

**ON-SITE SEWAGE DISPOSAL
SYSTEM AND INSTALLATION
ORDINANCE NO. 2013-_____**
DAVISS COUNTY, INDIANA

An Ordinance pertaining to and regulating the design, construction, installation, maintenance and operation of On-site Sewage Systems located within Daviess County, Indiana, providing for the violation thereof.

Be it ordained by the Board of Commissioners of Daviess County ("Commissioners") that this Ordinance is adopted as follows:

- 1) TITLE. This Ordinance and all ordinances supplemental or amending hereto shall be known as the On-Site Sewage Disposal System and Installation Ordinance, and may be cited as such and will be referred to herein as "this Ordinance".
- 2) PURPOSE. The purpose of this Ordinance is to provide minimum standards for the prevention and suppression of disease and health risks associated with the use and installation of On-site Sewage Systems and to otherwise promote public safety and welfare and protection of the environment.
- 3) AUTHORITY. The Health Officer of Daviess County ("Health Officer") and the Health Officer's agents and representatives are hereby authorized to issue permits, collect permit and incidental fees, perform inspections, order or otherwise compel correction of violations of this Ordinance, and are otherwise authorized to perform all actions necessary for the administration and enforcement of this Ordinance.
- 4) ADOPTION OF REGULATIONS BY REFERENCE.
 - a) The regulations of the Indiana State Department of Health as found in Title 410 IAC 6-8.3 *et. seq.*, 410 IAC 6-10.1 *et. seq.*, Bulletin S.E. 11, *et. seq.*, and Bulletin S.E. 13, *et. seq.*, as amended ("Applicable Law"), are hereby incorporated by reference in this Ordinance.
 - b) Copies of Applicable Law are available at <http://www.state.in.us/isdh> or upon request of the Daviess County Board of Health ("Board").
- 5) SUPPLEMENTAL DEFINITIONS. In addition to or to otherwise supplement those definitions contained in Applicable Law, which is incorporated herein by reference, this Ordinance shall include the following definitions.
 - a) "Business Building": Means that building or structure utilized primarily for a commercial establishment including, but not limited to, office buildings, apartments, condominiums, motels, mobile home parks, churches, campgrounds, schools, hospitals, nursing homes, restaurants, etc., at locations where such facilities may be approvable.
 - b) "Duplex": Means a single dwelling under one roof as defined in 410 IAC 6-8.3-15 with two separate living quarters for two separate families.
 - c) "Multiple Family Unit": Means any building or place used or intended to be used as a place of seasonal or permanent human habitation or for sleeping for more than two families.
 - d) "On-Site Sewage System": Means any sewage disposal facility not owned by a municipality or sanitary district or administered by the State Department of Health and

shall include septic tanks, aeration tanks, elevated sand mounds, finger systems or other subsurface absorption fields.

- e) "Planned Development": Means any land development, which requires the specific zoning classification entitled "Planned Development".
 - f) "Public Water Supply": Means any water supply regulated by the Indiana Department of Environmental Management.
 - g) "Residence": Means a dwelling, as defined in 410 IAC 6-8.3-15.
 - h) "Sanitary Privy": Means a privy so located, constructed, and maintained; as defined in Indiana State Department of Health Bulletin S.E. 11.
- 6) SYSTEM REQUIREMENTS. Where a sanitary sewer system is not available, all persons owning, leasing, or otherwise occupying property shall comply with Applicable Law and the following provisions of this Ordinance for an On-Site Sewage System.
- a) No person shall throw, run, drain, seep, or otherwise dispose into any of the surface waters or ground waters of Daviess County, or cause, permit, or suffer to be thrown, run, drained, allowed to seep or otherwise disposed into such waters, any organic or inorganic matter from an on-site sewage disposal system that would cause or contribute to health hazard or water pollution.
 - b) Privies shall comply with Applicable Law and Indiana State Department of Health Bulletin S.E. 11, as amended. Bulletin S.E. 11 is herein incorporated by reference as part of this section and copies are available at the Daviess County Board of Health for public inspection. In the case of self-contained chemical toilets, no pit will be required. If a privy, chemical toilet, incinerating toilet, composting toilet, or any other toilet that is not connected to plumbing fixtures is utilized and any additional wastewater is generated from the residence, duplex, multiple family unit, or business building, an on-site sewage disposal system in compliance with this Ordinance must be utilized.
 - c) Should an on-site sewage disposal system fail, the failure shall be corrected by the owner or occupant of the property served by such system within the time limit set by the Health Officer.
 - d) Whenever a sanitary sewerage system becomes available and is within three hundred (300) feet of the property line of developed property in Daviess County that contains a Residence, Duplex, multiple family unit, or Business Building served by an On-site Sewage System, chemical toilet, composting toilet, incinerating toilet, privy, or any other toilet not connected to plumbing fixtures, a direct connection of the building sewer shall be made to said sanitary sewer 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. The direct connection to a sanitary sewerage system shall be made within one hundred eighty (180) days of issuance of orders of connection.
 - e) Whenever a new Residence, Duplex, multiple family unit, or Business Building is to be constructed in an area where a sanitary sewerage system is available as provided in the above paragraph, the landowner shall cause a connection to be made to the sanitary sewer prior to construction of any such project.
 - f) All primary septic tanks in an On-Site Sewage System design shall be a minimum size of one thousand (1,000) gallons below the water line. All additional tanks in an On-Site Sewage System design must be, at minimum, equal size to the primary septic tank.

7) MINIMUM BUILDING SITE SIZE

- a) "Set-Aside" means an area that has been deemed suitable through soil testing for replacement of an On-site Sewage System on the same site (according to 410 IAC 6-8.3 et. seq.) if the original On-site Sewage System fails or becomes inadequate due to modifications to the dwelling.
- b) In order to be considered for an On-site Sewage System, a proposed new building site shall have room for the approved septic absorption field and a Set-Aside. The Set-Aside must be located in an area on the building site that has been soil tested and deemed suitable for sustaining an On-site Sewage System.
- c) In its sole discretion, the Daviess County Health Department may grant a variance to the requirements in this section if the petitioner:
 - i) Makes the variance request in writing;
 - ii) Presents clear and convincing evidence that special conditions warrant such a variance; and
 - iii) Presents clear and convincing evidence that the variance, if granted, will present no significant risk that sewage will flow off-site, pollute groundwater or create a health hazard. The cost of the installation and maintenance will not, in and of itself, constitute a special condition justifying a variance.

8) PERMIT PROCESS

- a) Application - Before the commencement of construction, alteration or repair of an On-site Sewage System ("System Install"), the owner shall apply in writing to the Daviess County Health Department for a permit ("Permit") to construct, alter or repair an On-site Sewage System. The application shall consist of an:
 - i) application form,
 - ii) a fee that conforms to the fee schedule ordinance approved by the Commissioners,
 - iii) a soil analysis report conducted by an IRSS recognized soil scientist,
 - iv) a system drawing, and if new construction, drawing must include the location of the Set Aside.
 - v) a list of On-Site Sewage System components,
 - vi) as well as any other information required by the Health Officer or Applicable Law.
- b) Permit Fees
 - i) A fee is required and such amount shall conform to the fee schedule ordinance approved by the Commissioners.
 - ii) A 501c3 organization may be exempted from paying a Permit fee at the discretion of the Health Officer.
 - iii) Any fee required under this section shall be paid prior to Permit issuance.
 - iv) A receipt for the payment of such fees shall be provided by the Daviess County Health Department and all funds received from the Permit fees shall be transferred to the health fund of Daviess County.
 - v) The payment of fees under this Ordinance is not transferable or refundable.
- c) Permit Issuance
 - i) A Permit, whether issued prior to or after the adoption of this Ordinance, shall lapse and be void if work has not been started within two (2) years after Permit issuance. A soil survey more than two (2) years old must be reviewed by the Daviess County Health Department to determine if additional soil analysis and information is required.

- ii) Because of the hazards regarding potential ground water contamination of wells through the development of subdivisions, Planned Developments, parcels and other divisions of land for development and unless a Public Water Supply is provided, the Health Officer may, at the Health Officer's discretion, decline to issue a Permit if the On-site Sewage System may cause or contribute to a health hazard or an unsanitary condition.
- iii) Unless a Public Water Supply is provided, the factors to be considered by the Health Officer in making a determination on a Permit include, but are not limited to,
 - (1) the requirements of 410 IAC 6-8.3 et. seq.,
 - (2) soil and geological conditions,
 - (3) the depth of the water table and the quantity of water available,
 - (4) evidence of any contaminants existing in the water supply, and
 - (5) the number of existing or anticipated On-site Sewage Systems located within the general area in which the proposed On-site Sewage System is to be built.

9) INSTALLATION

a) Installer Certification

- i) No person shall perform any System Install until the person is certified by the Daviess County Health Department as an acceptable installer for the type of system to be installed ("Certified Installer").
- ii) In order to become a Certified Installer, an individual must meet requirements a) through c) below (such requirements collectively, "Certification"):
 - (1) Demonstrate knowledge of Applicable Law and other applicable rules and regulations by passing a proficiency examination conducted by the Daviess County Health Department ("Exam") or provide documentation verifying certification through Indiana On-Site Wastewater Professionals Associations (IOWPA).
 - (2) Present proof of liability insurance issued by a company registered in Indiana showing coverage for the entire term of the Certification. The liability policy shall be sufficient to indemnify persons for whom faulty work may be performed or a minimum of One Hundred Thousand Dollars (\$100,000.00).
 - (3) Pay an initial fee that conforms to the fee schedule ordinance approved by the Commissioners.
- iii) Any Certification issued hereunder shall be valid for a term of one (1) year beginning January 1 and expiring December 31 of the same year and shall be renewed annually. A Certification shall bear the name and address of the Certified Installer and the expiration date and shall not be transferable. Any Certification that is not renewed within sixty (60) days of the expiration date shall be considered void and the expired installer must again pass the Exam or provide active IOWPA documentation.
- iv) A Certified Installer shall maintain in his possession a copy of his Certification at all times when Installing Systems.
- v) A Certified Installer shall be on the site at all times during construction, and shall be deemed responsible for the installation. A Certified Installer may supervise other construction workers as necessary to assist in the installation.
- vi) Prior to any such installation, a property owner wishing to perform a System Install that would serve his own dwelling shall pass the Exam or provide IOWPA documentation.

- b) Fees
 - i) A fee shall be submitted prior to issuance of Certification. A fee shall also be assessed for annual renewal of Certification and shall also be submitted prior to issuance of the renewed Certification. Any fees hereunder shall conform to the fee schedule ordinance approved by the Commissioners.
 - ii) A property owner as described in Section 9(a)(vi) shall be exempt from the Certification fee.
- c) Enforcement
 - i) Any person found to be in violation of any provision of this Ordinance or Applicable Law shall receive notice of the violation from the Health Department or its designee. The person shall have up to thirty (30) days to correct the violation.
 - ii) If the violation is not corrected within the designated time, the Health Officer may suspend or revoke the Certification. If the Certification is inactive, the Health Officer, upon correction of all applicable violations, may reinstate the Certification. If the Certification is revoked, the requirements of Section 9(a)(ii) herein must be met prior to recertification. Recertification shall not occur until all outstanding violations are corrected in accordance with Applicable Law.
 - iii) Any person performing System Installs without Certification shall be deemed to be in violation of the Ordinance. Such violation shall be fined for the first offense not more than Five Hundred Dollars (\$500.00); for the second and each subsequent offense not more than One Thousand Dollars per offense (\$1,000.00).

10) INSPECTIONS

- a) The Board, or its designee, shall be permitted to enter upon all properties for purposes of inspection, observation, measurement, sampling and testing necessary to ensure compliance with this Ordinance and to verify no On-site Sewage System has failed.
 - i) When deemed necessary, inspections by the Health Officer or his agent may be conducted before permit issuance or construction.
 - ii) No construction of the On-site Sewage System may take place if the On-site Sewage System site is disturbed or altered after the on-site soil analysis by the addition of fill material (other than construction necessary for the On-site Sewage System itself) or by cutting, scraping, compaction or the removal of soil, until a new soil analysis has been conducted and a modified permit has been issued. Each septic site must be protected from construction traffic by being roped or otherwise cordoned off. The site owner or his agent is responsible for designing an On-site Sewage System as part of the application process which addresses the demands of the site in accordance with Applicable Law and this Ordinance.
 - iii) The Daviess County Health Department is to be given forty-eight (48) hours notice prior to the covering of any part of the On-site Sewage System in order to be able to conduct a final inspection of the system.

11) PETITION FOR REVIEW

- a) The Board shall hear appeals incidental to the issuance and revocation of Permits and/or Certifications if, within fifteen (15) days following the date of receipt of a Permit and/or Certification, Permit and/or Certification modification, notice of Permit and/or Certification denial or notice of Permit and/or Certification revocation, and person aggrieved by such action files a petition for review concerning such action with the Board.

- i) A petition for review shall state:
 - (1) The name, address and telephone number (if applicable) of the person making the request
 - (2) Identify the interests of the petitioner which is affected by the Permit and/or Certification issuance, denial, modification or revocation
 - (3) Identify the persons whom the petitioner represents
 - (4) State with particularity the issues proposed to be considered
 - (5) Include proposed terms or conditions which, in the judgment of the petitioner, would be appropriate to carry out the requirements of law and 410 IAC 6-10.1 et. seq. or 410 IAC 6-8.3 et. seq. governing such Permits and/or Certifications.
- ii) The procedures established in I.C. 4-21-5, the Administrative Procedure and Orders Act, shall apply to the conduct of the hearing.

12) ENFORCEMENT

- a) Any person found to be violating any provision of this Ordinance shall be served by the Board or the duly appointed Health Officer with a written order stating the nature of the violation and providing a reasonable time limit, for correction of any violations of this Ordinance. The written order shall be served either by certified mail or personal service by the Health Officer of Daviess County or his designee.
- b) Any person who shall continue any violation of this Ordinance beyond the time limit provided for correction of any violations of this Ordinance or who shall fail to perform any duty lawfully enjoined or who shall fail, neglect or refuse to obey any lawful order given by the Health Officer shall be punished for the first offense by a fine of \$1,000.00 for the first day, and \$500.00 for each day the violation continues. Each day a violation of this Ordinance continues shall constitute a separate offense for which a separate fine may be levied. Application of this Ordinance or any part of this Ordinance is intended to be consistent with Applicable Law and specifically 410 IAC 6-8.3 et. seq. and 410 IAC 6-10.1 et. seq. and any inconsistency in the direct application of this Ordinance with said regulations shall be resolved in favor of enforceability of Applicable Law and 410 IAC 6-8.3 et. seq. and 410 IAC 6-10.1 et. seq.
- c) There shall be a fine of \$500.00 imposed upon any person or entity that fails to obtain a Permit prior to a System Install. This fine shall also apply to installers and developers as well as the property owner who fails to ensure that a Permit is obtained prior to a System Install or construction of any buildings or structures on the affected property.
- d) Any 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.

- 13) REMEDIES. The Health Officer may, in the name of the Commissioners, bring actions in the Courts of Daviess County for mandatory and injunctive relief for the enforcement of and to secure compliance with any order or orders made by the Health Officer or to otherwise provide for the enforcement of this Ordinance. Any such action for mandatory or injunctive relief may be joined with an action to recover the penalties, costs and expenses provided in this Ordinance. In the event any legal action is necessary to enforce this Ordinance, the Health Officer may seek recovery of costs and expenses reasonably incurred to enforce the provisions of this Ordinance including, but not limited to reasonable attorney's fees.

- 14) SEVERABILITY. Should any section, paragraph, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid for any reason, the remainder of said Ordinance shall not be affected and shall remain in full force and effect.
- 15) EFFECTIVE DATE. This Ordinance shall apply to all of Daviess County, Indiana, as of the date from and after its adoption and approval by the Commissioners as stated herein and any publication as required by law.
- 16) REPEALER. The provisions of Ordinances 1972-1 and 2008-2 are hereby superseded by this Ordinance.

Adopted by the Commissioners in regular meeting on this _____ day of _____, 2013.

The Board of Commissioners of the County of Daviess:

Anthony D. Wichman

C. Michael Taylor

Larry Wilson

ATTEST:

Gail Doades, Auditor