FLOYD COUNTY ORDINANCE 1997- FCO-XI

AN ORDINANCE REGULATING RESIDENTIAL AND COMMERCIAL ON-SITE SEWAGE DISPOSAL SYSTEMS AND PROVIDING PENALTIES FOR VIOLATIONS

BE IT ORDAINED by the Board of Commissioners of the County of Floyd:

ARTICLE I. APPLICABILITY AND ADMINISTRATION

SECTION 1. This Ordinance shall apply within the unincorporated areas of Floyd County, Indiana, expressly excluding the incorporated areas of the Civil City of New Albany, Indiana, and the towns of Greenville and Georgetown, and, except as may be otherwise expressly set forth herein, shall apply only to those dwellings and commercial facilities which are not presently served by or will not be connected to a sanitary sewerage system. The applicability of this Ordinance to commercial on-site wastewater disposal facilities is expressly limited to those for which the Floyd County Health Department shall have jurisdiction to issue construction permits.

SECTION 2. The administration and enforcement of this ordinance is vested in the Floyd County Health Board appointed pursuant to IC 16-20-2-6, the Floyd County Health Officer appointed pursuant to IC 16-20-2-16, and the Floyd County Health Department created and established pursuant to IC 16-20-2-2.

ARTICLE II. DEFINITIONS

SECTION 1. For purposes of this Ordinance, the following definitions shall apply:

COMMERCIAL FACILITY: Any structure or place intended for human occupation, use, or commerce, other than a dwelling, including such facilities as apartment buildings, campgrounds, churches, commercial establishments, condominiums, medical facilities, mobile home parks, motels, office buildings, restaurants, and schools.

COMMERCIAL ON-SITE WASTEWATER DISPOSAL FACILITY: All equipment and devices necessary for proper conduction, collection, storage, treatment, and on-site disposal of wastewater from other than one (1) or two (2) family dwellings.

COMMERCIAL RULE 410: Indiana State Department of Health Rule 410 IAC 6-10, et seq., effective as of the date of this Ordinance, as thereafter amended and supplemented.

DEPARTMENT: The Floyd County Health Department, being an agency of local government, created and acting pursuant to the provisions of IC 16-20, et seq., and its duly authorized employees and representatives.

DWELLING: Any house or structure or place used or intended to be used as a place of seasonal or permanent human habitation or for sleeping for one (1) or two (2) families. The term 'residence' shall be used interchangeably with the term dwelling.

HEALTH BOARD: The Floyd County Board of Health duly constituted and acting pursuant to the provisions of IC 16-20, et seq., and its duly authorized representatives.

HEALTH OFFICER: The Floyd County Health Officer duly appointed by the Floyd County Board of Health and acting pursuant to the provisions of IC 16-20, et seq., and his duly authorized representatives.

OWNER: The holder of fee simple title to a dwelling or commercial facility, or the holder of equitable title thereto in the event that the contract creating such equitable title confers exclusive possession of and the obligation to maintain the dwelling or commercial facility, or the agent of either.

PERSON: An individual, partnership, copartnership, corporation, firm, company, association, society, holding company, trustee, school corporation, school city, school town, school district, any unit of government, or any other legal entity, or their successors or assigns, or agent of the aforesaid.

RESIDENTIAL RULE 410: Indiana State Department of Health Rule 410 IAC 6-8.1, et seq., effective as of the date of this Ordinance, as thereafter amended and supplemented.

RESIDENTIAL SEWAGE DISPOSAL SYSTEM: All equipment and devices necessary for proper conduction, collection, storage, treatment, and on-site disposal of sewage from a one (1) or two (2) family dwelling.

SANITARY SEWERAGE SYSTEM: A sewer or system of sewers which convey sewage away from the lot on which it originates to a wastewater treatment facility owned and operated by an incorporated city or town, conservancy district, regional sewer district, or private utility

SEWAGE: All water-carried waste derived from ordinary living processes. The term 'wastewater' shall be used interchangeably with the term sewage.

SECTION 2. The definitions set forth in this Ordinance, together with those found in Residential Rule 410, Commercial Rule 410, and Indiana State Department of Health Bulletin S.E. 13, shall be used in the application, interpretation, and enforcement of this Ordinance, and each definition shall be deemed to apply equally to a residential sewage disposal system or commercial on-site wastewater disposal facility, unless the application of a word, term, or phrase only to a particular system, facility, or rule is clearly indicated.

ARTICLE III. HEALTH HAZARD DECLARED

SECTION 1. A failed residential sewage disposal system or failed commercial on-site wastewater disposal facility is hereby declared to be a health hazard and nuisance.

SECTION 2. For purposes of this Ordinance, a sewage disposal system or facility shall be deemed to have failed when:

(a) The system refuses to accept sewage at a rate of design application thereby interfering with the normal use of plumbing fixtures; or

(b) Effluent discharge exceeds the absorptive capacity of the soil, resulting in ponding, seepage, or other discharge of the effluent to the ground or surface waters; or

(c) Effluent is discharged from the system or facility causing contamination of a potable water supply, ground water, or surface waters.

SECTION 3. With respect to a failed sewage disposal system, the Health Board shall issue such orders, pursuant to Article XII of this Ordinance, as it shall deem necessary and appropriate for the abatement of the resulting health hazard, subject only to the express limitations set forth in Residential Rule 410.

ARTICLE IV. RIGHT OF ENTRY

SECTION 1. The Health Board, the Health Officer and the duly authorized representatives of each, may enter upon public or private property at reasonable times and upon presentation of credentials to inspect facilities, equipment, or records, investigate allegations, determine soil characteristics,

conduct tests, or collect samples for the purpose of obtaining information necessary to the issuance of a permit pursuant to this Ordinance, Residential Rule 410, or Commercial Rule 410, or to determine whether any person is subject to, or in violation of this Ordinance or said Rules or any permit or license issued pursuant thereto.

SECTION 2. Except in an emergency declared by the Health Officer or Health Board, due notice of an intent to enter a residential or commercial building shall be given.

ARTICLE V. PROHIBITED ACTS

SECTION 1. No person shall throw, run, drain, seep, or otherwise dispose into any of the surface waters or ground waters of Floyd 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 a dwelling or commercial facility or from a residential sewage disposal system or commercial on-site wastewater disposal facility that would cause or contribute to a health hazard or water pollution.

SECTION 2. No person shall commence or allow the construction of a dwelling, or placement of a mobile home, or the construction of a commercial facility without first having obtained a written permit for the construction of a sewage disposal system.

SECTION 3. No person shall commence or allow the replacement, reconstruction, expansion or remodeling of a residence which may increase the number of bedrooms without first having obtained a written permit for the addition to, replacement, or alteration of the existing residential sewage disposal system.

SECTION 4. No person shall cause or allow a change in occupancy or use of any facility served by a commercial on-site wastewater disposal facility if such change would result in wastewater flow on the peak day in excess of the permitted capacity of the disposal facility, or if it would result in wastewater being generated of a type incompatible with absorption field disposal, without first having obtained a construction permit for appropriate modifications of the subject wastewater disposal facility.

SECTION 5. No person shall cause or allow the construction of any outbuilding or the installation of any swimming pool, geothermal heat system, underground utility connection, or underground lawn sprinkler system in association with an existing residence or commercial facility without first

obtaining a Site Approval Permit for such construction.

SECTION 6. No person shall construct, install, replace, alter, modify, repair, or add to a residential sewage disposal system, and no owner shall knowingly suffer or allow any such system to be installed, replaced, altered, modified, repaired or added to except in accordance with the duly issued construction permit, the terms and provisions of Residential Rule 410, and this Ordinance.

SECTION 7. No person shall construct, install, replace, alter, modify, repair, or add to a commercial on-site wastewater disposal facility, and no owner shall knowingly suffer or allow any such facility to be installed, replaced, altered, modified, repaired or added to except in accordance with the duly issued construction permit, the terms and provisions of Commercial Rule 410 and /or Indiana State Department of Health Bulletin S.E. 13, and this Ordinance.

SECTION 8. No person shall construct or install or thereafter replace, alter, modify, or repair a residential sewage disposal system without first having been issued a license pursuant to the provisions of this Ordinance.

SECTION 9. No person shall construct or install or thereafter replace, alter, modify, or repair a commercial on-site wastewater disposal facility, over which the Floyd County Health Department has jurisdiction for the issuance of a construction permit, without first having been issued a license pursuant to the provisions of this Ordinance.

SECTION 10. No person, having received a written order from the Health Officer or the Health Board pertaining to a violation of this Ordinance or the terms, provisions, conditions, or limitations of any permit or license issued hereunder, shall fail or refuse to comply with the terms and provisions of such order within the time limit specified therein.

ARTICLE VI. RESIDENTIAL PERMITS

SECTION 1. Applications for permits for the construction, installation, replacement, alteration, repair of, or addition to, a residential sewage disposal system shall be submitted by the owner or agent of the owner upon forms provided by the Department, shall contain such information as is required by Residential Rule 410 and/or deemed necessary by the Health Officer, and shall be accompanied by the appropriate fee payable to the Department, as such fee may be established from time to time by the Board of Commissioners of the County of Floyd.

SECTION 2. Construction Permits for residential sewage disposal systems shall be issued by the Health Officer only upon a determination that the proposed system, or the alteration, repair of, or addition to an existing system, complies with the requirements, terms, and provisions of Residential Rule 410, this Ordinance, and the following:

a. The terms and provisions of Residential Rule 410 and Indiana State Department of Health Bulletin S.E. 11 to the contrary, notwithstanding, permits for the construction or installation of permanent privies, to include sanitary vault privies, shall not be issued.

b. The terms and provisions of Residential Rule 410 to the contrary, notwithstanding, no septic tank having a capacity of fewer that 1000 gallons, and no soil absorption system containing less than 400 lineal feet of pipe shall be installed.

c. The Health Officer may specify in the construction permit any limitation, term, or condition necessary to provide a functional, easily operated, enduring residential sewage disposal system in accordance with Residential Rule 410, or to prevent a health hazard, nuisance, surface water pollution or groundwater pollution.

d. Subsurface gravity feed residential sewage disposal systems for duplex dwellings shall be separate for each dwelling unit. For design systems, the absorption area shall be computed using the following formula for AREA:

$$\frac{150g \times 1 + \text{no. of bedrooms and bedroom equivalents}}{\text{loading rate in gpd/sq.ft.}}$$

e. A construction permit shall expire on the last day of the 36th month following the month of permit issuance, unless the applicant has commenced the activity for which the permit was issued on or before the date of permit expiration, PROVIDED, a permit issued pursuant to this Article shall be deemed amended and supplemented to include the terms, conditions, and requirements of this Ordinance, and any amendments thereof, effective as of the date of commencement of such activity.

SECTION 3. Site Approval Permits for the construction of any outbuilding or the installation of any swimming pool,

geothermal heat system, underground utility connection, or underground lawn sprinkler system shall be issued upon: (1) proper application of the owner or the agent of the owner on forms furnished by the Department, (2) the payment of the fee established by the Board of Commissioners of the County of Floyd, from time to time, and (3) a determination by the Health Officer that the proposed location of such construction or installation conforms with Residential Rule 410, and shall not damage the residential sewage disposal system or interfere with its proper operation.

ARTICLE VII. COMMERCIAL PERMITS

SECTION 1. Applications for permits for the construction, installation, replacement, alteration, repair of, or addition to, a commercial on-site wastewater disposal facility shall be upon forms provided by the Indiana State Department of Health and shall be submitted to such State Department as permitted and required by Commercial Rule 410. In the event that the Indiana State Department of Health shall determine that the Floyd County Health Department shall have jurisdiction over the review of such application and the issuance of a construction permit, the owner or agent of the owner will be advised by letter.

SECTION 2. Construction permits for commercial on-site wastewater disposal facilities over which the Department has jurisdiction shall be issued in accordance with this Ordinance, Commercial Rule 410, and Indiana Department of Health Bulletin S.E. 13, PROVIDED, that references in said Rule and Bulletin to the "Board" or "State Board of Health" shall be interpreted to mean the Floyd County Board of Health, and references therein to the "Commissioner" shall be interpreted to mean the Floyd County Health Officer.

ARTICLE VIII. PERMIT DENIAL

SECTION 1. An application for a construction permit for a residential sewage disposal system may be denied by the Health Officer for the following causes:

(a) any misrepresentation made in the application;

(b) failure of the owner or the agent of the owner to respond to a request for information from the Health Officer within 30 days of receiving such request;

(c) a sanitary sewerage system of adequate capacity is available for connection at a construction cost

estimated by the Health Officer not to exceed one hundred fifty (150) percent of the cost estimated by the Health Officer for installing a residential sewage disposal system; or

(d) failure to show that the residential sewage disposal system can be constructed, operated, maintained, or abandoned in compliance with Residential Rule 410.

SECTION 2. If a permit is denied by the Health Officer, the applicant shall be given notice in writing, which notice shall set forth the basis for denial and the fact that a petition for review may be filed in accordance with Article XIII of this Ordinance.

SECTION 3. Denial of a permit for the construction of a commercial on-site wastewater disposal facility shall be as permitted by Commercial Rule 410.

ARTICLE IX. PERMIT REVOCATION OR MODIFICATION

SECTION 1. A construction permit for a residential sewage disposal system may be revoked or modified by the Health Board for any of the following causes:

(a) violation of Residential Rule 410 or this Ordinance;

(b) violation of any limitation, term, or condition contained in the construction permit; or

(c) failure to disclose all facts relevant to the construction and use of the disposal system, or any misrepresentation contained in the application for a construction permit.

SECTION 2. If a permit is modified or revoked by the Health Board, the permittee shall be given notice in writing, which notice shall set forth the basis for the modification or revocation and the fact that a petition for review may be filed in accordance with Article XIII of this Ordinance.

SECTION 3. A construction permit for a commercial on-site wastewater disposal system may be revoked or modified by the Health Board for a violation of this Ordinance or as otherwise permitted by Commercial Rule 410.

ARTICLE X. LICENSES

SECTION 1. Applications for a license to construct, install, replace, alter, modify, or repair a residential sewage

disposal system or commercial on-site wastewater disposal facility shall be submitted upon forms provided by the Department and shall be accompanied by the fee established by the Board of Commissioners of the County of Floyd, from time to time. The application shall disclose the type of license requested, namely, Residential, Commercial, or Combination.

SECTION 2. No license shall be issued by the Department unless the applicant has demonstrated a working knowledge of the laws, rules, and regulations pertaining to the type of system for which a license is to be issued, namely:

(a) Residential Rule 410 and this Ordinance for a Residential license;

(b) Commercial Rule 410, Indiana State Department of Health Bulletin S.E. 13, and this Ordinance for a Commercial license; or

(c) Residential Rule 410, Commercial Rule 410, Bulletin S.E. 13 and this Ordinance for a Combination License.

Minimum required knowledge shall be demonstrated by a score of at least eighty-two (82) percent on a standardized written proficiency examination to be administered by the Department, PROVIDED, that in the event that the reading or language skills of the applicant would preclude the use of a written examination, an oral exam may be given by the Department, and FURTHER PROVIDED, that if the applicant is not a natural person, the examination shall be a administered to a designated representative who shall be an officer, partner, official, or employee of the applicant.

SECTION 3. The following terms and conditions shall apply to a license and the issuance thereof under this Article:

(a) A license shall expire on the anniversary of its issuance.

(b) If a license is continually renewed, re-examination shall not be required.

(c) Opportunity for re-examination shall be afforded persons failing to pass the license exam, but no more frequently than once every 30 days.

(d) The standardized examination may be revised by the Department, from time to time, and more than one comparable version may be administered.

(e) A list of those persons holding a valid license under this Article shall be made available to the public.

(f) A licensee may be required by the Health Officer to attend one educational class or program annually pertaining to sewage disposal to be conducted by the Department or the Indiana State Department of Health.

SECTION 4. A license issued under this Article may be suspended or revoked if the licensee shall be found by the Health Officer to have committed any act prohibited by Article V of this Ordinance, any act that might result in the denial or revocation of a construction permit issued hereunder, or violated any term or provision of this Ordinance, to include Residential Rule 410, Commercial Rule 410, and Indiana State Department of Health Bulletin S.E. 13, pertaining to the system or facility for which the license was issued. Notice of suspension or revocation shall be in writing, shall specify the acts or violations committed, and shall be served upon the licensee as permitted by Section 1 of Article XII of this Ordinance.

ARTICLE XII. ORDERS OF THE HEALTH OFFICER AND BOARD

SECTION 1. Any person found to be violating this Ordinance, to include the terms, conditions, provisions, and limitations of any permit or license issued hereunder, may be served by the Health Officer with a written notice and order stating the nature of the violation and providing a reasonable time limit for the satisfactory correction thereof. A written notice and order under this Article shall be served upon the person to whom directed by personal delivery, certified mail, or otherwise as a summons may be served under the Indiana Rules of Civil Procedure.

SECTION 2. Any person failing to comply with the written order of the Health Officer or the Health Board issued under this Article shall, by such failure, violate Section 10 of Article V of this Ordinance, which violation shall be separate from and in addition to any violation giving rise to or prompting the issuance of such written order.

ARTICLE XIII. PETITION FOR REVIEW

SECTION 1. Within thirty (30) days following the date of: (1) receipt of an issued permit, notice of permit denial, notice of permit modification, or notice of permit revocation

pertaining to a residential sewage disposal system, (2) issuance or denial of a Site Approval Permit, or (3) issuance, denial or revocation of a license, or within fifteen (15) days of the receipt of an order of the Health Officer or Health Board issued pursuant to Article XII of this Ordinance, any person aggrieved by such action may file a petition for review with the Health Board. A petition for review shall:

(a) state the name and address of the person making the request (petitioner);

(b) identify the interest of the petitioner which is affected by the action complained of;

(c) identify any persons whom the petitioner represents;

(d) state with particularity the reason(s) for the request; and

(e) set forth the relief requested.

SECTION 2. Upon receipt of a timely petition for review, the Health Board shall, at its next scheduled regular meeting, or at an earlier special meeting to be called, conduct a hearing into the matters addressed by the petition, and shall take such action thereon, if any, as it shall deem necessary and appropriate. Upon the mutual agreement of the petitioner and the Health Board, the hearing may be conducted in accordance with the procedures set forth in IC 4-21.5, et seq., being the Administrative Procedure and Orders Act.

SECTION 2. A Petition for review with respect to an issued permit, permit modification, notice of permit denial, or notice of permit revocation for a commercial on-site wastewater disposal facility shall be in accordance with Commercial Rule 410.

ARTICLE XIV. ENFORCEMENT

SECTION 1. Enforcement of this Ordinance as against a person violating the terms and provisions of same shall be in accordance with the provisions of I.C. 34-4-32, et seq. An action to enforce this ordinance shall be brought in the name of the Health Officer or the Health Board, as appropriate, and upon proof by a preponderance of the evidence of a violation hereof, judgment shall be entered against the defendant for a sum of not less than $100.00 for each violation. A separate violation of this Ordinance shall be deemed to occur for each day that a person shall be in violation of the terms and provisions hereof. No action

under this Section shall be commenced, however, with respect to a violation for which a petition for review is pending under Article XIII, hereof.

SECTION 2. In addition to the remedy set forth in Section 1 of this Article, an action may be brought for mandatory or injunctive relief as against any person violating the terms and provisions of this Ordinance, which action shall be brought in the name of the Health Officer or Health Board, as appropriate, but only after notice of violation has been given as permitted by Section 1 of Article XII of this Ordinance. Except in an emergency expressly declared by the Health Board, no action under this Section shall be commenced with respect to a violation for which a petition for review is pending under Article XIII, hereof.

SECTION 3. To the extent permitted by law and this Ordinance, an action under Section 1 of this Article may be joined with an action under Section 2, and to any judgment in favor of the Health Officer and/or Health Board shall be added costs of the action, reasonable attorney fees, and expenses incurred by the Department in the enforcement of this Ordinance.

SECTION 4. In all actions under this Article, the Health Board and/or the Health Officer shall be represented by the attorney retained by the Health Board pursuant to IC 16-20-1-1.

ARTICLE XV. MISCELLANEOUS PROVISIONS

SECTION 1. Unless and until Indiana State Board of Health rule 410 IAC 6-8.1 is amended to include an express provision pertaining to the proper abandonment of septic tanks, holding tanks, drywells or sanitary vault privies, any owner who shall discontinue use of a septic tank, holding tank, drywell, or sanitary vault privy shall cause same to be pumped by a licensed septic tank hauler and shall either, (1) remove the structure from the ground or, (2) open and fill same with sand or clean fill in a manner approved by the Health Officer.

SECTION 2. Indiana State Board of Health Rules 410 IAC 6-8.1 and 410 IAC 6-10, together with Bulletin S.E. 13, as each such rule and Bulletin may be amended and supplemented from time to time, are incorporated herein by reference and made a part of this Ordinance. To the extent that these rules may be found to be inconsistent with one another or with Bulletin S.E. 13, Rule IAC 6-8.1 shall be deemed to apply only to Residential Sewage Disposal Systems and Rule IAC 6-10 and Bulletin S.E. 13 only to Commercial On-site Wastewater

Disposal Facilities. Any inconsistency between said Rules and Bulletin and this Ordinance shall be resolved against this Ordinance unless the inconsistent provision hereof is more restrictive than the provision of the Rules or Bulletin.

SECTION 3. Should any term or provision of this Ordinance be declared by a court of competent jurisdiction to be unconstitutional or invalid, such determination shall not affect the remainder of this Ordinance which shall remain in full force and effect.

SECTION 4. In the interpretation and application of this Ordinance, the masculine form shall mean and apply to the feminine, and the singular form shall mean and apply to the plural. The title hereof and those of all Articles of this Ordinance shall be disregarded

SECTION 5. Any provision of any ordinance, rule, or regulation heretofore adopted by the Board of Commissioners of the County of Floyd which is inconsistent or in conflict with this Ordinance is hereby repealed.

SECTION 6. This Ordinance shall be in full force and effect on an after it passage and publication as required by law.

SO ORDAINED this 16th day of September, 1997.

BOARD OF COMMISSIONERS
OF THE COUNTY OF FLOYD

Larry R. Denison
MEMBER

Michael T. Schindler
MEMBER

Mary Lou Hammond
MEMBER

ATTEST:

Barbara J. Gillings
FLOYD COUNTY AUDITOR

FLOYD COUNTY ORDINANCE 2010-FCO - XII
AN ORDINANCE AMENDING
FLOYD COUNTY ORDINANCE 1997- FCO-XI
AN ORDINANCE REGULATING RESIDENTIAL AND COMMERCIAL ON-SITE SEWAGE DISPOSAL SYSTEMS AND PROVIDING PENALTIES FOR VIOLATIONS

WHEREAS, the Board of Commissioners for Floyd County, Indiana is desirous of expanding the restrictions of allowable residential sewage disposal systems:

NOW THEREFORE BE IT ORDAINED that Article VI, Section 2(a) of Ordinance 1997-FCO-XI is hereby amended to read :

"ARTICLE VI. RESIDENTIAL PERMITS

SECTION 2. Construction Permits for residential sewage disposal systems shall be issued by the Health Officer only upon a determination that the proposed system, or the alteration, repair of, or addition to an existing system, complies with the requirements, terms, and provisions of Residential Rule 410, this Ordinance, and the following:

a. The terms and provisions of Residential Rule 410 and Indiana State Department of Health Bulletin S.E. 11 to the contrary, notwithstanding, permits for the construction or installation of permanent privies, to include sanitary vault privies *and compost toilets*, shall not be issued."

NOW THEREFORE BE IT FURTHER ORDAINED that any provision of Ordinance No. 1997-FCO-XI not specifically contradicted herein shall remain in full force and effect.

SO ORDAINED this 20th day of April, 2010.

BOARD OF COMMISSIONERS
OF FLOYD COUNTY, INDIANA

D. Mark Seabrook, President

Charles A. Freiberger, Member

Stephen A. Bush, Member

ATTEST:

FLOYD COUNTY AUDITOR