

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 fire departments. Ex-officio members shall be permitted to attend all meetings, interact on all topics and offer their expertise and opinions in the operation of the DCECC.

The terms of the members of the Board of Commissioners of Delaware County shall expire on December 31, 2006.

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. Establish policies, for the conduct of the business and operations of the DCECC,
 - C. Hire a Director and an Assistant Director for the DCECC who shall serve at the pleasure of the Board.
 - D. Create uniform and objective standards for the hiring and discipline of all employees of the DCECC.
 - E. Enter into contracts (subject to approval of the Delaware County Commissioners) for services, employees or purchases related to the operation of the DCECC.

- F. Hire and discharge employees of the DCECC and negotiate any and all collective bargaining contracts, subject to the final approval of the Delaware County Commissioners.
- G. Generally oversee the operations of the DCECC.
- H. Conduct all meetings of the Board pursuant to the Indiana Open Meetings law.
- I. 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. **DUTIES OF THE DIRECTOR.** The Director and the Assistant Director are, at all times, responsible to the Board of the Emergency Communications Center. The Director shall implement the policies set by the Board of Emergency Communications Center and shall assist in the preparation of any budgetary matters.
- 6. **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.
- 7. **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.
- 8. **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)

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 (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 50EF, or not lower than 150EF., 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 office 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, during the month of July of each year, 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 during the month of July of each year, 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.

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 an 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.

- B. 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.

- C. 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.
- D. 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 proved 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 preformed 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 an 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 a 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, 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 1st of each year and expiring the April 30th 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 30th 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. Bathers 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 least 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 meet 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

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)

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).

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)

CHAPTER 14

Hazardous Material Clean-up and Clean-up 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 1st 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.

VII. 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.

VIII. 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.

- IX. 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.
- X. 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.

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

XII. 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 devise 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 form 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 Establishment 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. that 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.

- (a) 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 DELAWARE 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 comprising 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 machine(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:

<u>Square Feet of establishment:</u>	<u>Annual permit fee</u>
Less than 1000 sq. ft	\$55.00
1000 sq. ft. to 1999 sq. ft.	\$80.00
2000 sq. ft. to 2999 sq. ft.	\$95.00
3000 sq. ft. to 4999 sq. ft.	\$110.00
5000 sq. ft. and more	\$120.00

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 31st of each year. The completed application along with the appropriate fee must be returned to the Delaware County Health Department postmarked by January 31st of the new year permitted. A late fee of 25% of the permit fee will be established for applications not postmarked by January 31st 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 designate 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

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 compliant.

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)

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.