

## **TITLE IX: GENERAL REGULATIONS**

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## CHAPTER 90: ANIMALS

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*DOGS AND CATS***' 90.01 BARKING DOGS.**

The owner shall not allow his or her dog to disturb the peace and quiet of any person within the Town of Liberty by barking, howling, or making noise of any kind for unreasonable periods of time. (Ord. 1993-3, passed 6-21-1993) Penalty, see ' 90.99

**' 90.02 RUNNING AT LARGE.**

(A) From and after the effective date of this section, no person shall permit or allow any dog to run at large or loose, to run unattended, or to roam or run free without being on a leash under the control of its owner or its owner=s agent within any parts of the Town of Liberty, Indiana.

(B) Any dog found running at large or loose, running unattended, or roaming or running free without being on a leash under the control of its owner or its owner=s agent shall hereby be declared to be a public nuisance and it shall be the duty of every police officer within the Town of Liberty to cause such dogs to be captured and placed into the county dog pound. In case the owner of such dog is known, the Marshal shall give notice of the impounding to the owner. Such dogs may be reclaimed by the owner upon payment of the fees as required by law. If the owner is unknown, such officer shall post notice at the Town Hall, that if the dog is not claimed within 20 days of the posting of the notice, it may be disposed of. In the event the impounded dogs are not reclaimed within 20 days, they shall be sold or destroyed as the impounding officer or County Dog Warden may prescribe.

(C) This section shall take effect and be in force upon due and legal publication of the same as the law required.

(Ord. passed 3-21-1979) Penalty, see ' 90.99

**' 90.03 ANIMAL WASTE.**

Any owner or his or her agent taking the owner=s dog or cat outside of the owner=s real property limits must immediately remove any excrement deposited by the animal on any public or private property, except in the case of a guide dog for a blind person or service dog for a deaf or physically disabled person.

(Ord. 1998-1, passed 4-6-1998) Penalty, see ' 90.99

***LARGE CONCENTRATED ANIMAL FEEDING OPERATIONS*****90.15 PURPOSE.**

The purpose of this subchapter is to acknowledge that agriculture remains an essential component of the county economy and that, through technology and market trends, agricultural activities have evolved into agricultural industries. These standards apply to any new large concentrated animal feeding operation (CAFO) and to the expansion of an existing CAFO and are intended to minimize the impact of such feeding operations on public health. These standards are in addition to the rules, regulations, and procedures set forth by the Indiana Department of Environmental Management (IDEM), the United States Environmental Protection Agency (USEPA), or any other agency or board designated at the federal, state, or local level to monitor or regulate concentrated animal feeding operations.

(Ord. 11-10-08, passed 11-19-2008)

**90.16 CONFLICTING ORDINANCES.**

These standards are in addition to the rules, regulations, and procedures set forth by the Indiana Department of Environmental Management (IDEM), the United States Environmental Protection Agency (USEPA), or any other agency or board designated at the federal, state, or local level to monitor or regulate concentrated animal feeding operations. In the case of conflicting standards and/or regulations, the more restrictive shall prevail. Compliance with these standards shall be maintained throughout the life and proper closure of any operation.

(Ord. 11-10-08, passed 11-19-2008)

**90.17 INCORPORATION OF STATE LAW BY REFERENCE.**

All rules, regulations, and requirements of the Indiana Department of Environmental Management (IDEM) related to large CAFOs, including but not limited to 327 I.A.C. 5, 327 I.A.C. 15, and 327 I.A.C. 16 are hereby incorporated into this subchapter both in current form and as amended or augmented in the future.

(Ord. 11-10-08, passed 11-19-2008)

**90.18 REPORTING REQUIREMENT SUBSTITUTION AND ADDITION.**

In the case where a report requiring information of the same character must be filed to meet a federal or state requirement, the report may be copied and submitted to the Health Department in lieu of otherwise applicable reporting requirements under this section. Any information required by this subchapter which is not included in the federal or state report must be submitted additionally.

(Ord. 11-10-08, passed 11-19-2008)

**90.19 DEFINITIONS.**

(A) Except as defined below, the terms of I.C. 13 and 327 I.A.C. 5, 15, and 16, as each may be amended from time to time, shall have the same definition whenever used in this section.

(B) For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**ADJACENT PROPERTY.** Any property which is not owned in whole or in part by the owner of the property on which a large CAFO is located but which shares a boundary with a property on which a large CAFO is located or a property that shares a boundary with a property on which manure from a large CAFO is applied. Federal and state highways are not considered **ADJACENT PROPERTIES**. Properties with only a federal or state highway separating them are considered **ADJACENT**.

**APPLICANT.** A person who applies for a county health permit for concentrated animal feeding operation pursuant to this subchapter.

**APPLICATION.** Form provided by the County Health Department to apply for a county health permit for a concentrated animal feeding operation.

**ASTM.** An acronym for American Society for Testing Materials.

**BOARD OF HEALTH.** The Union County Board of Health.

**BOD<sub>5</sub>.** Biochemical oxygen demand. A measurement of the rate of oxygen use by organisms over a five-day period at 20°C in the dark.

**CAFO.** An acronym for **CONCENTRATED ANIMAL FEEDING OPERATION**.

**CAFO UNIT.** A unit of measurement used to determine the total number of single animal types or combination of animal types and sizes which are fed, maintained, or stabled at a concentrated animal feeding operation. To determine the number of **CAFO UNITS** for an operation, divide the number of each type of animal located at the facility by the number of animals of that type required to minimally constitute a large CAFO per 327 I.A.C. 5-4-3(7). The sum of these numbers rounded down to the nearest whole number is the number of CAFO units. (e.g., IDEM considers 2,500 swine over 55 pounds to be the lower threshold for a large CAFO, then an operation confining 4,500 swine equals 4,500/2,500 rounded down, or one **CAFO UNIT**).

**CHURCH.** Any tax exempt building or portion thereof used to conduct religious services on a regular basis.

**COD.** Chemical oxygen demand. A measurement of the amount of oxygen used while fully

oxidizing the organic compounds in a sample of water. For the purposes of this subchapter, the process described in ISO 6060 shall be the standard for **COD** measurement.

**COLI.** Escherichia coli, a bacterium frequently found in the lower intestine of warmblooded animals.

**COUNTY.** Union County, Indiana.

**COUNTY HEALTH PERMIT.** Written authorization issued by the County Health Department to construct, modify or operate a large CAFO.

**CU.** An abbreviation for CAFO unit.

**DAY CARE FACILITIES.** The same meaning as a child care center as defined in I.C. 12-7-2-28.4 and a child care home as defined in I.C. 12-7-2-28.6 and a child care ministry as defined in I.C. 12-7-2-28.8.

**EXISTING CAFO.** A CAFO is considered to exist for purposes of this subchapter if the CAFO=s confinement structure(s) or manure storage structure(s) have been constructed as of the effective date of this subchapter or IDEM has issued a final CAFO permit for the CAFO as of the effective date of this subchapter.

**FEMA.** Acronym for the **FEDERAL EMERGENCY MANAGEMENT AGENCY**.

**FLOODPLAIN.** The area adjoining a river or stream that has been or may be covered by flood water as defined in 312 I.A.C. 1-1-15 or as may be amended from time to time. For the purposes of this section, Union County, Indiana Flood Hazard Boundary Maps Community Panel Number 180411 001 A and Community Panel Number 180411 002 A of the U.S. Department of Housing and Urban Development, effective date: March 4, 1977, shall be used to determine the boundaries for **FLOODPLAINS**.

**FLOODWAY.** The channel of a river or stream; and the parts of the floodplain adjoining the channel that are reasonably required to efficiently carry and discharge the flood water or flood flow of a river or stream as defined in 312 I.A.C. 1-1-16 or as may be amended from time to time.

**FROZEN GROUND.** When the air temperature at or near ground level is at or below 28°C, the ground below the point of measurement is **FROZEN GROUND**.

**HEALTH DEPARTMENT.** The Health Department of the Union County, Indiana.

**HEALTH OFFICER.** The Health Officer of Union County or the Health Officer=s duly authorized representative.

**HIGHLY PERMEABLE SOIL.** Soil with a Ksat rating of 100 or more micrometers per second.

***I.A.C.*** An acronym for the ***INDIANA ADMINISTRATIVE CODE***.

***I.C.*** An acronym for the ***INDIANA CODE***.

***IDEM.*** An acronym for the Indiana Department of Environmental Management.

***LARGE CONCENTRATED ANIMAL FEEDING OPERATION*** or ***LARGE CAFO***. Any property or contiguous properties and all structures and animals contained thereon that are owned in whole or in part by the same person(s) confining only one category of livestock and matching the definition of ***LARGE CAFO*** as defined in 327 I.A.C. 5-4-3(7) or confining more than one category of livestock where the number of animals in two or more categories are in the range defined for a Medium CAFO in 327 I.A.C. 5-4-3(10).

***MANURE.*** Any animal feces or urine and any biological material such as bedding which has been in contact with animal feces or urine and any storm water, groundwater, or process water that has been commingled with animal feces or urine.

***MEDICAL FACILITY.*** Any facility that, for a fee, treats ill, injured, or disabled patients or has residents that need daily assistance to perform normal living activities and who routinely stay at the facility for 24 hours a day for 14 days or more such as hospitals, long-term care facilities, and other similar facilities.

***MUCK SOILS.*** Unconsolidated soil material consisting primarily of highly decomposed organic material (usually between 20% and 50%) in which the original plant parts are not recognizable and exhibiting the highest bulk density and the lowest water content at saturation of all organic soil material.

***MUNICIPALITY.*** Any incorporated area of Union County.

***NITRATE.*** Any salt of nitric acid containing a nitrate ion (NO<sub>3</sub>-).

***NON-POTABLE WELL.*** Any well not intended or used for drinking water or culinary purposes except wells for fire suppression and environmental monitoring.

***OFF-SITE WELL.*** Any potable water supply well which is not on the property that contains a CAFO.

***PERMIT STIPULATIONS.*** Permit-specific requirements issued by the Health Department to address unique issues raised by the specific site or situation.

***PERSON.*** Any of the following or their authorized representative: any individual, trust, firm, joint stock company, federal agency, corporation (including a government corporation), limited liability company, partnership, co-partnership, company, estate, municipal corporation, non-profit organization, church, city, school city, town, school town, school district, school corporation, county, state agency,



association, state, municipality, commission, political subdivision of the state, any interstate entity, or any other legal entity or their legal representative.

**PROCESS WATER.** Any water that comes in contact with animals, pens, barns, manure, litter, feed, bedding, or milk, eggs, or other commercial products and any spillage or release of such water.

**PROPERTY OWNER.** Any person or their authorized representative who owns a property or facility in whole or in part subject to the requirements or this subchapter.

**PUBLIC TILE.** Any drain tile that is required to be maintained by the county.

**RESIDENCE.** A place that is listed on the county tax roles where at least one person routinely performs his or her primary residential activities such as eating, sleeping, and recreating.

**RESIDENTIAL ZONING DISTRICT.** An area designated under the County Zoning Ordinance as R1, R2, or a Planned Unit Development.

**RZD.** An acronym for residential zoning district.

**SATURATED SOIL.** Soil from which water will flow from the soil profile into an unlined auger hole.

**SENSITIVE RECEPTOR.** A facility or location which poses an increased need for protection from a threat(s) to public health such as schools and medical facilities.

**SCHOOL.** Any publicly or privately owned building or group of buildings where more than 25 students are provided academic, technical, or vocational instruction an average of at least 130 days per year.

**VECTOR.** An insect or organism that is a carrier of disease and spreads infection by conveying pathogens from one host to another.

**WATERS OF THE STATE.** Water as defined in I.C. 13-11-2-265.  
(Ord. 11-10-08, passed 11-19-2008)

## ‘ 90.20 APPLICABILITY.

This subchapter applies to the location, design, construction, and operation of concentrated animal feeding operations in the county. Certain provisions of this subchapter do not apply to existing CAFOs.  
(Ord. 11-10-08, passed 11-19-2008)

## ‘ 90.21 REVIEW OF SUBCHAPTER; LIABILITY.

(A) The County Health Board shall review this subchapter as often as deemed necessary and at least every four years, and recommend changes to the subchapter, as deemed appropriate.

(B) This subchapter shall not create a liability for any member of the County Health Board for any damage that may result from any advice or recommendations made pursuant to service to the County Health Board. The subchapter shall not create a liability for the county or any of its divisions or employees for any damage that may result from the using or not using the advice or recommendations of the County Health Board.

(Ord. 11-10-08, passed 11-19-2008)

## **90.22 PERMITTING; APPLICATION AND FEES.**

### *(A) General requirements.*

(1) No person shall start construction of or operate a CAFO without first obtaining a county health permit from the Health Department, subject to exception described in division (A)(3) below.

(2) An applicant for a county health permit shall submit a permit application to the Health Department at the same time the applicant submits a permit application for the CAFO to the Indiana Department of Environmental Management (IDEM), subject to exception described in division (A)(3) below.

(3) Any existing large CAFO shall have 180 days from the effective date of this subchapter to submit a complete permit application to the Health Department.

(4) If a person receives an exemption from IDEM for any provision of 327 I.A.C. 5, 15, or 16 which effects any provision of this subchapter, the applicant shall also apply for and obtain a variance from the Health Department or the exemption may not be implemented.

(5) Permits shall expire five years after the date of issuance or on the date that the IDEM CAFO approval expires, whichever occurs first.

(6) A permit renewal application shall be submitted no later than 180 days prior to the expiration of an existing permit with the permit fee.

(7) Any proposed changes to the information contained in an application for which a permit has been issued shall be provided to the Health Department for approval prior to making the change. Such changes shall include but shall not be limited to changes in:

(a) The maximum number, sizes, and types of animals at the site;

(b) Structural changes or additions to manure storage, animal confinement, or feed storage facilities; and

(c) Change in ownership. (Requires re-submission of the affidavit described in division (C)(4) below.

**(B) *Permit application.***

(1) *Application process.* The permit application shall:

(a) Be submitted on forms prescribed by the Health Department;

(b) Include drawings made to scale which shall show the applicable setbacks and separation distances; and

(c) Contain the following information:

1. A completed application form;

2. A farmstead plan as defined in 327 I.A.C. 15-15-17;

3. An emergency spill response plan as defined in 327 I.A.C. 15-15-16;

4. A manure management plan as defined in 327 I.A.C. 16-7-11; and

5. Any other reasonable and necessary information required by the Health Officer to process the application.

(2) *Fees.*

(a) A non-refundable processing fee of \$635 shall be required at the time the application is submitted.

(b) If reduced setbacks are requested and granted, an additional fee of \$365 is required at the time of approval to cover the costs of verifying compliance.

(c) If the IDEM permit for the large CAFO expires before the Health Department permit, the fees will be reduced by 20% for each full year of difference in expiration date.

(3) *Obtaining a new permit.* Obtaining a permit from the Health Department does not release any person from obtaining any other required permit or approval.

(C) *Application processing and approval.*

(1) Within 20 days of receipt of a completed permit application the County Board of Commissioners, County Highway Department, County Area Plan Director, County Surveyor, and the County Drainage Board shall be notified of the application and provided a copy to ensure each department is aware of the planned facility and possesses the information necessary to assess the impact, if any, of the planned facility on resources and infrastructure under the purview of that department.

(2) Within 45 days of receipt of a completed permit application for a large CAFO that will be a significant ground water withdrawal facility as defined in I.C. 14-25-4-6, the Health Department shall contact the DNR and request an assessment of the pumping capacity and nitrate and E-Coli content of all existing wells within a one mile radius of the large CAFO property boundary. The Health Department shall assist the DNR by contacting all residents within this area and explaining the purpose of the assessment. A copy of each assessment shall be kept on file at the Health Department as baseline reference material should any resident seek declaration of a groundwater emergency per I.C. 14-25-4-9.

(3) The Board of Health, Health Officer and the Health Department shall review the application and all plans submitted pursuant to division (B)(1)(c) above for compliance with this subchapter and:

(a) Request any other information deemed reasonable and necessary to process the application;

(b) Notify all residents, businesses, and other facilities where people live or work within one mile of the proposed facility and provide them with a summary of the application and information on how they may comment on the application and the applicant shall pay all cost associated with notification;

(c) Require changes in the application necessary to comply with this subchapter;

(d) Establish site specific permit stipulations as necessary to address specific environmental and health issues. Include these stipulations along with those established pursuant to division (C)(1) above as requirements in the permit; and

(e) Approve the application upon a determination that the application meets all requirements of this subchapter.

(4) A signed affidavit stating that all persons who own any portion of the land and/or structures of the concentrated animal feeding operation (CAFO) have no outstanding or unresolved violations relating to concentrated animal feeding operations nor has a history of more than four violations in the last five years prior to the date of the application, with the Indiana Department of Environmental Management, the U.S. EPA, or other governmental agency relating to concentrated animal feeding operations.

(5) The Health Department shall not issue a permit to any person who:

(a) Has an unresolved violation with the EPA, IDEM, the Health Department, or any other environmental regulatory agency concerning a CAFO;

(b) Has intentionally misrepresented or concealed any material fact in any application for a CAFO health permit applicable to the proposed CAFO; or

(c) Has been convicted more than twice of any felony or misdemeanor violation of state, or federal environmental protection laws concerning concentrated animal feeding operations.

(D) *Sewage disposal permit.* The Health Department shall not issue an on-site sewage disposal permit until a county health permit has been approved and issued.  
(Ord. 11-10-08, passed 11-19-2008)

### **90.23 SETBACKS FROM RESIDENCES, RESIDENTIAL ZONING DISTRICTS, AND MUNICIPALITIES.**

(A) *General requirements.*

(1) No large CAFO shall be constructed or allowed to operate, except as provided in division (A)(3) below, closer to a residence, residential zoning district (RZD), or municipality than the reduced setbacks shown in division (B) below.

(2) No large CAFO shall be required pursuant to this subchapter to be constructed or operate farther from a residence, RZD, or municipality than the standard setbacks shown in division (B) below.

(3) All structures at large CAFOs which exist as of the effective date of this subchapter shall be exempt from the setbacks listed in division (B) below, however, all additions or expansions of existing facilities shall be subject to the setbacks established in division (B) below.

(4) Regardless of the setback of any large CAFO, it shall be a violation of this subchapter for any large CAFO to operate in a manner that becomes a threat to public health and the Health Department shall exercise its authority under I.C. 16-20 and other state statutes to protect public health.

(5) All setbacks shall be measured as the straight line distance from the nearest point of any structure at the large CAFO that contains animals or manure to the:

(a) Nearest point on the outside wall of any residence for residential setbacks;

(b) The nearest boundary of any RZD for a RZD setback; and

(c) The nearest boundary of any municipality for a municipality setback.

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(6) Only residences, RZD boundaries, and municipality boundaries in existence as of the date the large CAFO application is submitted to the Health Department shall be used to establish setbacks.

(7) Neither the Health Department nor the Board of Health shall issue a variance to reduce the setbacks to less than the reduced setbacks except under a variance issued pursuant to division (C)(2) below.

(B) *Reduced and standard setback distances.* The following table lists the reduced and standard residential, RZD, and municipality setbacks for CAFOs.

<i>Residential, RZD, and Municipality Setbacks</i>		
<i>Size of CAFO</i>	<i>Residential<sup>2</sup></i>	<i>RZD or Municipality<sup>2</sup></i>
1 CU	1,320	2,000
2 CU	1,320	3,600
3 CU	1,800	4,600
4 CU	2,300	5,300
5 CU	2,600	5,800
6 CU	2,900	6,400
7 CU	3,200	7,000
8 CU	3,500	7,400
9 CU	3,700	7,800
<sup>1</sup> 10 CU	3,900	8,400

**NOTES TO TABLE:**  
<sup>1</sup>For each CU above 10 CU, the following shall be used to calculate the setbacks:  
 -The residential setback shall equal the square root of the total number of CU times 1,000 rounded to the nearest 100 feet.  
 -The RZD or municipality setback shall be twice the residential setback as calculated above.  
<sup>2</sup>All setbacks are shown in feet.

(C) *Reduction of setbacks.*

(1) Reduced setbacks noted below apply to any CAFO that utilizes the following processes or practices for the reduction of hydrogen sulfide gas. Note that if multiple methods are used, the percentages are applied cumulatively from the source outward.

(a) The use of pit or lagoon additives shall reduce the setback, provided the applicant provides the Health Department with a third-party analysis of the effectiveness of the additives. The setback shall be reduced by the percentage of hydrogen sulfide decrease multiplied by the decrease

certainty (e.g., the decrease is 37% and the decrease certainty is 95%, a CAFO of size three CU could reduce the minimum residential setback by 35.15% from 2,300 feet to roughly 1,500 feet). If this method of reduction is used, the applicant must supply the Health Department with proof that the additives are being applied on an ongoing basis in the quantity recommended by the manufacturer.

(b) Use of biofiltration shall reduce setbacks provided the installer provides the Health Department with test results verified by a third party demonstrating the percentage of hydrogen sulfide removed. This percentage will then equal the setback reduction percentage so long as the applicant continues to supply the Health Department with proof of adequate maintenance of the system.

(c) Landscaping to slow dispersion may be used to reduce setbacks.

1. Planting and maintenance of a shelterbelt of at least three rows of evergreen trees on 20-foot centers covering 90% of the perimeter shall reduce the setback distance by 10%.

2. Creation of berm or a combination of natural terrain and human-made berm that enclose 90% of the perimeter with an embankment six feet or more above the level of the source(s) of H<sub>2</sub>S emissions shall reduce the setback distance by 10%.

(d) Use of anaerobic digester equipment, subject to approval of the Health Department, will reduce the setback distance by the percentage of demonstrated reduction in hydrogen sulfide emissions, provided that:

1. The anaerobic digester equipment and processes must have been in use at more than two locations for a sufficient length of time to allow a sound judgment to be made of its long-term effectiveness;

2. Its effectiveness in achieving the claimed reduction must be independently assessed by analysts from a government agency, university, or other similar organization;

3. Verifiable documentation of the assessment of effectiveness must be submitted to the Health Department prior to approval;

4. Annual records are provided to the Health Department sufficient to establish that the processes and equipment are maintained on an ongoing basis; and

5. If the equipment and processes result in the liquid effluent stored in uncovered lagoons meeting the following criteria, the bond required in ' 90.32(C) may be reduced by 50%:

a. BOD<sub>5</sub> < 30mg/l;

b. COD < 100 mg/l;

c. Nitrate < 20 mg/l;

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- d. pH 6.5 to 8.5;
- e. Fecal coliform < 500;
- f. MPN-100 ml;
- g. E. Coli < 250 MPN-100 ml; and
- h. If chlorine is used in treatment, Cl < .5 mg/l.

(e) Any method developed after the adoption of this subchapter that produces substantial and verifiable reductions in the emission of hydrogen sulfide may be considered on a case-by-case basis for a setback reduction at the discretion of the County Health Officer.

(f) Any method developed after the adoption of this subchapter that produces substantial and verifiable reductions in the pathogens or toxic compounds contained in uncovered lagoons may be considered on a case-by-case basis for a reduction of the bond required in ' 90.32(C) at the discretion of the County Health Officer.

(2) Any operation that receives approval for a reduced setback but does not implement and maintain the conditions upon which the setback is based shall be subject to ' 90.30 and shall be required to reduce the number of animals at the operation to comply with the standard setback requirements.

(D) *Standard setbacks.*

(1) Standard setbacks shall apply to those large CAFOs that do not meet or maintain the requirements for the reduced setbacks.

(2) The Health Department may approve a variance for a reduction to the standard residential setback if the applicant obtains a waiver(s) voluntarily signed by the owner(s) of a residence that would otherwise be within the setback and only if the proposed large CAFO was a CAFO as of the effective date of this subchapter or denial of the variance would create an undue hardship on the applicant.

(a) The Health Department reserves the right not to approve a variance based on a waiver if, in its opinion, the waiver would involve an unacceptable risk to public health.

(b) Any variance issued pursuant to this division shall be disclosed to prospective buyers by the property owner if the property which is the subject of the waiver is to be sold.

(3) The Health Department may approve a variance for a reduction to the standard setbacks based on the prevailing wind direction, speed, and frequency.

(4) The Health Department shall determine the amount of reduction warranted by the methods described in divisions (D)(2) and (D)(3) above.



(5) If a reduction in a residential setback is approved by the Health Department based on reductions in air emissions, it shall apply to the RZD and municipality setbacks in equal proportion to the residential setback reduction.

(E) *Setback protection.*

(1) When an applicant applies for a permit from the Health Department, the applicant may register for the maximum setback for which the site qualifies.

(2) No person shall construct a residence or any other facility within the setback previously established in a permit issued pursuant to this subchapter.

(F) *Reduced setback operational requirement.* Any person who receives a permit for reduced setbacks under division (C) above shall complete construction of the facilities or implementation of technology and procedures according to the reduced setback requirements of the permit prior to bringing animals on-site.

(Ord. 11-10-08, passed 11-19-2008) Penalty, see ' 90.99

**' 90.24 SEPARATION DISTANCES BETWEEN LARGE CAFOS.**

(A) *Generally.* A proposed large CAFO may be located within two miles of any existing large CAFO(s) only if the following separation distances are met, as applicable.

(1) If there is one and only one large CAFO within two miles of a proposed large CAFO, when the residential setback of the proposed large CAFO is multiplied by two, it shall not intersect with the residential setback of the existing large CAFO.

(2) If there is more than one large CAFO within two miles of the proposed large CAFO, when the residential setback of the proposed large CAFO is multiplied by five, it shall not intersect with the residential setback of an existing CAFO.

(3) The requirements of divisions (A)(1) and (A)(2) above notwithstanding, no large CAFO shall be required to be more than two miles from any other large CAFO.

(4) The separation distances between large CAFOs do not alter the residential, RZD, or municipality setbacks.

(B) *Reduction in separation distance between large CAFOs.*

(1) The Health Department may approve a reduction in the separation distance between large CAFOs when there is more than one large CAFO within two miles of the proposed large CAFO if the conditions described in divisions (B)(1)(a) through (B)(1)(c) below are met.

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(a) The separation distance may be reduced by incorporating measures to reduce the exposure of nearby residents to air emissions to the satisfaction of the Health Department. The burden of proof for establishing the effectiveness of a technology to reduce emissions shall be on the applicant. In order to receive full consideration for a proposed technology by the Health Department, the technology must meet the following requirements.

1. It must have been in use at numerous locations for a sufficient length of time to allow a sound judgment to be made of its long-term effectiveness.
2. Its effectiveness must have been independently assessed by experts from a government agency, university, or other similar organization.
3. Verifiable documentation must be provided to the Health Department.

(b) The separation distance may be reduced if, in the opinion of the Health Department, the geographic relationship of the large CAFOs is unlikely to result in unacceptable exposure to any resident from any airborne contaminant.

(c) Neither the Health Department nor Board of Health may reduce the separation distance pursuant to division (B)(1) above to less than the following: when the residential setback of the proposed large CAFO is multiplied by three, it shall not intersect with the residential setback of any existing large CAFO.

(2) The Health Department shall determine the amount of reduction warranted under division (B)(1) above subject to the limitations described in division (B)(1)(c) above.

(3) If a large CAFO owner fails to implement any of the items on which the reduction is based, the Health Department shall order a reduction in the number of animals at the site consistent with ' 90.30 and the permittee shall comply with this order.

*(C) Reduction in separation distance for an existing CAFO applying for a large CAFO permit. An existing CAFO located one mile or more from a large CAFO may be approved for a large CAFO permit under this subchapter if all standard setback conditions are met and there is only one large CAFO within two miles of the existing CAFO applying for the permit. (Ord. 11-10-08, passed 11-19-2008)*

**' 90.25 SEPARATION DISTANCES BETWEEN LARGE CAFOS AND SENSITIVE RECEPTORS.**

(A) No large CAFO structure or area which stores manure or confines animals, except as provided in division (B) below, shall be located within the distance shown in the following table.

<i>Sensitive Receptor Separation Distance</i>
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<i>Sensitive Receptor Separation Distance</i>	
Churches and public use areas	One-half of the residential setback
Day cares	Equal to the residential zoning district setback
Medical facilities	Equal to the residential zoning district setback
Schools	Equal to the residential zoning district setback
Sensitive receptor	Minimum separation distance

(B) All large CAFO structures that exist as of the effective date of this subchapter shall be exempt from the separation distances in division (A) above, however, additions or expansions to manure storage or animal confinement areas or facilities shall be subject to the separation distances listed in division (A) above.

(C) All setbacks shall be measured as the straight line distance from any structure on the CAFO that stores manure or contains animals to the nearest point on the outside wall of the structure or the nearest property line or road right-of-way, as appropriate.

(Ord. 11-10-08, passed 11-19-2008)

**90.26 SEPARATION DISTANCES BETWEEN LARGE CAFOS AND WATER FEATURES.**

(A) No large CAFO waste lagoon or solid manure storage structure, except as provided in division (C) below, shall be located within the distance shown in the following table.

<i>Water Feature Separation Distances</i>		
		<i>Separation Distance</i>
Drainage inlets	500 feet	100 feet
Flood plains	300 feet from all large CAFO structures plus two feet of freeboard	
Non-potable well	500 feet	100 feet
Off site well	300 feet	100 feet
Public tiles	75 feet from all large CAFO structures	
Public water supply well	1,500 feet	300 feet
Sediment basins	500 feet	100 feet
Sinkholes	500 feet	100 feet
Water feature	Waste lagoon	Solid waste storage structure

<i>Water Feature Separation Distances</i>		
		<i>Separation Distance</i>
Water of the state	500 feet	100 feet
Water well on the CAFO	100 feet	100 feet

(B) No large CAFO shall be constructed within a wellhead protection area that is based on the five-year time of groundwater travel to the wellhead and which has been designated or approved by IDEM or the Health Officer.

(C) All large CAFO waste lagoons and solid manure storage structures that exist as of the effective date of this subchapter shall be exempt from the separation distances in divisions (A) and (B) above however, additions to or expansion of these structures shall be subject to all separation distances in divisions (A) and (B) above.

(D) Waste lagoon, solid waste storage structure, public water supply, waters of the state, drainage inlets, sediment basins, and sinkholes shall have the same meaning as the meaning established by the Indiana Water Pollution Control Board.

(E) The separation distances shall be measured as the straight line distance from any structure on the large CAFO that contains animals or manure to the nearest point of the water feature.

(F) The Health Department may reduce the setback from a public water supply well to 1,000 feet if the lagoon is not located in an area with high permeability soils.

(G) The Health Department may approve a reduction in the setbacks from lagoons for non-potable wells, waters of the state, drainage inlets, sediment basins, and sinkholes to 300 feet if:

- (1) Filter strip at least 35 feet wide is installed and maintained near the water feature;
- (2) A berm is constructed near the lagoon to protect the water feature; or

(3) The surface water feature is at least two feet higher in elevation than the up slope toe of the lagoon and the floor of the solid waste storage structure, as applicable.  
 (Ord. 11-10-08, passed 11-19-2008)

**' 90.27 DESIGN REQUIREMENTS.**

(A) *General requirements.*

(1) All large CAFO structures that exist (see definition in ' 90.19) as of the effective date of this subchapter shall be exempt from the requirements of divisions (B) and (C) below except all existing facilities shall comply with division (B)(2) below, within 365 days of the effective date of this

subchapter.

(2) All applicable county permits must be obtained prior to initiating construction of any facility or structure.

(B) *Manure storage facilities.*

(1) All structures for the storage of manure shall be designed and constructed to prevent the release of contaminants to the environment.

(2) All structures for the storage of solid manure shall be designed and constructed to prevent precipitation from contacting the manure and to prevent the release of liquids to the environment from material within the structure.

(3) All structures for the storage of store solid manure shall be designed and constructed to be two feet in elevation above the surrounding terrain or the applicant shall submit engineering data showing that the facilities would not be flooded by a 24-hour 100-year precipitation event to the satisfaction of the Health Department.

(4) All lagoons that contain manure or liquid that comes in contact with manure shall have a high density polyethylene (HDPE) liner equal to or greater than a design thickness as specified by using ASTM Standard D 5199 for measurement of a smooth HDPE liner or an equivalent alternative which shall be subject to the approval of the Health Department. The installation of the liner, including the welding of all seams, shall be performed according to the recommendations of the manufacturer.

(5) If a lagoon is constructed in high permeability soils or where the seasonal water table is within four feet of the bottom of the lagoon, groundwater monitoring wells shall be installed and sampled according to the requirements of the Health Department.

(C) *Animal confinement and silage storage structures.*

(1) All structures designed to confine animals or store silage shall be designed and constructed to:

(a) Prevent the release of contaminants to the environment; and

(b) Be two feet in elevation above the surrounding terrain or the applicant shall submit engineering data showing that the facilities would not be flooded by a 24-hour 100-year precipitation event to the satisfaction of the Health Department.

(2) If a confinement structure exhaust fan(s) distribute exhaust in the direction of one or more nearby resident(s), the Health Department may order that wind breaks or other reasonable and necessary measures be implemented to reduce the exposure of the residents.

(Ord. 11-10-08, passed 11-19-2008)

**90.28 OPERATIONAL REQUIREMENTS.***(A) General requirements.*

(1) All operational requirements contained in this subchapter shall be applicable to all large CAFO operations. If compliance with any portion of this section as of the effective date of this subchapter would constitute an undue hardship to an owner of an existing large CAFO, the Health Department may grant a waiver for up to 365 days for the owner to come into compliance.

(2) No person shall institute, permit, or maintain a practice or condition while storing or applying manure or confining animals that may transmit, generate, or promote disease.

(3) All liquid manure must be contained in an approved containment structure until removed for land application or other disposition approved by the Health Department.

(4) Silage which has spoiled and is not to be feed to the confined animals shall be disposed of in accordance with the approved waste disposal plan.

(5) A large CAFO owner and/or operator must immediately contact the Health Department and implement their approved emergency response plan upon a determination that a release to the environment may contaminate surface water, groundwater, or an adjacent property.

(6) If the Health Department determines there is evidence that any soil, surface water, or groundwater has been or is being contaminated by the operation of a large CAFO, the Health Department shall immediately notify IDEM of such evidence in writing.

(7) There shall be no discharge or release of manure, litter, or process water pollutants to waters of the state unless allowed by an existing National Pollution Discharge Elimination System permit.

(8) All manure shall be stored, managed, and land applied according to the requirements of 327 I.A.C. 15 and the additional requirements of this subchapter.

*(B) Site maintenance.*

(1) All spills or releases of manure and any material that has come into contact with manure, other than approved land application, on or off the large CAFO property to the soil or surface water shall be immediately cleaned up.

(2) All open air manure storage structures shall be maintained to prevent damage to the structural integrity of the storage structure. Maintenance shall, at a minimum, include the following requirements:

(a) Woody vegetation shall be removed from any earthen lagoon;

(b) Burrowing animals shall be removed from any earthen lagoon; and

(c) Vegetation around lagoons shall be mowed and/or trimmed to prevent a breeding ground for vectors.

(3) Vectors and rodents shall be controlled so they do not become a public health nuisance to neighbors. Notification to the Health Department shall be required if procedures for vector control will result in a range outside of the large CAFO property boundaries prior to application of procedures. (Ord. 11-10-08, passed 11-19-2008)

#### **90.29 ISSUANCE OF STANDARDS AND REQUIREMENTS.**

(A) The Board of Health may adopt, amend, or rescind any rules, regulations, or standards as deemed appropriate and necessary for proper enforcement of and to carry out the purposes and intent of this subchapter subject to the following requirements: public comment periods, public meetings, and public hearings, as appropriate, in accordance with state law shall be used when developing rules, regulations, or standards.

(B) The Health Department may adopt, amend, or rescind policies and procedures for the appropriate implementation of this subchapter.

(C) The rules, regulations, standards, policies, and procedures issued pursuant to this subchapter may not:

(1) Threaten public health; or

(2) Violate any provision of this subchapter or other applicable federal, state, or county laws or regulations.

(Ord. 11-10-08, passed 11-19-2008)

#### **90.30 ENFORCEMENT; INSPECTIONS, VIOLATIONS, AND ORDERS.**

(A) *Enforcement authority.* Except as provided for elsewhere in this subchapter, the Health Department is authorized and charged with enforcing this subchapter.

(B) *Reporting violations of state and federal law.* If the Health Department is made aware of an actual or alleged violation of any state or federal law or regulation regarding CAFOs occurring in the county, it shall become the duty of the Health Department to investigate and report as follows.

**Union County - General Regulations**

(1) If the Health Department is made aware of the alleged violation via a citizen complaint, the Health Department shall make a reasonable attempt to corroborate the information within one working day of the complaint and shall attach any findings to subsequent reports.

(2) The Health Department shall provide notification of the alleged or actual violation to the agency with authority to enforce the law or regulation via phone immediately.

(3) The Health Department shall follow up the phone notification with a report of the same facts in writing to the same agency within one working day of the phone report.

*(C) Right of entry for inspections.*

(1) Any application for a permit that includes reduced setback provisions submitted under the provisions of this subchapter shall constitute permission for representatives of the Health Department bearing proper credentials and identification to enter the grounds of the large CAFO identified in the application to verify compliance with the requirements for reduced setbacks.

(2) No representative of the Health Department shall enter animal confinement structures.

(3) After the issuance of a permit including reduced setback provisions, representatives of the Health Department bearing proper credentials and identifications may enter upon and inspect any property except animal confinement buildings listed in the permit application as part of the operation for such purposes as inspecting, observing, measuring, sampling, testing, or examining records necessary to carry out the provisions of this subchapter.

(4) In the event a person who has common ownership over a building, structure, or land subject to a large CAFO permit that includes reduced setback provisions does not allow an inspection, the following shall occur:

(a) The application submitted or permit issued pursuant to this subchapter shall be immediately cancelled;

(b) All work being performed, except that necessary to protect the health of animals, shall be immediately suspended; and

(c) The work may only commence upon the approval of the Health Department.

(5) The Health Department shall attempt to inspect each large CAFO holding a permit that includes reduced setback provisions as often as deemed necessary and no less than twice each year subject to the availability of resources.

*(D) Corrective action for violations of the subchapter.*

(1) When the Health Department has reasonable grounds to believe that there has been a violation of this subchapter which is also a violation of IDEM's requirements, the Health Department



shall notify IDEM and may work with IDEM to implement a joint enforcement action or may defer enforcement to IDEM.

(2) Whenever the Health Department determines there are reasonable grounds to believe that there has been a violation of any provision of this subchapter, the Health Department shall issue a written order to abate the violation to the person(s) responsible for the violation consistent with the following requirements.

(a) The abatement order shall be sent by certified mail to the last known address of the responsible person.

(b) If the certified letter is returned, a copy of the letter shall be posted at the property and the posting shall constitute due notice.

(c) The abatement order shall include:

1. A statement explaining the nature of the violation or condition;
2. A description of the remedies required to abate the violation or condition;
3. A reasonable time for correcting the violation or condition; and
4. A description of the penalty that is imposed for the violation, if any.

(3) Any person notified of a corrective action requirement by the process identified above shall comply with the order or he or she shall be in violation of this subchapter and subject to the penalty provisions of this subchapter.

(E) *Issuance of emergency orders.*

(1) Whenever the Health Officer finds that an emergency exists which requires immediate action to protect public health, the Health Officer may, without notice or hearing, issue an emergency abatement order to any person reciting the existence of such an emergency and requiring that action be taken as the Health Officer deems reasonable and necessary to meet the emergency. Notwithstanding any other provisions of this subchapter, such order shall be effective immediately. An emergency abatement order may include, but need not be limited to, an order to:

- (a) Immediately discontinue any practice that threatens public health or the environment;
- (b) Remove any contamination that has entered the environment; and/or
- (c) Carry out any other action necessary to protect public health or the environment;

(2) Any person receiving an emergency abatement order:

(a) Shall comply with and carry out the order;

(b) May seek a hearing under ' 90.31(E) while carrying out such order; and

(c) Shall have the right to recover any of its response costs to the extent that the order or any portion thereof is found to have been arbitrary or capricious or not otherwise in accordance with law.

(3) If a person fails to perform the lawful measures ordered by the Health Officer pursuant to ' 90.31(D), the Health Department:

(a) May enter the property without prior notice to take or cause to be taken any emergency order; and

(b) Shall be reimbursed by the person who failed to perform the emergency order for all costs incurred by the Health Department associated with taking the action ordered.

*(F) Appealing an order of the Health Department.*

(1) Any person affected by an order of abatement or any decision issued by the Health Department pursuant to the enforcement of this subchapter may petition for and shall be granted a hearing on the matter before the Health Officer, provided that such person shall file a petition with the office of the Health Officer by mail postmarked or hand delivered, within 15 days after service of an order of abatement or issuance of the decision. The request for a hearing shall be written and shall set forth a brief statement of the grounds thereof.

(2) Upon receipt of such petition, the Health Officer shall arrange a time and place for such hearing and shall give the petitioner written notice thereof. Such hearing shall be held as soon as practicable after the receipt of a petition but in no case shall be more than 30 days after receipt of the petition. At such hearing, the petitioner shall be given an opportunity to be heard and to show cause why such notice or decision should not be enforced.

(3) The Health Officer shall sustain, modify, or withdraw the notice to the petitioner as soon as practicable and in no case later than 15 days following the hearing.

(4) A decision by the Health Officer to approve, amend, or disapprove an order or decision shall be final subject only to review by a court of competent jurisdiction.  
(Ord. 11-10-08, passed 11-19-2008)

**' 90.31 VARIANCES.**

(A) The Health Officer may issue a written variance to any provision of this subchapter on a case by case basis, except where restricted herein.

(B) The Health Officer shall approve, amend, or disapprove a written petition by another party for a variance from any provision of this subchapter, except where restricted herein, as soon as practical after receiving the petition and in no case more than 30 days after the petition is filed or 60 days if the petition is for a reduction in residential setbacks or the distance between large CAFOs.

(C) If the variance request is for a reduction in the residential setback as allowed in ' 90.23(C) and ' 90.23(D) or a reduction in the distance between large CAFOs allowed by ' 90.24(B), the Health Officer shall follow the process described in ' 90.32 but shall additionally:

(1) Request the opinion of the Board of Health on the appropriateness of the proposed reduction;

(2) Hold a public meeting; and

(3) Issue a determination of the setback based on the Health Department=s assessment of the appropriateness of the proposed setback and the comments, data, and opinions of the applicant, Board of Health, and the public.

(D) Any person affected by a decision by the Health Officer to approve, amend, or disapprove a variance may petition for and shall be granted a hearing on the matter before the Board of Health subject to the following conditions.

(1) The petitioner shall file a petition with the office of the Health Officer by mail postmarked or hand delivered, within 15 days after issuance of a decision on a waiver by the Health Officer. The request for a hearing shall be written and shall set forth a brief statement of the grounds thereof.

(2) Upon receipt of such petition, the Board of Health shall arrange a time and place for a hearing and shall give the petitioner written notice thereof. Such hearing shall be held as soon as practicable after the receipt of a petition but in no case shall be more than 30 days after receipt of the petition. At such hearing, the petitioner shall be given an opportunity to be heard and to show cause why such variance should or should not be enforced.

(3) The Board of Health may appoint a committee to hear the petition and make a report to the Board of Health.

(4) The Board of Health shall render a decision in the matter as soon as practical and, in no case, later than 60 days after receipt of the petition. A decision by the Board of Health shall be final and may be appealed only to a court of competent jurisdiction.

(E) Neither the Health Officer nor the Board of Health may approve a variance that:

(1) Threatens public health; or

(2) Would result in a violation of any applicable federal, state, or county law, regulation, or rule.

(Ord. 11-10-08, passed 11-19-2008)

### **' 90.32 FINANCIAL SECURITY.**

(A) No county health permit shall be issued unless adequate security has been furnished to ensure proper cleanup and disposal as required by divisions (B) and (C) below.

(B) A cash or surety bond shall be furnished to the County Commissioners for any manure storage system. A manure storage system may include one or more lagoons at any single large CAFO. If the bond is a surety bond, the surety shall be approved by the County Commissioners and found to be of reputable character and financially sound with respect to the obligation incurred. The bond shall be furnished before construction and during the life of the operation. The bond shall remain with the County Commissioners until the operator has complied with all federal, state, and local laws, rules and ordinances in operation of the facility and until the prompt clean up and proper disposal of any waste improperly handled or disposed of at the facility and restoration of the premises upon which the facility is operated and to ensure proper closure of the manure storage system and/or to prevent discharge contamination into surface waters of the state. If a cash bond is posted, all interest earned thereon shall become part of the bond subject to terms and conditions, including the condition of release. The County Commissioners shall give approval before release of the bond.

(C) The amount of cash or surety bond shall be in an amount equal to \$1,500 for each 100,000 gallons of manure storage capacity, prorated for smaller amounts.

(D) The amount of cash or surety bond shall be reduced by 50% for a new concentrated animal feeding operation with the approval of methods or equipment meeting the requirements of ' 90.23(C)(1)(d).

(E) A liability insurance policy shall be furnished in addition to the cash or surety bond in an amount equal to or greater than the amount of the cash or surety bond.

(Ord. 11-10-08, passed 11-19-2008)

### **' 90.33 DISCLAIMER OF LIABILITY; INSPECTIONS AT DISCRETION OF HEALTH DEPARTMENT.**

(A) This subchapter shall not create liability on the part of the Health Department or any officer, employee, or agent thereof for any damage that may result from reliance on this subchapter or on any administrative decision lawfully made thereunder.

(B) All inspections shall be at the discretion of the Health Department and nothing in this subchapter shall be construed as requiring the Health Officer to conduct any inspection nor shall any inspection imply a duty to conduct any other inspection. Nothing in this subchapter shall be construed to hold the Health Officer responsible for any damage to persons or property by any failure to make an inspection or reinspection or for inspections that fail to identify unacceptable conditions or procedures. (Ord. 11-10-08, passed 11-19-2008)

**' 90.99 PENALTY.**

(A) Any person violating any provision of this subchapter for which no specific penalty is prescribed shall be subject to ' 10.99.

(B) Any person violating ' 90.01 shall be subject to a fine of \$10 for the first offense and \$25 for each subsequent offense in a 12-month period. Said fine shall be payable to the Town Clerk. Failure to remit the fine within 15 days of the issuance of the ' 90.01's violation citation shall result in the filing of an enforcement action in the Circuit Court of the county.

(C) Any person who shall violate any of the provisions of ' 90.02 or fail to comply therewith shall be guilty of a misdemeanor and, upon conviction, shall pay a fine of not more than \$100.

(D) For each and every violation of ' 90.03, there shall be assessed a fine of \$25 and court costs.

(E) (1) Any person determined by the Health Officer to be in violation of ' ' 90.15 through 90.33 shall be penalized for each offense by a penalty established by the Health Officer of not more than \$500 for the first offense; not more than \$1,000 for the second; and by not more than \$2,500 for each subsequent offense.

(2) Penalties shall be payable to the County Commissioners.

(3) Each day a person fails to perform the corrective action in accordance with the schedule identified in an abatement order issued by the Health Officer shall constitute a distinct and separate violation and said person shall be subject to the penalties identified in division (E)(1) above.

(4) Any person violating any provisions of division (E)(1) above shall be liable to the Health Department for any expense, loss, or damage occasioned it by reason of such violation, including the costs for labor, supplies, equipment, and services necessary to enforce an order of abatement.

(5) The Health Officer may restrict, suspend, or revoke any permit for:

(a) Repeated substantive violations of ' ' 90.15 through 90.33;

(b) Failure to perform a corrective action ordered by the Health Department; or

(c) Providing false information to the Health Department.

(Ord. passed 3-21-1979; Ord. 1993-3, passed 6-21-1993; Ord. 1998-4, passed 4-6-1998; Ord. 11-10-08, passed 11-19-2008)

## CHAPTER 91: FAIR HOUSING

### Section

- 91.01 Policy statement
- 91.02 Definitions
- 91.03 Unlawful practice
- 91.04 Discrimination in the sale or rental of housing
- 91.05 Discrimination in residential real estate-related transactions
- 91.06 Discrimination in the provision of brokerage services
- 91.07 Interference, coercion, or intimidation
- 91.08 Prevention of intimidation in fair housing cases
- 91.09 Exemptions
- 91.10 Administration enforcement; authority; violations and remedies

### ' 91.01 POLICY STATEMENT.

It shall be the policy of the Board of Commissioners of the county to provide, within constitutional limitation, for fair housing throughout its corporate limits as provided for under the Federal Civil Rights Act of 1968, 42 U.S.C. ' ' 2000e et seq., as amended, the Federal Housing and Community Development Act of 1974, 42 U.S.C. ' ' 5401 et seq., as amended, and I.C. 22-9.5-1 et seq. (Ord. 6-102-1, passed 10-3-1994)

### ' 91.02 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

***AGGRIEVED PERSON.*** Includes any person who:

- (1) Claims to have been injured by a discriminatory housing practice; or
  - (2) Believes that such person will be injured by a discriminatory housing practice that is about to occur.
- (I.C. 22-9.5-2-2)

**COMMISSION.** The Indiana Civil Rights Commission created pursuant to I.C. 22-9-1-4 et seq. (I.C. 22-9.5-2-3)

**COMPLAINANT.** A person, including the Commission, who files a complaint under I.C. 22-9.5-6. (I.C. 22-9.5-2)

**DISABILITY.**

(1) With respect to a person:

(a) A physical or mental impairment which substantially limits one or more of such person=s major life activities;

(b) A record of having such an impairment;

(c) Being regarded as having such an impairment; and

(d) An impairment described or defined pursuant to the Federal Americans with Disabilities Act of 1990, being 42 U.S.C. ' ' 12101 et seq.

(2) The term **DISABLED** shall not include current illegal use of or addiction to a controlled substance as defined in 21 U.S.C. ' 802; nor does the term **DISABLED** include an individual solely because that individual is transvestite.

**DISCRIMINATORY HOUSING PRACTICE.** An act that is unlawful under ' 91.04, ' 91.05, ' 91.06, ' 91.07, or ' 91.08 or I.C. 22-9.5-5.

**DWELLING.** Any building, structure, or part of a building or structure that is occupied as or designed or intended for occupancy as, a residence by one or more families; or any vacant land which is offered for sale or lease for the construction or location of a building, structure, or part of a building or structure that is occupied as, or designed or intended for occupancy as a residence by one or more families). (I.C. 22-9.5-2-8)

**FAMILIAL STATUS.**

(1) One or more individuals who have not attained the age of 18 years being domiciled with: A parent or another person having legal custody of such individual or the written permission of such parent or other person.

(2) The protections afforded against discrimination on the basis of **FAMILIAL STATUS** shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.



**FAMILY.** Includes a single individual with the status of such family being further defined herein.  
(I.C. 22-9.5-2-9)

**PERSON.** Includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies joint-stock companies, trusts, non-incorporated organizations, trustees, trustees in cases under 11 U.S.C., receivers, and fiduciaries.  
(I.C. 22-9.5-2-11)

**TO RENT.** Includes to lease, to sublease, to let and otherwise to grant for a consideration the right to occupy the premises not owned by the occupant.  
(I.C. 22-9.5-2-13)  
(Ord. 6-102-1, passed 10-3-1994)

**' 91.03 UNLAWFUL PRACTICE.**

(A) Subject to the provisions of ' 91.03(B), ' 91.09, and I.C. 22-9.5-3, the prohibitions against discrimination in the sale or rental of housing set forth in I.C. 22-9.5-5-1 and in ' 91.0 4 of this chapter shall apply to dwellings except as exempted by division (B) below and I.C. 22-9.5-3.

(B) Other than the provisions of division (C) below, nothing in ' 91.04 shall apply to:

(1) Any single-family house sold or rented by an owner where the private individual owner does not own more than three such single-family houses at any one time; provided that in the sale of such single-family house by a private individual owner not residing in the house at the time of sale or who was not the most recent resident of such house prior to the sale, the exemption shall apply only to one such sale within any 24-month period. The private individual owner may not own any interest in, nor have owned or reserved on his or her behalf, title to or any right to all or a portion of the proceeds from the sale or rental of more than three such single-family houses at any one time. The sale or rental of any such single-family house shall be excepted from application of this section only if such house is sold or rented:

(a) Without the use in any manner of the sales or rental facilities or services of any real estate broker, agent or salesperson, or any person in the business of selling or renting dwellings, or of any employee or agent of any such broker, agent or salesperson, or person; and

(b) Without the publication, posting or mailing, after notice of advertisement or written notice in violation of ' 91.04(C), but nothing in this provision shall prohibit the use of attorneys, escrow agents, abstracters, title companies, and other such professional assistance as necessary to perfect or transfer this title.

(2) Rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of such living quarters as his or her residence.

(C) For the purposes of division (B) above, a person shall be deemed to be in the business of selling or renting dwellings if:

(1) He or she has, within the preceding 12 months, participated as principal in three or more transactions involving the sale or rental of any dwelling or any interest therein;

(2) He or she has, within the preceding 12 months, participated as agent, other than in the sale of his or her own personal residence, in providing sales or rental facilities or services in two or more transactions involving the sale or rental of any dwelling or any interest therein; or

(3) He or she is the owner of any dwelling unit designed or intended for occupancy by, or occupied by, five or more families.

(Ord. 6-102-1, passed 10-3-1994) Penalty, see ' 10.99

#### **' 91.04 DISCRIMINATION IN THE SALE OR RENTAL OF HOUSING.**

As made applicable by ' 91.03 and except as exempted by ' 91.03(B) and ' 91.09, it shall be unlawful:

(A) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, disability, familial status, or national origin;

(B) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, disability, familial status, or national origin;

(C) To make, print, or publish, or cause to be made, printed, or published any notice, statement or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, disability, familial status, or national origin, or an intention to make such preference, limitation, or discrimination;

(D) To represent to any person because of race, color, religion, sex, disability, familial status, or national origin that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available;

(E) For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or perspective entry into the neighborhood of a person or persons of a particular race, color, religion, color, religion, sex, disability, familial status, or national origin; and/or

(F) (1) To discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a disability of:

(a) The buyer or renter;

(b) A person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or

(c) Any person associated with that person.

(2) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a disability of:

(a) The person;

(b) A person residing in or intending to reside in that dwelling after it is sold, rented, or made available; or

(c) Any person associated with that person.

(3) For purpose of division (F), *DISCRIMINATION* includes:

(a) A refusal to permit, at the expense of the disabled person, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises except that, in the case of a rental, the landlord may where it is reasonable to do so, condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted;

(b) A refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling; or

(c) In connection with the design and construction of covered multi-family dwellings for first occupancy after the date that is 30 months after September 13, 1988, a failure to design and construct those dwellings in such a manner that:

1 The public use and common use portions of such dwellings are readily accessible to and usable by disabled persons;

2. All the doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by disabled persons in wheelchairs; and

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3. All premises within such dwellings contain the following features of adaptive design:

- a. An accessible route into and through the dwelling;
  - b. Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;
  - c. Reinforcements in bathroom walls to allow later installation of grab bars;
- and
- d. Usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

(4) Compliance with the appropriate requirements of the American National Standard for buildings and facilities providing accessibility and usability for physically disabled people (commonly cited as AANSI A117-1@) suffices to satisfy the requirements of division (F)(3)(c)3. above

(5) Nothing in this division (F) requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals of whose tenancy would result in substantial physical damage to the property of others.  
(Ord. 6-102-1, passed 10-3-1994) Penalty, see ' 10.99

**' 91.05 DISCRIMINATION IN RESIDENTIAL REAL ESTATE-RELATED TRANSACTIONS.**

(A) It shall be unlawful for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race, color, religion, sex, disability, familial status, or national origin.

(B) As used in this section, the term ***RESIDENTIAL REAL ESTATE-RELATED TRANSACTION*** means any of the following:

- (1) The making or purchasing of loans or providing other financial assistance:
  - (a) For purchasing, constructing, improving, repairing, or maintaining a dwelling; or
  - (b) Secured by residential real estate.
- (2) The selling, brokering, or appraising of residential real property.

(C) Nothing in this chapter prohibits a person engaged in the business of furnishing appraisals of real property to take into consideration factors other than race, color, religion, national origin, sex, disability, or familial status.

(Ord. 6-102-1, passed 10-3-1994) Penalty, see ' 10.99

**' 91.06 DISCRIMINATION IN THE PROVISION OF BROKERAGE SERVICES.**

It shall be unlawful to deny any person access to or membership or participation in any multiple-listing service, real estate brokers= organization, or other service, organization, or facility relating to the business of selling or renting dwellings, or to discriminate against him or her in the terms or conditions of such access, membership or participation on account of race, color, religion, sex, disability, familial status, or national origin.

(Ord. 6-102-1, passed 10-3-1994) Penalty, see ' 10.99

**' 91.07 INTERFERENCE; COERCION, OR INTIMIDATION.**

It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by ' 91.03, ' 91.04, ' 91.05, or ' 91.06.

(Ord. 6-102-1, passed 10-3-1994) Penalty, see ' 10.99

**' 91.08 PREVENTION OF INTIMIDATION IN FAIR HOUSING CASES.**

Whoever, whether or not acting under color of law, by force or threat of force willfully injures, intimidates or interferes with, or attempts to injure, intimidate or interfere with:

(A) Any person because of his or her race, color, religion, sex, disability, familial status, or national origin and because he or she is or has been selling, purchasing, renting, financing, occupying or contracting, or negotiating for the sale, purchase, rental, financing or occupation of any dwelling, or applying for or participating in any service, organization, or facility relating to the business of selling or renting dwellings;

(B) Any person because he or she, is or has been, or in order to intimidate such person or any other person or any class of persons from:

(1) Participating, without discrimination on account of race, color, religion, color, religion, sex, disability, familial status, or national origin, in any of the activities, services, organizations or facilities described in this chapter; or

(2) Affording another person or class of persons opportunity or protection so as to participate.

(C) Any citizen because he or she is or has been, or in order to discourage such citizen or any other citizen from lawfully aiding or encouraging other persons to participate, without discrimination on account of race, color, religion, sex, disability, familial status, or national origin, in any of the activities, services, organizations or facilities described in division (A) above, or participating lawfully in speech or peaceful assembly opposing any denial of the opportunity to participate shall be fined not more than \$1,000, or imprisoned not more than one year, or both; and if bodily injury results shall be fined not more than \$10,000, or imprisoned for not more than ten years, or both; and if death results shall be subject to imprisonment for any term of years or for life.

(Ord. 6-102-1, passed 10-3-1994) Penalty, see ' 10.99

### 91.09 EXEMPTIONS.

(A) Exemptions defined or set forth under I.C. 22-9.5-3 et seq. shall be exempt from the provisions of this chapter to include those activities or organization set forth under divisions (B) and (C) below.

(B) Nothing in this chapter shall prohibit a religious organization, association, or society, or any non-profit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association, or society, from limiting the sale, rental, or occupancy of dwellings which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons, unless membership in such religion is restricted on account of race, color, religion, color or national origin. Nor shall anything in this chapter prohibit a private club not in fact open to the public, which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members.

(C) (1) Nothing in this chapter regarding familial status shall apply with respect to housing for older persons.

(2) As used in this section, ***HOUSING FOR OLDER PERSONS*** means housing:

(a) Provided under any state or federal program that the Secretary of the Federal Department of Housing and Urban Development or the State Civil Rights Commission determines is specifically designed and operated to assist elderly persons (as defined in the state or federal program);

(b) Intended for, and solely occupied by, persons 62 years of age or older; or

(c) Intended and operated for occupancy by at least one person 55 years of age or older per unit.

(Ord. 6-102-1, passed 10-3-1994)

**91.10 ADMINISTRATIVE ENFORCEMENT; AUTHORITY; VIOLATIONS AND REMEDIES**

(A) The authority and responsibility for administering this chapter and referral of complaints hereunder to the Commission as set forth in division (B) below hereof shall be vested in the chief elected official of the Board of Commissioners of the county.

(B) Notwithstanding the provisions of I.C. 22-9.5-4-8, the Board of Commissioners of the county, because of a lack of financial and other resources necessary to fully administer enforcement proceedings and possible civil actions under this chapter, herein elects to refer all formal complaints of violation of the articles of this chapter by Complainants to the Indiana Civil Rights Commission (ACommission@) for administrative enforcement actions pursuant to I.C. 22-9.5-6 and the chief elected official of the Board of Commissioners of the county, shall refer all said complaints to the Commission as provided for under division (A) above to said Commission for purposes of investigation, resolution and appropriate relief as provided for under I.C. 22-9.5-6.

(C) All executive departments and agencies of the Board of Commissioners of the county, shall administer their departments, programs and activities relating to housing and urban development in a manner affirmatively to further the purposes of this chapter and shall cooperate with the chief elected official and the Commission to further such purposes.

(D) The chief elected official of the Board of Commissioners of the county, or the chief elected official=s designee, shall provide information on remedies available to any aggrieved person or complainant requesting such information.

(Ord. 6-102-1, passed 10-3-1994)





## CHAPTER 92: NON-SMOKING POLICY

### Section

- 92.01 Purpose and scope
- 92.02 Prohibition of tobacco use
- 92.03 Enforcement
- 92.04 Public education
- 92.05 Effective date

#### ' 92.01 PURPOSE AND SCOPE.

(A) The purposes of this chapter are:

(1) To protect the public health and welfare by prohibiting smoking in public places and places of employment; and

(2) To guarantee the right of non-smokers to breathe smoke-free air and to recognize that the need to breathe smoke-free air shall have priority over the desire to smoke.

(B) Campus: Union County Health Department building and grounds located at 6 West South Street, Liberty, IN.

(Ord. 03-02-09, passed 3-2-2009) Penalty, see ' 10.99

#### ' 92.02 PROHIBITION OF TOBACCO USE.

(A) Smoking is prohibited in the Health Department facilities located at 6 West South Street, Liberty, IN, including indoors, outdoors, and in all vehicles located on the premises.

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

(C) Copies of this chapter shall be distributed to all current employees and to all prospective employees. No Smoking@ signs shall be posted on the County Health Department campus. Signs will be provided by the County Tobacco Coalition.

(Ord. 03-02-09, passed 3-2-2009) Penalty, see ' 10.99

**92.03 ENFORCEMENT.**

The success of this chapter will depend on the thoughtfulness, consideration, and cooperation of tobacco users and non-users. All individuals on County Health Department premises share in the responsibility for adhering to and enforcing this chapter.

(Ord. 03-02-09, passed 3-2-2009)

**92.04 PUBLIC EDUCATION.**

The County Health Department and the County Tobacco Coalition shall provide smoking cessation one-to-one counseling which will assist employees and clients who wish to stop using tobacco products.

(Ord. 03-02-09, passed 3-2-2009)

**92.05 EFFECTIVE DATE.**

The effective date of this chapter should occur no later than 30 days after enactment.

(Ord. 03-02-09, passed 3-2-2009)

## CHAPTER 93: FIRE PREVENTION

### Section

#### 93.01 Open burning

#### ' 93.01 OPENING BURNING.

(A) The Board of Commissioners, pursuant to I.C. 10-4-1 et seq., resolve and request that there be no open burning or discarding matches, ashes, or any burning materials from vehicles within the county.

(B) The Board of Commissioners of the county do not wish to prohibit previously scheduled ceremonial and celebratory burning events such as bonfires, and organized cookouts, however, such events shall be approved and/or monitored by the respective fire departments under which their jurisdiction falls. All bonfires must be contained in a fire ring either metal or stone.

(C) This section shall continue until rescinded by the Board, but shall be reviewed every 30 days. (Exec. Order passed 6-19-2012) Penalty, see ' 10.99

