH, AR, A99, or AO).

**Start of construction** includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, or improvement was within 180 days of the permit date. The actual start means the first placement or permanent construction of a structure (including a manufactured home) on a site, such as the pouring of slabs or footing, installation of piles, construction of columns, or any work beyond the stage of excavation for placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, foundations, or the erection of temporary forms. For substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

**Structure** means a structure that is principally above ground and is enclosed by walls and a roof. The term includes a gas or liquid storage tank, a manufactured home, or a prefabricated building. The term also includes recreational vehicles to be installed on a site for more than 180 days.

**Substantial damage** means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

**Substantial improvement** means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the “start of construction” of the improvement. This term includes structures that have incurred “repetitive loss” or “substantial damage” regardless of the actual repair work performed. The term does not include improvements of structures to correct existing violations of state or local health, sanitary, or safety code requirements or any alteration of a “historic structure”, provided that the alteration will not preclude the structures continued designation as a “historic structure”.

**Suspension** means the removal of a participating community from the NFIP because the community has not enacted and/or enforced the proper floodplain management regulations required for participation in the NFIP.

**Variance** is a grant of relief from the requirements of this ordinance, which permits construction in a manner otherwise prohibited by this ordinance where specific enforcement would result in unnecessary hardship.

**Violation** means the failure of a structure or other developments to be fully compliant with this ordinance. A structure or other development without the elevation, other certification, or other evidence

of compliance required in this ordinance is presumed to be in violation until such time as that documentation is provided.

**Watercourse** means a lake, river, creek, stream, wash, channel or other topographic feature on or over which waters flow at least periodically. Watercourses includes specifically designated areas in which substantial flood damage may occur.

**Water surface elevation** means the height, in relation to the North American Vertical Datum of 1988 (NAVD 88) or National Geodetic Vertical Datum of 1929 (NGVD) (other datum where specified) of floods of various magnitudes and frequencies in the floodplains of riverine areas.

**X zone** means the area where the flood hazard is less than that in the SFHA. Shaded X zones shown on recent FIRMs (B zones on older FIRMs) designate areas subject to inundation by the flood with a 0.2 percent chance of being equaled or exceeded (the 500-year flood). Unshaded X zones (C zones on older FIRMs) designate areas where the annual exceedance probability of flooding is less than 0.2 percent.

**Zone** means a geographical area shown on a FHBM or FIRM that reflects the severity or type of flooding in the area.

**Zone A** (see definition for A zone).

**Zone B, C, and X** means areas identified in the community as areas of moderate or minimal hazard from the principal source of flood in the area. However, buildings in these zones could be flooded by severe, concentrated rainfall coupled with inadequate local drainage systems. Flood insurance is available in participating communities but is not required by regulation in these zones. (Zone X is used on new and revised maps in place of Zones B and C.)

### Article 3. General Provisions.

#### Section A. Lands to Which This Ordinance Applies.

This ordinance shall apply to all SFHAs and known flood prone areas within the unincorporated territory of Delaware County, Indiana.

#### Section B. Basis for Establishing Regulatory Flood Data.

This ordinance's protection standard is the regulatory flood. The best available regulatory flood data is listed below. Whenever a party disagrees with the best available data, the party submitting the detailed engineering study needs to replace existing data with better data and submit it to the Indiana Department of Natural Resources for review and approval.

(1) The regulatory flood elevation, floodway, and fringe limits for the studied SFHAs of Delaware County shall be as delineated on the one-percent annual chance flood profiles in the Flood Insurance Study of Delaware County and Incorporated Areas dated July 4, 2011 and the corresponding Flood Insurance Rate Map prepared by the Federal Emergency Management Agency dated July 4, 2011.

(2) The regulatory flood elevation, floodway, and fringe limits for each of the remaining SFHAs delineated as an "A Zone" on the Delaware County and Incorporated Areas Flood Insurance Rate Map prepared by the Federal Emergency Management Agency and dated July 4, 2011 shall be according to

the best data available as provided by the Indiana Department of Natural Resources; provided the upstream drainage area from the subject site is greater than one square mile.

(3) In the absence of a published FEMA map, or absence of identification on a FEMA map, the regulatory flood elevation, floodway, and fringe limits of any watercourse in the community's known flood prone areas shall be according to the best data available as provided by the Indiana Department of Natural Resources; provided the upstream drainage area from the subject site is greater than one square mile.

#### Section C. Establishment of Floodplain Development Permit.

A Floodplain Development Permit shall be required in conformance with the provisions of this ordinance prior to the commencement of any development activities in areas of special flood hazard.

#### Section D. Compliance.

No structure shall hereafter be located, extended, converted or structurally altered within the SFHA without full compliance with the terms of this ordinance and other applicable regulations. No land or stream within the SFHA shall hereafter be altered without full compliance with the terms of this ordinance and other applicable regulations.

#### Section E. Abrogation and Greater Restrictions.

This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

#### Section F. Discrepancy between Mapped Floodplain and Actual Ground Elevations.

- (1) In cases where there is a discrepancy between the mapped floodplain (SFHA) on the FIRM and the actual ground elevations, the elevation provided on the profiles from the Flood Insurance Study shall govern.
- (2) If elevation of the site in question is below the base flood elevation, that site shall be included in the SFHA and regulated accordingly.
- (3) If the elevation (natural grade) of the site in question is above the base flood elevation, that site shall be considered outside the SFHA and the floodplain regulations will not be applied. The property owner should be advised to apply for a LOMA.

#### Section G. Interpretation.

In the interpretation and application of this ordinance all provisions shall be:

- (1) Considered as minimum requirements;
- (2) Liberally construed in favor of the governing body; and,
- (3) Deemed neither to limit nor repeal any other powers granted under state statutes.



## Section H. Warning and Disclaimer of Liability.

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on available information derived from engineering and scientific methods of study. Larger floods can and will occur on rare occasions. Therefore, this ordinance does not create any liability on the part of Delaware County, the Indiana Department of Natural Resources, or the State of Indiana, for any flood damage that results from reliance on this ordinance or any administrative decision made lawfully thereunder.

## Section I. Penalties for Violation.

Failure to obtain a Floodplain Development Permit is the SFHA or failure to comply with the requirements of a Floodplain Development Permit or conditions of a variance shall be deemed to be a violation of this ordinance. All violations shall be considered a common nuisance and be treated as any other violation of the Delaware County Comprehensive Zoning Ordinance and/or the Delaware County Code. All violations shall be punishable by a fine not exceeding \$2,500.

- (1) A separate offense shall be deemed to occur for each day the violation continues to exist.
- (2) The County shall inform the owner that any such violation is considered a willful act to increase flood damages and therefore may cause coverage by a Standard Flood Insurance Policy to be suspended.
- (3) Nothing herein shall prevent the County from taking such other lawful action to prevent or remedy any violations. All costs connected therewith shall accrue to the person or persons responsible.

## Section J. Increased Cost of Compliance (ICC).

In order for buildings to qualify for a claim payment under ICC coverage as a “repetitive loss structure”, the National Reform Act of 1994 requires that the building be covered by a contract for flood insurance and incur flood-related damages on two occasions during a 10-year period ending on the date of the event for which the second claim is made, in which the cost of repairing the flood damage, on the average, equaled or exceeded 25 percent of the market value of the building at the time of each such flood event.

## Article 4. Administration.

### Section A. Designation of Administrator.

The Zoning Administrator for Delaware County shall administer and implement the provisions of this ordinance and is herein referred to as the Floodplain Administrator.

### Section B. Permit Procedures.

Application for a Floodplain Development Permit shall be made to the Floodplain Administrator on forms furnished by him or her prior to any development activities, and may include, but not be limited to, the following plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, earthen fill, storage of materials or equipment, drainage facilities, and the location of the foregoing. Specifically the following information is required:

(1) Application stage.

- a. A description of the proposed development;
- b. Location of the proposed development sufficient to accurately locate property and structure in relation to existing roads and streams;
- c. A legal description of the property site;
- d. A site development plan showing existing and proposed development locations and existing and proposed land grades;
- e. Elevation of the top of the lowest floor (including basement) of all proposed buildings. Elevation should be in NAVD 88 or NGVD;
- f. Elevation (in NAVD 88 or NGVD) to which any non-residential structure will be floodproofed;
- g. Description of the extent to which any watercourse will be altered or relocated as a result of proposed development; and
- h. Copies of local, state and federal permits and/or approvals, as applicable. If the development calls for any alteration or relocation of a watercourse, verification must be submitted showing that notice was given to adjacent municipal corporation, the State Floodplain Coordinator, and FEMA.

(2) Construction stage.

Upon placement of the lowest floor; or floodproofing, it shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the NAVD 88 or NGVD elevation of the lowest floor or floodproofed elevation, as built. Said certification shall be prepared by or under the direct supervision of a registered land surveyor or professional engineer and certified by the same. When floodproofing is utilized for a particular structure said certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. Any work undertaken prior to submission of the certification shall be at the permit holders' risk. The Floodplain Administrator shall review the lowest floor and floodproofing elevation survey data submitted. The permit holder shall correct deficiencies detected by such review before any further work is allowed to proceed. Failure to submit the survey or failure to make said corrections required hereby shall be cause to issue a stop-work order for the project.

Section C. Duties and Responsibilities of the Floodplain Administrator.

The Floodplain Administrator and/or designated staff is hereby authorized and directed to enforce the provisions of this ordinance. The Administrator is further authorized to render interpretations of this ordinance, which are consistent with its spirit and purpose.

Duties and Responsibilities of the Floodplain Administrator shall include, but not be limited to:

- (1) Review all floodplain development permits to assure that the permit requirements of this ordinance have been satisfied;

- (2) Inspect and inventory damaged structures in the SFHA and complete substantial damage determinations;
- (3) Ensure that construction authorization has been granted by the Indiana Department of Natural Resources for all development projects subject to Article 5, Section E and G (1) of this ordinance, and maintain a record of such authorization (either copy of actual permit or floodplain analysis/regulatory assessment).
- (4) Ensure that all necessary federal or state permits have been received prior to issuance of the local floodplain development permit. Copies of such permits are to be maintained on file with the floodplain development permit;
- (5) Notify adjacent communities and the State Floodplain Coordinator prior to any alteration or relocation of a watercourse, and submit copies of such notifications to FEMA;
- (6) Maintain for public inspection and furnish upon request local permit documents, damaged structure inventories, substantial damage determinations, regulatory flood data, SFHA maps, Letters of Map Amendment (LOMA), Letters of Map Revision (LOMR), copies of DNR permits and floodplain analysis and regulatory assessments (letters of recommendation), federal permit documents, and “as-built” elevation and floodproofing data for all buildings constructed subject to this ordinance.
- (7) Utilized and enforce all Letters of Map Revision (LOMR) or Physical Map Revisions (PMR) issued by FEMA for the currently effective SFHA maps of the community.
- (8) Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is not diminished;
- (9) Verify and record the actual elevation of the lowest floor (including basement) of all new or substantially improved structures, in accordance with Article 4 Section B;
- (10) Verify and record the actual elevation to which any new or substantially improved structure have been floodproofed, in accordance with Article 4, Section B;
- (11) Review certified plans and specifications for compliance.
- (12) Stop Work Orders
  - a. Upon notice from the floodplain administrator, work on any building, structure or premises that is being done contrary to the provisions of this ordinance shall immediately cease.
  - b. Such notice shall be in writing and shall be given to the owner of the property, or to his agent, or to the person doing the work, and shall state the conditions under which work may be resumed.
- (13) Revocation of Permits
  - a. The floodplain administrator may revoke a permit or approval, issued under the provisions of the ordinance, in cases where there has been any false statement or misrepresentation as to the material fact in the application or plans on which the permit or approval was based.

- b. The floodplain administrator may revoke a permit upon determination by the floodplain administrator that the construction, erection, alteration, repair, moving, demolition, installation, or replacement of the structure from which the permit was issued is in violation of, or not in conformity with, the provisions of this ordinance.
- (14) Inspect sites for compliance. For all new and/or substantially improved buildings constructed in the SFHA, inspect before, during and after construction. Authorized County officials shall have the right to enter and inspect properties located in the SFHA.

## Article 5. Provisions for Flood Hazard Reduction.

### Section A. General Standards.

In all SFHAs and known flood prone areas the following provisions are required:

- (1) New construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure;
- (2) Manufactured homes shall be anchored to prevent flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This standard shall be in addition to and consistent with applicable state requirements for resisting wind forces;
- (3) New construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage below the FPG;
- (4) New construction and substantial improvements shall be constructed by methods and practices that minimize flood damage;
- (5) Electrical, heating, ventilation, plumbing, air conditioning equipment, utility meters, and other service facilities shall be located at/above the FPG or designed so as to prevent water from entering or accumulating within the components below the FPG. Water and sewer pipes, electrical and telephone lines, submersible pumps, and other waterproofed service facilities may be located below the FPG;
- (6) New and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
- (7) New on-site sewage systems located in a fringe area and repairs to existing on-site sewage systems shall be located and installed in accordance with state and local health codes and procedures; replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
- (8) On-site waste disposal and sewage systems shall be located and constructed to avoid impairment to them or contamination from them during flooding and no part of a new on-site sewage system, including the soil absorption area, shall be located in a floodway.
- (9) Any alteration, repair, reconstruction or improvements to a structure that is in compliance with the provisions of this ordinance shall meet the requirements of “new construction”: as contained in this ordinance; and,

- (10) Any alteration, repair, reconstruction or improvement to a structure that is not in compliance with the provisions of this ordinance shall be undertaken only if said non-conformity is not further extended or replaced.

## Section B. Specific Standards.

In all SFHAs, the following provisions are required:

- (1) in addition to the requirements of Article 5, Section A, all structures to be located in the SFHA shall be protected from flood damage below the FPG. This building protection requirement applies to the following situations:
  - a. Construction or placement of any new structure having a floor area greater than 400 square feet;
  - b. An addition or improvement made to any existing structure, as follows:
    - (i) where the cost of the addition or improvement equals or exceeds 50% of the value of the existing structure (excluding the value of the land);
    - (ii) with a previous addition or improvement constructed since the community's first floodplain ordinance.
  - c. Reconstruction or repairs made to a damaged structure where the costs of restoring the structure to its before damaged condition equals or exceeds 50% of the market value of the structure (excluding the value of the land) before damage occurred;
  - d. Installing a travel trailer or recreational vehicle on a site for more than 180 days.
  - e. Installing a manufactured home on a new site or a newly installed manufactured home on an existing site. This ordinance does not apply to retuning the existing manufactured home to the same site it lawfully occupied before it was removed to avoid flood damage; and
  - f. Reconstruction or repairs made to a repetitive loss structure.
- (2) **Residential Construction.** New construction or substantial improvement of any residential structure (or manufactured home) shall either have the lowest floor, including basement, at or above the FPG (two feet above the base flood elevation). Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to facilitate the unimpeded movements of floodwaters shall be provided in accordance with the standards of Article 5, Section B (4).
- (3) **Non-Residential Construction.** New construction or substantial improvement of any commercial, industrial, or non-residential structure (or manufactured home) shall either have the lowest floor, including basement, elevated to or above the FPG (two feet above the base flood elevation) or be floodproofed to or above FPG. Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to facilitate the unimpeded movements of floodwaters shall be provided in accordance with the standards of Article 5, Section B (4). Structures located in all "A Zones" may be floodproofed in lieu of being elevated if done in accordance with the following:

- a. A Registered Professional Engineer or Architect shall certify that the structure has been designed so that below the FPG, the structure and attendant utility facilities are watertight and capable of resisting the effects of the regulatory flood. The structure design shall take into account flood velocities, duration, rate of rise, hydrostatic pressures, and impacts from debris or ice. Such certification shall be provided to the official as set forth in Article 4, Section C (10).
- b. Floodproofing measures shall be operable without human intervention and without an outside source of electricity.

(4) **Elevated Structures.** New construction or substantial improvements of elevated structures shall have the lowest floor at or above the FPG.

Elevated structures with fully enclosed areas formed by foundation and other exterior walls below the flood protection grade shall be designed to preclude finished living space and designed to allow for the entry and exit of floodwaters to automatically equalize hydrostatic flood forces on exterior walls. Designs must meet the following minimum criteria:

- a. provide a minimum of two openings located in a minimum of two exterior walls (having a total net area of not less than one square inch for every one square foot of enclosed area); and
- b. the bottom of all openings shall be no more than one foot above the exterior grade or the interior grade immediately beneath each opening, whichever is higher; and
- c. openings may be equipped with screens, louvers, valves or other coverings or devices provided they permit the automatic flow of floodwaters in both directions; and
- d. access to the enclosed area shall be the minimum necessary to allow for parking for vehicles (garage door) or limited storage of maintenance equipment used in connection with the premises (standard exterior door) or entry to the living area (stairway or elevator); and
- e. the interior portion of such enclosed area shall not be partitioned or finished into separate rooms; and
- f. the interior grade of such enclosed area shall be at an elevation at or higher than the exterior grade; and

(5) **Structures Constructed on Fill.** A residential or nonresidential structure may be constructed on a permanent land fill in accordance with the following:

- a. The fill shall be placed in layers no greater than 1 foot deep before compacting to 95% of the maximum density obtainable with either the Standard or Modified Proctor Test Method.
- b. The fill should extend at least ten feet beyond the foundation of the structure before sloping below the FPG.
- c. The fill shall be protected against erosion and scour during flooding by vegetative cover, riprap, or bulkheading. If vegetative cover is used, the slopes shall be no steeper than 3 horizontal to 1 vertical.

- d. The fill shall not adversely affect the flow of surface drainage from or onto neighboring properties.
- e. The top of the lowest floor including basements shall be at or above the FPG.

**(6) Standards for Manufactured Homes and Recreational Vehicles.** Manufactured homes and recreational vehicles to be installed or substantially improved on a site for more than 180 days must meet one of the following requirements:

- a. The manufactured home shall be elevated on a permanent foundation such that the lowest floor shall be at or above the FPG and securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement. This requirement applies to all manufactured homes to be placed on a site:
  - (i) outside a manufactured home park or subdivision;
  - (ii) in a new manufactured home park or subdivision;
  - (iii) in an expansion to an existing manufactured home park or subdivision; or
  - (iv) in an existing manufactured home park or subdivision on which a manufactured home has incurred “substantial damage” as a result of a flood.
- b. The manufactured home shall be elevated so that the lowest floor of the manufactured home chassis is supported by reinforced piers or other foundation elevations that are no less than 36 inches in height above grade and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement. This requirement applies to all manufactured homes to be placed on a site in an existing manufactured home park or subdivision that has not been substantially damaged by a flood.
- c. Manufactured homes with fully enclosed areas formed by foundation and other exterior walls below the flood protection grade shall be designed to preclude finished living space and designed to allow for the entry and exit of floodwaters to automatically equalize hydrostatic flood forces on exterior walls as required for elevated structures in Article 5, section B. 4.
- d. Flexible skirting and rigid skirting not attached to the frame or foundation of a manufactured home are not required to have openings.
- e. Recreational vehicles placed on a site shall either:
  - (i) be on site for less than 180 days; and,
  - (ii) be fully licensed and ready for highway use (defined as being on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions); or
  - (iii) meet the requirements for “manufactured homes” as stated earlier in this section.

## Section C. Standards for Subdivision Proposals.

- (1) All subdivision proposals shall be consistent with the need to minimize flood damage.
- (2) All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.
- (3) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood hazards.
- (4) Base flood elevation data shall be provided for subdivision proposals and other proposed development (including manufactured home parks and subdivisions) containing land in the SFHA and/or flood prone areas. Lines depicting the floodway and fringe shall be delineated on the plat and/or site plans.
- (5) All subdivision containing a SFHA shall include statements in the restrictions and owner's certificate dealing with the lowest floor elevation requirement, increased flood risks and flood insurance premiums, and protection of the floodway. The Plan Commission may require additional information to be included as deemed necessary to meet the requirements of this ordinance.
- (6) All subdivision proposals shall minimize development in the SFHA and/or limit density of development permitted in the SFHA. The Plan Commission may require additional engineering studies prior to allowing development in the SFHA.

## Section D. Critical Facility.

Construction of new critical facilities shall be, to the extent possible, located outside the limits of the SFHA. Construction of new critical facilities shall be permissible within the SFHA if no feasible alternative site is available. Critical facilities constructed within the SFHA shall have the lowest floor elevated to or above the FPG at the site. Floodproofing and sealing measures must be taken to ensure that toxic substances will not be displaced by or released into floodwaters. Access routes elevated to or above the FPG shall be provided to all critical facilities to the extent possible.

## Section E. Standards for Identified Floodways.

Located within the SFHAs, established in Article 3, Section B, are areas designated as floodways. The floodway is an extremely hazardous area due to the velocity of floodwaters, which carry debris, potential projectiles, and has erosion potential. If the site is in an identified floodway, the Floodplain Administrator shall require the applicant to forward the application, along with all pertinent plans and specifications, to the Indiana Department of Natural Resources and apply for a permit for construction in a floodway. Under the provisions of IC 14-28-1 a permit for construction in a floodway from the Indiana Department of Natural Resources is required prior to the issuance of a local building permit for any excavation, deposit, construction, or obstruction activity located in the floodway. This includes land preparation activities such as filling, grading, clearing and paving, etc. undertaken before the actual start of construction of the structure. However, it does exclude non-substantial additions/improvements to existing (lawful) residences in a non-boundary river floodway. IC 14-28-1-26 allows construction of non-substantial additions/improvements to residences in a non-boundary river floodway without obtaining a permit for construction in the floodway from the Indiana Department of Natural Resources. If fill is needed to elevate an addition above the existing grade, prior approval (construction in a floodway permit) for the fill is required from the Indiana Department of Natural Resources.



No action shall be taken by the Floodplain Administrator until a permit (when applicable) has been issued by the Indiana Department of Natural Resources granting approval for construction in the floodway. Once a permit for construction in a floodway has been issued by the Indiana Department of Natural Resources, the Floodplain Administrator may issue the local Floodplain Development Permit, provided the provisions contained in Article 5 of this ordinance have been met. The Floodplain Development Permit cannot be less restrictive than the permit for construction in a floodway issued by the Indiana Department of Natural Resources. However, a community's more restrictive regulations (if any) shall take precedence.

No development shall be allowed which acting alone or in combination with existing or future development, will increase the regulatory flood more than 0.14 of one foot; and

For all projects involving channel modifications or fill (including levees), the County shall submit the data and request that the Federal Emergency Management Agency revise the regulatory flood data.

#### Section F. Standards for Identified Fringe.

If the site is located in an identified fringe, then the Floodplain Administrator may issue the local Floodplain Development Permit provided the provisions contained in Article 5 of this ordinance have been met. The key provision is that the top of the lowest floor of any new or substantially improved structure shall be at or above the FPG.

#### Section G. Standards for SFHAs without Established Base Flood Elevation and/or Floodways/Fringes.

(1) Drainage area upstream of the site is greater than one square mile:

If the site is in an identified floodplain where the limits of the floodway and fringe have not yet been determined, and the drainage area upstream of the site is greater than one square mile, the Floodplain Administrator shall require the applicant to forward the application, along with all pertinent plans and specifications, to the Indiana Department of Natural Resources for review and comment.

No action shall be taken by the Floodplain Administrator until either a permit for construction in a floodway or a floodplain analysis/regulatory assessment citing the one-percent annual chance flood elevation and the recommended Flood Protection Grade has been received from the Indiana Department of Natural Resources.

Once the Floodplain Administrator has received the proper permit for construction in a floodway or floodplain analysis/regulatory assessment approving the proposed development, a Floodplain Development Permit may be issued provided the conditions of the Floodplain Development Permit are not less restrictive than the conditions received from the Indiana Department of Natural Resources and the provisions contained in Article 5 of this ordinance have been met.

(2) Drainage area upstream of the site is less than one square mile:

If the site is in an identified floodplain where the limits of the floodway and fringe have not yet been determined and the drainage area upstream of the site is less than one square mile, the Floodplain Administrator shall require the applicant to provide an engineering analysis showing the limits of the floodplain and one-percent annual chance flood elevation for the site.

Upon receipt, the Floodplain Administrator may issue the local Floodplain Development Permit, provided the provisions contained in Article 5 of this ordinance have been met.

- (3) The total cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the regulatory flood more than 0.14 of one foot and will not increase flood damages or potential flood damages.

#### Section H. Standards for Flood Prone Areas.

All development in known flood prone areas not identified on FEMA maps, or where no FEMA published map is available, shall meet general standards as required per Article 5, Section A (1) through 10.

#### Article 6. Variances & Appeals Procedures.

##### Section A. Designation of Variance and Appeals Board.

The Delaware-Muncie Metropolitan Board of Zoning Appeals shall hear and decide appeals and requests for variances from requirements of this ordinance in accordance with established schedules and procedures.

##### Section B. Duties of Board of Zoning Appeals.

The board shall hear and decide appeals when it is alleged an error in any requirement, decision, or determination is made by the Floodplain Administrator in the enforcement or administration of this ordinance. The board shall hear and decide requests for variances from requirements of this ordinance. Any person aggrieved by the decision of the board may appeal such decision in accordance with state law.

##### Section C. Variance Procedures.

In addition to established procedures, in passing upon a request to vary the requirements of this ordinance, the Board of Zoning Appeals shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this ordinance, and;

- (1) The danger of life and property due to flooding or erosion damage;
- (2) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
- (3) The importance of the services provided by the proposed facility to the community;
- (4) The necessity to the facility of a waterfront location, where applicable;
- (5) The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
- (6) The compatibility of the proposed use with existing and anticipated development;

- (7) The relationship of the proposed use to the comprehensive plan and floodplain management program of that area;
- (8) The safety of access to the property in times of flood for ordinary and emergency vehicles;
- (9) The expected height, velocity, duration, rate of rise, and sediment of transport of the floodwaters at the site; and,
- (10) The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

#### Section D. Conditions for Variances.

- (1) Variance shall only be issued when there is:
  - a). A showing of good and sufficient cause;
  - b). A determination that failure to grant the variance would result in exceptional hardship; and
  - c). A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud or victimization of the public, or conflict with existing laws or ordinances.
- (2) No variance for a residential use within a floodway subject to Article 5, Section E or Section G (1) of this ordinance may be granted.
- (3) Any variance granted in a floodway subject to Article 5, Section E or Section G (1) of this ordinance will require a permit from the Indiana Department of Natural Resources.
- (4) Variances to the Provisions for Flood Hazard Reduction of Article 5, Section B, may be granted only when a new structure is to be located on a lot of one-half acre or less in size, contiguous to and surrounded by lots with existing structures constructed below the flood protection grade.
- (5) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- (6) Variances may be granted for the reconstruction or restoration of any structure individually listed on the National Register of Historic Places or the Indiana State Register of Historic Sites and Structures.
- (7) Any applicant to whom a variance is granted shall be given written notice specifying the difference between the base flood elevation and the elevation to which the lowest floor is to be built and stating that the cost of the flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation (See Article 6, Section E).
- (8) The Floodplain Administrator shall maintain the records of appeal actions and report any variances to the Federal Emergency Management Agency or the Indiana Department of Natural Resources upon request (See Article 6, Section E).

#### Section E. Variance Notification.

Any applicant to whom a variance is granted shall be given written notice over the signature of a community official that:

- (1) The issuance of a variance to construct a structure below the base flood elevation will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage; and,
- (2) Such construction below the base flood level increases risks to life and property.

The Floodplain Administrator will maintain a record of all variance actions, including justification for their issuance, and report such variances issued in the community's biennial report submission to the Federal Emergency Management Agency.

#### Section F. Historic Structure.

Variances may be issued for the repair or rehabilitation of "historic structures" upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as an "historic structure" and the variance is the minimum to preserve the historic character and design of the structure.

#### Section G. Special Conditions.

Upon the consideration of the factors listed in Article 6, and the purposes of this ordinance, the Board of Zoning Appeals may attach such conditions to the granting of variances as it deems necessary to further the purposes of this ordinance.

#### Article 7. Severability.

If any section, clause, sentence, or phrase of this Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way effect the validity of the remaining portions of this Ordinance.

#### Article 8. Effective Date.

This ordinance shall take effect July 4, 2011.  
**(Ordinance No. 2011-014, Commissioners, 5/16/11)**

## CHAPTER 12

### ANIMAL CARE & CONTROL

#### 3-12-1. Definitions.

The following words, terms and phrases shall have the following meanings ascribed to them:

Animal Control Officer shall mean the dog/cat warden, law enforcement officer, or any County employee with proper training designated by the County Commissioners as having the responsibility for the administration of any or all of the provisions of this Ordinance.

Animal Care and Adoption Center Supervisor shall mean the person placed in charge of the designated Care and Adoption Center facility. This person shall be approved by the County Commissioners as having the proper training and experience to administer a humane facility according to Center policies and regulations yearly reviewed and approved by the County Commissioners or their designee(s).

Dog/cat running at large shall mean any dog or cat not under immediate control, not on a leash, not at heel, not beside a competent person, not in a vehicle driven or parked, or not within the property limits of its owner. Hunting dogs are under the control of their owner when hunting with the landowner's permission and working dogs (including Police, leader and stock herding) are under the control of their owner when discharging their assigned tasks.

Dangerous dog/cat shall mean any dog/cat which constitutes a potential threat to the safety of any person due to its behavior or disease carrier status and/or any dog/cat which according to records of the appropriate authority, has inflicted severe injury on a person without provocation on public or private property not owned by its owner or has killed or caused severe injury to another domestic animal while off its owner's premises.

EXCEPTION: No dog may be declared dangerous if 1.) the threat, injury or damage was sustained by a person who, at the time, was committing a willful trespass or other tort upon the premises occupied by the owner or keeper of the dog or was in any way threatening physical harm to its owner or handler that was engaged in any lawful activity, or 2.) the threat, injury or damage was sustained by a person or animal who, at the time was defending itself from injury caused by any attacking person or animal.

County Animal Care and Adoption Center shall mean the dog/cat shelter established by the County Commissioners to keep, care for, place for adoption, or legally dispose of animals impounded as provided herein.

Domestic animal shall mean any animal kept as a pet, or otherwise under the care and control of its owner.

Owner shall mean an individual or business entity which has the legal right of possession and control of a domestic animal. Any person who routinely keeps and cares for a domestic animal shall be deemed to be its owner. Controlled feral population are not considered owned animals.

Agent shall mean any person 18 years of age or older having lawful custody of a dog/cat with the permission, expressed or implied, of its owner.

Licensed dog shall mean any dog on which a tax has been assessed and paid and for which a license has been issued pursuant to the laws of the State of Indiana and Delaware County.

Non-immunized dog/cat shall mean any dog/cat which does not have a valid rabies immunization certificate.

Rabies vaccination shall mean the injection by a licensed veterinarian of a dog/cat with a rabies vaccine licensed by the U.S.D.A. and approved by the Indiana State Department of Health, or the appropriate authority from the legal residence of the dog/cat owner.

Severe injury shall mean any physical injury that results in broken bones or disfiguring lacerations requiring multiple sutures or cosmetic surgery to a person or another animal.

Veterinarian shall mean any person licensed and accredited to practice veterinary medicine in the State of Indiana.

Humane treatment of animals encompasses the following:

1. It is kept in a clean, sanitary, and healthy manner and is not confined so as to be forced to stand, sit, or lie in its own excrement.
2. It has sufficient and wholesome food and water which is proper and nutritional for its species.
3. It has a proper and adequate structure provided throughout the year that will provide the animal with clean, dry bedding; and that will protect it from all elements of weather and will allow it to stand, sit, and lie down without restriction, and which is kept in a sanitary manner.
4. If ill, diseased or injured, receives proper veterinary care as necessary to promote its good health and prevent the spread of disease to other animals.
5. It is not beaten, cruelly ill-treated, overloaded, overworked, tormented or otherwise abused or neglected or caused to engage in combat with other animals or humans.
6. It is not physically altered in any manner by anyone other than a veterinarian by accepted veterinary procedures and/or accepted animal husbandry procedures. Animals may be tattooed for identification purposes.
7. If it is restrained by a chain, leash, wire cable, or similar restraint, such restraint shall be designed and placed to prevent choking or strangulation or entanglement with other objects. Such restraint shall not be less than ten feet in length.
8. It shall not be placed or confined or allowed to be confined in such a manner that it remains in a motor vehicle or trailer under such conditions or for such periods of time as may endanger the health or well-being of the animal due to heat, cold, lack of food or water, or any circumstance which may cause suffering, disability or death.
9. It shall not be abandoned or dumped. Abandonment shall mean leaving an animal for a period in excess of 24 hours without appropriate provisions having been made for its feeding, watering, shelter and care.

### 3-12-2. Duties and Responsibilities.

- A. When requests have been made for assistance in the disposal of dead animals, the County dispatcher shall route the request to the appropriate governmental body. Removal and disposal of dead animals is not the responsibility of the Animal Control Officer.
- B. Persons in the unincorporated areas of the County may bury their pets on their property or other private property with the owners permission.
- C. The assessor or his designated agent of the township wherein the dog owner resides shall be responsible for collecting the State and County dog fees.
- D. The County Animal Control Officer will be a law enforcement officer, fully trained and authorized to act in a law enforcement capacity.
- E. The County Animal Control Officer will respond to all calls concerning animals in his/her jurisdiction and take appropriate action at the scene. Said officer(s) shall be the primary law enforcement agent(s) of the County responsible for the vigorous enforcement of the provisions of this ordinance.
- F. The County Animal Control Officer shall respond to reports for all injured animals for which an owner cannot be identified and, in cooperation with the Animal Care and Adoption Center supervisor, determine whether the animal must be humanely sacrificed or might survive with proper medical attention. Should the latter be the decision, the animal control officer shall provide or secure transportation to a veterinary clinic.
- G. The County Animal Care and Adoption Center will be maintained by the County for the purposes of receiving animals impounded by the animal control officer, animals surrendered by their owners, and animals rescued by citizens. In addition, the Center will strive to return lost or stray pets to their owners, and to make healthy pets in their care available for adoption by responsible persons. Finally, the Center will be the agency charged with educating the public concerning responsible pet ownership, including spaying and neutering of pets, and the humane treatment of animals.
- H. The County Animal Care and Adoption supervisor shall be responsible for developing and implementing policies by which the Center operates. The supervisor will be responsible for the welfare of animals delivered to the Center, and for cooperating with the animal control officer to make decisions about the management of severely injured or impounded animals, for implementing the judgment of the Court concerning specific animals placed at the Center, and cooperating with the County Health Department in the impounding, quarantining and/or euthanasia of ill or dangerous animals.
- I. The County Commissioners will design and support an animal care and control program which:
  - 1. Uniformly and diligently enforces laws relating to public health and safety.
  - 2. Responds to nuisance complaints in a timely manner.
  - 3. Investigates complaints of abuse and neglect.
  - 4. Rescues mistreated and injured animals.
  - 5. Shelters stray and homeless animals.
  - 6. Works to reunite lost pets with their owners.

7. Places healthy, behaviorally sound animals with responsible persons.
8. Euthanizes suffering animals as well as those that are neither reclaimed nor adopted within the time limit to be set by the Center supervisor.
9. Promotes mandatory vaccination, licensing and identification of both dogs and cats.
10. Hires and provides training for animal control officers and shelter personnel who can professionally handle animals humanely and efficiently with minimum risk to the public and other animal care and control personnel.
11. Designates an adequate and well-maintained facility to accept and house animals.
12. Receives income for the Animal Care and Adoption Center and Animal Control program and personnel necessary for their operation from:

- a). pet licensing
- b). impoundment fees charged to owners whose animals have been picked up
- c). boarding and redemption fees charged to owners who recover their pets
- d). fines for violation of this ordinance
- e). fees from the quarantine animals
- f). adoption fees
- g). private donations to local government earmarked for animal welfare

- J. The County Commissioners shall be responsible for appointing an Animal Welfare Advisory Board to review the policies and the operation of the Animal Care and Adoption Center and Animal Control Office, making recommendations to the appropriate entities for improving county animal control and advising the Commissioners on matters relating to their involvement in animal management in the county.

### 3-12-3. Violations.

- A. It shall be a violation of this ordinance for any owner/agent to cause, permit or allow a dog/cat to run at large within Delaware County other than hunting or working dogs who are on task.
- B. It shall be a violation of this ordinance for any owner/agent to fail to adequately protect the public from a dog/cat which has been declared dangerous. Such an animal should be securely confined on the owner/agent's property and managed safely by a leash and other necessary accessories when in a public place or off the owner/agent's property.
- C. It shall be a violation of this ordinance to fail to maintain a current rabies certificate for each dog/cat owned.
- D. It shall be a violation of this ordinance to fail to pay a state and/or county tax for each dog owned or kennel tax where applicable.
- E. It shall be a violation of this ordinance to neglect an animal by failing to keep it in a clean area, provide sufficient food and water, an adequate shelter and proper and timely veterinary care.
- F. It shall be a violation of this ordinance to beat, cruelly ill-treat, torture, overload, overwork, torment, administer poison or other harmful substances or otherwise abuse an animal.
- G. It shall be a violation of this ordinance to confine an animal in a car, trailer or other confined space under conditions that will endanger its health or well-being.



- H. It shall be a violation of this ordinance to abandon or dump and animal.
- I. It shall be a violation of this ordinance for an owner/agent to fail to remove the waste deposited by his/her animal while on public property or property not owned by the owner/agent. The waste shall be disposed of in a sanitary manner.
- J. It shall be a violation of this ordinance to allow an animal to travel in an open vehicle such as the open bed of a pickup truck or other similar vehicle unless safely restrained.
- K. It shall be a violation of this ordinance for any person to: own, possess, keep or train any animal with the intent that such animal be engaged in any exhibition of fighting; build, make, maintain or keep a pit on premises owned or occupied by him/her or allow a pit to be built, made, or maintained or kept on such premises for the purposes of an exhibition of fighting; in any manner encourage, instigate, promote or assist in an exhibition of animal fighting or intentional combat; charge admission, be an assistant, umpire or participate or be present as a spectator to any exhibition of animal fighting or combat.
- L. It shall be a violation of this ordinance to house five or more dogs under the age of six months without securing a State of Indiana kennel license and paying Delaware County kennel fees. Regulations concerning humane treatment of animals as defined in this ordinance apply to kennel owners as they do to owners of individual dogs.
- M. It shall be a violation of this ordinance for any person to harbor or keep any dog which, by loud and frequent or habitual barking, howling, yelping or whining causes serious annoyance or disturbance to the neighborhood.

#### 3-12-4. Enforcement of Section 3.

- A. Dogs and cats found to be running at large and not under restraint as provided herein, shall be impounded by the animal control officer. The Animal Care supervisor shall make reasonable efforts to contact the owner of the dog/cat to inform them of the location and status of the dog/cat. The owner may resume possession of such animal upon submitting evidence that it has a current rabies tag and, in the case of dogs, that the dog is duly licensed in its county of residence. The owner will pay the impounding fee and any expenses incurred by the county while providing care for the animal before the animal is returned.
- B. The owner of a dog/cat which has been identified as dangerous and fails to take appropriate measures to protect the public from that animal, will be issued a citation by the animal control officer and the animal will be impounded. The owner may resume possession of the animal at the Court's discretion upon presentation of proof of current rabies vaccination and in the case of dogs, current license and upon payment of impoundment fees, expenses and fines. When an officer receives a complaint that a dog has bitten a human, said officer will investigate that complaint. The officer will notify the Delaware County Health Department and follow that department's instructions concerning the quarantine of the animal. The officer shall fill out a Bite Report Form and issue a warning or citation based on the officer's discretion.
- C. Owners of dogs/cats which are found to not have current rabies tags shall be issued a warning by the animal control officer with a deadline to present to the officer or the Animal Care Center supervisor evidence that the situation has been corrected. Failure to provide such evidence by the deadline will result in a citation and fine and the animal may be impounded. Correction of the situation will allow

the owner of the animal to resume possession if it has a current rabies inoculation, and in the case of dogs, is currently licensed, and upon payment of the impounding fees, expenses and fines.

- D. Owners of dogs which are found not to have current state and county licenses shall be issued a warning by the animal control officer with a deadline to present to the officer or the Animal Care Center supervisor evidence that the situation has been corrected. Failure to provide such evidence by the deadline will result in a citation and fine and the animal may be impounded. Correction of the situation will allow the owner of the dog to resume possession if it has current rabies inoculation, is currently licensed and upon payment of the impoundment fees, expenses and fines.
- E. If an animal control officer has reasons to believe either a) that an animal is in distress caused by mistreatment, exposure to the elements, extremes of temperature, lack of adequate ventilation or drainage, lack of sanitation, deprivation of food or water, restraint of movement, confinement, lack of sufficient exercise space, constrictive gear, injury, illness, physical impairment or parasites, or b) if the well-being of an animal is threatened by a dangerous condition or circumstance, or c) if the distress of the animal is caused by the willful act or omission or gross negligence of any person, or d) if it is likely that the animal would be in distress if the owner retains ownership of the animal, the animal control officer is authorized and empowered to immediately remove and impound the animal. A citation for violating this ordinance will be issued to the person violating it by the animal control officer. The animal will not be returned to its owner without an order from the Court.
- F. If an animal control officer has reason to believe that an animal has been dumped or abandoned, said officer may enter upon any property where the animal is restrained or confined and supply it with necessary food, water and care. The officer shall make reasonable attempts to locate an owner or care-giver for that animal. The officer shall impound that animal if no owner or care-giver is found within 48 hours. If emergency medical care is needed, the officer shall impound the animal immediately and in consultation with the Animal Care Center supervisor, secure proper veterinary treatment. The animal shall then become the responsibility of the Animal Care Center supervisor. Should an owner or care-giver later be found, that person may resume possession of the animal should the supervisor determine that the circumstances of the abandonment were inadvertent and the owner or care-giver pays the cost of impounding and caring for the animal.
- G. An owner who fails to remove his/her pet's waste as described in this ordinance may be issued a warning by an animal control officer for the first offense and a citation and fines for any subsequent offense.
- H. An animal observed by the animal control officer riding unrestrained in the back of a pickup truck or similar vehicle may be impounded and the driver issued a citation. Providing the animal has a current rabies inoculation, and in the case of dogs, is currently licensed in its county of residence, said animal may be returned to the owner upon payment of the imposed fines by the driver of the vehicle and payment of the impoundment fees and expenses.
- I. When an animal control officer has reason to believe that an exhibition of fighting is occurring, said officer will notify the County Sheriff and in cooperation with County and local police officers, may enter upon and property and impound all animal present. Individuals present with animals in their possession but not arrested by the police for violation of Indiana State Law (35-46-3-9), shall be issued a citation by the animal control officer. Animals impounded pursuant to this section shall not be returned to their owners without the express permission of the Court and payment of impoundment fees and expenses and fines.

- J. When the animal control officer receives a complaint of a dog which is causing annoyance or disturbance to the neighborhood by loud and frequent barking, howling, yelping or whining, he/she shall investigate that complaint and may issue a warning for the first offense and a citation for each subsequent offense.

Any person violating any of the provisions of this ordinance shall become liable to the County for any fines enunciated in the fine schedule for each violation, expenses, loss or damage caused by such violation.

### 3-12-5. Fees and Fines.

A. Animal Care and Adoption Center Fees.

Any animal impounded under the terms of this ordinance shall be reclaimed as provided herein upon payment, by the owner or person reclaiming such animal, in the amount determined by the Animal Care and Adoption Center Supervisor.

B. Fines for violation of Section 3.

1. Any owner, person or other entity violating Sections 3(A), 3(C), 3(D), 3(I), 3(J), 3(L), or 3(M), shall be issued a warning for the first offense and upon being found to have violated any of these sections will be punished by a fine of \$25.00 for the second offense and \$50.00 for the third offense.
2. Any owner, person or other entity found to have violated Sections 3(B), 3(E), 3(G), or 3(H), will be punished by a fine of \$100.00 for the first offense, \$200.00 for the second offense, and \$300.00 for the third offense.
3. Any owner, person or other entity found to have violated Sections 3(F) or 3(K) will be punished by a fine of \$1,000.00 for the first offense, \$2,000.00 for the second offense, and \$3,000.00 for the third offense.

Any owner, person or other entity found to have violated any of the provisions of Section 3, three or more times will be, at the discretion of the Court subject to permanent loss of the animal or animals which are the subject of said violations.

**(Ordinance No. 2002-026, Commissioners' meeting, 12/30/02).**

#### 3-12-5.1. Fees for the Return of Stray Animals.

A fee of Twenty-Five Dollars (\$25.00) shall be assessed per animal against an owner of said stray animal that is in the possession of the Animal Control Officer and said stray animal is returned to owner before being transported to the Henry County Animal Shelter.

The Twenty-Five Dollar (\$25.00) animal assessment fee shall be deposited into the Delaware County 268 Animal Welfare Fund in the Delaware County Auditor's Office.

That the Ordinance shall be in full force and effect from and after its passage by the Board of Commissioners of Delaware County, Indiana and such publication as required by law.

**(Ordinance No. 2011-004, Commissioner, 3/7/11)**

3-12-6. Interlocal Agreement for Joint City/County Animal Shelter.

Delaware County Board of Commissioners hereby adopts the Interlocal Agreement in accordance with I.C. 36-1-7-1 et. seq., as set forth in the attached Exhibit A.  
**(Resolution No. 2010-006, Commissioners, 3/15/10)**

## CHAPTER 13

### **SMOKING REGULATIONS IN PUBLIC AREAS**

3-13-1. Definitions: The following words and phrases, whenever used in this chapter, shall be construed as defined in this section.

3-13-1.1. “Attached Bar” means an area of a restaurant that serves alcoholic beverages which maintains a separate outside entrance.

3-13-1.2. “Bar” means an establishment that is devoted to the serving of alcoholic beverages as defined by Indiana law for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of those beverages, including but not limited to, taverns, nightclubs, cocktail lounges, and cabarets and a place where minors under age 21 are not permitted to be present by operation of law or the determination of the proprietor.

3-13-1.3. “Business” means a sole proprietorship, partnership, joint venture, corporation, or other business entity formed for profit-making purposes, including retail establishments where goods or services are sold as well as professional corporations and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered.

3-13-1.4. “Bowling Alley” shall mean a facility that provides bowling activities for the general public.

3-13-1.5. “Employee” Means a person who is employed by an employer in consideration for direct or indirect monetary wages or profit, and a person who volunteers his or her services for a non-profit entity.

3-13-1.6. “Employer” means a person, business, partnership, association, corporation. Including a municipal corporation, trust, or non-profit entity that employs the services of one or more individual persons.

3-13-1.7. “Enclosed Area” means all space between a floor and ceiling that is enclosed on all sides by solid walls or windows (exclusive of doorways), which extend from the floor to the ceiling.

3-13-1.8. “Health Care Facility” means an office or institution providing care or treatment of diseases, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions, including but not limited to, hospitals, rehabilitation hospitals or other clinics, including weight control clinics, nursing homes, homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, dentists, and all specialists within these professions. This definition shall include all waiting rooms, and wards within health care facilities.

3-13-1.9. “Place of Employment” means an area under control of a public or private employer that employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, hallways, and vehicles. A private residence is not a “place of employment” unless it is used as a child care, adult day care, or health care facility.

3-13-1.10. “Public Place” means an enclosed area to which the public is invited or in which the public is permitted, including but not limited to, banks, bars, educational facilities, health care facilities,

Laundromats, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, retail food service establishments, retail stores, shopping malls, sports arenas, theaters, and waiting rooms. A private residence is not a “public place” unless it is used as a child care, adult day care, or health care facility.

3-13-1.11. “Private Club” means a facility owned or operated by an association, or corporation which shall not be operated for monetary gain and consists of a membership formed as a nationally recognized local chapter, lodge, or corresponding unit of a fraternal order, recognized on a national basis, or comprised of persons who have served in the armed forces of the United States. Said local chapter, lodge, or fraternal order was formed and recognized as an exclusive association of persons organized for a joint or common purpose for which application for membership, the payment of dues, and the self governance by the members are distinguishing characteristics. Entry into and use of said facility is restricted to members and guests of members.

3-13-1.12. “Private Residence” means any single family dwelling owned or occupied by an individual or family. “Private Residence” shall include a private apartment in a retirement facility or multi unit residential facility.

3-13-1.13. “Restaurant” means an eating establishment, including but not limited to, coffee shops, cafeterias, sandwich stands, and private and public school cafeterias, which gives or offers for sale food to the public, guests, or employees, as well as kitchens and catering facilities in which food is prepared on the premises for serving elsewhere. The term “restaurant” shall include a bar area within the restaurant if not separated by a wall within a separate entrance.

3-13-1.14. “Retail Tobacco Store” means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.

3-13-1.15. “Service Line” means an indoor line in which one (1) or more persons are waiting for or receiving service of any kind, whether or not the service involves the exchange of money.

3-13-1.16. “Shopping Mall” means an enclosed public walkway or hall area that serves to connect retail or professional establishments.

3-13-1.17. “Smoking” means inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe, plant, or other combustible substance in any manner or in any form.

3-13-1.18. “Sports Arena” means sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys, and other similar places where members of the general public assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events.

3-13-1.19. “Truck Stop” means a facility that offers 24 hour rest stop services to over the road truck and semi-trailer drivers with said facilities being located within ½ mile of an interstate highway.

### 3-13-2. Application to all Public Buildings.

All enclosed facilities, including buildings and vehicles owned, leased, or operated by County of Delaware and the City of Muncie, shall be subject to the provisions of this Chapter.

3-13-3. Smoking shall be prohibited in all enclosed public places within the County of Delaware, including but not limited to, the following places.

- 3-13-3.1. Galleries, libraries, and museums.
- 3-13-3.2 Areas available to and customarily used by the general public in businesses and non-profit entities patronized by the public, including but not limited to, professional offices, banks, Laundromats, hotels, and motels.
- 3-13-3.3 Bingo facilities.
- 3-13-3.4 Bowling alleys.
- 3-13-3.5 Convention facilities.
- 3-13-3.6 Elevators.
- 3-13-3.7 Facilities primarily used for exhibiting a motion picture, stage, drama, lecture, musical recital, or other similar performance.
- 3-13-3.8 Health care facilities.
- 3-13-3.9 Licensed childcare and adult day care facilities.
- 3-13-3.10 Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.
- 3-13-3.11 Polling places.
- 3-13-3.12 Public transportation facilities, including buses and taxicabs, under the authority of the County of Delaware, and ticket, boarding, and waiting areas of public transit depots.
- 3-13-3.13 Restaurants, including attached bar areas.
- 3-13-3.14 Restrooms, lobbies, reception areas, hallways, and other common-use areas.
- 3-13-3.15 Retail stores.
- 3-13-3.16 Rooms, chambers, places of meeting or public assembly, including school buildings, under the control of an agency, board, commission, committee, or council of the County or a political subdivision of the State when a public meeting is in progress, to the extent the place is subject to the jurisdiction of the County of Delaware.
- 3-13-3.17 Service lines.
- 3-13-3.18 Shopping malls.
- 3-13-3.19 Sports arenas, including enclosed places in outdoor arenas.

### 3-13-4. Prohibition of Smoking in Places of Employment.

- 3-13-4.1. Smoking shall be prohibited in all enclosed facilities within places of employment without exception. This includes common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, vehicles, and all other enclosed facilities.
- 3-13-4.2. This prohibition on smoking shall be communicated to all existing employees by the effective date of this Ordinance and to all prospective employees upon their application for employment.

### 3-13-5. Reasonable Distance.

Smoking is prohibited within a reasonable distance outside an enclosed area where smoking is prohibited, so as to insure that tobacco smoke does not enter the area through entrances, windows, ventilation systems, or areas where persons or patrons may be exposed to prior to access to the structure.

### 3-13-6. Areas Exempt from this Ordinance.

- 3-13-6.1. Notwithstanding any other provision of this Ordinance to the contrary, the following areas shall be exempt from the provisions of Sections 3-13-3 and 3-13-4:
- 3-13-6.1.1. Bars and attached bars to restaurants where the attached bar is separated by a wall between the restaurant and the attached bar which runs from the floor to the roof and has a separate outside entrance for patrons.
- 3-13-6.1.2. Hotel and motel rooms that are rented to guests and are designated as smoking rooms.
- 3-13-6.1.3. Outdoor areas of places of employment so long as said areas comply with the provision of Section 3-13-5.
- 3-13-6.1.4. Outdoor seating areas of restaurants so long as said areas comply with the provisions of Section 3-13-5.
- 3-13-6.1.5. Private residences, including private apartments in retirement facilities and multiple-unit residential facilities, except when used as a licensed child care, adult day care, or health facility.
- 3-13-6.1.6. Private Clubs in areas where use is restricted to 21 years of age or older.
- 3-13-6.1.7. Retail tobacco stores, provided that smoke from these places does not infiltrate into areas where smoking is prohibited under the provisions of this Ordinance.
- 3-13-6.1.8. Truck Stops. "Truck Stop" means a facility that offers 24 hour rest stop services to over the road truck and semi-trailer drivers with said facility being located within ½ mile of an interstate highway.



### 3-13-7. Declaration of Establishments as Nonsmoking.

Notwithstanding any other provision of this Ordinance, an owner, operator, manager, or other person in control of an establishment, facility, or outdoor area may declare that entire establishment, facility, or outdoor area as a nonsmoking place. Smoking shall be prohibited in any place in which a sign conforming to the requirements of this chapter is posted.

### 3-13-8. Posting of Signs.

3-13-8.1. “No Smoking” signs or the international “No Smoking” symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be clearly and conspicuously posted in every public place and place of employment where smoking is prohibited by this Ordinance, by the owner, operator, manager, or other person having control of the area.

3-13-8.2. All ashtrays and other smoking paraphernalia shall be removed from any public area where smoking is prohibited by this Ordinance by the owner, operator, manager, or other person having control of the area.

### 3-13-9. Violations and Penalties.

3-13-9.1. A person who smokes in an area where smoking is prohibited by the provisions of this Ordinance, or a person who owns, manages, operates, or otherwise controls a public place, place of employment, or other area where smoking is prohibited under this ordinance, and who fails to comply with the provisions of this Ordinance shall be subject to payment of a designated civil penalty of Fifty and 00/100 dollars (\$50.00). All second and subsequent violations, in twelve consecutive month period, are subject to the same enforcement procedures, and fines for any subsequent violation shall be at least Two Hundred and 00/100 Dollars (\$200.00) and not more than Five Hundred and 00/100 dollars (\$500.00).

3-13-9.2. In addition to the fines established by this Ordinance, multiple violations of this Ordinance, in a twelve consecutive month period, by a person who owns, manages, operates, or otherwise controls a public place, place of employment, or other area where smoking is prohibited by this Ordinance, may result in suspension or revocation of any permit or license issued to the person for the premises on which the violation occurred.

3-13-9.3. Each day upon which a violation of this Ordinance occurs shall be considered a separate and distinct violation.

### 3-13-10. Enforcement.

3-13-10.1. This Ordinance shall be enforced by the Delaware County Department of Health or an authorized designee.

3-13-10.2. Any citizen who desires to register a complaint under this Ordinance shall register said complaint for enforcement with the Delaware County Health Department.

3-13-10.3. An owner, manager, operator, or employee of an establishment regulated by this Ordinance shall inform persons violating this Ordinance of the appropriate provisions thereof.

3-13-10.4. In addition to the remedies provided by the provisions of this Section, the Delaware County Department of Health may apply for injunctive relief to enforce those provisions in any court of competent jurisdiction; costs may be allocated to the prevailing party.

3-13-10.5. The costs for enforcement of this Ordinance shall be paid from the proceeds received by the Health Department from the Tobacco Settlement Funds or the Local Health Maintenance Fund and any fines received that have been levied as a result of this ordinance.

3-13-11. Public Education.

The Delaware County Department of Health shall create a program upon adoption of this ordinance and no later than sixty days after adoption of this ordinance to explain the purposes and requirements of this Ordinance to the citizens affected by it, and to guide owners, operators, and managers in their compliance with the Ordinance. The program may include publication of a brochure for affected businesses and individuals explaining the provisions of this Ordinance.

3-13-12. Other Applicable Laws.

This Ordinance shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

3-13-13. Severability.

If any provision, clause, sentence, or paragraph of this Ordinance or the application thereof to any person or circumstances shall be held invalid, that invalidity shall not affect the other provisions of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

3-13-14. Repeal of Section 1-9-2J.

Upon the effective date of this Ordinance section 1-9-2J of the Delaware County Code shall be repealed.

3-13-15. Effective Date.

This Ordinance shall be effective one hundred and twenty (120) days after the date of its publication.  
**(Ordinance No. 2006-004, Commissioners, 2/21/06)**

3-13-16. Regulating Smoking in all Workplaces and Public Places.

Sec. 1002. Definitions.

The following words and phrases, whenever used in this Chapter, shall be construed as defined in this Section:

A. "Bar" means an establishment that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of those beverages, including but not limited to, taverns, nightclubs, cocktail lounges, and cabarets.

B. "Business" means a sole proprietorship, partnership, joint venture, corporation, or other business entity, whether for-profit or not-for-profit, including retail establishments where goods or services are sold;

- professional corporations and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered; and private clubs.
- C. “Employee” means a person who is employed by an employer in consideration for direct or indirect monetary wages or profit, and a person who volunteers his or her services for a non-profit entity.
- D. “Employer” means a person, business, partnership, association, corporation, including a municipal corporation, trust, or non-profit entity that employs the services of one or more individual persons.
- E. “Enclosed Area” means all space between a floor and a ceiling that is bounded on all sides by walls, doorways, or windows, whether open or close. A wall includes and retractable divider, garage door, or other physical barrier, whether temporary or permanent.
- F. “Health Care Facility” means an office or institution providing care or treatment of diseases, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions, including but not limited to, hospitals, rehabilitation hospitals or other clinics, including weight control clinics, nursing homes, long-term facilities, homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, psychiatrists, dentists, and all specialists within these professions. This definition shall include all waiting rooms, hallways, private rooms, semiprivate rooms, and wards within health care facilities.
- G. “Place of Employment” means an enclosed area under the control of a public or private employer, including, but not limited to, work areas, private offices, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, hallways. A private residence is not a “place of employment” unless it is used as a child care, adult day care, or health care facility.
- H. “Playground” means any park or recreational area designed in part to be used by children that has play or sports equipment installed or that has been designated or landscaped for play or sports activities, or any similar facility located on public or private school grounds or on any government entity, both city and county-owned grounds.
- I. “Private Club” means an organization, whether incorporated or not, which is the owner, lessee, or occupant of a building or portion thereof used exclusively for club purposes at all times, which is operated solely for a recreational, fraternal, social, patriotic, political, benevolent, or athletic purpose, but not for pecuniary gain, and which only sells alcoholic beverages incidental to its operation. The affairs and management of the organization are conducted by a board of directors, executive committee, or similar body chosen by the members at an annual meeting. The organization has established bylaws and/or a constitution to govern its activities. The organization has been granted an exemption from the payment of federal income tax as a club under 26 U.S.C. Section 501.
- J. “Public Place” means an enclosed area to which the public is invited or in which the public is permitted, including but not limited to, banks, bars, educational facilities, gaming facilities, health care facilities, hotels and motels, Laundromats, public transportation vehicles and facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, tobacco retail stores, shopping malls, sports arenas, theaters, and waiting rooms. A private residence is not a “public place” unless it is used as a child care, adult day care, or health care facility.
- K. “Restaurant” means an eating establishment, including but not limited to, coffee shops, cafeterias, sandwich stands, and private and public school cafeterias, which gives or offers for sale food to the

public, guests, or employees, as well as kitchens and catering facilities in which food is prepared on the premises for serving elsewhere. The term “restaurant” shall include a bar area within the restaurant.

- L. “Service Line” means an indoor or outdoor line in which one (1) or more persons are waiting for or receiving service of any kind, whether or not the service involves the exchange of money, including but not limited to ATM lines, concert lines, food vendor lines, movie ticket lines, and sporting event lines.
- M. “Shopping Mall” means an enclosed public walkway or hall area that serves to connect retail or professional establishments.
- N. “Smoking” means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated tobacco or plant product intended for inhalation, in any manner or in any form.
- O. “Sports Arena” means a place where people assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events, including sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, and bowling alleys.

#### Sec. 1003. Application of Chapter to County-Owned Facilities.

All enclosed areas, including buildings, and vehicles owned, leased, or operated by any government entity (both city and county) in Delaware County, shall be subject to the provisions of this Chapter.

#### Sec. 1004. Prohibition of Smoking in Enclosed Public Places.

Smoking shall be prohibited in all enclosed public places within Delaware County, including but not limited to, the following places:

- A. Aquariums, galleries, libraries, and museums.
- B. Areas available to the general public in businesses and non-profit entities patronized by the public, including but not limited to, banks, laundromats, professional offices, and retail service establishments.
- C. Bars.
- D. Bingo facilities.
- E. Child care and adult day care facilities.
- F. Convention facilities.
- G. Educational facilities, both public and private.
- H. Elevators.
- I. Gaming facilities.
- J. Health care facilities.

K. Hotels and motels.

L. Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.

M. Polling places.

N. Public transportation vehicles, including buses and taxicabs, under the authority of any government entity (both city and county) in Delaware County, and ticket, boarding, and waiting areas of public transportation facilities, including bus, train, and airport facilities.

O. Restaurants.

P. Restrooms, lobbies, reception areas, hallways, and other common-use areas.

Q. Retail stores, including tobacco retail stores.

R. Rooms, chambers, places of meeting or public assembly, including school buildings, under the control of an agency, board, commission, committee or council of any government entity or a political subdivision of the State, to the extent the place is subject to the jurisdiction of Delaware County.

S. Service lines.

T. Shopping malls.

U. Sports arenas, including enclosed places in outdoor arenas.

V. Theaters and other facilities primarily used for exhibiting motion pictures, stage dramas, lectures, musical recitals, or other similar performances.

#### Sec. 1005. Prohibition of Smoking in Enclosed Places of Employment.

A. Smoking shall be prohibited in all enclosed areas of places of employment without exception. This includes common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevator, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, and all other enclosed facilities.

B. This prohibition on smoking shall be communicated to all existing employees by the effective date of this Chapter and to all prospective employees upon their application for employment.

#### Sec. 1006. Prohibition of Smoking in Private Clubs.

Smoking shall be prohibited in all private clubs.

#### Sec. 1007. Prohibition of Smoking in Enclosed Residential Facilities.

Smoking shall be prohibited in the following enclosed residential facilities:

A. All private and semi-private rooms in nursing homes.

B. 100% of hotel and motel rooms that are rented to guests.

#### Sec. 1008. Prohibition of Smoking in Outdoor Areas.

Smoking shall be prohibited in the following outdoor places:

- A. Within a reasonable distance of twelve (12) feet outside entrances, operable windows, and ventilation systems of enclosed areas where smoking is prohibited, so as to prevent tobacco smoke from entering those areas.
- B. In all outdoor arenas, stadiums, and amphitheaters. Smoking shall also be prohibited in, and within twelve (12) feet of, bleachers and grandstands for use by spectators at sporting and other public events.
- C. In, and within twelve (12) feet of, all outdoor public transportation stations, platforms, and shelters under the authority of any government entity (both city and county) in Delaware County.
- D. In all outdoor service lines.

#### Sec. 1009. Where Smoking is Not Regulated.

Notwithstanding any other provision of this Chapter to the contrary, the following areas shall be exempt from the provisions of Section 1004 and 1005:

- A. Private residences, unless used as a childcare, adult day care, or health care facility, and except as provided in Section 1007.
- B. Outdoor areas of places of employment except those covered by the provisions of Section 1008.

#### Sec. 1010. Declaration of Establishment as Non-smoking.

Notwithstanding any other provision of this Chapter, an owner, operator, manager, or other person in control of an establishment, facility, or outdoor area may declare that entire establishment, facility, or outdoor area as a nonsmoking place. Smoking shall be prohibited in any place in which a sign conforming to the requirements of Section 1011(A) is posted.

#### Sec. 1011. Posting of Signs and Removal of Ashtrays

The owner, operator, manager, or other person in control of a public place or place of employment where smoking is prohibited by this Chapter shall:

- A. Clearly and conspicuously post “No Smoking” signs or the international “No Smoking” symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) in that place.
- B. Clearly and conspicuously post at every entrance to that place a sign stating that smoking is prohibited.

- C. clearly and conspicuously post on public transportation vehicles identified under Section 1004 (N) that constitutes a place of employment under this Chapter at least one sign, visible from the exterior of the vehicle, stating that smoking is prohibited.
- D. Remove all ashtrays from any area where smoking is prohibited by this Chapter, except for ashtrays displayed for sale and not for use on the premises.

Sec. 1012. Nonretaliation; Nonwaiver of Rights.

- A. No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, customer, or resident of a multiple-unit residential facility because that employee, applicant, customer, or resident exercises any rights afforded by this Chapter or reports or attempts to prosecute a violation of this Chapter. Notwithstanding Section 1014, violation of this Subsection shall be, punishable by a fine not to exceed \$500.00 for each violation.
- B. An employee who works in a setting where an employer allows smoking does not waive or otherwise surrender any legal rights the employee may have against the employer or any other party.

Sec. 1013. Enforcement.

- A. This Chapter shall be enforced by the Delaware County Health Department or an authorized designee.
- B. Notice of the provisions of this Chapter shall be given to all applicants for a business license in Delaware County.
- C. Any citizen who desires to register a complaint under this Chapter may initiate enforcement with the Delaware County Health Department.
- D. The Health Department, Fire Department, or their designees shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this Chapter.
- E. An owner, manager, operator, or employee of an establishment regulated by this Chapter shall direct a person who is smoking in violation of this Chapter to extinguish the product being smoked. If the person does not stop smoking, the owner, manager, operator, or employee shall refuse service and shall immediately ask the person to leave the premises. If the person in violation refuses to leave the premises, the owner, manager, operator, or employee shall contact a law enforcement agency.
- F. Notwithstanding any other provision of this Chapter, an employee or private citizen may bring legal action to enforce this Chapter.
- G. In addition to the remedies provided by the provisions of this Section, Delaware County or any person aggrieved by the failure of the owner, operator, manager, or other person in control of a public place or a place of employment to comply with the provisions of this Chapter may apply for injunctive relief to enforce those provisions in any court of competent jurisdiction.
- H. In addition to the remedies provided by the provisions of this Section, the Delaware County Health Department may apply for injunctive relief to enforce those provisions in any court of competent jurisdiction, costs, including attorney fees, and other litigation expenses, may be recovered by the Delaware County Health Department.

- I. The costs for enforcement of this ordinance, including attorney fees for litigation shall be paid from the proceeds received by the Health Department from the Tobacco Settlement Funds of any fines received that have been levied as a result of this ordinance.
- J. Pursuant to Indiana Code 16-41-20-9, any person aggrieved by an order of the Delaware County Health Department, or County Health Officer, issued pursuant to provisions of this ordinance may, not more than ten (10) days after the making of the order or determination of a violation, file with any Delaware County Circuit Court a petition seeking review of the order. The Court shall hear the appeal. The Court's decision is final.

#### Sec. 1014. Violations and Penalties.

- A. A person who smokes in an area where smoking is prohibited by the provisions of this Chapter shall be in violation of this Ordinance and, punishable by a fine not exceeding five hundred dollars (\$500.00).
- B. Except as otherwise provided in Section 1012(A), a person who owns, manages, operates, or otherwise controls a public place or place of employment and who fails to comply with the provisions of this Chapter shall be in violations of this Ordinance, punishable by:
  - 1. A fine not exceeding five hundred dollars (\$500) for a first violation.
  - 2. A fine not exceeding five hundred dollars (\$500) for each additional violation within one (1) year.
- C. In addition to the fines established by this Section, violation of this Chapter by a person who owns, manages, operates, or otherwise controls a public place or place of employment may result in the suspension or revocation of any permit or license issued to the person for the premises on which the violation occurred.
- D. Violation of this Chapter is hereby declared to be a public nuisance, which may be abated by Delaware County Health Department by restraining order, preliminary and permanent injunction, or other means provided for by law, and the Delaware County Health Department may take action to recover the costs of the nuisance abatement.
- E. Each day on which a violation of this Chapter occurs shall be considered a separate and distinct violation.

#### Sec. 1015. Public Education.

The Delaware County Health Department shall engage in a continuing program to explain and clarify the purposes and requirements of this Chapter to citizens affected by it, and to guide owners, operators, and managers in their compliance with it. The program may include publication of a brochure for affected businesses and individuals explaining the provisions of this ordinance.

#### Sec. 1016. Governmental Agency Cooperation.

The Delaware County Health Department shall annually request other governmental and educational agencies having facilities with Delaware County to establish local operating procedures in cooperation and compliance with this Chapter. This includes urging all federal, state, local government entities, and



school district agencies to update their existing smoking control regulations to be consistent with the current health findings regarding secondhand smoke.

Sec. 1017. Other Applicable Laws.

This Chapter shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

Sec. 1018. Broad Construction – Chapter to be interpreted broadly.

This Chapter shall be liberally construed so as to further its purposes.

Sec. 1019. Severability.

If any provision, clause, sentence, or paragraph of this Chapter or the application thereof to any person or circumstances shall be held invalid, that invalidity shall not affect the other provisions of this Chapter which can be given effect without the invalid provision or application, and to this end the provisions of this Chapter are declared to be severable.

Sec. 1020. Repeal of Ordinance No. 2006-004.

Upon the effective date of this ordinance, Delaware County Ordinance No. 2006-004A shall be repealed.

Sec 1021. Effective Date.

This Ordinance shall be effective thirty (30) days after the date of its publication.  
**(Ordinance No. 2011-012, Commissioners, 6/6/11)**

## CHAPTER 14

### HAZARDOUS MATERIAL CLEAN-UP AND COST REIMBURSEMENT

I. Purpose. An ordinance to regulate the reporting of storage of hazardous materials and the expedient cleanup of hazardous materials released within Delaware County. An ordinance to provide for enforcement procedures for failure to report storage of hazardous material, releases of hazardous materials, for the commencement of clean-up procedures, clean-up costs recovery, issuance of fines, collection of fines, disbursement of funds, and methods of enforcement. The Ordinance shall not supersede or conflict with any rule, regulation, ordinance or statute regarding the Bureau of Water Quality (BWQ) nor duplicate the goals of the BWQ. This Ordinance is to supplement and enhance the rules, regulations, ordinances and statutes regarding the BWQ, state statutes, rule, regulation, or law, said state and federal regulations. To the extent that any provision herein conflicts with or contravenes any state, rule, regulation or law shall control. The Ordinance does not in any way impose additional or new requirements upon the citizens and businesses of Delaware County. In particular, the Reporting Requirements of Section IV are not in addition to Federal SARA Title III or Indiana Code 13-25-2 (Indiana SARA Title III).

II. Definitions.

Community Emergency Coordinator (CEC): The term “community emergency coordinator” shall mean the person designated by the local emergency plan as CEC.

Contaminated: The term “contaminated” means the presence of any hazardous material in excess of acceptable levels by any Federal Act, state statutes or local laws.

Extremely Hazardous Substance (EHS): The term “extremely hazardous substance” means a listed substance described in Section 11002(a)(2) of the Emergency Planning and Community Right-to-know Act.

EMA Director/Deputy Director (EMA D/D.D.): This will be the Director, or Deputy Director of the Delaware County Emergency Management Agency as established by Delaware County Ordinance 1998-009.

Environment: The term “environment” includes water, air, and land and the interrelationship that exists among and between water, air, and the land and all living things.

Enforcement Officer: The person provided with the authority to enforce this ordinance shall be the EMA D/D.D. or the person so appointed.

Federal Act: The term “federal act” means the Superfund Amendments and Reauthorization Act of 1986 (SARA Title III), the Emergency Planning and Community Right-to know Act of 1986 (EPCRA), and the Occupational Safety and Health Act (OSHA) or any other Federal statute, Federal regulation, State statute or State regulation that may apply.

Fire Department Having Jurisdiction: The term “fire department having jurisdiction” means a department or association organized for the purpose of answering fire alarms, extinguishing fires, and providing other emergency services, the members of which receive compensation of no compensation and/or nominal compensation for their services, and the primary geographical response area of the department or association includes the facility in question.

Facility: The term “facility” means all buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person (or by any person which controls, is controlled by, or under common control with, such person). For purposes of this ordinance, the term includes motor vehicles, rolling stock, and aircraft.

Governmental Unit: The term “governmental unit” means any division or branch of the State of Indiana or the U. S. Government, including but not limited to, a county, city, township, town, entity with taxing authority (i.e. school district or waste water district), agency, division, office or person acting in their official governmental capacity.

Hazardous Chemicals: The term “hazardous chemicals” has the meaning given such term by section 11021(e) of EPCRA.

Hazardous Material: The term “hazardous material” means either a hazardous chemical, extremely hazardous substance, toxic chemical or any combination of these materials.

Inventory Form: The term “inventory form” means an emergency and hazardous chemical inventory form set forth in 42 U.S.C. 11022.

Local Emergency Planning Committee (LEPC): The term “local emergency planning committee” refers to a local emergency planning committee of a county appointed by the emergency response commission in compliance with 42 U.S.C. 11001(a). For purposes of this ordinance, LEPC shall refer to the Delaware County LEPC.

Material Safety Data Sheet (MSDS): The term “material safety data sheet” means the sheet required to be developed pursuant to section 29 CFR 190.1200(g), as that section may be amended from time to time.

Person: The term “person” means any individual, trust, firm, joint stock company, corporation, or other similarly organized entity, partnership, association, State, municipality, commission, political subdivision of a State, or interstate body, Federal Government or any branch of the Federal Government, legal representatives, agents or assigns.

Operator: The term “operator” means any person who operates a facility where hazardous materials are used, stored, manufactured, treated or otherwise found.

Owner: The term “owner” means any person who has any type of ownership interest in a facility or the real estate upon which the facility is located.

Release: The term “release” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, infiltration or disposing into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles) of any hazardous material.

Response Agency (RA): The term “response agency” means any person that responds to a release.

Toxic Chemical: The term “toxic chemical” means a listed substance described in section 11023(c) of EPCRA.

III. Supplemental to Local, State and Federal Law. It is not the intent of this Ordinance to preempt the provisions of the Federal Act, state statutes, regulations and rules as may be applicable to any person, owner

or operator, or facility which produces, uses, stores, or otherwise has possession of hazardous material. No provision of this Ordinance shall be deemed to supersede any local, state or federal law, rule, regulation or requirement. To the extent that any provision herein conflicts with or contravenes any state or federal statute, rule, regulation or law, said state or federal statute, rule, regulation or law shall control.

- IV. Annual Reporting Requirements. The owner or operator of a facility is required to prepare or have prepared a Material Safety Data Sheet (MSDS) for any substance on the list published under 42 U.S.C. 11002(a)(2) pursuant to I.C. 13-25-2 et seq., Indiana SARA Title III and 42 U.S.C. §§11001-11050, Federal SARA Title III. The reporting requirement states that if an owner or operator shall file on or before the 1<sup>st</sup> day of March an inventory form with the LEPC and the fire department having jurisdiction.

The inventory form shall contain all information that is designated as Tier II information by the Federal Act for each hazardous material for which the facility is required to file an inventory form. All inventory forms submitted to the LEPC shall contain the certification statement and be signed by as required by Section A, B, C, or D below.

- A. By a responsible corporate officer, if the entity submitting the inventory form is a corporation or similarly organized entity. For the purpose of this paragraph responsible corporate officer means:
  - 1. a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy-or decision-making function for the corporation, or;
  - 2. the manager of one or more manufacturing, production, or operation facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million, if authority to sign documents had been assigned or delegated to the manager in accordance with corporate procedures.
- B. By a general partner or proprietor if the person submitting the inventory form is a partnership or sole proprietorship respectively.
- C. The principal executive officer or director having responsibility for the overall operation of the facility if the person submitting the inventory form is a Federal, State, or local governmental entity, or their agents.
- D. By a duly authorized representative of the individual designated in paragraph A, B, or C of this section if:
  - 1. the authorization is made in writing by the individual designated in paragraph A, B, or C;
  - 2. the authorization specifies either an individual or a position having responsibility for the overall operation of the facility in which the Hazardous Material is found, such as the position of plant manager or equivalent responsibility, or having overall responsibility for the Hazardous Material matters for the company; and,
  - 3. the written authorization is submitted to the LEPC.
- E. If an authorization under paragraph D of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, or overall responsibility for the Hazardous Material matters for the company, a new authorization satisfying the requirement of paragraph D of this section must be submitted to the LEPC prior to or together with any inventory forms to be signed by an authorized representative.

The certification statement that is required by the previous sections may be contained in a letter sent together with the inventory form and any supporting documentation. The certification shall state the following:

I certify under the penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Upon written request by the LEPC or the fire department having jurisdiction, the owner or operator of a facility, subject to this section, shall within 30 days of receiving said written request, file a copy of the inventory form, with all Tier II information on all hazardous material, with the LEPC and the fire department having jurisdiction.

Any person that adds a hazardous material to a location, moves the location of hazardous material or substantially increases (an increase of 10% or more) the quantity of any hazardous material, shall amend the applicable inventory form and file the amended inventory form with the LEPC and the fire department having jurisdiction. The amended inventory form shall be filed within 30 days of the addition or increase of any hazardous material at the facility.

Any person that fails to comply with this section may be fined not more than Two Thousand Five Hundred Dollars and Zero Cents (\$2,500.00) for each violation. Each day of non-compliance for each applicable hazardous material shall be deemed a separate violation.

V. Hazardous Material Release. Any person, owner, operator or facility responsible for the release of hazardous material, or upon their property has a release of hazardous material shall:

1. Immediately notify 911 Communications of the hazardous material release;
2. Immediately take appropriate action to minimize the harm of a hazardous material release;
3. Cooperate with all responding agencies in any manner requested; and,
4. Allow any response agency immediate access to all areas where hazardous material are located, found or released. Any delays in allowing access to any response agency the affected area shall be deemed in violation of this ordinance.

Any person, owner or operator of facility that is responsible for a release of hazardous material or fails to comply with this section may be fined not more than Two Thousand Five Hundred Dollars and Zero Cents (\$2,500.00) for each violation. Each day of non-compliance for each applicable hazardous material shall be deemed a separate violation.

The person, owner, operator or facility responsible for a release of hazardous material shall:

1. Use a remediation company that is approved by the LEPC for all clean up of the release;
2. After remediation is complete, test all surrounding and known contaminated areas by a certified laboratory and/or certified testing company for any evidence of continued contamination;
3. Report all test results to the EMA D. and/or D.D., and,
4. Pay all cost associated with the testing, clean up and remediation of all contaminated areas.

Any response agencies that respond to a release of a hazardous material, shall notify 911 Communication. 911 Communications shall then notify the EMA D/D.D., who will then confer with the Incident Commander. Further actions will be at their discretion and in accordance with the county response plan and in accordance with Local, State, and Federal statutes, rules, regulations and laws.

Any response agency may, after attempting to contact the property owner, gain access to a location where a release of hazardous material has occurred by any means necessary. This includes locations on private or public property. If the property owner is not readily discernable, can not be contacted, has not been contacted or does not immediately grant access to the area of the hazardous material release, the response agency may gain access by any means necessary to the location of the hazardous material release.

At the time of a hazardous material release or any time thereafter, the enforcement officer shall have the authority to:

1. Issue an order that requires a responsible person, owner, operator or facility to cease and desist a release of hazardous material or failure to report hazardous material. The responsible person shall immediately halt any and all activities contributing to a release and shall immediately begin clean up procedures upon receipt of a cease and desist order, the responsible person may be ordered to appear in any court of general jurisdiction for failure to obey the order;
2. Petition any Delaware County court of general jurisdiction to issue an injunction enjoining the responsible person, owner, operator or facility from releasing hazardous material, to clean up any release, to pay for the clean up of any release, to pay for the fine for releasing hazardous material, to reimburse any agency who incurred costs responding to a hazardous material release or to report hazardous material, or;
3. In the event that a Person violates the Ordinance then the EMA D/D.D. or a law enforcement officer shall be permitted to pursue all legal remedies without exception or exclusion. The remedies for violation of the Ordinance shall be cumulative and not exclusive. Failure of the EMA D/D.D. or any law enforcement officer to exercise any remedy at any time shall not operate as a waiver of the right of to exercise any remedy for the same or any subsequent violation at any time thereafter.

VI. Penalty and Fine Allocation. Any fines, reimbursements or other money collected under Sections IV and V of this Ordinance shall be deposited into a non-reverting account maintained pursuant to this Ordinance. Any money in said non-reverting account shall only be distributed for the costs indicated below:

- A. Reimbursement to the Delaware County Emergency Management Agency for unreimbursed costs incurred by them in taking action for a hazardous material release that gave rise to the fine and/or costs.
- B. Reimbursement to the Delaware County Emergency Management Agency or any other unit of government for any costs, including attorney fees, incurred to maintain an action against a responsible party in connection for a hazardous material release that gave rise to the fine and/or costs.
- C. Reimbursement to a response agency for any cost associated with responding to and/or taking action in response to a hazardous material release.
- D. Replacement of any material supplied by, provided by, or used by a response agency in response to a release of hazardous material.

VII. Reimbursement: Reasonable and Necessary Expenses. The person, owner, operator or facility who is the responsible party for a hazardous material release shall reimburse any response agency that responded to said release and incurred costs associated with the release. Reimbursement is available under this section for all costs and expenses that are incurred by any response agency in taking any reasonable and necessary actions in responding to a release of a hazardous material.

A response agency shall submit a bill or invoice to the EMA D/D.D. for reimbursement of the costs associated to responding to a hazardous material release, within Twenty-one (21) days of the release. The EMA D/D.D. shall be responsible for the collection of the costs incurred by the response agency. If a responsible person, owner, operator

or facility pays the costs, the EMA D/D.D. shall deposit the money in the special Delaware County Emergency Management Agency non-reverting fund by this Ordinance. The Delaware County Emergency Management Agency shall than reimburse the response agency for the costs it incurred in responding tot a release of hazardous materials.

A response agency, that incurred costs under this Section, the EMA D/D.D. or Delaware County, when costs are unreimbursed for a period of ninety (90) days, may bring an action for reimbursement form the responsible person, owner, operator or facility in Delaware County court of general jurisdiction. The action to collect reimbursement may be filed in the same case as the citation issued by an enforcement officer. The response agency, Delaware County and the EMA D/D.D. shall be entitled to reasonable attorney fees incurred to collect reimbursement form the responsible party, any other cost associated with the collection of the recovery of the costs and interest at the statutory rate on the amounts spent by the response agency as a result of the hazardous material release.

Any money collected under this Section shall be deposited into a special Delaware County Emergency Management Agency non-reverting account maintained pursuant to this ordinance. Nay money in said non-reverting account shall only be distributed for the costs indicated below:

- A. Reimbursement to the Delaware County Emergency Management Agency for any costs incurred by them in responding to and/or taking action in response to hazardous material release.
- B. Reimbursement to a response agency for any costs associated with responding to and/or taking action in response to t hazardous material release.
- C. Reimbursement to the Delaware County Emergency Management Agency, LEPC CEC or response agency, including attorney fees, incurred to maintain an action against a responsible person in connection for a hazardous material release that caused the cost to be incurred.
- D. Replacement of any material supplied by, provided by, or used by a response agency in response to a release of hazardous material.

If a response agency brings its own action for reimbursement, said response agency shall be entitled to keep any and all money collected as a result of the action for reimbursement.

VIII. Non Reverting Fund. The Delaware County Auditor shall create a non-reverting fund. The fund shall be used for the sole purposes as outlined in this ordinance. The non-reverting fund shall be created with the exclusive control of the LEPC.

IX. Fee Schedule. The Delaware County Emergency Management Agency may establish a fee schedule to be used in the assessment of costs associated with the clean up of a hazardous material release pursuant to the approval of the Delaware County Board of Commissioners. The Delaware County Emergency Management Agency may update and change the fee schedule as needed, pursuant to the approval of the Delaware County Board of Commissioners, by publishing the updated fee schedule in the newspaper with the largest circulation within Delaware County. Said fee schedule shall be effective 10 days after publication.

Response agencies may establish their own fee schedule for the costs associated with the clean up and response to a hazardous material release. Said fees and collection costs may be charged to a responsible person as indicated in Section VIII of this ordinance.

X. Effective Date. This ordinance shall take effect and be in force ten (10) days after publication.

XI. Codification. This ordinance shall be codified in the Delaware Code of Ordinance as \_\_\_\_\_.  
**(Ordinance No. 2005-010, Commissioners, 6/6/05)**

# CHAPTER 15

## WEIGHTS AND MEASURES

### Section 1. Definitions.

County Inspector/Deputy Inspector shall be the person or persons duly authorized to inspect weighing or measuring instruments in Delaware County.

Instrument shall be any scale, weight, beam, measure or weighing or measuring device of every kind or instrument, or part thereof, subject to regulation by the Division of Weights and Measures of the State Department of Health.

### Section 2. Compliance with State Standards Required. No person engaged in the business of selling, buying, exchanging goods or commodities by weight, measurement or volume shall use an instrument in his business operations for such purpose if such instrument does not meet the standards established by the State of Indiana or the Division of Weights and Measures of the State Department of Health. A person who violates this section shall be fined One Hundred Dollars (\$100.00) for each violation.

### Section 3. Inspection of Mobile Instruments.

(A). If an instrument is mobile or otherwise operated at more than one (1) location and is not made available to be inspected by the County Inspector at a permanent business location during regular business hours of the County, the County Inspector shall have the authority to order the owner or operator to present the instrument for inspection by the County Inspector at the time and location designated by the County Inspector.

(B). A person who fails to comply with such orders of the County Inspector shall be fined One Hundred Dollars (\$100.00) for each violation.

### Section 4. Instrument Repair and Installation. All owners or operators of instruments shall inform the County Inspector that an instrument had been repaired or installed and provide the County Inspector with the location of said instrument prior to that instrument being placed into service. The County Inspector shall thereafter certify its accuracy and affix a security seal and/or annual approval seal. A person who violates this section shall be fined One Hundred Dollars (\$100.00) for each such instrument placed into service without such certification and seal.

### Section 5. Numbering of Instruments. Any person who owns or operates more than one (1) instrument of a particular type at a business location shall number each instrument in such a manner that each instrument shall be readily distinguishable from all other such instruments of that type present at that location. A person who violates this section shall be fined Fifty Dollars (\$50.00).

### Section 6. Security Seals.

(A). When a weighing or measuring device is security sealed by a County Inspector, such security seal shall not be cut, severed or removed without permission of a County Inspector. Any weighing or measuring device designed to be security sealed should be sealed by a County Inspector.



- (B). Repairmen whose equipment is certified under Section 510-4 may remove a security seal for the purpose of making repairs without prior approval of the County Inspector. Repairmen who cut, sever or remove a security seal shall notify the County Inspector within **24 hours**.
- (C). If the instrument bears an annual approval seal on its exterior, such approval seal shall not be altered, defaced or removed.
- (D). No security seal or annual approval seal shall be valid in the County except a seal authorized by the County Inspector.
- (E). No weighing or measuring device shall be used in the business of selling, buying, bartering or exchanging of goods or commodities if the security seal has been cut, severed or removed until it is resealed by the County Inspector or permission is given by the County Inspector if immediate resealing is impractical.
- (F). A person who violates this section shall be fined Two Hundred Dollars (\$200.00).

Section 7. Commodity Regulations.

- (A). All persons engaged in the selling, buying, bartering or exchanging goods or commodities must sell, buy, barter or exchange the goods or commodities using the legal method of selling, buying, bartering, or exchanging such goods or commodities as required by the National Conference on Weights and Measures Sale of Commodities Regulation.
- (B). All commodities and goods offered for sale in package or containers shall meet all labeling requirements of the National Conference on Weights and Measures Packaging and Labeling Regulations. A manufacturer, wholesale distributor or retail seller who violates this section may be fined as follows for the number of units at each location where they are available for purchase;
  - 1. (1to 25 units; \$100.00)
  - 2. (26 to 50 units, \$200.00)
  - 3. (51 to 75 units, \$300.00)
  - 4. (76 to 100 units, \$400.00)
  - 5. (101 to 200 units, \$800.00)
  - 6. (201 or more units, \$1,000.00)
- (C). All commodities, when required to be sold by weight, must be sold by net weight and all commodities required to be sold by measure or count shall be accurate as required.
- (D). The manufacturer, wholesale distributor or retail seller of a packaged commodity which is less than the weight, measure or count designated on its package may be fined as follows for the number of such units at each location where they are available for purchase;
  - 1. (1 to 25 units, \$100.00)
  - 2. (26 to 50 units, \$200.00)
  - 3. (51 to 75 units, \$300.00)
  - 4. (76 to 100 units, \$400.00)
  - 5. (101 to 200 units, \$800.00)
  - 6. (201 or more units, \$1,000.00)

- Section 8. User Fee for Courtesy Services. The County Inspector may collect a fee which shall not exceed Forty Dollars (\$40.00) for inspecting or calibrating any scale or measuring device which is not used in the business of selling, buying or exchanging goods or commodities, and is not subject to regulation by the Division of Weights and Measures of the State Board of Health.
- Section 9. Enforcement.
- (A). The County Inspector may issue to the violator a citation which shall be written on a citation ticket and kept on file in the Weights and Measures Office.
  - (B). If the violator does not pay the fine and/or correct the problem within ten (10) days, the matter shall be referred to the County Attorney for prosecution. If the enforcement becomes necessary, it shall include costs incurred and attorney fees.
  - (C). The fine shall be doubled if the person has prior violation of this chapter within the last one (1) year.
  - (D). Each day the violation continues constitutes a separate violation.
  - (E). Any fees collected under this Ordinance shall be deposited in a special account in which it will then be appropriated for expenses for the operation of the Delaware County Weights and Measures Department.
- Section 10. Repealer. All Ordinances or parts of ordinances in conflict with this provision of this ordinance are hereby repealed.
- Section 11. Severability Clause. Should any section, paragraph, clause or phrase of this ordinance be declared unconstitutional or invalid, the remainder of said ordinance shall continue in full force and effect. **(Amended Ordinance No. 2006-004A, Commissioners, 10/16/06, Ordinance No.2005-004, Commissioners, 2/23)**

## CHAPTER 16

### **BED AND BREAKFAST AND/OR RETAIL FOOD ESTABLISHMENT**

The purpose of this ordinance is to safeguard public health and assure that food provided to consumers is safe, unadulterated, and honestly presented. It establishes definitions; sets standards for management and personnel; food operations, and equipment and facilities; and provides for Retail Food Establishment and/or Bed and Breakfast Establishment plan review, permits, inspections, and employee restriction.

This ordinance defines Bed and Breakfast Establishment, Catering, Conflict of Interest, Commissary, Delaware County Health Department, Event Sponsor, Hazard Analysis Critical Control Point, Health Officer, Hearing Officer, Imminent Health Hazard, Inspection Report, Mobile Food Establishment, Operator, Order, Permit, Person, Public Official, Retail Food Establishment, Temporary Food Establishment, Vending Machine, and Vending Machine Location; requires construction and/or alteration plans; requires a Permit and payment of Permit fees for the operation of Bed and Breakfast Establishment, Retail Food Establishment, Mobile Food Establishment, and/or Temporary Food Establishment; prohibits sale of adulterated, unwholesome, or misbranded food; regulates inspection of such establishments; provides for compliance and the enforcement of this ordinance; provides penalties for violations of said ordinance; and incorporates by reference Indiana Code (IC) 16-42-1, IC 16-42-2, IC 16-42-5, Indiana State Department of Health Rule(s) 410 Indiana Administrative Code (IAC) 7-15.5, 410 IAC 7-21-47, 410 IAC 7-22 and 410 IAC 7-23.

The Delaware County Health Department is hereby authorized to issue Bed and Breakfast Establishment, Retail Food Establishment, Mobile Food Establishment, and/or Temporary Food Establishment Permit, collect Permit fees and penalties, perform inspections, hold hearings, Order or otherwise authorized to perform all actions necessary for the administration and enforcement of this ordinance.

Be it ordained by the Board of Commissioners of Delaware County, State of Indiana, that:

#### **Section A: Definitions**

Bed and Breakfast Establishment (as defined in 410 IAC 5-15.5) means an Operator occupied residence that:

1. Provides sleeping accommodations to the public for a fee;
2. Has no more than fourteen (14) guest rooms;
3. Provides breakfast to its guests as part of their fee; and
4. Provides sleeping accommodations for no more than thirty (30) consecutive days to a particular guest.

Catering means the preparation of food in an approved retail food establishment and may include the transportation of such food for service and consumption at some other site.

Conflict of Interest means a situation in which the private financial interest of a Public Official, Public Official's spouse, ex-spouse, sibling, in-laws, children and/or un-emancipated child, may not influence the Public Official's judgment in the performance of a public duty. The Public Official(s) of Delaware County shall follow the code of ethics that was established for Public Officials in Delaware County Ordinance #2003-023, published in the Personnel Policy Handbook.

Commissary means a registered catering establishment, restaurant, or any food establishment in which food, food containers or food supplies are kept, handled, prepared, packaged or stored from which meals are catered and mobile retail food establishments or pushcart are serviced.

Delaware County Health Department means the local Health Department in Delaware County or authorized representative having jurisdiction over Bed and Breakfast Establishment, Retail Food Establishment, Mobile Food Establishment, and/or Temporary Food Establishment.

Event Sponsor means a person, group, or organization that plans, coordinates, or guarantees an event, circumstance, or an occasion for the promotion, production, or sponsorship of an event and has the responsibility to direct the set up and management of any Mobile Food Establishment or Temporary Food Establishment.

Hazard Analysis Critical Control Point (HACCP) Plan means a written document that delineates the formal procedures for following the Hazard Analysis Critical Control Point principals developed by the National Advisory Committee on microbiological Criteria for Foods.

Health Officer means the Health Officer having jurisdiction in Delaware County or his/her duly authorized representative.

Hearing Officer means the President of the Board of Health, or any other Board member that the President of the Board of Health deems appropriate.

Imminent Health Hazard means any circumstance or situation, which in the opinion of the Health Officer or his/her duly authorized representative presents a serious health risk to the public.

Inspection Report means the document prepared by the Delaware County Health Department that is completed as a result of the inspection and provided to the Operator.

Mobile Food Establishment means a retail food establishment that is wheeled, on skids, mounted on a vehicle, a marine vessel or otherwise readily moveable, such as a pushcart or trailer.

Operator means the person who has a primary oversight responsibility for operations of the establishment through ownership, or lease or contractual agreement, and who is responsible for the storage, preparation, display, transportation, or serving of food to the public.

Order (derived from IC 4-21.5-1-9) means a Delaware County Health Department action of particular applicability that determines the legal rights, duties, privileges, immunities, or other legal interest of One (1) or more specific Persons. The term includes a permit.

Permit means the document issued by the Delaware County Health Department that authorizes a Person to operate a Bed and Breakfast Establishment, Retail Food Establishment, Mobile Food Establishment, and/or Temporary Food Establishment.

Person means an association; a corporation; an individual; partnership; or other legal entity, government subdivision or agency.

Public Official Means any Official of Delaware County, State of Indiana.

Retail Food Establishment (as derived from 410 IAC 7-20) means an operation that:

1. Stores, prepares, packages, serves, vends, or otherwise provides food for human consumption, such as:

- (A) a restaurant;
- (B) satellite or catered feeding location;
- (C) a catering operation if the operation provides food directly to a consumer or to a conveyance used to transport people;
- (D) a market;
- (E) a grocery store;
- (F) a convenience store;
- (G) a vending location;
- (H) a conveyance used to transport people;
- (I) an institute; or
- (J) a food bank;
- (K) a commissary;
- (L) a cottage industry;
- (M) a hospice facility as defined in IC 16-25-11;
- (N) a health care facility as defined in IC 16-21-2;
- (O) a health care facility as defined in IC 16-18-2;
- (P) a childcare facility as defined in IC 12-12-5, such as:
  - (i) licensed child care centers licensed under 470 IAC 3-4.7
  - (ii) licensed child care institutions licensed under 470 IAC 3-11, 470 IAC 3-12, and 410 IAC 3-13; and
  - (iii) registered child care ministries registered under 470 IAC 3-4.5; and
- (Q) an assisted living facility as defined in IC 12-10-15.

2. Relinquishes possession of food to a consumer directly or indirectly through a delivery service, such as home delivery of grocery orders or restaurant takeout orders, or delivery service that is provided by common carriers.

The term includes the following:

- 1. an element of the operation, such as a transportation vehicle or a central preparation facility that supplies a vending location or satellite feeding location unless the vending or feeding location is permitted by the regulatory authority.
- 2. an operation that is conducted in a mobile, stationary, temporary, or permanent facility or location, where consumption is on or off the premises, and regardless of whether there is a charge for the food.

Temporary Food Establishment means a Retail Food Establishment and/or Mobile Food Establishment that operates for a period of no more than fourteen (14) consecutive days in conjunction with a single event or celebration.

The term excludes the following from the fourteen (14) day requirement:

- 1. has a servicing area as an operating base location to which a mobile retail food establishment or transportation vehicle returns at least once each day for such functions as:
  - (A) vehicle and equipment cleaning;

- (B) discharging liquid or solid wastes;
- (C) refilling water tanks, ice bins, recharging of refrigeration unit(s); and
- (D) boarding food.

Vending Machine means a self-service device that, upon activation, such as through the insertion of a coin, paper currency, token, card, key, or by optional manual operation, dispenses unit servings of food in bulk or in packages without the necessity of replenishing the device between each vending operation.

Vending Machine Location means the room, enclosure, space, or area where one (1) or more vending machines are installed and operated and includes the storage areas and areas on the premises that are used to service and maintain the vending machines.

## **Section B: Permits**

General: It shall be unlawful for any Person to operate any Bed and Breakfast Establishment, Retail Food Establishment, Mobile Food Establishment and/or Temporary Food Establishment in Delaware County, without first obtaining a valid Permit from the Health Officer. The valid Permit must be posted in a conspicuous location in the Bed and Breakfast Establishment, Retail Food Establishment, Mobile Food Establishment and/or Temporary Food Establishment.

Only persons who comply with this applicable requirements of 410 IAC 7-15.5 and/or 410 IAC 7-20 will be entitled to obtain and keep a Permit.

A separate Permit shall be required for each Bed and Breakfast Establishment, Retail Food Establishment, Mobile Food Establishment and/or Temporary Food Establishment operated or to be operated by any Person.

A Permit issued under this ordinance is **non-transferable**.

A Bed and Breakfast Establishment, Retail Food Establishment, Mobile Food Establishment and/or Temporary Food Establishment Permitted by the Delaware County Health Department shall be considered registered as required in IC 16-42-1-6.

Permit Period: A Permit for a Bed and Breakfast Establishment, Retail Food Establishment, and/or Mobile Food Establishment shall be issued for a term beginning January 1, and/or before commencement of operation, and expire December 31, of the same year and shall be applied for by the Person and/or Operator annually.

A Permit for a Temporary Food Establishment shall be for the same term of fourteen (14) days.

Permit Content: Any Permit issued by the Health Officer shall contain

- (1) the name and address of the Person and/or owner to whom the Permit is granted;
- (2) the location of the establishment for which the Permit is issued;
- (3) the issuance and expiration date(s); and
- (4) other such pertinent data as may be required by the Delaware County Health Officer.

Application: A person desiring to operate a Bed and Breakfast Establishment, Retail Food Establishment, Mobile Food Establishment and/or Temporary Food Establishment shall submit to the

Delaware County Health Department a written application for a Permit on a form provided by the Delaware County Health Department.

Content of the Application: The application shall include:

- (1) the name, mailing address, telephone number, and original signature of the Person and/or Operator applying for the Permit and the name, mailing address, and location of the Bed and Breakfast Establishment, Retail Food Establishment, Mobile Food Establishment and/or Temporary Food Establishment.
- (2) information specifying whether the Bed and Breakfast Establishment, Retail Food Establishment, Mobile Food Establishment, and/or Temporary Food Establishment owned by an association, corporation, individual, partnership, or other legal entity.
- (3) a statement specifying whether the Bed and Breakfast Establishment, Retail Food Establishment, Mobile Food Establishment, and/or Temporary Food Establishment:
  - (A) if not permanent, is mobile and/or temporary, and
  - (B) the operation includes one (1) or more of the following:
    - (1) prepares, offers for sale, or serves potentially hazardous food:
      - (a) only to order upon a consumer's request;
      - (b) in advance in quantities based on projection consumer demand and discard food that is not sold or served at an approved frequency; or
      - (c) using time, rather than temperature, as the public health control as specified under 410 IAC 7-20 (MUST HAVE AN APPROVED WRITTEN PROCEDURE ON FILE WITH THE DELAWRE COUNTY HEALTH DEPARTMENT TO USE TIME AS A CONTROL METHOD).
      - (d) prepares acidified foods as defined in 410 IAC 7-21-3.
    - (2) prepares potentially hazardous food in advance using a food preparation method that involves two or more steps which may include combining potentially hazardous ingredients; cooking; cooling; reheating; hot or cold holding; freezing; or thawing;
    - (3) prepares food as specified under item (3)(B)(2) of this section for delivery to and consumption at a location off the premises of the Bed and Breakfast Establishment where it is prepared;
    - (4) prepares food as specified under item (3)(B)(2) of this section for service to a highly susceptible population, as defined in 410 IAC 7-20; (MUST HAV AN APPROVED PLACARD, NOTICE OR LETTER ON FILE WITH THE DELAWARE COUNTY HEALTH DEPARTMENT FOR USE IN THE ESTABLISHMENT)
    - (5) prepares only food that is not potentially hazardous; or

- (6) does not prepare, but offers for sale only prepackaged food that is not potentially hazardous.
- (4) the name, title, address, and telephone number of the Operator directly responsible for the Bed and Breakfast Establishment, Retail Food Establishment, Mobile Food Establishment and/or Temporary Food Establishment.
- (5) the name, title, address, and telephone number of the Person who functions as the immediate supervisor of the Person specified under subdivision (4) of this section such as the zone, district, or regional supervisor.
- (6) the names, titles, and addresses of:
  - (A) the Persons compromising the legal ownership as specified under subdivision (2) of this section including the owners and Operators; and
  - (B) the local resident agent if one required based on the type of legal ownership.
- (7) a statement signed by the applicant that:
  - (A) attests to the accuracy of the information provided in the application, and
  - (B) affirms that the application will:
    - (1) comply with the ordinance, and
    - (2) allow the Delaware County Health Department access to the Bed and Breakfast Establishment, Retail Establishment, Mobile Food Establishment, and/or Temporary Food Establishment and records as specified in 410 IAC 7-15.5 and 410 IAC 7-20.
- (8) Vending Machine Company and/or Vending Service must provide the following information:
  - (A) the name of the company, business, establishment, and/or other entity where the vending service provides vending machines(s);
  - (B) the location or address of the company, business, establishment, and/or other entity where the vending service provides vending machine(s);
  - (C) the type of vending machine(s) at the stated location, such as:
    - (1) hot and cold holding of potentially hazardous food;
    - (2) hot and cold holding of liquid food products;
  - (D) the total number(s) of vending machine(s) at the stated location, such as:
    - (1) hot or cold holding of potentially hazardous food;
    - (2) hot or cold holding of liquid food products;



- (E) the day(s) of the week that the vending machine(s) and vending machine location(s) are serviced by the Vending company;
- (F) the total number of vehicles that service the vending machine location(s) in Delaware County.

(9) other information required by the Delaware County Health Department:

Qualification: To qualify for a Permit, an application must:

- (1) be an owner and/or Operator of the Bed and Breakfast Establishment, Retail Food Establishment, Mobile Food Establishment and/or Temporary Food Establishment;
- (2) comply with the requirements of this ordinance;
- (3) agree to allow access to the Bed and Breakfast Establishment, Retail Food Establishment, Mobile Food Establishment, and/or Temporary Food Establishment and provide required information; and
- (4) pay the applicable Permit fees at the time the application is submitted.

Plans Requirements: The owner or other authorized agent of an existing or proposed Bed and Breakfast Establishment and/or Retail Food Establishment shall submit to the Delaware County Health Department properly prepared plans and specifications for review and approval before:

- (1) the construction of a Bed and Breakfast Establishment and/or Retail Food Establishment;
- (2) the conversion of an existing structure for use as a Bed and Breakfast Establishment and/or Retail Food Establishment; or
- (3) the remodeling of a Bed and Breakfast Establishment and/or Retail Food Establishment; or
- (4) a change of type of food operation; and
- (5) if the Delaware County Health Department determines that the plans and specifications are necessary to ensure compliance with this section;
- (6) the plans and specifications for a Bed and Breakfast Establishment and/or Retail Food Establishment shall include:
  - (A) the layout of the building and equipment;
  - (B) the type of operation;
  - (C) the type of food preparation (as specified in Appendix B of the published version of 410 IAC 7-20); and
  - (D) the menu.
- (7) the plans and specifications shall be deemed satisfactory and approved by the Delaware County Health Department before a Permit can be issued.

- (8) a pre-operational inspection shows that the Bed and Breakfast Establishment and/or Retail Food Establishment is built or remodeled in accordance with the approved plans and specifications and that the establishment is in compliance with this ordinance, 410 IAC 7-20 and/or 410 7-15.5.

Change of Ownership: The Delaware County Health Department may renew a Permit for an existing Bed and Breakfast Establishment, and/or Retail Food Establishment or may issue a Permit to a new owner of an existing Bed and Breakfast Establishment and/or Retail Food Establishment after properly completed application is submitted, reviewed, and approved, the fees are paid, and an inspection shows that the establishment is in compliance with this ordinance.

Responsibilities of the Operator: Upon acceptance of the Permit issued by the Delaware County Health Department, the Operator in order to retain the Permit shall:

- (1) comply with the provisions of this ordinance and all laws and rules adopted by reference herein and the conditions of any variances granted by the Indiana State Department of Health;
- (2) immediately discontinue affected operations and notify the Delaware County Health Department if an Imminent Health Hazard may exist;
- (3) immediately discontinue the sale of food that is unwholesome, adulterated or misbranded as provided in the Indiana Food, Drug, and Cosmetic Act, IC 16-1-32. Samples of food may be taken and examined by the Health Officer or his/her duly authorized representative as often as may be necessary to determine freedom from contamination, adulteration, or misbranding. The Health Officer or his/her duly authorized representative may, on written notice to the owner or operator, impound and forbid the sale of any food which is unwholesome, adulterated, or misbranded, or which he has probable cause to believe is unfit for human consumption, unwholesome, adulterated, or misbranded; provided that in the case of misbranding which can be corrected by proper labeling, such food may be released to the operator for correct labeling under the supervision of the Health Officer or his/her duly authorized representative. The Health Officer or his/her duly authorized representative may also cause to be removed or destroyed any dairy product, meat product, seafood, poultry, poultry product, confectionery, bakery product, vegetable, fruit, or other perishable item;
- (4) allow representatives of the Delaware County Health Department access to the Bed and Breakfast Establishment and/or Retail Food Establishment at all reasonable times;
- (5) comply with directives of the Delaware County Health Department including time frames for corrective actions specified in Inspection Reports, notices, Orders, warnings, and other directives issued by the Delaware County Health Department in regard to the Operator's Bed and Breakfast Establishment and/or Retail Food Establishment or in response to community emergencies;
- (6) accepts notices issued and served by the Delaware County Health Department; and
- (7) be subject to the administrative, civil, injunctive, and criminal remedies authorized in law for failure to comply with this ordinance or a directive of the Delaware County Health Department;
- (8) post the Permit in a location in the Bed and Breakfast Establishment and/or Retail Food Establishment that is conspicuous to consumers.

## **Section C: Permit Fees**

It shall be unlawful for any Person to operate a Bed and Breakfast Establishment, Retail Food Establishment, Mobile Food Establishment and/or Temporary Food Establishment in Delaware County, who has not paid the Permit fee required to be paid for the operation of such establishment.

The fee shall be paid for a term beginning January 1, and/or before commencement of operation and expiring December 31, of the same year and shall be applied for by the Person and/or Operator annually.

Permit fees for the issuance of a Permit under this Ordinance to a Bed and Breakfast Establishment, a Retail Food Establishment, Mobile Food Establishment, and/or Temporary Food Establishment shall be set by the Delaware County Health Department, as provided by the Statutes of the State of Indiana. (See IC 16-21-1-27)

A receipt for the payment of such fee shall be provided by the Delaware County Health Department.

The payment of such fees shall be required for each Bed and Breakfast Establishment, Retail Food Establishment, Mobile Food Establishment and/or Temporary Food Establishment operated or to be operated by any Person.

### **Permit Fees:**

#### **The annual permit fee for food service establishments shall be as follows:**

<b><u>Square Feet of establishment:</u></b>	<b><u>Annual permit fee</u></b>
<b>Less than 1000 sq. ft</b>	<b>\$55.00</b>
<b>1000 sq. ft. to 1999 sq. ft.</b>	<b>\$80.00</b>
<b>2000 sq. ft. to 2999 sq. ft.</b>	<b>\$95.00</b>
<b>3000 sq. ft. to 4999 sq. ft.</b>	<b>\$110.00</b>
<b>5000 sq. ft. and more</b>	<b>\$120.00</b>

Permit fees for temporary food service establishments shall be \$10.00 per event.

Permit fees for vending machines shall be \$5.00 for each machine.

**Permits issued after July 1.** Any new Bed and Breakfast Establishment, Retail Food Establishment, and/or Mobile Food Establishment food service facility permit (except temporary) applied for and issued after July 1 of any year shall have the fee reduced to one half (1/2) the total annual permit fee for the year of issuance only.

**Exemption from Permit Fees:** No fee shall be required to be paid for a Retail Food Establishment Permit operated by religious, educational, charitable organization, or person's operating vending machines that dispense only prepackaged, non-perishable, and non-potentially hazardous food(s).

An organization that is exempt from the Indiana Gross Retail Tax under Indiana Code IC 6-2.5-5-21(b)(1)(B), IC 6-2.5-5-21(b)(1)(C), or IC 6-2.5-5-21(b)(1)(D) and offers food for sale to the final consumer at an event held for the benefit of the organization is exempt from the payment of fees. This exemption only applies to organization(s) that meet the criteria addressed in Indiana Code 16-42-5-4.

- (1) members of the organization prepare the food that will be sold;
- (2) events conducted by the organization under this section take place for no more than thirty (30) days in any calendar year; and
- (3) the name of each member who has prepared a food item is attached to the container in which the food item has been placed.

This section does not prohibit an exempted organization from waiving the exemption and applying for a permit under this section. A signed waiver form provided by Delaware County Health Department must be filled out and be on file.

The exemption does not prevent a local Health Department Inspector from addressing an imminent health risk or responding to a complaint.

The Health Officer shall be provided, upon request, proof of an organization's tax exemption.

**Late Fees:** A late fee for failure to pay the permit fee prior to the operation of the Bed and Breakfast Establishment and/or Retail Food Establishment or the late fee for failure to renew a permit after the expiration of the permit to operate Bed and Breakfast Establishment and/or Retail Food Establishment shall be assessed by the Delaware County Health Department. The late fee shall consist of 25% of the permit fee. The application for the annual renewal of a food service permit will be mailed to each existing establishment prior to December 31<sup>st</sup> of each year. The completed application along with the appropriate fee must be returned to the Delaware County Health Department postmarked by January 31<sup>st</sup> of the new year permitted. A late fee of 25% of the permit fee will be established for applications not postmarked by January 31<sup>st</sup> of the permit year.

**The payment of fees under this ordinance is non transferable or refundable.**

#### **Section D: Inspection**

**General:** Each Retail Food Establishment, Bed and Breakfast Food Establishment, Mobile Food Establishment, and/or Temporary Food Establishment permit holder shall assist and cooperate with the inspection of their facility by the Health Officer or his/her duly authorized representative.

Failure to cooperate and/or assist in the inspection of the facility will result in the immediate suspension and/or revocation of the Retail Food Establishment, Bed and Breakfast Food Establishment and/or Temporary Food Establishment permit.

Each Bed and Breakfast Establishment, Retail Food Establishment, Mobile Food Establishment, and/or Temporary food Establishment permit holder shall permit the Health Officer or his/her duly authorized representative to inspect, collect evidence and/or exhibits, and to copy any or all records relative to the enforcement of this ordinance.

The Delaware County Health Department shall inspect a Bed and Breakfast Establishment and/or Retail Food Establishment at least once every 6 months.

The Delaware County Health Department may increase the interval between inspections beyond six (6) months if:

- (1) the Bed and Breakfast Establishment and/or Retail Food Establishment is fully operating under an approved and validated Analysis Critical Control Point (HACCP) plan(s);
- (2) the Bed and Breakfast Establishment and/or Retail Food Establishment is assigned a less frequent inspection based on a written risk-based inspection schedule that is being uniformly applied throughout the jurisdiction;
- (3) the Delaware County Health Department may contact the Operator to determine that the nature of the food has not changed;
- (4) the Delaware County Health Department may inspect the establishment if the department has received a complaint;
- (5) the Delaware County Health Department may inspect the establishment if the department has reason to believe the establishment is not in compliance with any order(s) that was issued.

**Mobile Food Establishment and/or Temporary Food Establishment:** The Delaware County Health Department shall periodically inspect throughout its Permit period a Mobile Food Establishment, and/or Temporary Food Establishment that prepares, sells, or serves unpackaged potentially hazardous food may inspect a Mobile Food Establishment, and/or Temporary Food Establishment that prepares, sells or serves unpackaged, non-potentially hazardous food that:

- (1) has improvised rather than permanent facilities or equipment for accomplishing functions such as hand washing, food preparation and protection, food temperature control, ware washing, providing drinking water, waste retention and disposal, and insect and rodent control; or
- (2) has untrained food employees.

**Performance and Risk Based Inspection:** Within the parameters specified in the above Inspection Subsection(s) of this Ordinance, the Delaware County Health Department shall prioritize, and conduct more frequent inspections based upon its assessment of a Bed and Breakfast Establishment and/or Retail Food Establishment's history of compliance with this ordinance and the Bed and Breakfast Establishment and/or Retail Food Establishment's potential as a vector of food borne illness by evaluating:

- (1) past performance, for violations of 410 IAC 7-1535, 410 IAC 7-20 and/or 410 IAC 7-22 and/or HACCP plan requirements that are critical or non-critical;
- (2) past performances, for numerous or repeat violations of 410 IAC 7-15.5 and/or 410 IAC 7-20 and/or HACCP plan requirements that are non-critical;
- (3) past performance, for complaints investigated and found to be valid;
- (4) the hazards associated with the particular foods that are prepared, stored, or served;

- (5) the type of operation including the method and extent of food storage, preparation, and service;
- (6) the number of people served; and
- (7) whether the population served is a highly susceptible population.

**Access Allowed at Reasonable Times After Due Notice:** After the Delaware County Health Department presents official credentials and provides notice of the purpose of and the intent to conduct an inspections, the Operator shall allow the Delaware County Health Department to determine if the Bed and Breakfast Establishment, Retail Food Establishment, Mobile Food Establishment, and/or Temporary Food Establishment is in compliance with this ordinance by allowing access to the establishment, allowing inspection, and providing information and records specified in this ordinance. The Delaware County Health Department is entitled the information and records according to IC 16-42-1-13 and IC 16-42-5-23, during the Bed and Breakfast Establishment and/or Retail Food Establishment's hours of operation and other reasonable times.

Access is a condition of the acceptance and retention of a food establishment Permit to operate.

If access is denied, and Order issued by the appropriate authority allowing access may be obtained according to law. (See IC 16-20-1-26)

**Inspection Reports:** At the conclusion of the inspection, the Delaware County Health Department shall provide a copy of the completed Inspection Report and the notice to correct violations to the Operator or to the Person-in-charge, as required under IC 16-20-8-5.

**Timely Correction of Critical Violations:** Except as specified in the next paragraph, an Operator shall at the time of inspection correct a critical violation of 410 IAC 7-15.5, 410 IAC 7-20 and/or 410 IAC 7-22 and implement corrective actions for a HACCP plan provision that is not in compliance with its critical limit.

Considering the nature of the potential hazard involved and the complexity of the corrective action needed, The Delaware County Health Department may agree to or specify a longer time frame after the inspection, the Operator to correct critical code violations or HACCP plan deviations.

After receiving notification that the Operator has corrected a critical violation or HACCP plan deviation, or at the end of the specified period of time, the Delaware County Health Department shall verify correction of the violation, document the information on an Inspection Report, and enter the report in the Delaware County Heath Department's records.

**Refusal to Sign Acknowledgement:** Refusal to sign an acknowledgement of receipt will not affect the Operator's obligation to correct the violations noted in the Inspection Report with in the time frames specified.

A refusal to sign an acknowledgement of receipt is noted in the Inspection Report and conveyed to the Delaware County Health Department historical record for the Bed and Breakfast Establishment, Retail Food Establishment, Mobile Food Establishment and/or Temporary Food Establishment.

The Operator is not necessarily in agreement with the findings of the Delaware County Health Department inspection by acknowledgement of receipt.

**Public Information:** Except as specified in section 176 (Trade Secrets) of 410 IAC 7-20, the Delaware County Health Department shall treat the Inspection Report as a public document and shall make it available for disclosure to a Person who requests it as provided in law. (See IC 16-20-8-6)

## **Section E: Compliance and Enforcement**

**Application Denial:** If an application for a plan review and/or Permit to operate a Bed and Breakfast Establishment, Retail Food Establishment, Mobile Food Establishment, and/or Temporary Food Establishment, is denied, the Delaware County Health Department shall provide the applicant with the notice that includes:

- (1) the specific reasons and rule citations for the application and/or Permit denial;
- (2) the actions, if any, that the applicant must take to qualify for the application and/or Permit; and
- (3) advisement of the applicant's rights of appeal and the process and time frames for appeal that are provided in law.

**Immediate Permit Suspension:** The Health Officer may order the Immediate Suspension of any permit without a hearing if the Health Officer determined through inspection, or examination of employee(s), food(s), records, or other means as specified in this ordinance, that an Imminent Health Hazard to the Public exists and that the suspension is in the immediate best interest of the public due to an Imminent Health Hazard. Upon the Immediate Suspension of any Bed and Breakfast Establishment, Retail Food Establishment, Mobile Food Establishment and/or Temporary Food Establishment permit, the owner and/or proprietor shall immediately cease all retail operations until such time as the immediate suspension is vacated by the Health Officer or a court of competent jurisdiction.

Any person affected by an Immediate Suspension order without a hearing may challenge said order of the Health Officer in a court of competent jurisdiction within seventy-two (72) hours after the order was made. Failure to seek judicial relief within seventy-two (72) hours shall waive the right of the permit holder to obtain immediate judicial review of the Immediate Suspension order.

Any other suspension order issued by the Health Officer (except an Immediate Suspension order) is subject to the Appeals section listed in Section G of this Ordinance.

**Permit Suspension:** The Health Officer may suspend a Permit to operate a Bed and Breakfast Establishment, Retail Food Establishment, Mobile Food Establishment and/or Temporary Food Establishment with a hearing before the Health Officer if it determines through inspection, or examination of employee(s), food(s), records, or other means as specified in this ordinance, that an Imminent Health Hazard to the Public exist.

**Revocation or Permit:** The Health Officer may revoke a Bed and Breakfast Establishment, Retail Food Establishment, Mobile Food Establishment, and/or Temporary Food Establishment Permit upon a hearing. The Health Officer shall preside at the hearing. The permit holder shall be allowed an opportunity to present witness, cross-examine witnesses and be represented by counsel at the hearing. Hearings may not be continued except for good cause as determined by the Health Officer.

The Health Officer shall provide notice to the permit holder of the intent to revoke their permit no less than twenty (20) days before the date of revocation. The permit holder may request a hearing in writing

concerning the revocation no later than ten (10) days from the date of intent to revoke the permit. Failure to make a written request for a hearing shall waive the right to a hearing before the Health Officer.

The decision of the Health Officer is subject to the Appeals section in Section G of this Ordinance.

**Request for Re-instatement:** Any owner or Operator of a Bed and Breakfast Establishment, mobile Food Establishment, Mobile Food Establishment and/or Temporary Food Establishment whose permit has been suspended or revoked may make an application to the Health Officer for reinstatement of this permit. An Owner or Operator of a Bed and Breakfast Establishment, Retail Food Establishment, Mobile Food Establishment and/or Temporary Food Establishment may not request reinstatement more frequently than twice a year.

**Ceasing Operation and Contacting the Delaware County Health Department:** An Operator of a Bed and Breakfast Establishment, Retail Food Establishment, Mobile Food Establishment and/or Temporary Food Establishment shall immediately discontinue operations and notify the Delaware County Health Department if an Imminent Health Hazard may exist because of an emergency such as a fire, flood, extended interruption of electrical or water service, sewage backup, misuse of poisonous or toxic materials, onset of an apparent foodborne illness outbreak, gross in-sanitary occurrence or condition, or other circumstances that may endanger public health.

An Operator need not discontinue operations in an area of an establishment that is unaffected by the Imminent Health Hazard.

**Resuming Operation:** If a Bed and Breakfast Establishment, Retail Food Establishment, Mobile Food Establishment and/or Temporary Food Establishment has discontinued operations for the reasons stated above or otherwise according to law, the Operator must obtain approval from the Delaware County Health Department before resuming operations.

**Outstanding Fees:** Any outstanding fees may be a condition upon which a permit may not be issued.

**Enforcement Options:** The following are options available to Delaware County Health Department for consideration:

- (1) establish a process for the issuance of Notice of Violation based on violation(s) of Retail Food Establishment and/or Bed and Breakfast Establishment Sanitation requirements.
- (2) once the Bed and Breakfast Establishment, Retail Food Establishment, Mobile Food Establishment and/or Temporary Food Establishment receives the Notice of Violation, said Establishment shall have a certain amount of time, to be determined by the Health Department inspector, in order to bring said Establishment into compliance. If said Establishment is not in compliance after said time period, the Delaware County Health Department shall conduct an administrative proceeding for the suspension and/or revocation of the Bed and Breakfast Establishment, Retail Food Establishment, Mobile Food Establishment and/or Temporary Food Establishment Permit in front of the Health Officer.
- (3) the Health Officer or his/her duly authorized representative may issue an "Order to Abate" based on a condition that may transmit, generate, or promote disease. Failure on the part of the operator to comply with the Order to Abate could result in the enforcement of the Order



to Abate in the court jurisdiction by the initiation of an injunction by the County Attorney or County Prosecuting Attorney.

- (4) if the action concerning public health is an ordinance violation, request the County Attorney or County Prosecuting Attorney to institute a proceeding in the court(s) for the enforcement of this ordinance violation.
- (5) if the action concerning public health is a criminal offence, then the Health Department will contact the local Police Department having jurisdiction to initiate a case report to be filed with the County Prosecuting Attorney to institute a proceeding in the court(s) for enforcement.

## **Section F: Penalties**

The Health Officer may enforce any provision of this ordinance by injunction.

The responsible party shall be subject to a fine up to the amount of \$1,000.00 per violation of this ordinance. Each day in which a violation occurs shall constitute a separate violation.

The responsible party found to be in violation of this ordinance shall also be required to pay attorney fees incurred by the Health Officer for enforcing this ordinance.

The Circuit Court that has jurisdiction over the violation(s) after hearing and determination that the offending party has violated the terms of this ordinance may assess penalties for the violation(s) listed on the most recent inspection sheet that has brought this to a court action, based on Schedule of Civil Penalties Title 410 IAC 7-23.

## **Section G: Administrative Appeals Section**

Any Person(s) aggrieved by Orders issued under Enforcement Options 1-3 of Section E above shall be entitled to a review of the final Order before a Hearing Officer by filing a written request therefore with the Health Officer. The written request must be mailed or hand delivered to:

Delaware County Health Officer  
100 West Main Street, Room 207  
Muncie, IN 47305

And must be received with in fifteen (15) days after such final Order is issued.

Upon the Health Officer receipt of such request, the Hearing Officer shall hear the matter again in an open hearing after at least five (5) days written notice of the time, place and nature thereof. The time shall be measured pursuant to the rules of the court of having jurisdiction. (A shorter period of time may be granted, if requested by either party and agreed upon.)

The notice of the hearing shall be served upon the Person requesting the review by hand delivery or mail by Certified Mail the notice to the address listed on the Permit application as the Person's mailing address or such other address, as the Person shall designated in the letter of request to the Health Officer.

The Hearing Officer establishes the Rules of Procedure and advises the parties prior to the start of the proceedings.

The Hearing Officer shall make written findings of facts and shall enter its final Order or determination of this matter in writing.

The Order completes the Administrative Appeals procedure.

The decision of the Hearing Officer may be appealed pursuant to the Administrative Orders and Procedures Act.

#### **Section H: Conflict of Interest**

No Delaware County Public Official shall conduct himself in a manner that is or could have the appearance of a Conflict of Interest.

#### **Section I: Unconstitutional Clause**

Should any section, paragraph, sentence, clause, or phrase of this ordinance be declared unconstitutional or invalid for any reason, the remainder of this ordinance shall not be affected thereby.

#### **Section J: Repeal and Effective Date**

All ordinances and parts of ordinances in conflict with this ordinance are hereby repealed, and this ordinance shall be in full force and in effect thirty (30) days after its adoption and publication as provided by law.

**(Ordinance No. 2004-013, Commissioners, 9/20/04)**

## CHAPTER 17

### OPEN BURNING

#### 17-1. Regulation.

1. Open burning is defined as the burning of any materials wherein air contaminants resulting from combustion are emitted directly into the air, without passing through a stack or chimney form an enclosed chamber.
2. No person shall start, kindle, cause, allow, or maintain any form of open burning of any materials on private or public property, except as specifically authorized by this ordinance. No person shall allow the accumulation or existence of combustible material that constitutes or contributes to open burning.
3. Exemptions: The following types of burning are allowed:
  - a. The burning of charcoal, clean untreated wood, and other cooking fuels customarily used in an outdoor grill, traditional food cooking devices, or campfires.
  - b. Fires used for recreational or ceremonial purposes such as school pep rally fires or the celebration of scout activities. Recreational or ceremonial shall meet the following conditions:
    1. Only clean untreated wood or charcoal shall be used. Paper or petroleum products can be used for ignition purposes only.
    2. The fire shall not be ignited more than 2 hours before the recreational activity is to take place and shall be extinguished upon conclusion of the activity.
    3. The pile burned shall be less than 1000 cubic feet (for example: 10ft. x 10 ft. x 10 ft.)
    4. The local fire department shall be notified 24 hours in advance if the pile to be burned is more than 125 cubic feet (for example: 5 ft. x 5 ft. x 5 ft.)
    5. The fire shall not be for disposal purposes.
    6. The fire shall not be within 500 feet of a pipeline or fuel storage area.
4. Variances. Other types of fires may be approved as follows:

Any other type of fire whereby a citizen of Delaware County has obtained a variance from the provisions of this ordinance by petitioning the Delaware County Health Department may be allowed. However, the Delaware County Health Department cannot grant a variance for burning that would otherwise violate the provisions of the 326 Indiana Administrative Code 4-1 et.seq. and as amended and Indiana Code 13-17-9.

The following types of fires may be allowed if approved by the Indiana Department of Environmental Management:

- a. Fire Fighter training

- b. Fire extinguisher training
  - c. Vegetation propagation
  - d. Use of an air curtain destructor
  - e. Please refer to Attachment A for expanded versions of variance situations based on 326 IAC-4-1-3(c)(3-8) and 326 IAC 4-1-4.
5. The following conditions apply to all exemptions and variances:
- a. Burning shall be done during safe weather conditions. Burning shall not occur, during high winds, temperature inversions, air stagnation, or when a pollution alert or ozone action day has been declared.
  - b. Fires must be attended at all times until completely extinguished.
  - c. Fires must be extinguished if they create a fire hazard, nuisance, pollution problem, or threat to public health.
  - d. Fire fighting equipment adequate for the size of the fire shall be on-site and nearby during times of burning.
  - e. **Burning shall not be for disposal purposes.**
  - f. All burning shall comply with other federal, state, and local laws, rules, and ordinances.
6. Enforcement: Any person found in violation of this ordinance shall be subject to the following procedures:
- a. The Fire Department, Police Department, Health Department or other designated department personnel within Delaware County shall issue a warning notice to a first-time violator stating that he or she is in violation. The person must then correct the violation by immediately extinguishing the fire. Failure or refusal to immediately extinguish the fire shall result in a citation being issued. Any fire unattended that is a violation of this ordinance shall result in an immediate citation being issued to the land owner.
  - b. Issuance of a citation to the violator shall result in the imposition of a *Five Hundred* Dollar fine (\$500.00), payable one-half (1/2) to the Delaware County Health Department, and one-half (1/2) to the responding fire department.
  - c. Willful failure or refusal by the violator to immediately extinguish the fire in violation of this ordinance shall also result in the Fire Department having the authority to go upon private property to extinguish said fire and to bill the violator for the cost for the run.
  - d. Each subsequent starting, kindling, causing, or allowing of a new fire after a warning notice or citation has been issued shall result a fine of One Thousand Five Hundred Dollars (\$1,500.00). Each subsequent fire will result in a fine of One Thousand Five Hundred Dollars (\$1,500.00).

- e. Fees collected shall be paid one-half (1/2) to the Health fund, one-half (1/2) to the responding fire department.
  - f. Liability for Fire: Any person who allows the accumulation or existence of combustible material which constitutes or contributes to open burning may not refute liability for violation of this ordinance on the basis that said fire was set by vandals, accidental, or act of God.
7. The open burning provisions are enforceable by the duly appointed Fire Department, Police Department, Health Department and other designated department personnel or law enforcement officers within Delaware County acting on his/her/their own initiative or upon complaint.

This ordinance shall be in full force and effect from and after its passage by the Board of County Commissioner of Delaware County and legal publication.

**(Ordinance No. 2007-023, Commissioners)**

17-2. Open Burning.

Open Burning Commissioners 2009-017, after discussion not introduced 5/4/09.

**(Ordinance No. 2009-017, Commissioners, 5/4/09)**

## CHAPTER 18

### **STORM DRAINAGE AND SEDIMENT CONTROL**

#### **3-18-1. Purpose.**

To protect the safety, health and general welfare of the citizens of Delaware County, Indiana by requiring compliance with standards and practices which result in proper storm water drainage and sediment control in the event of land alterations.

#### **3-18-2. Jurisdiction.**

The provision of this ordinance shall be applicable throughout the unincorporated area of Delaware County, Indiana.

#### **3-18-3. Land Alterations.**

Any land alterations must be accomplished in conformity with the drainage requirements of this ordinance. Where any apparent conflict exists between drainage requirements of this ordinance and similar requirements of the Delaware County Drainage Board or any state or federal agency which has jurisdiction over the work involved, the most stringent requirements shall be applicable. Except for the foregoing, compliance with any other applicable provision of the law, ordinance or regulation shall not excuse noncompliance with this ordinance.

#### **3-18-4. Definitions.**

- A. BUILDING COMMISSIONER: As used herein, "Building Commissioner" shall mean the Building Commissioner of Delaware County, Indiana.
- B. COUNTY COMMISSIONER: As used herein, "Commissioners" and "County Commissioners" shall mean the Board of Commissioners of Delaware County, Indiana.
- C. COUNTY ENGINEER: As used herein, "County Engineer" shall mean the County Engineer of Delaware County, Indiana.
- D. DRAINAGE BOARD: As used herein, "Drainage Board" shall mean the Delaware County Drainage Board.
- E. DRAINAGE FACILITIES: As used herein, "drainage facilities" shall mean all ditches, channels, conduits, retention-detention systems, tiles, swales, sewers, and other natural or artificial means of draining storm water from land.
- F. DRAINAGE REQUIREMENTS: As used herein, "drainage requirements" shall mean:
  - (1) Minimum drainage standards established by the provisions of this ordinance.
  - (2) Regulations promulgated by the County Commissioners.
  - (3) Obligations and requirements relating to drainage established under the Subdivision Control Ordinance of Delaware County, Indiana.
  - (4) Requirements stated under the Delaware County Comprehensive Zoning Ordinance and the Flood Plain Management Ordinance for Delaware County, Indiana.

- (5) Obligations and requirements relating to drainage established under the Drainage Board of Delaware County, Indiana.
- (6) Conditions relating to drainage attached to a grant of appeal by the Delaware-Muncie Metropolitan Board of Zoning Appeals.

G. LAND ALTERATIONS: As used herein, ‘land alterations’ shall mean any action taken to land which either:

- (1) Changes the contour; or
- (2) Increases the runoff rate; or
- (3) Changes the elevation; or
- (4) Changes the rate at which water is absorbed; or
- (5) Creates or changes a drainage pattern; or
- (6) Creates or changes a drainage facility; or
- (7) Involves construction, enlargement or location of any building on a permanent foundation as regulated herein; or
- (8) Involves a subdivision of land as regulated in the Delaware County Subdivision Ordinance or a planned unit development or a mobile home park as regulated in the Delaware County Comprehensive Zoning Ordinance; or
- (9) Creates an impoundment.

Land alteration includes terracing, grading, excavating, constructing earthwork, draining, installing drainage tile, filling and paving which impacts drainage to or from any public right-of-way and/or public facility.

H. MAINTENANCE: As used herein, ‘maintenance’ shall mean cleaning out, removing obstruction from, spraying and making minor repairs of a drainage facility so it will perform the function for which it was designed and constructed.

I. MINOR LANDSCAPING: As used herein, ‘Minor Landscaping’ shall mean the planting and tilling of gardens, flower beds, shrubs, trees, and similar uses and a fill less than one (1) foot in depth, and placed on natural terrain with a slope flatter than ten (10) percent, not intended to support structures, which does not exceed fifty (50) cubic yards per acre and does not obstruct drainage.

J. PLAN COMMISSION: As used herein, ‘Plan Commission’ shall mean the Delaware-Muncie Metropolitan Plan Commission.

K. SURVEYOR: As used herein, ‘Surveyor’ or ‘County Surveyor’ shall mean the Delaware County Surveyor.

### 3-18-5. Administration.

A. DRAINAGE PERMIT EXCLUSION: The following actions shall not be considered a land alteration for the purpose of this ordinance nor shall a drainage permit be required:

- (1) Excavation of cemetery graves;
- (2) Refuse disposal sites where storm drainage is controlled by other regulations;
- (3) Excavation for wells, excavation and backfills for poles, conduits and wires of utility companies;

- (4) Exploratory excavation or soil testing under the direction and control of professional engineers, soil engineers, geologists, civil engineers, architects or land surveyors, which are backfilled and which are restored to original contours;
- (5) Ordinary cultivation of agricultural land including tilling, terracing, construction of minor open ditches and crop irrigation;
- (6) The planting and tilling of gardens, flower beds, shrubs, trees and other common uses and minor landscaping of land appurtenant to residences;
- (7) Fill and grading of former basement sites after the demolition of a structure, to conform to adjacent terrain;
- (8) Fill of small holes caused by erosion, settling of earth or the removal of such materials as dead trees, posts or concrete;
- (9) A fill less than one (1) foot in depth, and placed on natural terrain with a slope flatter than ten (10) percent, not intended to support structures, which does not exceed fifty (50) cubic yards per acre and does not obstruct drainage;
- (10) Maintenance of drainage facilities;
- (11) Installation of septic systems, when proper permit had been obtained;
- (12) Construction of a driveway, when a proper permit has been obtained;
- (13) Installation of individual building sewers, when a proper tap permit has been obtained.
- (14) Installation and/or construction of a 1 or 2 family dwelling provided the provisions of SECTION 18-1-7 are met and proper permits are obtained.

B. DRAINAGE PERMITS-APPLICATIONS: No person, partnership or corporation shall undertake or accomplish any land alteration without having in force a written drainage permit obtained from the Delaware County Engineer. The drainage permit must be obtained before any work is initiated with the exception of testing to determine procedures or materials. In order to obtain a drainage permit, the applicant for same must be the person or entity that will in fact be responsible for accomplishing the land alteration for which the permit was issued. Applications for a drainage permit shall be filed in the Office of the Delaware County Engineer on forms prescribed by the County Commissioners. Within seven (7) working days from the date of filing for a permit or forward a written statement to the applicant indicating cause for no issuance. The statement shall set forth all actions, information, and/or plan amendments shall not be unduly withheld. A drainage permit shall be issued by the County Engineer if:

- (1) The application and the drainage plan with supplemental information required by SECTION 18-1-6 have been properly prepared and submitted and reflect compliance with the General Drainage Standards for Delaware County, Indiana.
- (2) A certification of sufficiency of plan and a certificate of obligation to observe have been filed by a registered professional engineer, land surveyor or architect engaged in storm drainage design;
- (3) If required by the Engineer or another entity authorized to establish or enforce drainage requirements, a bond has been posted pursuant to SECTION 18-1-9;
- (4) If required by the Engineer or another entity authorized to establish or enforce drainage requirements, a covenant has been executed pursuant to SECTION 18-1-9;
- (5) If required by the Engineer or other entity authorized to establish or enforce drainage requirements, an easement has been dedicated pursuant to SECTION 18-1-9;



- (6) The applicable fee has been paid;

No drainage facility intended for public dedication shall be constructed until a drainage permit has been obtained from the Delaware County Engineer. A drainage facility or system intended to be dedicated to the public, in whole or in part, must be accepted by Delaware County by action of the Commissioners, as applicable, and no such drainage facility or system shall be accepted unless it is found to be in conformance with this Ordinance.

3-18-6. Professionally Prepared and Certified Drainage Plans.

A drainage plan fulfilling the requirements of this SECTION shall be submitted to the Office of the County Engineer for approval before a drainage permit can be obtained to accomplish a land alteration. The drainage plan must be submitted in duplicate, and shall indicate in a precise manner the work to be accomplished, and said plans shall in all respects be consistent with the drainage plan submitted. One (1) copy of the drainage plan will remain on file in the County Engineer's Office. The following information must be submitted for approval:

- A. CONSTRUCTION FEATURES: The drainage plan shall demonstrate and describe subsurface drainage and include the following:
- (1) The drainage plan shall be drawn to scale, preferably one (1) inch per fifty (50) feet, and an arrow indicating north shall appear on each page. Existing land contours shall be shown, with one-foot contours for land with a slope flatter than ten (10) percent, two-foot contours for slopes equal to or twenty (20) percent, and five-foot contours for slopes equal to or greater than twenty (20) percent. A bench mark, which is easily accessible and locatable, shall be shown. The bench mark shall be shown. The bench mark shall be determined by USGS datum.
  - (2) A map which indicates the location and vicinity of the proposed land alteration shall be included in the drainage plan.
  - (3) The drainage plan shall show the locations of all existing and proposed drainage facilities. Storm drains and manholes and other structures shall be located in the plans by dimensions from traverse lines, property markers or road center lines. However, for areas where physical features are not available, coordinates of manholes and bearings of storm drains shall be based on the State Of Indiana's coordinate system or other acceptable horizontal and vertical datum. If applicable, the drainage plan should show the direction of flow, elevation of inverts, gradient, size and capacity of existing and proposed storm drains. When using storm drains, the capacity shall be indicated. Profiles of the on-site construction shall be provided which show existing and proposed piping and structures.
  - (4) Plan and profile information shall be provided for any off-site construction. The plan shall be shown at the upper portion of the drawing. The plan, generally, shall be drawn to scale of one (1) inch equals fifty (50) feet. The plan shall show appropriate right-of-way and easement limits. The profile shall be shown under the plan and shall extend a sufficient distance downstream of the outlet to allow any pertinent information concerning the outlet channel to be shown. The storm drain and inlet profile shall generally be drawn on a scale of one (1) inch equals fifty (50) feet horizontal, one (1) inch equals five (5) feet vertical. Where a storm drain is located in an existing or proposed pavement or shoulder, the center line grade of the road shall be shown. Where a storm drain is located outside pavement or

shoulder, the existing ground over the storm drain is to be shown. If the storm drain is to be constructed on fill, the profile of the undisturbed earth, at drain location, shall be shown.

B. **DESIGN CALCULATIONS:** Design calculations are required as part of the drainage plan and shall specifically include:

- (1) Estimation of existing and proposed storm water runoff conditions, with a drainage area map for the site and tributary area, shall be calculated utilizing storm conditions contained in the General Drainage Standards for Delaware County, Indiana. The drainage area map shall indicate contours at two-foot (2') intervals and limits of the 100-year flood (USGS quad maps, or the Delaware County Watershed maps, or other contour maps where applicable). Weighted runoff coefficient computations indicating overland flow time and flow time in a swale, gutter, pipe or channel shall be indicated.
- (2) Closed conduit and open channel design computations shall include the size of pipe or channel cross section, pipe or channel invert's slope in percent, roughness coefficient, flowing velocities in feet per second, and design capacity in cubic feet per second.
- (3) Head loss computations in manholes and junction chambers.
- (4) Hydraulic gradient computations, wherever applicable.
- (5) Erosion control methods.

Such design calculations shall conform with the standards of SECTION 18-1-16 and 18-1-17 of this ordinance and all regulations promulgated thereunder. The County Engineer shall be empowered to require additional information to be included in a drainage plan as is necessary to evaluate and determine the adequacy of the proposed drainage facility.

C. **CERTIFICATES:** All drainage plans submitted under this SECTION to the County Engineer's Office for approval must be certified by a registered professional engineer, land surveyor or architect engaged in storm drainage design, under whose supervision the plans were prepared.

All drainage plans submitted under this SECTION to the County Engineer's Office must include a Certificate of Obligation to Observe by a registered professional engineer, land surveyor or architect engaged in storm drainage design.

Within ten (10) days after the completion of a land alteration for which a drainage permit was required and relative to which a certified plan was required to be filed pursuant to this SECTION, a registered professional engineer, land surveyor or architect engaged in storm drainage design, shall execute and file with the County Engineer's Office a Certificate of Completion and Compliance.

3-18-7. Regulated Drain Clearance-1 and 2 Family Dwellings.

A. **PROCESS:** Prior to any site work in connection with the installation, construction, enlargement or location of a one-family dwelling, two-family dwelling or accessory structure appurtenant to either a one- or two-family dwelling, the owner and/or developer shall obtain clearance from the Delaware County Surveyor's Office that no work shall encroach upon any regulated drain easement.

The following information must be submitted in order for the Surveyor's Office to establish such regulated drain clearance:

- (1) The legal description and the street address for the property;
- (2) The dimensions and borders of the parcel;
- (3) The name and address of the owner;
- (4) An arrow indicating north;
- (5) Location of all existing and proposed improvements, structures and paved areas on the site.

No permits shall be issued in connection with the installation, construction, enlargement or location of a one-family dwelling, two-family dwelling or accessory structures appurtenant thereto prior to obtaining the regulated drain clearance described herein.

Regulated drain clearance shall be indicated on subdivisions for which a drainage plan has been approved as set forth in this Ordinance. Such clearance shall be shown on the subdivision plat in the form of drainage easements and special notes as deemed necessary. Regulated drain clearance shall not be required as a precondition for obtaining permits in the instance of a one- or two-family dwelling constructed in a subdivision for which a plat and a drainage plan have been approved provided the owner and/or developer of such dwelling comply with the specifications and information found on the approved plat and drainage plan.

The County Surveyor may require the submission of plans or other information in order to establish regulated drain clearance.

#### 3-18-8. Permit Duration.

If the land alteration for which the permit has been issued has not commenced within two (2) years from the date of its issuance, the permit shall expire by operation of law and no longer be of any force or effect; provided, however, the County Commissioners may, upon the recommendation of the County Engineer, extend the validity of the permit for an additional period of time.

#### 3-18-9. Bonds, Covenants and Easements.

- A. **BONDS:** The Board of County Commissioners, upon the recommendations of the County Engineer, may as a prerequisite to the issuance of a drainage permit, require the posting of a performance bond or other surety. The principle or other surety shall be the owner of the affected land, the developer, or any other party, parties or entity the County Commissioners believe necessary or helpful. Such bond shall name Delaware County as a party who can enforce the obligations thereunder, and shall be in an amount established by the County Commissioners as adequate to provide surety for the satisfactory completion of the improvements required by the drainage permits. In the instance of platting, such bond may be a part of the total bonding required by the County Commissioners.

In instances where the County Commissioners have required a performance bond pursuant to this SECTION, the Commissioners may, as an alternative to the posting of such bond, accept other appropriate security, such as a properly conditioned irrevocable letter of credit, which meets the same objectives as the performance bond described in this SECTION, subject to the approval of any other department or agency whose interests are protected by the same bonding requirement.

- B. COVENANTS: Where the County Engineer shall determine that such is necessary in order to achieve satisfactory present and future drainage of the parcel of land for which a drainage permit is sought and the area surrounding the parcel, the Board of County Commissioners may, as a prerequisite to the issuance of a drainage permit, require the execution of covenants and/or easements running in form to Delaware County, Indiana by the owner or owners of such parcel. As a minimum in such cases, the County Commissioners shall require that the following covenant be executed by the owner or owners of such land which will be included in the recorded plat:

“It shall be the responsibility of the owner of any lot or parcel of land within the area of this plat to comply at all times with the provisions of the drainage plan as approved for this plat by the Board of Commissioners of Delaware County, Indiana and the requirements of all drainage permits for this plat issued by the Delaware County Engineer’s Office.”

- C. EASEMENTS: The Board of County Commissioners may, upon recommendation from the County Engineer and as a prerequisite from the County Engineer, and as a prerequisite to issuance of a drainage permit, require the dedication of easement to Delaware County and to owners of other affected lands by the owner of the parcel of land, relative to which application for a drainage permit has been made, where such is necessary to achieve satisfactory present and future drainage of the parcel and the area surrounding the parcel.

#### 3-18-10. Nonconforming Sites.

A development existing prior to the enactment of this Ordinance must be brought into full compliance with this Ordinance if any of the following activities occur:

- A. EXPANSION OF FLOOR AREA: The gross area of a development is expanded by more than ten (10) percent, or more than four thousand (4,000) square feet, whichever is less. Repeated expansions of a development, constructed over a period of time commencing with the effective date of this Ordinance, shall be combined in determining whether this threshold has been reached.
- B. INTENSIFICATION AND CHANGE OF USE: The use of a development is intensified or the use of a development is changed, resulting in an increase in storm water runoff.
- C. CHANGE IN SITE DESIGN: Any activity that requires the submission of a development plan and an amended development plan is submitted which involves more than ten (10) percent of the land area of the parcel.

#### 3-18-11. Investigations and Inspections.

The power to make investigations and inspections of land alterations shall be vested in the County Surveyor, the County Engineer and the County Building Commissioner and their authorized representatives. Investigations and inspection of land alterations may be made at any time by going upon, around or about the premises on which the land alteration has occurred. Such investigation and inspection may be made either before, during or after the land alteration is completed and it may be made for the purposes, among others, of determining whether the land alteration meets drainage requirements and ascertaining whether the land alteration has been accomplished in a manner consistent with the plans and specifications or a certificate filed pursuant to SECTION 18-1-6. Efforts to afford an opportunity for investigation and inspection of the land alteration shall be made by persons working on or having control of the land alteration, including making available a copy of plans and specifications submitted to obtain a drainage permit.

### 3-18-12. Enforcement.

- A. **FEES FOR PERMITS OBTAINED AFTER COMMENCEMENT OF WORK:** If work for which a drainage permit is required by this ordinance is commenced by the permit applicant without compliance with the provisions of SECTION 18-1-5, the permit fee shall be double the applicable amount stated in SECTION 18-1-14, and if work for which a permit is required is completed or is substantially completed by the permit applicant without compliance with the provisions of SECTION 18-1-5, the permit shall be ten (10) times the applicable amount stated in SECTION 18-1-14; provided, however, that the maximum fee incurred under this SECTION shall be three hundred (300) dollars plus the amount of the normal fee for the permit. This sanction shall in no way limit the operation of penalties provided elsewhere in this ordinance.
- B. **PERMIT REVOCATION:** The board of County Commissioners may revoke the drainage permit where the application, plans, supporting documents, or other evidence required by this ordinance reflects either:
- (1) A false statement or misrepresentation as to material fact; or
  - (2) Lack of compliance with the drainage requirements of this ordinance; or
  - (3) Failure to post bond, execute covenants or dedicate easements as required by the County Commissioners or other applicable entity pursuant to this ordinance.

This sanction shall in no way limit the operation of penalties provided elsewhere in this ordinance.

- C. **STOP-WORK ORDER:** Wherever the County Surveyor, the County Engineer or the County Building Commissioner or their authorized representatives discover the existence of any of the circumstances listed below, they are empowered to issue an order requiring the suspension of the land alteration. A stop-work order shall be issued if:
- (1) Land alteration is proceeding in an unsafe manner;
  - (2) Land alteration is occurring in violation of a drainage requirement and in such manner that if land alteration is allowed to proceed, there is a probability that will be substantially difficult to correct the violation; or
  - (3) Land alterations for which a drainage permit is required is proceeding without a drainage permit being in force. In such an instance the stop-work order shall indicate that the effect of the order terminates when the required drainage is obtained.

This sanction shall in no way limit the operation of penalties provided elsewhere in this ordinance.

- D. **CIVIL ACTION:** Delaware County may initiate a civil action in a court of competent jurisdiction to restrain any person, partnership or corporation accomplishing a land alteration from violating a drainage requirement or plans and specifications filed in order to obtain a drainage permit. Delaware County may also initiate a civil action in a court of competent jurisdiction to restrain any person, partnership or corporation which owns land from allowing a drainage requirement or plans and specifications filed in order to obtain a drainage permit to be violated when a land alteration is accomplished.

The purposes for which injunctive relief may be sought shall include, but not limited to:

- (1) Enforcing the provisions of a stop-work order issued pursuant to this ordinance; or
- (2) Preventing the accomplishment of a land alteration in violation of a drainage requirement; or
- (3) Requiring accomplishment of a land alteration in accordance with the drainage requirements, and if a drainage permit has been obtained, plans and specifications filed therewith.

This sanction shall in no way limit the operation of penalties provided elsewhere in this ordinance.

- E. **GENERAL PENALTY:** Any person, partnership or corporation violating the substantive or procedural provisions of this ordinance, any minimum standard found in SECTION 18-1-16 and SECTION 18-1-17 of this Ordinance, any regulation promulgated pursuant to this ordinance, or any other drainage requirement as defined in SECTION 18-1-4 shall be guilty of a misdemeanor and may be subject to a fine in any sum not exceeding two thousand five hundred dollars (\$2,500.00). This penalty shall in no way limit the operation of special penalties for specific provisions of this ordinance, nor shall such special penalties in any way limit the operation of this general penalty.
- F. **ENFORCEMENT OF COVENANTS:** Any person who violates a covenant required under SECTION 18-1-9, and/or the owner of any parcel of land who permits such a violation upon land owned by him or her, may be notified in writing by the County Surveyor, the County Engineer or by the County Building Commissioner, that a violation exists, and shall be given a reasonable period of time in which to correct such violation. The notice shall specify the nature of the violation with reasonable clarity. If the person responsible for the violation of a covenant required under SECTION 18-1-9, or the owner of the land upon which such violation exists, fails to correct the violation in a reasonable time in accordance with the requirements of the notice described above, Delaware County shall have the authority to correct the violation at its expense and to place a lien upon the real property whereupon the violation was so corrected for the recovery of any and all expenses incurred by the County for effecting such correction.

### 3-18-13. Variances and Deviations From Plan.

- A. **PROCEDURE:** The Board of Commissioners of Delaware County, Indiana shall have the power to modify or waive any minimum drainage standard found in SECTION 18-1-16 and 18-1-17 of this ordinance. The Commissioners may grant such modification or waiver if an applicant for a drainage permit makes a substantial showing:
- (1) That a minimum drainage standard regulation is infeasible or unreasonably burdensome; and
  - (2) The alternate plan submitted by the applicant will achieve the same objective and purpose as compliance with minimum drainage standards and regulations.

The request for a variance together with supporting information shall be made in writing to the County Engineer who shall present the request to the County Commissioners at the first regularly scheduled Commissioners' meeting following the filing of the request. The County Commissioners shall make a decision on the request for a variance within thirty (30) days after the request was filed with the County Engineer.

- B. **DEVIATIONS FROM PLAN:** Any significant deviation or change in the detailed plans and specifications after the granting of a drainage permit shall be approved by the County Commissioners. The request for a deviation or change shall be made prior to commencing any land alteration affected by the deviation or change and shall be made in the same manner as for a variance.
- C. **APPEALS:** A decision by the County Commissioners under this SECTION shall be subject to review by certiorari.

3-18-14. Fees.

- A. **AMOUNT:** The following fee schedule shall apply for all land alterations accomplished pursuant to this ordinance:

CATEGORY OF LAND ALTERATIONS	PERMIT FEE
(1) Land alterations, in or out of a subdivision, which is in conjunction with the construction, enlargement or location of a one-family or two-family dwelling, or an accessory building appurtenant thereto for which regulated drain clearance is required.	none
(2) Land alteration in conjunction with the planting of a subdivision, the development of a planned unit development or a mobile home park. The permit fee is to be paid when the drainage permit is issued based on the previously submitted, approved drainage plans.	\$10.00 per acre with a \$10.00 Minimum & \$100.00 Maximum.
(3) Land alterations which are neither in conjunction with the conditions set forth in item 1 above nor in conjunction with the conditions set forth in item 2 above.	\$20.00 per acre With a \$10.00 Minimum & \$100.00 Maximum.

- B. **EXEMPTION FOR GOVERNMENTAL UNITS:** Drainage permits shall be obtained for land alteration activity accomplished by or for a governmental unit and inspections as specified in this ordinance shall be allowed. Fees shall be required as specified except for the following:
- (1) Land alteration activity for which a fee cannot be charged by the municipality because of federal or state law, or
- (2) Land alteration activity accomplished by an employee or contractor of Delaware County in the Course of governmental duties.

### 3-18-15. Procedure for Promulgation of Regulations.

- A. **AUTHORIZATION;** The board of Commissioners of Delaware County, Indiana, shall adopt, amend or repeal regulations which more specifically deal with the subject matter of the standards found in SECTION 18-1-16 and 18-1-17. The provisions of such regulations shall be consistent with the standards of SECTION 18-1-16 and 18-1-17. Any conflict between these standards and the regulations shall be reconciled in favor of the standards.
- B. **NOTICE OF HEARING:** Before any regulation is adopted, amended or repealed by the Board of County Commissioners as authorized by this SECTION, the Commissioners shall cause a notice to be published at least ten (10) days prior to the date set for a public hearing. The notice shall include a statement of the time and place of the hearing, a reference to the general subject matter of the proposed regulations and reference to the fact that a copy of the proposed regulations is on file at the County Engineer's Office where it may be examined; however, no action with the respect to a regulation shall be invalid because the reference to the subject matter thereof in such notice is insufficient.
- C. **PUBLIC HEARING:** On the date set for hearing on a proposed regulation, any interested party shall be afforded an adequate opportunity to comment on the proposed regulation through the presentation of facts or arguments or the submission of written materials. The proposed regulation may be amended at the hearing. All relevant matters presented shall be given full consideration by the Board of County Commissioners. All hearings shall be open to the public.
- D. **PUBLICATION OF ADOPTED REGULATIONS:** Adopted, amended or repealed regulations promulgated by the Board of County Commissioners shall be published according to Indiana State Statute publication requirements. Copies of all regulations and amendments thereto shall be on file in the County Engineer's Office.
- E. **AMENDMENTS:** After the initial adoption of the regulations, the County Commissioners may amend the regulations in accordance with the procedure set forth in this SECTION.
- F. **TITLE:** The regulations adopted pursuant to this SECTION shall be known as the General Drainage Standards and Regulations of Delaware County, Indiana.

### 3-18-16. Minimum Drainage Standards and Regulations.

- A. **GENERAL COMPLIANCE:** All land alterations accomplished in the unincorporated area of Delaware County, Indiana shall adhere to and be in compliance with the minimum drainage standards established by this ordinance and all regulations adopted by the Board of County Commissioners in accordance with SECTION 18-1-15, unless a variance from the minimum drainage standards or regulations has been granted pursuant to SECTION 18-1-14.

The release rate of storm water from development, redevelopments, and new construction may not exceed the storm water runoff from the land area in its present state of development. The owner and/or developer must submit detailed computations of runoff before and after development, redevelopment or new construction which demonstrates that runoff will not be increased. These computations must show that the peak runoff rate after development for the 50 year return period storm of critical duration shall not exceed the 5 year return period predevelopment peak runoff rate. The critical duration storm is that storm duration that requires the greatest detention storage. Prior to deriving detailed computations, the owner and/or developer should consult with the County Engineer



to determine the best method for computing runoff and the area to be considered in the computations. The areas to be considered may exceed an actual building site in order to carry out the purpose of this ordinance. The methods which may be used shall include, but are not limited to, the Rational Method and Soil Conservation Service Method.

**B. MINIMUM STANDARDS FOR LAND ALTERATIONS OTHER THAN ONE OR TWO FAMILY DWELLINGS:**

- (1) **GENERAL:** Land alterations accomplished other than in conjunction with the construction, enlargement or location, on a permanent foundation, of a one- or two-family dwelling or accessory structure appurtenant to such dwelling shall be in accordance with standards found below and in accordance with the regulations adopted by the County Commissioners which are pertinent to these standards. Land alterations shall be carried out in conformity with covenants executed in connection with the rezoning cases, commitments, variance conditions, plat restrictions, flood plain management requirements, and state and local building code standards.
- (2) **DRAINAGE TO ADEQUATE RECEIVING PLACE:** A drainage facility shall be provided which allows drainage of water runoff from each upper watershed area and from each portion of the land altered parcel to a place or places adequate to receive it.
- (3) **DRAINAGE FACILITY CHARACTERISTICS:** The drainage facility shall:
  - (a) Be capable of accommodating the ten (10) year design rainfall intensity, or a rainfall of greater intensity, without endangering the public safety and health, or causing significant damage to property;
  - (b) Be durable, easily maintained and safe to persons;
  - (c) Retard sedimentation and erosion.
- (4) **RUNOFF ACCOMODATON WITHIN PARCEL:** The part of the drainage facility situated within the parcel, in addition to complying with the requirements stated above:
  - (a) Shall drain each and every part of the parcel;
  - (b) Shall be sufficient to accept:
    - (1) The water runoff from the parcel after development; and
    - (2) The present water runoff from developed areas upstream; and
    - (3) The present water runoff from undeveloped areas upstream; and
  - (c) May include improvements such as retention-detention system in the instance where the condition of the land makes use of such improvements feasible and appropriate.
- (5) **RUNOFF ACCOMODATION DOWNSTREAM FROM PARCEL:** As to drainage facilities located downstream and beyond the boundary of the parcel, the drainage system within the parcel shall be designed that there will be no increase in peak discharge or runoff rates as a result of the development unless said downstream facilities located beyond the limits of the parcel are sufficient to accept:
  - (a) The water runoff from the parcel after development; plus
  - (b) The present water runoff for development areas upstream; plus

- (c) The present water runoff from undeveloped areas upstream; plus
  - (d) The present water runoff of those areas through which the drainage facility passes.
- (6) **ACCEPTANCE OF UPSTREAM DRAINAGE:** At least one opening shall be provided for each watershed at the upstream edge of the parcel to accept upstream drainage.
  - (7) **HABITABLE STRUCTURES FREE FROM 100-YEAR FLOODS:** The drainage facility shall be such that all habitable structures' first floor elevation shall be (2) feet above a 100-year flood elevation, where applicable.
  - (8) **DAMAGE TO ADJOINING PROPERTY:** Land alterations shall be accomplished so as to prevent damage or increased sheet runoff to adjoining property.
  - (9) **MAXIMUM SLOPE:** The maximum vertical fall of earth on the parcel shall be six (6) inches per foot two [(2) horizontal to one (1) vertical]. Slopes of other materials other than earth shall be at the safe angle of repose for the materials encountered.
  - (10) **PERMANENCY OF GRADES:** Land alterations shall be accomplished in such a way that the grades left at the time that the work is completed will be permanent and stable.
  - (11) **SUBSURFACE DRAINAGE REQUIRED:** Subsurface drainage shall be provided in areas having a high water table and be sufficient to intercept seepage that would:
    - (a) Affect earth slope stability of the building foundation; or
    - (b) Create undesirable wetness.

**C. RECOMMENDED STANDARDS FOR ONE OR TWO FAMILY DWELLINGS:**

- (1) **GENERAL:** it is recommended that land alterations accomplished in conjunction with the construction, enlargement or location, on a permanent foundation, or a one- or two-family dwelling, or accessory structure appurtenant to either a one- or two- family dwelling by in accordance with standards found below and in accordance with regulations adopted by the County Commissioners which are pertinent to these standards.
- (2) **SLOPES WITHIN 100 FEET OF BUILDING FOUNDATIONS:** All final grades should slope away from building foundations as follows:
  - (a) Around each permanent building foundation there shall be a slope with a minimum vertical fall of six (6) inches for the area measured from the foundation to a point ten (10) feet from the building foundation or the property line, whichever is closer; and
  - (b) Thereafter a slope with a minimum vertical fall of one-fourth inch per foot (two (2) percent) for previous surfaces and a slope with a minimum vertical fall of one-sixteenth inch per foot (one-half [1/2] percent) for concrete, asphalt or other impervious surfaces for the area from the perimeter of the area subject to paragraph (1) above to a point one hundred (100) feet from the building foundation or into a drainage facility or a property line, whichever is closer.
- (3) **ENTIRE PARCEL TO DRAIN:** The land alterations should be accomplished in such a manner that water drains off each part of the parcel to a point or points having capacity to

receive such water. For areas beyond the 100-foot area cited above, the slope shall have a vertical fall of at least one-sixteenth inch per foot (one-half [1/2] percent) into a drainage channel or swale.

- (4) **HABITABLE STRUCTURES FREE FROM 100-YEAR FLOODS:** The drainage facility should be such that all habitable structures' first floor elevation shall be two (2) feet above the 100-year flood elevation, where applicable.
- (5) **UPSTREAM STORM WATER:** The drainage facility should accommodate upstream storm water at any point or points entering the site.
- (6) **DOWNSTREAM DRAINAGE:** Design and construction of the drainage facility should provide for the discharge of storm water run-off at a point or points having capacity to receive upstream and on-site drainage.
- (7) **DURABILITY AND MAINTENANCE:** Design and construction of the drainage facility should be such that it will be durable and easy to maintain.
- (8) **DAMAGE TO ADJOINING PROPERTY:** Land alterations should be accomplished so as to prevent damage to adjoining property.
- (9) **MAXIMUM SLOPE:** The maximum vertical fall of earth on the parcel should be six (6) inches per foot (fifty (50) percent). Slopes of materials other than earth should be at the safe angle of repose for the materials encountered.
- (10) **PERMANENCY OF GRADES:** Land alteration should be accomplished in such a way that grades left at the time that the work is completed will be permanent and stable.
- (11) **SUBSURFACE DRAINAGE REQUIRED:** Subsurface drainage should be provided in areas having a high water table and be sufficient to intercept seepage that would:
  - (a) Affect earth slope stability or stability of building foundations; or
  - (b) Create undesirable wetness.
- (12) **BLOCKING DRAINAGEWAYS:** No excavations or fills shall block or otherwise impede the free drainage of surface water in a drainage swale or channel.

### 3-18-17. Minimum Standards for Erosion and Sediment Control.

- A. **GENERAL REQUIREMENTS:** Land alterations shall be accomplished in accordance with standards found in this SECTION and in accordance with the regulations adopted by the County Commissioners which are pertinent to these standards.
- B. **PROTECTION OF EXPOSED AREAS:** Land alterations which strips the land of vegetation, including regrading, shall be done in a way that will minimize erosion. Whenever feasible, natural vegetation shall be retained, protected, and supplemented. Cut and fill operations shall be kept to a minimum to ensure conformity with existing topography so as to create the least potential erosion. The duration of time which an area remains exposed shall be kept as quickly as practical.

- C. PROTECTION DURING DEVELOPMENT: Temporary vegetation or mulching shall be used to protect exposed area during development.
- D. PERMANENT VEGETATION: Permanent and final vegetation or structural erosion-control devices shall be installed as soon as practical under the circumstances.
- E. SEDIMENT CONTROL: Sediment in runoff water shall be trapped by the use of such methods as debris basins and silt traps until the disturbed area is stabilized.

3-18-18. General Drainage Standards Adopted by Reference.

The General Drainage Standards shall mean the General Drainage Standards and Regulations of Delaware County, Indiana, as promulgated by the Board of Commissioners of Delaware County, Indiana, as set forth in SECTION 18-1-15. The General Drainage Standards and Regulations of Delaware County, Indiana, and all amendments thereto, are hereby adopted by reference and incorporated as a part of the Storm Drainage and Sediment Control Ordinance set forth herein.

3-18-19. Validity.

Should any section, subsection, paragraph, clause, word or provision of these regulations be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the regulations as a whole or any part thereof other than the part so declared to be unconstitutional or invalid.

3-18-20. Repealer.

All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

3-18-21. Effective Date.

This ordinance shall be in full force and effect upon its passage by the Board of Commissioners of Delaware County, Indiana, and such publication as required by law and upon the adoption of the General Drainage Standards and Regulations of Delaware County, Indiana as required by this ordinance.  
**(Ordinance No. 1993-19, Commissioners 4/27/1993)**

## **CHAPTER 19**

### **SUBDIVISION ORDINANCE**

Adopted by reference.

## **CHAPTER 20**

### **TANNING BED FACILITIES**

#### **3-20-1. Inspections of Tanning Bed Facilities.**

By the Delaware County Board of Health that the requirements set forth in Indiana Administrative Code 820 IAC 5-1-1 and subsequent sub-chapters be enforced by the local Board of Health in the following particulars. That the Health Officer is hereby authorized to inspect tanning be facilities and to insure compliance of the Administrative Code.

**(Resolution No. 2010-001, Delaware County Board of Health, 2010)**

## **CHAPTER 21**

### **MULTI-HAZARD MITIGATION PLAN**

#### **3-21-1. Adoption of Plan.**

1. The Multi-Hazard Mitigation Plan for Delaware County, Indiana, is hereby adopted as an official plan of Delaware County.
2. This Resolution shall be in full force and effect from and after its passage by the Delaware County Board of Commissioners.

## CHAPTER 22

### **CONSTRUCTION SITE AND POST CONSTRUCTION SITE STORMWATER CONTROL**

#### **Section 1. PURPOSE/INTENT**

##### **A. Site Construction Control**

The purpose of this ordinance relative to Post-Construction Control is to establish requirements for stormwater discharge from construction activities of one acre or more so as to protect the public health, existing water uses, and aquatic biota. This ordinance establishes methods for controlling the introduction of pollutants into the municipal separate storm sewer system (MS4) in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit process. The objectives of this ordinance are:

- (1) To regulate construction activities disturbing more than one acre of land as governed by 327 IAC 15-5.
- (2) To require construction site operators to develop and implement a Construction Plan including a Storm Water Pollution Prevention Plan in order to receive a grading permit from the County.

##### **B. Post-Construction Control**

The purpose of this ordinance relative to Post-Construction Control is to implement planning procedures that promote and improve water quality. The planning procedures will include, at a minimum, the post-construction requirements of 327 IAC 5-5-6.5(a)(8). The County may require the use of storage, infiltration, filtering, and/or vegetative practices to reduce the impact of pollutants on stormwater runoff. Where appropriate, and to the extent of the MS4 operator's authority, the planning procedures may also include the following:

- (1) Buffer strip and riparian zone preservation.
- (2) Filter strip creation.
- (3) Minimization of land disturbance and surface imperviousness.
- (4) Minimization of directly connected impervious areas.
- (5) Maximization of open space.
- (6) Directing the community's growth away from sensitive areas and towards area that can support growth without compromising water quality.

#### **Section 2. DEFINITIONS**

For the purpose of this ordinance, the following shall mean:

Authorized Enforcement Agency: employees or designees of the County Commissioners of Delaware County, Indiana.

Best Management Practices (BMPs): schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and



other management practices to prevent or reduce the discharge of pollutants directly or indirectly to stormwater, receiving waters, or stormwater conveyance systems. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

Clean Water Act: The federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.

Construction Activity: Activities subject to NPDES Construction Permits. These include construction projects resulting in land disturbance of one acre or more, as defined in 327 IAC 15-5. Such activities include, but are not limited to, clearing, and grubbing, grading, excavating, and demolition.

Hazardous Materials: Any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

Illegal Discharge: Any direct or indirect non-storm water discharge to the storm drain system, except as exempted in County Ordinance Number \_\_\_\_\_ entitled Stormwater Illicit Discharge and Connection Ordinance.

Illicit Connections: An illicit connection is defined as either of the following:

Any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the storm drain system including but not limited to any conveyances which allow any non-storm water discharge including sewage, process wastewater, and wash water to enter the storm drain system and any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection has been previously allowed, permitted, or approved by an authorized enforcement agency or,

Any drain or conveyance connected from a commercial or industrial land use to the storm drain system which has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.

Indiana Stormwater Quality Manual: A reference manual developed by the State of Indiana that provides guidance on planning principals, as well as criteria for specific structural and non-structural stormwater management practices.

Industrial Activity: Activities subject to NPDES Industrial Permits as defined in 327 IAC 15-6.

National Pollutant Discharge Elimination System (NPDES) Storm Water Discharge Permit: means a permit issued by EPA (or by a State under authority delegated pursuant to 33 USC § 1342(b)) that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

Non-Storm Water Discharge: Any discharge to the storm drain system that is not composed entirely of storm water.

Person: any individual, association, organization, partnership, firm, corporation or other entity recognized by law and acting as either the owner or as the owner's agent.

Pollutant: Anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordinances, and accumulations that may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.

Premises: Any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

Storm Drainage System: Publicly-owned facilities by which storm water is collected and/or conveyed, including but not limited to any roads with drainage systems, municipal streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human-made or altered drainage channels, reservoirs, and other drainage structures.

Storm Water: Any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.

Stormwater Pollution Prevention Plan: A document which describes the best management practices and activities to be implemented by a person or business to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to Stormwater, Stormwater Conveyance Systems, and/or receiving waters to the maximum extent practicable.

Wastewater: Any water or other liquid, other than uncontaminated storm water, discharge from a facility.

### **Section 3. APPLICABILITY**

This ordinance covers any new development or re-development construction site resulting in the disturbance of one acre or more of total land area. Persons must meet the general permit rule applicability requirements under 327 IAC 15-2-6. This ordinance also applies to disturbances of less than one acre of land that are part of a larger common plan of development or sale if the larger common plan will ultimately disturb one or more acres of land within the corporate limits of the County.

All terms, conditions, definitions, and other measures defined in 327 IAC 15-5 shall apply except for state permitting process references and submittal deadlines of construction plans.

This ordinance does not apply to persons who obtain an individual NPDES permit under 327 IAC 15-2-6.

This ordinance does not apply to the Indiana Department of Transportation when it conducts its business within the County corporate limit under its NPDES permit pursuant to 327 IAC 15.

This ordinance does not apply to the following types of activities:

1. Agricultural land disturbing activities.
2. Forest harvesting activities.

This ordinance does not apply to the following activities, provided other applicable permits contain provisions requiring immediate implementation of soil erosion control measures:

1. Landfills that have been issued a certification of closure under 329 IAC 10.
2. Coal mining activities permitted under IC 14-34.
3. Municipal solid waste landfills that are accepting waste pursuant to a permit issued by the Indiana Department of Environmental Management under 329 IAC 10 that contains equivalent stormwater requirements, including the expansion of landfill boundaries and construction of new cells either within or outside the original solid waste permit boundary.

#### **Section 4. RESPONSIBILITY FOR ADMINISTRATION**

The County shall administer, implement, and enforce the provisions of this ordinance. Any powers granted, or duties imposed, upon the authorized enforcement agency, may be delegated in writing to persons or entities acting in the beneficial interest of or in the employ of the agency.

#### **Section 5. SEVERABILITY**

The provisions of this ordinance are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this Ordinance, or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this Ordinance.

#### **Section 6. ULTIMATE RESPONSIBILITY**

The standards set forth herein, and promulgated pursuant to this ordinance, are minimum standards; therefore this ordinance does not intend nor imply that compliance by any person will ensure that there will not be violations of NPDES permits.

#### **Section 7. RESPONSIBILITY OF CONSTRUCTION SITE OWNERS**

This project site owner has the following responsibilities:

1. Ensure that a sufficient construction plan is completed and submitted in accordance with procedures established by the County.
2. Complete a sufficient notice of intent letter submitted to the County with a copy sent to the Indiana Department of Environmental Management.
3. Make application for a grading permit in accordance with procedures established by the County.
4. Ensure compliance with this ordinance during construction activity and the implementation of the construction plan.
5. Ensure that all persons engaging in construction activities, on a permitted project site, comply with the applicable requirements of this rule and the approved construction plan.
6. Notify the County with a sufficient notice of termination letter and send a copy to the Indiana Department of Environmental Management.

7. Pay the cost of any required Special Engineering Review, if Stormwater Pollution Prevention Plan (SWPPP) requires professional engineering review.

For off-site construction activities that provide services (for example, road extensions, sewer, water, and other utilities) to a permitted project site, these off-site activity areas must be considered a part of the permitted project site when the activity is under the control of the project site owner.

For an individual lot where the land distance is expected to be one acre or more, and the lot lies within a project site permitted under this rule, the individual lot owner shall:

- A. Ensure that a sufficient construction plan is completed and submitted in accordance with procedures established by the County.
- B. Complete a notice of intent letter and submit it to the County.
- C. Apply for a building permit in accordance with the procedures established by the County.

For an individual lot where the land disturbance is less than one acre and the lot lies within a project site permitted under this rule, the individual lot operator shall:

1. Comply with the provisions and requirements of the plan developed by the project site owner in accordance with the procedures established by the County.
2. Comply with the provisions set forth in Section 11 of this ordinance.
3. Apply for a building permit in accordance with the procedures established by the County. (NOTE: There is no need to submit a notice of intent under the above subsection.)

## **Section 7. GENERAL REQUIREMENTS FOR STORMWATER QUALITY CONTROL**

All storm water quality measures and erosion and sediment controls necessary to comply with this ordinance must be implemented in accordance with the construction plan and sufficient to satisfy the following conditions.

A project site owner shall meet the following minimum requirements:

1. Sediment-laden water which otherwise would flow from the project site shall be treated by erosion and sediment control measures appropriate to minimize sedimentation.
2. Appropriate measures shall be implemented to minimize or eliminate wastes or unused building materials, including garbage, debris, cleaning wastes, wastewater, concrete truck washout, and other substances from being carried from a project site by run-off or wind. Identification of areas where concrete truck washout is permissible must be clearly posted at appropriate areas of the site. Wastes and unused building materials shall be managed and disposed of in accordance with all applicable statutes and regulations.
3. A stable construction site access shall be provided for all traffic ingress and egress to the project site.
4. Public or private roadways shall be kept cleared of accumulated sediment that is a result of run-off or tracking. Bulk clearing of sediment shall not include flushing the area with water.

Cleared sediment shall be redistributed or disposed of in a manner that is in accordance with all applicable statutes and regulations.

5. Storm water run-off leaving a project site must be discharged in a manner that is consistent with applicable state or federal law.
6. The project site owner shall post a notice near the main entrance of the project site. For linear project sites, such as a pipeline or highway, the notice must be placed in a publically accessible location near the project field office. The notice must be maintained in a legible condition and contain the following information:
  - A. The completed NOI letter and the NPDES permit number, where applicable.
  - B. Name, company name, telephone number, e-mail address (if applicable), and address of the project site owner or a local contact person.
  - C. Location of the construction plan if the project site does not have an on-site location to store the plan.
7. This permit, and posting of the notice under subdivision (6), does not provide the public with any right to trespass on a project site for any reason, nor does it require that the project site owner allow members of the public access to the project site.
8. The storm water pollution prevention plan shall serve as a guideline for storm water quality, but should not be interpreted as the only requirements for implementation of storm water quality measures for a project site. The project site owner is responsible for implementing, in quality measures for a project site. The project site owner is responsible for implementing, in accordance with this rule, all measures necessary to adequately prevent polluted storm water run-off.
9. The project site owner shall inform all general contractors, construction management firms, grading or excavating contractors, utility contractors, and the contractors that have primary oversight on individual building lots, of the terms and conditions of this rule and the conditions and standards of the storm water pollution plan, and the schedule for proposed implementation.
10. Phasing of construction activities shall be used, where possible, to minimize disturbance of large areas.
11. Appropriate measures shall be planned and installed as part of an erosion and sediment control system.
12. All storm water quality measures must be designed and installed under the guidance of a trained individual.
13. Collected run-off, leaving a project site, must be either discharge directly into a well-defined and stable receiving channel or diffused and released to adjacent property without causing an erosion or pollutant problem to the adjacent property owner.

14. Drainage channels and swales must be designed and adequately protected so that their final gradients and resultant velocities will not cause erosion in the receiving channel or at the outlet.
15. Natural features, including, wetlands and sinkholes shall be protected from pollutants associated with storm water run-off.
16. Unvegetated areas that are scheduled, or likely to be left inactive for fifteen (15) days or more, must be temporarily or permanently stabilized with measures appropriate for the season to minimize erosion potential. Alternative measures to site stabilization are acceptable if the project site owner, or their representative, can demonstrate they have implemented erosion and sediment control measures adequate to prevent sediment discharge. Vegetated areas, with a density of less than seventy percent (70%), shall be restabilized using appropriate methods to minimize the erosion potential.
17. During the period of construction activities, all storm water quality measures necessary to meet the requirements of this rule shall be maintained in working order.
18. A self-monitoring program that includes the following must be implemented:
  - A. A trained individual shall perform a written evaluation of the project site at a minimum of one time per week and by the end of the next business day following each 0.5 inch of rain.
  - B. The evaluation must address the maintenance of existing storm water quality measures necessary to remain in compliance with all applicable laws and ordinances.
  - C. Written evaluation reports must include the name of the individual performing the evaluation, the date of the evaluation, problems identified at the project site, and details of corrective actions recommended and completed.
  - D. All evaluation reports for the project site must be made available to the inspecting authority within forty-eight (48) hours of a request.
19. Proper storage and handling of materials, such as fuels or hazardous wastes, and spill prevention and clean-up measures, shall be implemented to minimize the potential for pollutants to contaminate surface or ground water or degrade soil quality.
20. Final stabilization of a project site is achieved when:
  - A. All land disturbing activities have been completed and a uniform (for example, evenly distributed, without large bare areas) perennial vegetation cover with a density of seventy percent (70%) has been established on all unpaved areas not covered by permanent structures, or equivalent permanent stabilization measures have been employed; and
  - B. Construction projects on land used for agricultural purposes are returned to its preconstruction agricultural use and disturbed areas, not previously used for agricultural production, such as filter strips and areas that are not being returned to

their preconstruction agricultural use, meet the final stabilization requirements in clause (A).

**Section 8. GENERAL REQUIREMENTS FOR INDIVIDUAL BUILDING LOTS WITHIN A PERMITTED PROJECT**

All storm water quality measures, including erosion and sediment control, necessary to comply with this ordinance must be implemented in accordance with the plan and sufficient to satisfy the following conditions.

Provisions for erosion and sediment control on individual building lots regulated under the original permit of a project site owner must include the following requirements:

1. The individual lot operator, whether owning the property or acting as the agent of the property owner, shall be responsible for erosion and sediment control requirements associated with activities on individual lots.
2. Installation and maintenance of a stable construction site access for ingress and egress.
3. Installation and maintenance of appropriate perimeter erosion and sediment control measures prior to land disturbances.
4. Sediment discharge and tracking from each lot must be minimized throughout the land disturbing activities on the lot until permanent stabilization has been achieved.
5. Clean-up of sediment that is either tracked or washed onto roads. Bulk clearing of sediment shall not include flushing the area with water. Cleared sediment must be redistributed or disposed of in a manner that is in compliance with all applicable laws and ordinances.
6. Adjacent lots disturbed by an individual lot operator must be repaired and stabilized with temporary or permanent surface stabilization.
7. For individual residential lots, final stabilization meeting the criteria in section 8 (20) of this rule will be achieved when the individual lot operator completes final stabilization or has installed appropriate erosion and sediment control measures for an individual lot prior to occupation of the home by the homeowner and has informed the homeowner of the requirement for, and benefits of, final stabilization.

**Section 9. MONITORING OF DISCHARGE**

The County shall have the authority to monitor discharges from construction sites covered under this ordinance as described in County Ordinance Number \_\_\_\_ entitled Stormwater Illicit Discharge and Connection Ordinance.

**Section 10. REQUIREMENTS TO PREVENT, CONTROL, AND REDUCE STORM WATER POLLUTANTS BY THE USE OF BEST MANAGEMENT PRACTICES**

The County will establish requirements identifying Best Management Practices (BMPs) for any activity, operation, or facility which may cause or contribute to pollution or contamination of storm water, the storm drain system, or waters of the United States. The owner or operator of a

construction site shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the municipal storm drain system or watercourses through the use of these structural and non-structural BMPs. Further, any person responsible for a property or premise, which is, or may be required to implement, at the responsible person's expense, additional structural and non-structural BMPs to prevent the further discharge of pollutants to the municipal separate storm sewer system. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of storm water associated with industrial activity, to the extent practicable, shall be deemed compliance with the provisions of this section. These BMPs shall be part of a Stormwater Pollution Prevention Plan (SWPP) as necessary for compliance with requirements of the NPDES permit.

#### **Section 11. POST-CONSTRUCTION CONTROLS FOR NEW DEVELOPMENT OR REDEVELOPMENT**

On areas that undergo new development or redevelopment, site construction resulting in disturbance of one acre or more total land area, post-construction control measures in the form of structural and/or non-structural best management practices are required. Specifically, post-construction storm water pollutant loading cannot exceed pre-construction pollutant loading. Post-construction storm water best management practices (BMPs) shall have full technical and administrative approval authority on the application and design of all post-construction BMPs, conditions, definitions, and submittal requirements of construction plans and specifications and related documents as defined in 327 IAC 15-5-6.5(a)(8).

#### **Section 12. ENFORCEMENT**

Enforcement of this ordinance shall be subject to the severity of the infraction and the construction site operator's efforts to comply. The County shall reserve the right to interpret enforcement on a case by case basis. Tiered enforcement will be practiced at the County's discretion. The tiered enforcement may include:

1. Verbal warning to the construction site operator to make corrections. Initial verbal warning, min. 24 hours to correct, re-inspection free.
2. Written warning to the construction site operator to make corrections within a specified period of time. The period of time shall take into account issues such as severity of the problem, pending weather, seasonal conditions, and the level of effort necessary to correct the problem.
3. Warning of non-compliance with directions to the construction site operator that site conditions require immediate action.

Written Pending Stop Work Order, min. 48 hours to correct, re-inspection fee of \$50.00.

4. Stop Work Order
5. Fine/Penalties will be based on list attached as exhibit A.

#### **Section 13. BOND**

**A bond will be required initially, or for any site that has been issued a Stop Work Order. A one year maintenance bond, or other acceptable guarantee in the amount of 25% of the cost of the storm water drainage system is required.**



**Section 14. INJUNCTIVE RELIEF**

It shall be unlawful for any person to violate any provisions or fail to comply with any of the requirements of this Ordinance. If a person has violated, or continues to violate, the provisions of this ordinance, the authorized enforcement agency may petition any court of competent jurisdiction for a preliminary or permanent injunction restraining the person from activities which would create further violations. Such enforcement may also include compelling the person to perform abatement or remediation of the violation. Costs, including attorney fees, for injunctive relief may be assessed against the violator.

**Section 15. COMPENSATORY ACTION**

In lieu of enforcement proceedings, penalties, and remedies authorized by this Ordinance, the authorized enforcement agency may impose upon a violator alternative compensatory action, such as storm drain stenciling, attendance at compliance workshops, creek cleanup, etc.

**Section 16. VIOLATIONS DEEMED A PUBLIC NUISANCE**

In addition to the enforcement processes and penalties provided, and condition caused or permitted to exist in violation of any of the provisions of this Ordinance may be deemed a threat to public health, safety, and welfare, and is declared and deemed a nuisance, and may be summarily abated or restored at the violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken. Costs, including attorney fees, for injunctive relief may be assessed against the violator.

**Section 17. REMEDIES NOT EXCLUSIVE**

The remedies listed in this ordinance are not exclusive of any remedies available under any applicable federal, state, or local law and it is within the discretion of the authorized enforcement agency to seek cumulative remedies.

**Section 18. ADOPTION OF ORDINANCE**

This ordinance shall be in full force and effect (today) days after its final passage and adoption. All prior ordinances and parts of ordinances in conflict with this ordinance are hereby repealed.  
**(Ordinance No. 2010-013A, Commissioners, 4/5/10)**

## CHAPTER 23

### **PROHIBITING THE SALE OF SUBSTANCES CONTAINING SYNTHETIC CANNABINOIDS**

1. Products containing synthetic cannabinoids (“Products”) such as K2/Spice, or similar products which contain one or more of the following chemical compounds:
  - (1) (6aR, 10aR)-9-(hydroxymethyl)-6, 6-dimethyl-3,2-methloctan-2-yl)6a, 7, 10, 10a-tetrahydrobenzo[c]chromen-1-ol, also known as HU-210;
  - (2) 1-Pentyl-3-(1-naphthoyl)indole, also known as JWH-018;
  - (3) 1-Butyl-3-(1-naphthoyl)indole, also known as JWH-073; or
  - (4) Any other equivalent compound or derivative

Shall not be sold, marketed, or offered for sale within Delaware County, Indiana; and

2. Products containing synthetic cannabinoids (“Products”) may not be burned, incinerated or ignited in any public place or on any property owned, leased, or controlled by Delaware County..

Persons or entities violating the provisions of this ordinance shall be subject to the penalty imposed for a Class B infraction, as set forth in Indiana Code 34-25-5-4. Accordingly, this ordinance shall be enforced by the provisions of Indiana Code 34-28-5.

**(Ordinance No. 2010-030, Commissioners, 11/4/10)**