

ORDINANCE NO. 2019-10-CM
AMENDING THE TIPPECANOE COUNTY CODE CONCERNING
PRIVATE SEWAGE DISPOSAL

WHEREAS, the Board of Commissioners adopted Ordinance 99-30-CM concerning the Private Sewage Disposal which was codified at County Code Chapter 51; and

WHEREAS, the Board of Commissioners, upon recommendation of the Tippecanoe County Health Department, wishes to amend sections in Chapter 51 to incorporate the requirements of Indiana's Residential Septic Rule (410 IAC 6-8.3), to modify the hearing and appeal process, to clarify the remedies available to the County in the event of violations, and to modify the provisions concerning penalties for violations;

NOW, THEREFORE, BE IT ORDAINED by the Board of Commissioners of Tippecanoe County, Indiana, that the Tippecanoe County Code Sections 51.06, 51.10, 51.11, 51.12 and 51.99 be Amended and that Tippecanoe County Code Sections 51.13 and 51.14 be added as NEW sections as follows:

1. Section 51.06 of the Tippecanoe County Code shall be amended to read as follows:

51.06 SYSTEM REQUIREMENTS.

Where a sanitary sewer system is not available to serve a building site within the County, all persons owning, leasing, or otherwise occupying property shall comply with all applicable Indiana State Department of Health regulations, 410 IAC 6-8.1-1 *et seq.*, 410 6-8.3 *et seq.*, and 410 IAC 6-10-1 *et seq.*, as well as all amendments and supplements thereto including but not limited to 410 IAC 6-8.2-1 *et seq.* and other state regulations, any local ordinances, and the following provisions of this chapter for a private sewage disposal system:

(A) No person shall throw, run, drain, seep, or otherwise dispose into any of the surface waters or ground waters of the 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 that would cause or contribute to a health hazard or water pollution;

(B) Should a private 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.

2. Section 51.10 of the Tippecanoe County Code shall be amended to read as follows:

51.10 PETITION FOR REVIEW.

(A) The Health Officer shall hear appeals incidental to the issuance and revocation of permits if, within 15 days following the date of receipt of an issued permit, permit modification, notice of permit denial or notice of permit revocation, any person aggrieved by such action files a petition for review concerning such action with the Department.

(B) A petition for review shall:

1. State the name, address and telephone number (if applicable) of the person making the request (petitioner).
2. Identify the interest(s) of the petitioner which is effected by the permit issuance, denial, modification or revocation.
3. State with particularity the reasons for the request.
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 this chapter and 410 IAC 6-10-1 et seq. or 410 IAC 6-8.1-1 et seq. and of any other applicable law or legal requirement.

(C) If the Health Officer declines to grant relief requested by any person who has filed a petition for review as referenced above, then that aggrieved person shall have the right to appeal the Health Officer's decision to the Circuit or Superior courts of Tippecanoe County.

(D) The procedures established in I.C. 4-21.5-3-26 and in this Chapter shall apply to the conduct of any hearing referenced herein unless inconsistent herewith. Any notices required to the Department, or Health Officer, shall be sufficient if mailed or hand delivered to the Department's office if the notice is received before expiration of the time for filing the notice.

3. Section 51.11 of the Tippecanoe County Code shall be amended to read as follows:

51.11 ENFORCEMENT.

(A) It shall be the duty of the Health Officer to enforce the provisions of this Chapter. Any permit issued in conflict with the provisions of this Chapter shall be null and void. A violation of an abatement order issued by the Health Officer pursuant to the provisions of I.C. 16-20-1-25, or a similar statute, shall be considered a violation of this Chapter.

(B) Any person found to be violating any provision of this chapter shall be served by the Health Department or the duly appointed Health Officer with a written order stating the nature of the violation and providing a reasonable time limit, but not less than 30 days nor more than 90 days, for correction of any violations of this chapter. The written order shall be served either by certified mail or personal service by the Health Officer or his designate.

(C) Application of this chapter or any part of this chapter is intended to be consistent with 410 IAC 6-8.1-1 et seq. and 410 IAC 6-10-1 et seq. and any regulations supplementing, replacing, or repealing those regulations including but not limited to 410 IAC 6-8.2-1 et seq. This chapter shall be interpreted consistent with existing regulations and any inconsistency of this chapter with any statute, regulation, or other ordinance shall be resolved in favor of enforceability of this chapter. Any reference herein to any regulation of any Department of the State of Indiana shall include any future amendment or replacement of those regulations by regulations approved or adopted subsequent to the effective date of this chapter.

4. Section 51.12 of the Tippecanoe County Code shall be amended to read as follows:

51.12 REMEDIES.

The Health Officer may bring actions in the Tippecanoe Circuit Court or Superior Courts of the county for mandatory and injunctive relief for the enforcement of and to secure compliance with any order or orders made by the Health Officer; to restrain any person from violating this Chapter; to cause violations of this Chapter to be prevented, abated, or removed; or to otherwise provide for the enforcement of this chapter. Any such action for mandatory or injunctive relief may be joined with an action to recover the penalties, costs and expenses provided in this chapter. In the event any legal action is necessary to enforce this chapter, the Health Officer may seek recovery of costs and expenses reasonably incurred to enforce the provisions of this chapter, including, but not limited to, reasonable attorney's fees, loss or damage occasioned by reason of a violation of this Chapter, and other costs. The remedies provided in this Chapter shall be cumulative and not exclusive and shall be in addition to any other remedy provided by law.

5. Section 51.13 shall be added to the Tippecanoe County Code as a NEW section reading as follows:

51.13 PROCEDURE FOR HEARING.

(A) All hearings required under this or any other section, shall be open to the public and held with sufficient written notice to the permittee of time, place, and nature thereof to enable the party to the proceedings to appear and participate in the hearing.

(B) At any hearing provided for under this Chapter, the Hearing Officer shall be the Health Officer or the Health Officer's designee. Every person who is a party to such proceedings shall have the right to submit evidence, to cross-examine witnesses and to be represented by legal counsel as arranged by the party to the proceedings. All such hearings shall be conducted in an informal manner, but irrelevant, immaterial or unduly repetitive evidence may be excluded.

(C) Within a reasonable time after such hearing, the Health Officer or the Health Officer's designee shall enter a final order, subject to the right of appeal to a Court having jurisdiction of the parties and of the subject matter of the appeal.

(D) To exercise the right of appeal, a party to the final order must file a petition for relief from the order with the Circuit or a Superior Court of Tippecanoe County no later than as required by law or sixty (60) days from the date of the health officer's final order, whichever is less.

(E) If a septic permit is revoked, subject to any court order, no septic permit will be issued, with respect to the septic system that was the subject of the permit, until after one year from the date of the permit revocation; provided that, if the permit applicant can show through plan review a significant change of circumstances incidental to the installation, maintenance, repair, or replacement of the proposed or existing septic system or other relevant circumstances

associated with the operation of the existing or proposed septic system that the reasons for a permit denial or revocation would be unlikely to re-occur, the Health Officer, in their discretion, may waive the imposition of this subparagraph and may issue an installation or repair or other form of permit.

6. Section 51.14 shall be added to the Tippecanoe County Code as a NEW section reading as follows:

51.14 REFERRAL TO PROSECUTOR OR HEALTH DEPARTMENT ATTORNEY

Whenever the Health Officer determines that any person or entity subject to the provisions of this Chapter is in willful or continuing violation of any of the provisions of this Chapter, in addition to any other remedy or penalty imposed by this Chapter, the Health Officer may furnish evidence of said willful or continuing violation to the Prosecuting Attorney of Tippecanoe County, Indiana or the attorney for the Department who shall seek all appropriate legal remedies against the entity or person(s) violating the provisions of this Chapter.

7. Section 51.99 of the Tippecanoe County Code shall be amended to read as follows:

51.99 PENALTY

The Department has determined that one of the most efficient methods of encouraging compliance with ordinances to protect the public health is to assess civil penalties (fines) for violators of laws intended to suppress disease and minimize health risks. For purposes of tracking violations and imposing fines under this Chapter the Department shall maintain inspection records for not less than one (1) year from the date of any inspection conducted consistent with this Chapter. No fine is payable the first time a violation is noted within any one-year period. For a second or subsequent violation of this Chapter within any one-year period, a civil penalty is payable as provided in this Chapter.

(A) The following civil penalties (fines) shall apply for a violation of this Chapter which reoccurs for a second or subsequent time within any one-year period:

1. The second time the same violation is determined within any one-year period, there will be a fine of \$50.00.
2. The third (and subsequent) time the same violation is determined within any one-year period, there will be a fine of \$100.00.

(B) Each day after the expiration of the time limit for abating any violation of this Chapter or completing other actions as ordered by the Tippecanoe County Health Department or the Health Officer, shall constitute a distinct and separate offense; provided that, the total of all fines imposed for a continuing violation of this Chapter shall not exceed the total sum of \$10,000.00.

(C) All fines shall be payable in full within thirty (30) days of assessment, unless otherwise ordered by the Hearing Officer. Failure to pay fines by the due date will result in an

additional ten percent (10%) late fee. No permit is to be issued until all fines associated with violation of this Chapter have been paid in full. Any fines and late fees may be collected in any manner provided herein or as provided by law including any law for collection of debts, along with attorney fees incurred to collect said amounts owing and with all costs of collection.

(D) Any assessment of a civil penalty under this Chapter is subject to the right of appeal and a public hearing which will be scheduled, conducted, and concluded as provided in this Chapter. Any request for an appeal shall be filed in writing with the Health Officer within ten (10) days of assessment of the civil penalty.

NOW THEREFORE BE IT FURTHER ORDAINED AS FOLLOWS:

SEVERABILITY. Invalidity of any section, clause, sentence or provision of this Ordinance shall not affect the validity of any other part of this Ordinance.

PARTIAL INVALIDITY. If any term or provision of this Ordinance shall be found to be wholly or partially unenforceable then, notwithstanding same, the remainder of this Ordinance shall remain in full force and effect and such term or provision shall be deemed stricken or modified to the extent required to make the remainder of this Ordinance enforceable.

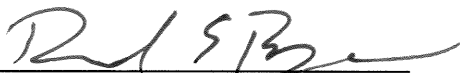
This Ordinance shall be in full force and effect upon its passage and signing and publication as required by law.

Presented to the Board of Commissioners of Tippecanoe County, Indiana, and approved on first reading this 1st day of April, 2019, by the following vote:

BOARD OF COMMISSIONERS OF
TIPPECANOE COUNTY


VOTE

yes



David S. Byers, President

yes




Tracy A. Brown, Vice President

Absent

Thomas P. Murtaugh, Member

ATTEST:




Robert Plantenga, Auditor of Tippecanoe County

Presented to the Board of Commissioners of Tippecanoe County, Indiana, and approved on second reading this 6th day of May, 2019, by the following vote:

BOARD OF COMMISSIONERS OF
TIPPECANOE COUNTY


VOTE

yes



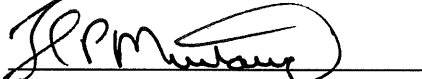
David S. Byers, President

yes



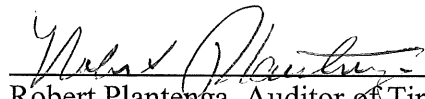
Tracy A. Brown, Vice President

yes



Thomas P. Murtaugh, Member

ATTEST:



Robert Plantenga, Auditor of Tippecanoe County