

## **TITLE IX: GENERAL REGULATIONS**

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### **CHAPTER 90: STREETS AND SIDEWALKS**

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## ***GENERAL PROVISIONS***

### **§90.01 COUNTY ROADS AND RIGHTS-OF-WAY**

#### **(A) DEFINITIONS.**

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

(1) ***EXCAVATION AND CONSTRUCTION.*** Installation, repair, and replacement of driveways, curbs, and sidewalks; the installation, repair, and replacement of all public utilities and other utilities, and other projects involving construction activities over, upon, or beneath county roads, alleys and public ways in the unincorporated area of Montgomery County.

(2) ***MINOR REPAIRS.*** Work personally performed by property owners to existing sidewalks or driveways located on public streets abutting their property. Minor repairs may include crack repair, removal and replacement of existing driveways to the same line and grade, or resurfacing. Minor repairs exclude any street curb cut work.

(3) ***PUBLIC ROADS.*** All public roads, streets, alleys, public ways and public rights-of-way in the unincorporated area of Montgomery County, Indiana.

(4) **ROUTINE MAINTENANCE.** Periodic repair or replacement of utilities or physical components within or adjacent to the public road, Routine maintenance excludes any street curb cut work.

(5) **ROAD CURB CUT WORK.** Work done to or through the actual street surface or curb and gutter section.

**(B) PERMITS.**

(1) *Permit required.* All excavation, construction, and road curb cut work on public roads in the unincorporated areas of the County shall require a permit issued by the County Highway Department upon application of the property owner, licensed contractor or utility performing the work. This shall also include boring under a road maintained by Montgomery County, and private application of dust control on a road maintained by Montgomery County.

(2) *Procedure.* Any person required to obtain a permit must apply for such a permit at the County Highway Department and pay the applicable permit fee.

(3) *Emergencies.* In an emergency involving a risk to public health or safety, construction or excavation may be commenced without a permit provided the person or entity performing the work has made a reasonable effort to inform the County Highway Department and any utility whose facilities might be involved, and shall make written application for a permit at the beginning of the next business day.

(4) *Work commenced without a permit.* Work commenced without a permit, or adherence to this section's emergency provisions, will result in the imposition of fines for each day the work is undertaken or a public road is left in disrepair as a result of work done without a permit.

(5) *Fees.* All applicants for permits, except those for minor repairs, routine maintenance, entities exempted by a written municipal agreement, for residential driveways, and initial installation of public improvements within new subdivisions, shall pay a permit fee. The fees are:

(a) for a non-residential driveway cut on a paved road is \$100, and the permit holder must provide a performance bond, in a form acceptable to Montgomery County in the amount of \$2,500;

(b) for the placement, relocation or removal of utility poles and overhead lines is \$100 per 1,000 lineal feet, and the permit holder must provide a performance bond, in a form acceptable to Montgomery County, in the amount of \$5,000;

(c) for subdivision entrance permits:

- (i) for 20 or fewer lots, the fee is \$100;
- (ii) for 21 to 40 lots, the fee is \$200;
- (iii) for 41 or more lots, the fee is \$300.

(d) for a permit for boring under a road maintained by Montgomery County, the permit fee is \$100 and a \$5,000 bond is required per permit.

(e) for a permit private application of dust control on a road maintained by Montgomery County, the permit fee is \$20.00.

(6) *Duration of the permits.* All permits shall expire within 1 year of the date of issuance. Once work is commenced, it must be completed within 30 days. If a longer period of time is needed, the permit holder may request that the Highway Director extend the work period for up to an additional 30 days.

**(C) OTHER REQUIREMENTS.**

(1) *Bond requirement.* A bond will be provided to the County to assure the proper repair of the public road before commencement of the work or immediately thereafter in the case of an emergency. The amount of the bond will be determined by the County Highway Director based upon the work to be performed and the cost of remediation if the applicant fails to perform.

(2) *Public safety precautions.* “Road Closed” and/or “Work Ahead” signs must properly mark the work site. Barricades and flaggers (if necessary) must separate exposed work from vehicle and pedestrian traffic. No trenches are to be left open overnight. All traffic control measures must comply with the *Manual on Uniform Traffic Control Devices for Streets and Highways*, published by the U.S. Department of Transportation.

(3) *Responsibility for maintenance.* It shall be the responsibility of the person or entity issued a permit to make sure that the public roads in or on which they perform work are properly repaired at the completion of the work and that particular places where the work was done are kept in good condition for a period of three years after the completion of the work. If the permit holder fails to perform proper repairs or maintenance for the three-year period, the County may perform any repair or maintenance work and bill the permit holder.

(4) *Additional rules and regulations.* The County Highway Department may adopt excavation specifications standards and rules for the making of cuts, for related matters involving excavations and restoration of pavements or surfacing.

(5) *Flowable Fill.* Flowable fill is required for excavation at depths of six feet or more.

**(D) RELOCATION OF PUBLIC UTILITIES.**

(1) *Purpose.* The County is authorized by Indiana law to manage and regulate the rights-of-way of its public roads. The purpose of this section is to establish a procedure for road improvement projects that involve the relocation of utility facilities by providing for the exchange of information and the implementation of their respective responsibilities among the County, utilities, and the contractors.

(2) *Applicability.*

- a. This section applies to improvement projects by Montgomery County for which is paid solely from local funds.
- b. This section does apply to public highways improvements projects conducted by the Indiana Department of Transportation (“INDOT”) or its designee or for

improvement projects for which Montgomery County received federal funding. In these events, the INDOT regulations in 105 IAC 13 shall be used between the parties.

*3. Definitions.*

- a. "Compensable work" means facility relocation for which Montgomery County will reimburse the utility under Indiana law.
- b. "Contractor" means the person or entity that enters into a contract with Montgomery County for an improvement project.
- c. "Day" means any calendar day of the year. If more than one (1) day, the term includes any consecutive day or days of any year or years.
- d. "Facility" shall include all privately, municipally, publicly, or cooperatively owned systems for supplying communications, power, light, heat, electricity, gas, water, pipeline, sewer, sewage disposal, drain or the like service, directly or indirectly, to the public. The term includes, but is not limited to, cable television systems.
- e. "Facility relocation" means any activity involving a facility that is needed for an improvement project including, but not limited to, abandoning, altering, deactivating. Installing, maintaining, modifying, moving, removing and/or supporting.
- f. "Highway" means any roadway under the jurisdiction of Montgomery County or where an improvement project is planned.
- g. "Improvement project" means the construction, reconstruction, rehabilitation, and process incidental to building, fabricating, or bettering any of the following:
  - (i) Projects within the unincorporated areas of Montgomery County that the County is required by statute to build and maintain.
  - (ii) A local project administered by Montgomery County including but not limited to road projects and road-related projects.The term does not include routine maintenance.
- h. "Major project" means an improvement project that due to scope or complexity, involves a long-term design process of more than twelve (12) months or is otherwise designated by Montgomery County as a major project.

- i. "Minor project" means an improvement project that due to scope or complexity, involves a short-term design process of less than twelve (12) months or is otherwise designated by Montgomery County as a minor project.
- j. "Project plan" means the plans for the improvement project suitable for the design of facility relocation that Montgomery County sends to the utility.
- k. "Utility" means the owner of a facility.
- l. "Work plan" means a plan of the utility to carry out facility relocation to accommodate an improvement project.

*4. Identification and Notification.*

- a. Montgomery County shall send by U.S. certified mail to the identified utility an initial notice of the proposed improvement project. A notice shall include the following:
  - i. The name or route number, or both, of the highway.
  - ii. The geographical limits of the improvement project.
  - iii. A general description of the work to be done.
  - iv. The anticipated date an approved work plan will be needed.
  - v. The anticipated ready for contract date of the improvement project.
  - vi. The name of the designer and other contact information, if available.
  - vii. Montgomery County's determination of whether the project is major or minor.

Montgomery County shall inform the utility of the latest anticipated dates with each notice.

- b. Within thirty (30) days after receiving the initial notice, the utility shall respond in writing to Montgomery County with a:
  - i. description of the type and location of its facilities within the geographical limits of the proposed improvement project; or
  - ii. statement that the utility has no facilities within the geographical limits of the improvement project.
- iii. Montgomery County will list the utilities and identify the locations of all facilities identified on one (1) or more plan sheets

*5. Verification of Existing Facilities.*

- a. Montgomery County shall send by certified mail to each utility a copy of the plan sheets that shows all existing facilities known to Montgomery County that are within the right-of-way of the improvement project or the geographical limits of the improvement project.
- b. Each utility shall do the following within thirty (30) days of receiving the plan sheets:
  - i. Review the accuracy of the plan as to the location of its existing facilities.

- ii. Declare in writing to Montgomery County whether the information is accurate or inaccurate.
- iii. Detail in writing to Montgomery County any inaccuracies in the information.

Failure to reply within the allotted time shall be deemed verification that the information is accurate.

## 6. Work Plan Development.

- a. In conjunction with the mailing the plans sheet(s), Montgomery County will send by mail preliminary project plans to the involved utilities. After receiving the preliminary project plans, each utility shall do the following:
  - i. Review the preliminary project plans.
  - ii. Declare in writing to Montgomery County whether there are or are not conflicts between its facilities and the improvement project.
  - iii. Detail in writing to Montgomery County any conflicts between its facilities and the proposed improvement project within:
    - (A) thirty (30) days for minor projects; or
    - (B) sixty (60) days for major projects.
- b. Failure to reply within the allotted time shall be deemed an indication of no conflicts. In the event of conflicts, the utility may recommend design changes for the improvement project to minimize utility costs or delays. Montgomery County will review the recommended changes and implement the changes where appropriate.
- c. After completion of the preliminary project plan development, Montgomery County will proceed with the development of final project plans for the improvement project. The County shall send by mail to the utility a copy of the preliminary final project plans for the improvement project, generally before those plans are complete, but which shall have sufficient detail to allow the preparation of the utility work plan. The utility shall use the preliminary final project plans to develop and provide to the County its work plan. A work plan shall be submitted:
  - i. whether or not any facility relocations are required; and
  - ii. within:
    - (A) sixty (60) days after receiving the preliminary final project plans for a minor project; and
    - (B) one hundred twenty (120) days after receiving the preliminary final project plans for a major project.

If a utility or the County determines there is a potential for conflict between work plans, the County will schedule a meeting. The County and the affected utilities will attend to coordinate the work. An additional thirty (30) days will be allowed to furnish the work plan if coordination is required with another utility or utilities. Additional time may be allowed by the department for unusually complex or extensive facility relocations, but not more than one hundred eighty (180) days.

d. The work plan shall include the following:

- i. A narrative description of the facility relocation that will be required.
- ii. A statement whether the facility relocation is or is not dependent on work:

(A) to be done by:

- (1) another utility; or
- (2) the County or contractor; or

(B) on the acquisition of additional right-of-way; with a description of that work.

- iii. A statement whether the utility is or is not willing to allow the contractor to do the required work as part of the highway contract.
- iv. The:
  1. earliest date when the utility could begin to implement the work plan; and
  2. number of days to complete the required work.
- v. The expected lead time in days to:
  1. obtain any required permits;
  2. obtain materials;
  3. schedule work crews; and
  4. obtain the necessary additional right-of-way.
- vi. A drawing of sufficient detail and scale to show the proposed location of the facility relocation.

e. For work that the utility believes it is entitled to be compensated by the County, the work plan shall also include a cost estimate for the facility relocation including appropriate credits for betterments and documentation of easements and compensable land rights.

f. Montgomery County shall review the work plan to ensure that it:

- i. is compatible with:
  1. County permit requirements;
  2. the project plans;
  3. the construction schedule; and
  4. other utility relocation work plans; and
- ii. has a reasonable:
  1. relocation scheme; and
  2. cost for compensable work.

g. If the work plan submitted by the utility is not compatible or reasonable, the County shall notify the utility by mail as soon as practicable. The utility shall submit a revised work plan within thirty (30) days of receipt of the notification by the County. The County shall review the revised work plan, and, if the work plan is still not compatible or reasonable, the County will prepare an alternative work plan for submission to the utility. Within thirty (30) days of receipt by the utility of the alternative work plan, the utility may

accept the alternative work plan or request, in writing, specific changes. The County shall review any requested changes to the alternative work plan. The County shall adopt a final work plan that considers the interests of the utility, contractor, and public, to ensure safety and reliability of the utility facilities and the highway and avoid the imposition of unnecessary and unreasonable costs. The final work plan adopted by the County will be the approved work plan; and

- h. A highway utility agreement, if required, shall be executed at this time.
- i. The County shall notify the utility by mail as soon as practicable when the final work plan is approved.

(2) Construction.

- a. Montgomery County shall notify the utility by mail not less than thirty (30) days before the utility is required to begin the implementation of the approved work plan. The utility shall acknowledge the notification by mail within fifteen (15) days.
- b. Montgomery County will include or reference a copy of each approved work plan in the highway contract.
- c. If an approved work plan is dependent on work by the contractor, the contractor shall do the following:
  - i. Provide Montgomery County and the utility a good faith notice not less than fifteen (15) days before the contractor's work is expected to be complete and ready for the utility to implement its work plan.
  - ii. Follow up with a confirmation notice to the County and the utility not less than five (5) days before the contractor's work will be complete so that the utility may implement the work plan.
- d. The utility shall notify Montgomery County and contractor, if identified, as follows:
  - i. At least five (5) days before beginning fieldwork within the right-of-way.
  - ii. When the work is complete.

(3) Work Revision Plans.

- a. If, before the letting date of the improvement project, the project plan is revised so that additional facility relocation work is found necessary,
  - i. Montgomery County shall:
    1. furnish to the utility the revised project plan; and
    2. identify to the utility the revisions within the project plan; and
  - ii. The utility shall provide to Montgomery County a revised work plan, except that the time allowed for the utility to submit the revised work plan after receiving the revised project plan shall not exceed sixty (60) days.

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- b. If, after the letting date of the improvement project, additional facility relocation is found necessary, Montgomery County shall notify the utility to prepare an expedited work plan as soon as practicable for submission to the County.

(4) Responsibilities.

- a. The utility, contractor, and Montgomery County shall perform the duties imposed by the approved work plan and contract within the time frames specified.
- b. Factors that shall excuse a utility from meeting the schedule in its approved work plan include the following:
  - i. The facility relocation was impacted by any of the following:
    1. Significantly differing site conditions.
    2. Unexpected impacts of other utilities.
    3. Other unforeseen circumstances that could not have been reasonably anticipated through due diligence.
    4. A force majeure event.
  - ii. Occurrence of severe weather or other factors beyond the control of the utility directly affecting the approved work plan.
  - iii. The final project plans differ substantially from the plans provided to the utility.
  - iv. If a facility is discovered during the process required by IC 8-1-26, has not been previously identified as being within the improvement project limits, and the utility can show the following:
    1. The facility was installed after the date the County identified the affected facilities as described above.
    2. A proper permit was obtained for the installation of the facility from Montgomery County.
- c. If an approved work plan requires adjustment due to the occurrence of one (1) or more factors enumerated in subsection (b), the County and the utility shall proceed as directed in section 8(b) of this rule.

**(E) SPECIAL REGULATIONS RELATING TO TELECOMMUNICATIONS PROVIDERS**

1. providers may collocate small cell facilities on existing utility poles and wireless support structures;
2. providers may perform routine maintenance on wireless facilities and replace wireless facilities with wireless facilities that are substantially similar to or the same size or smaller than the wireless facilities being replaced; and

3. providers with authority to use public rights-of-way may install, place, maintain or replace micro wireless facilities that are suspended on cables strung between existing utility poles in compliance with applicable codes.

**(F) PENALTY.**

Any person or entity violating this article is subject to a fine in the amount of \$500 per day, plus the cost of the required permit.

(Ord. 2021- 14, passed 4-12-21; Am Ord. 2021-31, passed 9-13-21).

**§90.02 IMPROVEMENTS; MINIMUM CONSTRUCTION**

**(A)** These are the minimum construction standards which must be met before any improvement, road, culvert or other structure is accepted into the county maintenance system. These standards maybe modified from time to time as may be approved by the Board of Commissioners. If any individual or entity constructs or installs any structure or improvement in any county right-of-way that does not meet the minimum specifications of the county standards, the county shall have the right to remove the nonconforming structure or improvement and replace it, if necessary, at the expense of the landowner.

**(B)** The costs incurred by the county may be taxed against the landowner's real estate upon which the improvement is located and collected by the county in the same manner that real estate taxes are taxed and collected.

**(C)** Drives shall match the pavement section of the adjacent roadway.

**(D)** If a pipe is required, it shall be the State Department of Transportation's Group "D" or superior. Capacity shall be by rational calculation with a 15-inch minimum, equal to downstream pipe size, or one size larger than adjacent upstream pipes, as minimum criteria. Appropriate end treatment shall be required.

**(E)** Slopes from the public road to private property shall begin at the shoulder break. Grades should not exceed 10%. Side slopes should match adjacent highway construction.

**(F) (1)** Turning movements by the class of traffic planned for use of the drive should

be possible from or to the adjacent lane without crossing the centerline. Thus, the State Department of Transportation's standard providing a 20-foot minimum width with a 20-foot radius shall be observed.

- (1) Those constructing the drive shall provide information showing the actual drive size, based upon turning improvements by the vehicles planned for use, for approval by the county. (Ord. 89-5, passed 8-15-89)

## **§90.03 COMMERCIAL DRIVES**

(A) The purpose of this section is to establish standards for installation of commercial drives connecting to county paved rights-of-way.

(B) The property owner shall pave this class of drive to the pavement section of the adjacent roadway at the time of construction.

(C) Drives shall match the pavement section of the adjacent roadway.

(D) If a pipe is required, it shall be the State Department of Transportation's Group "D" or superior. Capacity shall be by rational calculation with a 15-inch minimum, equal to downstream pipe size, or one size larger than adjacent upstream pipes, as minimum criteria. Appropriate end treatment shall be required.

(E) Slopes from the public road to private property shall begin at the shoulder break. Grades should not exceed 10%. Side slopes should match adjacent highway construction.

(F) (1) Turning movements by the class of traffic planned for use of the drive should be possible from or to the adjacent lane without crossing the centerline. Thus, the State Department of Transportation's standard providing a 20-foot minimum width with a 20-foot radius shall be observed.

- (2) Those constructing the drive shall provide information showing the actual drive size, based upon turning improvements by the vehicles planned for use, for approval by the county. (Ord. 89-5, passed 8-15-89)

## **ADDRESS NUMBERING SYSTEM**

## **§90.15 TITLE**

This subchapter shall be known and may be cited as the "Addressing Subchapter of the

County.”

(Ord. 2000-7, passed 12-19-00)

## **§90.16 COMPLIANCE**

No structure shall be assigned an address or street named in any manner whatsoever in the unincorporated areas of the county, except in full compliance with all provisions of this subchapter.

(Ord. 2000-7, passed 12-19-00)

## **§90.17 PURPOSE**

**(A)** The purpose of this subchapter shall be to set standards for residences and other structures numbering and road naming in the county and establish the authority and methods to be used when assigning addresses to properties in the county. These standards shall be used to establish residence locations which will be used in the implementation of an enhanced 911 emergency response system in the county.

**(B)** It is intended to provide continuity, avoid duplication and prevent general confusion regarding the location of developed parcels of land in the county.

(Ord. 2000-7, passed 12-19-00)

## **§90.18 APPLICATION**

It is not intended by this subchapter to interfere with, abrogate or amend any covenants or other agreements between parties, nor is it intended by this subchapter to repeal, nor abrogate, nor annul or in any way interfere with existing provisions of laws or ordinances not specifically repealed by this subchapter, or any rules or regulations previously adopted or issued pursuant to law relating to the listing of contractors.

(Ord. 2000-7, passed 12-19-00)

## **§90.19 JURISDICTION**

This subchapter shall apply to all land in Montgomery County, including the City of Crawfordsville, all incorporated towns and all unincorporated towns and areas.

This subchapter shall apply to all unincorporated land within the county.

(Ord. 2000-7, passed 12-19-00)

## **§90.20 DEFINITIONS**

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

**ADDRESS PLANNING AUTHORITY.** The County Commissioners shall serve as the

coordinating body in the county with the responsibility for assigning street addresses within its jurisdiction. The agency shall coordinate its addressing efforts with the County Building Administration (MCBA), County Sheriff, local postmasters and large mailers in the county such as utilities, government and the like.

**BASELINES.** Existing recognizable lines which divide the county into quadrants or sectors. The intersection of Division Line Road and State Road 231 is the center point of the county for addressing purposes. Division Line Road and State Road 231 generally form the BASE LINES for the county.

**BLOCK INTERVAL.** The hundred number interval is the distance between grid lines or the point where the next highest block number designation is used.

**CUSTOMER** or **ADDRESSEE.** A family, individual, residence, business or industry which receives mail or emergency service at a delivery point.

**FRONTAGE INTERVAL.** The distance in foot frontage along a street, highway or county road which is used to assign consecutive property numbers, beginning from the nearest grid or baseline. The address system used by the county assumes a FRONTAGE INTERVAL of 10.56 feet.

**GRID LINES.** Imaginary lines or actual county roads which are located a specific distance from and perpendicular or parallel to baselines. These lines indicate the point where block numbers change from one hundred to the next higher hundred. GRID LINES are used to standardize the numbering of parallel blocks at the same distance from the baselines.

**LOT.** A lot is a designated parcel, tract, development or area of land which is either not being or will be used eventually for construction of a structure.

**OUT-OF-BOUNDS ADDRESS.** A term used by the U.S. Postal Service to designate addresses that are out of sequence with other surrounding addresses. Often this occurs when mailboxes are located on the back street of a property that faces another street or on corner lots.

**PRIMARY ADDRESS NUMBER OR CITY-TYPE ADDRESS.** The numeric or alphanumeric component, which precedes the street name.

**STRUCTURE.** A residential home, apartment building, business or commercial building, industrial or manufacturing building or publicly-owned building which fronts onto a public street or road. (Ord. 2000-7, passed 12-19-00)

## **§90.21 ADVANTAGES OF SYSTEM; COUNTY COORDINATION**

**(A)** A street numbering system and corresponding property addresses provide individual structures which an exact geographic location in the county. City-type street-road addresses are necessary in order to provide a structure with a specific and more accurate identification for efficient mail delivery; to provide an easily identifiable geographic reference point for quick dispatch of police, fire and emergency rescue equipment; to provide utility companies with a permanent address record for billing and service calls tied to a specific structure; and to provide ease of location identification for friends, service vehicles or other individuals trying to locate a specific structure or a county road. A numbering system should make it easy for anyone to find the location of a county road or residential property in a short period of time and allow for a systematic expansion of address numbers as community growth occurs.

**(B)** The county will structure the naming of its road system and the issuance of property address based on the “Lyman/Purdue Street Numbering System.” The system is better known as the “Grid Coordinate System.” The system utilizes two baselines which run at approximate right angles to each other to divide the county into quadrants. Most of the county roads are number based on their distance from the north/south and east/west baselines.

**(C)** Existing county road/street names will be retained where feasible. Some names will have to be changed to correct duplications, multiple naming of the same road and other factors causing confusion. Road names will be used to delineate an assumed distance from the baseline. For example, County Road 250 South delineates that the road runs east/west at a distance of two and one-half miles south of the center of the county.

**(D)** Street addresses are assigned in increasing order from each base and grid line. In the county, 1,000 potential property addresses exist for each 5,280 feet of distance from the baselines. There are approximately 50 address numbers that will be available for each side of the street/road within each tenth of a mile. All of those available numbers will probably not be needed, depending on the density of development along the street/road. Therefore, possible addresses occur at each 10.56-foot interval. A specific street/road address is determined by measuring the number of 10.56-foot intervals between the grid line to the front entrance of a structure. Crooked roads and roads running at angles (not true north/south or east-west) will be addressed with the predominant north/south or east/west direction and may be named rather than numbered. Interval between address numbers will increase in these cases. (Ord. 2000-7, passed 12-19-00)

## **§90.22 PROPERTY ADDRESSING**

**(A)(1)** All residences, commercial, industrial and public structures located in the county shall be assigned a permanent city-type street address. Structures located on the south side of an east/west street/road and those located on the west side of north/south street/road shall be an odd-numbered property. Structures located on the north side of

an east/west street/road and those located on the east side of a north/south street/road shall have an even number.

**(2)** In all situations the Address Planning Authority shall make the final determination of which street/road will be used for an address. The criteria for this determination will be based on the layout of the property, layout of the structure and other factors that may affect emergency services and mail delivery.

**(3)** Street addresses are to be assigned based on a measurement of the distance from the gridline to a line perpendicular to the address road/street that intersects either the structure or the entrance to the property that contains the structure.

**(B)** An official street address shall contain no more than five digits with the first digit or the first two digits if the structure is located ten or more miles from the baseline, indicating the milepost or distance from the baselines. The third digit from the right shall indicate the block number which will change each 528 linear feet. The last two digits indicate the number of 10.56-foot intervals from the structure to the nearest block or grid line.

**(C)** Once a property address has been assigned by the MCBA to a specific structure, it shall be the responsibility of the property owner to provide visible and current address numbers on both the structure and on the mailbox. The letters and numbers on the mailbox shall be in compliance with U.S. Postal service regulations and recommendations. Letters and numbers placed on structures shall be at least three inches in height. The color of the numbering shall be in contrast to its background. The address shall be placed on both sides of the mailbox. In cases where an address is considered an “out of bounds” address, the address name of the road/street shall also be placed on both sides of the mailbox. The letters and numbers shall be placed on the mail level in a location which faces the street upon which it is addressed and near a main entryway and placed at or higher than the height of the entryway. The color of the lettering shall be in contrast to its background. If side or back entryways open to a street, road or alley different from the address, the side of the structure shall also have the full address, including address road/street name, properly displayed.

**(D) (1)** In the event that private roads are assigned names or numbers that are used

for addressing purposes, it will be responsibility of the property owner(s) to install and maintain a street name sign that meets the typical street sign requirements section of the county standards.

**(2)** Signs shall be installed within 180 days of the signing of this subchapter or within 90 days of the issuance of a new or changed street or road name. Penalties for failure to comply are outlined in § 90.26.

(Ord. 2000-7, passed 12-19-00)

**§90.23        RESPONSIBILITY**

(A) (1) The responsibility for the issuance of street addresses shall be delegated to the staff of the County Building Administration. The MCBA shall issue and keep a permanent record of all issued property addresses within its jurisdiction and share the addresses with local postal authorities and E-911 personnel. Determination of county road or highway names or changes in the names shall be the sole responsibility of the County Commissioners.

(2) The Commissioners shall have a final approval in the naming of streets in platted subdivisions, mobile home parks, commercial or industrial business parks and the like under its jurisdiction.

(B) Local incorporated communities shall have final approval in the naming of roads and subdivisions streets located within their corporate boundaries.”

(Ord. 2000-7, passed 12-19-00)

**§90.24 OBTAINING STREET ADDRESSES.**

(A) A person or business who submits an application to build a new structure in the county shall submit a plat or site plan as is normally required to obtain a building permit. Prior to issuance of an official building permit, an official address shall be assigned to the structure. The official address shall be forwarded to postal officials, the County Auditor and E-911 office. No other address shall be used for identification of the structure.

(B) In no case shall an individual or business be permitted to assign an address to their property or a structure on that property.

(Ord. 2000-7, passed 12-19-00)

**§90.25        INCORPORATED CITIES AND TOWNS**

(A) (1) The Building Administration and the County Commissioners do not have jurisdiction over the implementation of numbering systems within the incorporated cities and towns in the county. Numbering in these communities shall be the responsibility of the local plan commission, town board or city council. However, the County Commissioners can require that city-type addresses be implemented in these communities for purposes of defining structures for E-911 identification.

(2) All structures in the county shall be required to have city-type property addresses including those in incorporated communities.

**(B)** The rural route and box system now in place in some incorporated communities shall be eliminated and city-type addresses shall be assigned to all structures in the communities. (Ord. 2000-7, passed 12-19-00)

## **§90.26 ENFORCEMENT**

**(A)** Upon completion, all properties within the jurisdiction of the county shall be required to be in full compliance of this subchapter within six months of completion of the entire project if not assigned a new address.

**(B)** It is the duty of the owner or occupant of each house, business structure or other structure within the unincorporated areas of the county, now existing or hereafter erected to place on the structure and on the mailbox in front of structure, within six months from the date of passage of this subchapter, in accordance with § 90.22.

**(C)** In the event that the owner or occupant of any structure, as herein described, fails to comply with the terms and conditions of this subchapter, the owner or occupant, upon conviction, shall be guilty of an infraction and subject to a fine for every day that the violation is not rectified after receiving a written citation from one of the authorized agencies. All fines collected by this subchapter shall be returned the emergency telephone system budget.

**(D)** Authority to issue citations for violation of this subchapter hereby are granted to duly authorized personnel of the Building Administration, County Sheriff's Department, all county and city fire departments and town marshals.

**(E)** Copies of all citations issued will be forwarded to the County Attorney for collection in a manner consistent with other ordinances. Jurisdiction for the collection of the fines shall be the County Court.

(Ord. 2000-7, passed 12-19-00)

## CHAPTER 91: NUISANCES

### Section

- 91.01 Public nuisances prohibited
- 91.02 Definition
- 91.03 Duties of Sanitarian or other officer
- 91.04 Violations
- 91.05 Injunction

### **§91.01 PUBLIC NUISANCES PROHIBITED**

No person shall create, cause, continue, allow or maintain any nuisance as that term is defined in this chapter.

(Ord. 1996-1, passed - - 96; Am. Ord. 2006-07, passed 6-13-06)

### **§91.02 DEFINITION**

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

**NUISANCE.** A public nuisance is whatever is injurious to health, incident, offensive to the senses or an obstruction to the free use of property so as essentially to interfere with comfortable enjoyment of life or property.

(Ord. 1996-1, passed – 96; Am. Ord. 2006-07, passed 6-13-06)

### **§91.03 DUTIES OF SANITARIAN OR OTHER OFFICER**

**(A) Investigations.** Whenever the County Sanitarian, County Building Superintendent, County Highway Superintendent, County Law Enforcement Officer or other authorized enforcement officer has reason to believe that a nuisance exists on any property in the county, he or she shall conduct an investigation of the nuisance and report the nuisance to the Montgomery County Board of Commissioners for hearing.

**(B) Inspections.** Whenever the enforcement officer has reason to believe that a nuisance exists but is unable to determine conclusively that such a nuisance exists based upon observations of the property as it appears in plain view, the officer may apply to a court for warrant for the right to conduct an investigatory inspection of the premises.

**(C) Notice of Violation.** Whenever an enforcement officer determines that a nuisance exists, the officer shall provide to the owner and occupant, if any, of the property written notice of a violation. This notice shall contain the address of the property, a description of the nuisance, the name, address and telephone number of the enforcement officer, the date of any inspections, the action required to abate the nuisance, the time period in which the

nuisance must be abated, the procedure for appeal by the landowner or the occupant if he or she disagrees with the enforcement officer's determination that a nuisance exists, and the action available to the county if the nuisance is not abated.

**(D) *Time for Abatement.*** The time period in which the nuisance must be abated shall be not less than ten days nor more than 30 days from the date the notice is received by the owner/occupant or posted on the property, whichever occurs first.

**(E) *Appeal of Initial Determination.*** If the property owner or occupant disagrees with the determination of the enforcement officer, he or she may request a hearing before the Board of Commissioners. At such hearing, the enforcement officer shall present the evidence supporting the notice, and the owner or occupant shall have opportunity to present evidence and be heard on the issue of whether a nuisance exists. The request for an appeal hearing must be filed within ten days of the mailing or posting of the notice, whichever occurs first.

**(F) *Compliance Report.*** Within 30 days of the expiration of the time within which the abatement is to be completed, the enforcement officer shall submit to the Board of Commissioners a written report which indicates whether abatement is complete.

**(G) *Noncompliance Hearing.*** In the event the landowner or occupant fails to abate the nuisance, the enforcement officer shall request a hearing on such failure within 30 days of the Board of Commissioners' receipt of the report. The Board shall provide notice of the hearing to the landowner and occupant. At the hearing, the enforcement officer shall present evidence and recommend action to the Board to abate the nuisance. The landowner and occupant will also be allowed to present evidence and be heard on the matter at the hearing. The Board of Commissioners shall enter findings of fact with its order and provide the order to the landowner and occupant.

**(H) *Judicial Review.*** If the owner or occupant disagrees with the decision of the Board of Commissioners, he or she may file with the Montgomery Circuit Court a request for judicial review. This request must be filed within 30 days of the Board entering its order. The court may overturn the Commissioners' order if it finds that, based upon the evidence as a whole, the findings of act were arbitrary, capricious, an abuse of discretion, unsupported by the evidence or in excess of statutory authority. The landowner or occupant has the burden of proof.

**(I) *Remedies.*** If the Board of Commissioners finds that a nuisance exists and has not been abated as required in the notice of violation, the Board may order the enforcement officer to enter upon the property and take any action necessary to abate the nuisance, to hire private contractors to assist in the abatement, and to purchase supplies and equipment necessary for abatement.

**(J) Costs of Abatement Incurred by County.** The County Sanitarian or other officer who oversees the abatement shall, after the abatement is completed, certify under oath the actual cost of all labor, supplies or other expense of the abatement to the Board of Commissioners. Thereupon the County Sanitarian or other officer shall serve on the owner or occupant of the property in person or by certified mail a copy of the cost of the abatement. If the owner of the abated property fails or refuses to pay for the total cost of the abatement within 30 days from the date the notice is deposited in the mail or served on his or her person, the Board of Commissioners shall certify the cost of abatement to the County Treasurer and any other appropriate county official to be taxed against the real estate where the nuisance existed and collected as other real or personal property taxes are collected. (Ord. 1996-1, passed –96; Am. Ord. 2006-07, passed 6-13-06)

## **§91.04 VIOLATIONS**

Any person, firm or corporation who creates, causes, continues, allows or maintains any public nuisance in the county commits a Class C infraction and is subject to a fine in the amount of \$100 for each day until the nuisance is abated. Each day of violation shall constitute a separate violation. The liability for the expense of removing or abating any nuisance shall be in addition to any penalty for violation of this chapter.

(Ord. 1996-1, passed –96; Am. Ord. 2006-07, passed 6-13-06)

## **§91.05 INJUNCTION**

The county through its officers or agents shall be entitled to seek injunctive or other relief including damages, costs and attorney fees in any court. Upon proper showing the court shall enter an injunction to the landowner or occupant ordering the landowner and occupant to abate the nuisance upon terms and within the time periods consistent with this chapter.

(Ord. 1996-1, passed –96, Am. Ord. 2006-07, passed 6-13-06)

## CHAPTER 92: FAIR HOUSING

### Section

- 92.01 Policy
- 92.02 Definitions
- 92.03 Unlawful practice
- 92.04 Discrimination in sales or rentals
- 92.05 Discrimination in real estate transactions
- 92.06 Discrimination in brokerage services
- 92.07 Interference, coercion and intimidation
- 92.08 Prevention of intimidation
- 92.09 Exemptions
- 92.10 Administrative enforcement

### §92.01 POLICY

It shall be the policy of the Commissioners to provide, within constitutional limitation, for fair housing throughout its corporate limits, as provided for under the Federal Civil Rights Act of 1968, as amended, the Federal Housing and Community Development Act of 1974, as amended, and I.C. 22-9.5-1 et seq. (Ord. 93-9, passed 9-28-93)

### §92.02 DEFINITIONS

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

***AGGRIEVED PERSON.*** Any person who:

- (1) Claims to have been injured by a discriminatory housing practice; or
- (2) Believes that the 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. 22-9.5-2-2)

***COMPLAINANT.*** A person, including the Commission, who files a complaint under I.C. 229.5-6.

(I.C. 22-9.5-2-4)

***DISABILITY.***

(1) With respect to a person:

- (a) A physical or mental impairment which substantially limits one or more of the person' major life activities;
- (b) A record of having an impairment;
- (c) Being regarded as having an impairment;
- (d) An impairment described or defined pursuant to the federal Americans with Disabilities Act of 1990; and

(2) The term **DISABILITY** 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 **DISABILITY** include an individual solely because that individual is a transvestite.

(Am. Commissioners Ord. 2008-1, passed 2-11-08)

**DISCRIMINATORY HOUSING PRACTICE.** An act that is unlawful under §§ 92.03 through 92.08 or I.C. 22-9.5-5.

**DWELLING.** Any building, structure or part of a building or structure that is occupied as, or signed or intended for occupancy as, a residence by one or more families or any vacant land which offered for sale or lease for the construction or location of a building 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.** Discrimination on the basis of familial status means discrimination because the person is (1) pregnant; (2) domiciled with an individual under the age of 18 years in regard to whom the person is (a) the parent or legal custodian or (b) has the written permission of the parent or legal custodian for domicile with that person; or (3) in the process of obtaining legal custody of an individual younger than 18 years of age.

**FAMILY.** An individual (I.C. 22-9.5-2-9) or individuals having familial status as that term is defined in this section.

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

**TO RENT.** 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. 93-9, passed 9-28-93).

## §92.03 UNLAWFUL PRACTICE

Subject to the provisions of division (B) below, § 92.09 and I.C. 22-9.5-3, the prohibitions against discrimination in the sale or rental of housing set forth I.C. 22-9.5-1 and in § 92.04 shall apply to:

- (A) All 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 § 92.04 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 single-family houses at any one time. In the sale of the 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 the house prior to the sale, the exemption shall apply only to one sale within any 24-month period. The private individual 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 single-family houses at any one time. The sale or rental of any single-family house shall be excepted from application of this section only if the 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 salesman or any person in the business of selling or renting dwellings, or of any employee or agent of any broker, agent, salesperson or person; and

(b) Without the publication, posting or mail after notice of advertisement or written notice in violation of § 92.04(C), but nothing in this provision shall prohibit the use of attorneys, escrow agents, abstracters, title companies and other professional assistance as necessary to perfect or transfer this title.

(2) Rooms or units in dwelling 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 the 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. 93-9, passed 9-29-93)

## **§92.04 DISCRIMINATION IN SALES OR RENTALS**

As made applicable by § 92.03 and except as exempted hereby, it shall be unlawful:

- (A) To refuse to sell or rent after the making of a bona fide offer, 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, 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, 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 any 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 the 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 prospective entry into the neighborhood of a person or persons of particular race, color, religion, sex, disability, familial status or national origin;
- (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) That 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 the dwelling, because of a disability of:

- (a) That person;
- (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.

(3) For purposes of this division, “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 the person if the modifications may be necessary to afford the 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 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 the accommodations may be necessary to afford the 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, a failure to design and construct those dwellings in a manner that:
  1. The public-use and common use portions of the dwellings are readily accessible to and usable by disabled persons;
  2. All the doors designed to allow passage into and within all premises within the dwellings are sufficiently wide to allow passage by disabled persons in wheelchairs; and
  3. All premises within the 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 Americans With Disabilities Act of 1990 and of the American National Standard for buildings and facilities providing accessibility and usability for physically disabled people, commonly cited as “ANSI A117.1P,” suffices to satisfy the requirements of this section.

(5) Nothing in this section 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 or whose tenancy would result in substantial physical damage to the property of others. (Ord. 93-9, passed 9-28-93)

## **§92.05 DISCRIMINATION IN REAL ESTATE TRANSACTIONS**

(A) It shall be unlawful for any person or other entity whose business includes engaging residential real estate-related transactions to discriminate against any person in making available a transaction, or in the terms or conditions of 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 purchase 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. 93-9, passed 9-28-93)

## **§92.06 DISCRIMINATION IN 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 the access, membership or participation, on account of race, color, religion, sex, disability, familial status or national origin.  
(Ord. 93-9, passed 9-28-93)

## **§92.07        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 §§ 92.04 through 92.06.

(Ord. 93-9, passed 9-28-93).

## **§92.08        PREVENTION OF INTIMIDATION**

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; or
- (B)** Any person because he or she is or has been, or in order to intimidate the person or any other person or any class of persons from:
  - (1)** Participating, 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 herein; or
  - (2)** Affording another person or class of persons opportunity or protection so to participate.
- (C)** Any citizen because he or she is nor has been, or in order to discourage the 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 herein, 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. 93-9, passed 9-28-93)

## **§92.09 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 organizations set forth under division (B) and (C) below.

**(B)** Nothing in this chapter shall prohibit a religious organization, association or society, or any not-for-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 dwellings which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to the persons, unless membership in the religion is restricted on account of race, color or national origin. Nor shall anything in this chapter prohibit a private club not in fact open to the public, which as an incident to its primary purpose or purposes, provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of the 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. 93-9, passed 9-28-93)

## **§92.10 ADMINISTRATIVE ENFORCEMENT**

**(A)** The authority and responsibility for properly administering this chapter and referral of complaints hereunder to the Commission, as set forth in division (B) below, shall be vested in the Chief Executive Officer of the County Commissioners.

**(B)** Notwithstanding the provisions of I.C. 22-9.5-4-8, the County Commissioners, 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 this chapter by complainants to the State Civil

Rights Commission, hereafter the “Commission,” for administrative enforcement actions pursuant to I.C. 22-9.5-6 and Chief Elected Officer of the County Commissioners, shall refer all complaints to the Commission as provided for under division (A) above to the 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 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 Executive Officer and the Commission to further the purposes.

**(D)** The Chief Executive Officer of the County Commissioners or the Chief Executive Officer’s designee shall provide information on remedies available to any aggrieved person or complainant requesting the information.

(Ord. 93-9, passed 9-28-93)

## **CHAPTER 93: UNSAFE BUILDING LAW**

### Section

- 93.01 Adoption by reference
- 93.02 Building Administrator
- 93.99 Penalty

#### **§93.01           ADOPTION BY REFERENCE**

The Unsafe Building Law, I.C. 36-7-9 et seq., as amended, is hereby adopted by reference and incorporated herein as fully as if set out at length in this code of ordinances. (Ord. 2006-10, passed 7-3-06)

#### **§93.02           BUILDING ADMINISTRATOR**

The Building Administrator shall be responsible for the administration of the Unsafe Building Law.

(Ord. 2006-10, passed 7-3-06)

#### **§93.99           PENALTY**

A person who violates the Unsafe Building Law by any of the following commits a class C infraction and shall be subject to a fine of \$500 for each day that the violation continues. Each day that the violation continues constitutes a separate offense:

- (A) Remaining in, using or entering a building in violation of an order made under this chapter;
- (B) Knowingly interfering with or delaying the carrying out of an order made under this chapter;
- (C) Knowingly obstructing, damaging or interfering with persons engaged or property used in the performance of any work or duty under this chapter; or
- (D) Failing to comply with the provisions of this chapter articulated in I.C. 36-7-9-27. (Ord. 2006-10, passed 7-3-06)

## **CHAPTER 94: OBSTRUCTIONS ON PUBLIC ROADS, STREETS, EASEMENTS, AND RIGHTS-OF-WAY**

### Section

- 94.01      Obstructions prohibited
- 94.02      Definition
- 94.03      Duties of Sanitarian or other officer
- 94.04      Injunction
- 94.99      Penalty

*Cross-reference:*

*Streets and sidewalks, see Ch. 90*

## **§94.01            OBSTRUCTIONS PROHIBITED**

No person shall create, cause, continue, allow or maintain any obstruction which interferes with the public safety or lawful use of or obstructs the vision of persons traveling on public roads, streets, easements or rights-of-way.

(Ord. 2006-11, passed 7-3-06)

## **§94.02            DEFINITION**

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

***OBSTRUCTION.*** Any vegetation, tree, shrub, vine or other object which because of its size, condition or location interferes with the public safety or lawful use of or hinders in the vision of a person traveling on public roads, streets, easements or rights-of-way. Provided, however, crops growing on private property and not on the road, street, easement or right-of-way shall not be considered an ***OBSTRUCTION*** for purposes of this chapter.

(Ord. 2006-11, passed 7-3-06)

## **§94.03            DUTIES OF THE SANITARIAN OR OTHER OFFICER**

**(A)      *Investigations.*** Whenever the County Sanitarian, County Building Superintendent, County Highway Superintendent, County Law Enforcement Officer or other authorized enforcement officer has reason to believe that an obstruction exists on any property in the county, he or she shall conduct an investigation of the obstruction and report the obstruction to the Montgomery County Board of Commissioners for hearing.

**(B)      *Inspections.*** Whenever the enforcement officer has reason to believe that an obstruction exists and believes it is necessary to enter private property in order to complete his or her investigation, the officer may apply to a court for warrant for the right to conduct an investigatory inspection of the premises.

**(C)      *Notice of Violation.*** Whenever an enforcement determines that an obstruction exists, the officer shall provide to the owner and occupant, if any, of the property written notice of violation. This notice shall contain the address of the property, a description of

the obstruction, the name, address and telephone number of the enforcement officer, the date of any inspections, the action required to abate the obstruction, the time period in which the obstruction must be abated, the procedure for appeal by the landowner or the occupant if he or she disagrees with the enforcement officer's determination that an obstruction exists, and the action available to the county if the obstruction is not abated.

**(D) *Time for Abatement.*** The time period in which the obstruction must be abated shall be not less than ten days nor more than 30 days from the date the notice is received by the owner/occupant or posted on the property, whichever occurs first.

**(E) *Appeal of Initial Determination.*** If the property owner or occupant disagrees with the determination of the enforcement officer, he or she may request a hearing before the Board of Commissioners. At such hearing, the enforcement officer shall present the evidence supporting the notice, and the owner or occupant shall have opportunity to present evidence and be heard on the issue of whether an obstruction exists. The request for an appeal hearing must be filed within ten days of the mailing or posting of the notice, whichever occurs first.

**(F) *Compliance Report.*** Within 30 days of the expiration of the time within which the abatement is to be completed, the enforcement officer shall submit to the Board of Commissioners a written report which indicates whether abatement is complete.

**(G) *Noncompliance Hearing.*** In the event the landowner or occupant fails to abate the obstruction, the enforcement officer shall request a hearing on such failure within 30 days of the Board of Commissioners' receipt of the report. The Board shall provide notice of the hearing to the landowner and occupant. At the hearing, the enforcement officer shall present evidence and recommend action to the Board to abate the obstruction. The landowner and occupant will also be allowed to present evidence and be heard on the matter at the hearing. The Board of Commissioners shall enter findings of fact with its order and provide the order to the landowner and occupant.

**(H) *Judicial Review.*** If the owner or occupant disagrees with the decision of the Board of Commissioners, he or she may file with the Montgomery Circuit Court a request for judicial review. This request must be filed within 30 days of the Board entering its order. The court may overturn the Commissioners' order if it finds that, based upon the evidence as a whole, the findings of fact were arbitrary, capricious, an abuse of discretion, unsupported by the evidence or in excess of statutory authority. The landowner or occupant has the burden of proof.

**(I) *Remedies.*** If the Board of Commissioners finds that an obstruction exists and has not been abated as required in the notice of violation, the Board may order the enforcement officer to enter upon the property and take any action necessary to abate the obstruction, to hire private contractors to assist in the abatement, and to purchase supplies and equipment necessary for abatement.

**(J) Costs of Abatement Incurred by County.** The County Sanitarian or other officer who oversees the abatement shall, after the abatement is completed, certify under oath the actual cost of all labor, supplies or other expense of the abatement to the Board of Commissioners. Thereupon the County Sanitarian or other officer shall serve on the owner or occupant of the property in person or by certified mail a copy of the cost of the abatement. If the owner of the abated property fails or refuses to pay for the total cost of the abatement within 30 days from the date the notice is deposited in the mail or served on his or her person, the Board of Commissioners shall certify the cost of abatement to the County Treasurer and any other collected as other real or personal property taxes are collected.

(Ord. 2006-11, passed 7-3-06)

#### **§94.04 INJUNCTION**

The county through its officers or agents shall be entitled to seek injunctive or other relief including damages, costs and attorney fees in any court. Upon proper showing the court shall enter an injunction to the landowner or occupant ordering the landowner and occupant to abate the obstruction upon terms and within the time periods consistent with this chapter. (Ord. 2006-11, passed 7-3-06)

#### **§94.99 PENALTY**

Any person, firm or corporation who creates, causes, continues, allows or maintains any obstruction as defined in this chapter in the county commits a Class C infraction and is subject to a fine in the amount of \$100 for each day until the obstruction is abated. Each day of violation shall constitute a separate violation. The liability for the expense of removing or abating any obstruction shall be in addition to any penalty for violation of this chapter. (Ord. 2006-11, passed 7-3-06)

### **CHAPTER 95: DRUG NUISANCES**

#### Section

- 95.01 Drug nuisances prohibited
- 95.02 Definitions
- 95.03 Actions to abate

#### **§95.01 DRUG NUISANCES PROHIBITED**

No person shall create, cause, continue, allow or maintain any drug nuisance, as defined herein, in the unincorporated areas of Montgomery County.

(Ord. 2006-13, passed 7-3-06)

## §95.02. DEFINITIONS

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

**DRUG NUISANCE.** The use of property to commit an act constituting a drug offense under I.C. 35-48-4 or an attempt to commit or a conspiracy to commit a drug offense.

**PROPERTY.** Any house, mobile home or apartment, including but not limited to improvements to real estate which are leased for residential or commercial purposes.

(Ord. 2006-13, passed 7-3-06)

## §95.03 ACTIONS TO ABATE

**(A) Persons Entitled to Initiate Actions.** An action to abate a drug nuisance under this chapter may be initiated by the prosecuting attorney of Montgomery County, the County Attorney or the property owner.

**(B) Notice of Drug Nuisance.** A person initiating an action under this chapter shall at least 45 days before filing an action provide notice to each tenant of the property and the owner of record as shown in the records of the County Assessor. This notice must include the date and time the nuisance was first discovered, the location of the property where the nuisance is allegedly occurring, and all evidence in the possession of the person initiating the action regarding the nuisance. The notice must hand-delivered or sent by certified mail.

**(C) Filing of Complaint.** After the expiration of the 45-day notice period, a complaint may be filed to obtain legal or equitable remedies from a court. Within 48 hours of filing the complaint, the person filing the complaint shall post a copy of the complaint in a conspicuous place on the property alleged to be a drug nuisance. Service upon the defendant(s) shall comply with I.C. 3230-8-7 and 32-30-8-8.

**(D) Hearing.** The court shall schedule a hearing on the complaint not later than 20 days after the filing of the complaint. If service of process upon the defendants is not made within five days of the hearing, the court may set a new hearing date.

**(E) Remedies.** The court may enter legal remedies and an injunction or other equitable relief. The Court may also order a tenant that created the drug nuisance on the property to vacate the property within 72 hours of the issuance of an order. If the court finds that the owner of the property knew of the existence of the drug nuisance, the court

may order the owner to submit for court approval a plan for correction to ensure, to the extent reasonably possible, that the property will not again be used for a drug nuisance.

**(F)** *Failure of Tenant to Comply.* In the event a tenant fails to comply with a court order entered at the hearing, the owner may seek an order from the court allowing removal of the tenant and the tenant's personal property as provided for in I.C. 32-31-4.

**(G)** *Temporary Abatement.* Evidence that the drug nuisance has been discontinued at the time of filing of the complaint or the time of the hearing does not bar the imposition of appropriate relief by the court under this chapter. (Ord. 2006-13, passed 7-3-06)

## CHAPTER 96: INOPERABLE AND UNREGISTERED MOTOR VEHICLES

### Section

- 96.01 Dangerous motor vehicles prohibited
- 96.02 Definitions
- 96.03 Duties of Sanitarian or other officer
- 96.04 Injunction
- 96.05 Inspection fees
- 96.99 Penalty

### **§96.01 DANGEROUS MOTOR VEHICLES PROHIBITED**

No person shall create, cause, continue, allow or maintain any inoperable and unregistered motor vehicle which endangers the health or safety of the citizens of Montgomery County.  
(Ord. 2006-12, passed 7-25-06)

### **§96.02 DEFINITIONS**

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

***ENDANGERS HEALTH AND SAFETY.*** Any condition which adversely affects public health and safety, as reasonably determined by the County Sanitarian or his/her designee. Such conditions include but are not limited to the existence of gasoline, oils, acids or other liquids or gases which, if released or drained onto the ground or into the air, will adversely affect public health and safety.

***INOPERABLE.*** Any motor vehicle which cannot be used for its intended purpose because of mechanical malfunction or poor condition.

***MOTOR VEHICLE.*** Any automobile, motorcycle, mobile home not placed on a foundation, recreation vehicle or other vehicle as defined by Indiana law which is subject to registration with the Bureau of Motor Vehicles.

***UNREGISTERED.*** Any motor vehicle which is not registered with the Indiana Bureau of Motor Vehicles.

(Ord. 2006-12, passed 7-25-06)

### **§96.03 DUTIES OF SANITARIAN OR OTHER OFFICER**

**(A) *Investigations.*** Whenever the County Sanitarian, or other authorized enforcement officer has reason to believe that an inoperable and unregistered motor vehicle which endangers the health or safety of the citizens of Montgomery County (a dangerous motor vehicle) exists on any property in the county, he or she shall conduct an investigation of the hazard and report the hazard to the Montgomery County Board of Commissioners for hearing.

**(B) *Inspections.*** The County Sanitarian shall inspect all inoperable and unregistered motor vehicles annually. If the owner will not consent to the inspection and the Sanitarian has reason to believe that the motor vehicle is or may be one which because of its condition endangers public health or safety, he or she may apply to a court for a warrant for the right to conduct an investigatory inspection of the motor vehicle.

**(C) *Notice of Violation.*** Whenever an enforcement officer determines that a hazard exists, the officer shall provide to the owner written notice of a violation. This notice shall contain the address of the property, a description of the hazard, the name, address and telephone number of the enforcement officer, the date of any inspections, the action required to abate the hazard, the time period in which the hazard must be abated, the procedure for appeal by the owner if he or she disagrees with the enforcement officer's determination that a hazard exists, and the action available to the county if the hazard is not abated.

**(D) *Time for Abatement.*** The time period in which the hazard must be abated shall be not less than ten days nor more than 30 days from the date the notice is received by the owner or posted on the property, whichever occurs first.

**(E) *Appeal of Initial Determination.*** If the owner disagrees with the determination of the enforcement officer, he or she may request a hearing before the Board of Commissioners. At such hearing, the enforcement officer shall present the evidence supporting the notice, and the owner or occupant shall have opportunity to present evidence and be heard on the issue of whether a hazard exists. The request for an appeal hearing must be filed within ten days of the mailing or posting of the notice, whichever occurs first.

**(F) *Compliance Report.*** Within 30 days of the expiration of the time within which the abatement is to be completed, the enforcement officer shall submit to the Board of Commissioners a written report which indicates whether abatement is complete.

**(G) *Noncompliance Hearing.*** IN the event the owner fails to abate the hazard, the enforcement officer shall request a hearing on such failure within 30 days of the Board of Commissioner's receipt of the report. The Board shall provide notice of the hearing to the owner. At the hearing, the enforcement officer shall present evidence and recommend action to the Board to abate the hazard. The owner will also be allowed to present

evidence and be heard on the matter at the hearing. The Board of Commissioners shall enter findings of fact with its order and provide the order to the owner.

**(H) *Judicial Review.*** If the owner disagrees with the decision of the Board of Commissioners, he or she may file with the Montgomery Circuit Court a request for judicial review. This request must be filed within 30 days of the Board entering its order. The court may overturn the Commissioners' order if it finds that, based upon the evidence as a whole, the finding of fact were arbitrary, capricious, an abuse of discretion, unsupported by the evidence or in excess of statutory authority. The owner has the burden of proof.

**(I) *Remedies.*** If the Board of Commissioners finds that a hazard exists and has not been abated as required in the notice of violation, the Board may order the enforcement officer to enter upon the property and take any action necessary to abate the hazard, to hire private contractors to assist in the abatement, and to purchase supplies and equipment necessary for abatement.

**(J) *Costs of Abatement Incurred by County.*** The County Sanitarian or other officer who oversees the abatement shall, after the abatement is completed, certify under oath the actual cost of all labor, supplies or other expense of the abatement to the Board of Commissioners. Thereupon the County Sanitarian or other officer shall serve on the owner or occupant of the property in person or by certified mail a copy of the cost of the abatement. If the owner of the abated property fails or refuses to pay for the total cost of the abatement within 30 days from the date the notice is deposited in the mail or served on his or her person, the Board of Commissioners shall certify the cost of abatement to the County Treasurer and any other appropriate county official to be taxed against the real estate where the hazard existed and collected as other real or personal property taxes are collected.

(Ord. 2006-12, passed 7-25-06)

#### **§96.04 INJUNCTION**

The county through its officers or agents shall be entitled to seek injunctive or other relief including damages, costs and attorney fees in any court. Upon proper showing the court shall enter an injunction to the owner ordering the owner to abate the hazard upon terms and within the time periods consistent with this chapter.

(Ord. 2006-12, passed 7-26-06)

#### **§96.05 INSPECTION FEES**

The County Sanitarian shall collect a fee for each inspection the amount of \$100 for the first inspection of all of the vehicles at a single location. If the Sanitarian is not satisfied that the hazard has been abated, the re-inspection fee shall be the sum of \$100 for each vehicle inspected at a single location. This fee shall be deposited into the Dangerous

Motor Vehicle Fee Fund. This fund shall be used to pay for the expense of the administration of the chapter, including but not limited to salaries, benefits, supplies, equipment, contractual assistance and other expenses. (Ord. 2006-12, passed 7-25-06)

**§96.99            PENALTY**

Any person, firm or corporation who violates this chapter commits a Class C infraction and is subject to a fine in the amount of \$100 for each day until the hazard is abated. Each day of violation shall constitute a separate violation. The liability for the expense of removing or abating any nuisance shall be in addition to any penalty for violation of this chapter. (Ord. 2006-12, passed 7-25-06)

## CHAPTER 97: ANIMAL CONTROL

### Section

97.01	Definitions
97.02	Jurisdiction
97.03	Pet Care Standards
97.04	Animal Nuisances
97.05	Wolf Hybrids and Coydogs Prohibited
97.06	Impoundment
97.07	Dangerous Animals
97.08	Other Conditions for Release from Impoundment
97.09	Animal Control Fund
97.99	Penalty

### §97.01        **DEFINITIONS**

Wherever used in this Chapter, capitalized term shall have the meanings set forth below, unless the context clearly indicates or requires a different meaning:

**AGENT:** Any Individual eighteen (18) years of age or older who is authorized by an animal's Owner to have temporary or permanent custody of, shelter, have charge of, harbor, exercise control over, or otherwise act on such Owner's behalf with respect to such animal.

**ANIMAL CONTROL AGENCY:** Animal Welfare League of Montgomery County, Inc. or any other governmental or private entity charged or contracted with for the implementation of animal control services for and on behalf of Montgomery County.

**ANIMAL CONTROL AGENT:** A civilian Individual employed or appointed by an Animal Control Agency for the purposes of carrying out the provisions of this Chapter or any contract for animal control services.

**ANIMAL CONTROL FACILITY:** A facility, shelter or vehicle operated by an Animal Control Agency for promoting animal welfare and humane treatment of animals.

**ANIMAL NUISANCE:** Any animal that:

- (1) is an At Large animal;
- (2) molests passers-by or passing vehicles on public property without provocation;

- (3) attacks Individuals or other animals without provocation; or
- (4) otherwise unreasonably interferes with the free us and comfortable enjoyment of life or property.

**AT LARGE:** An animal that is:

- (1) not on a leash and is off the property of its Owner or the Owner's Agent;
- (2) on a leash that does not adequately confine the animal to the property of the Owner or the Owner's Agent;
- (3) on a leash that is not otherwise under the immediate control of an Individual physically capable of restraining the animal; or
- (4) otherwise not under the direct control of the Owner or Owner's Agent.

Notwithstanding the foregoing, an animal that is engaged in legal hunting or farming activities and is under the control and supervision of the Owner or the Owner's Agent is not considered to be At Large under this Chapter.

**COYDOG:** "Coydog" shall have the meaning prescribed by I.C. 15-20-1-5(a)(1), as amended or recodified from time to time.

**DANGEROUS ANIMAL:** The term "Dangerous Animal" includes any of the following:

- (1) Any animal which, when unprovoked, or two (2) separate occasions within the prior thirty-six (36) month period, engages in any behavior that requires a defensive action by any Individual to prevent Serious Bodily Injury when the Individual and the animal are off of the property of Owner or harborer of the animal.
- (2) Any animal which, when unprovoked, attacks or bites an Individual causing Serious Bodily Injury;
- (3) Any animal which within the prior thirty-six (36) month period, when unprovoked and off the property of the Owner or keeper of the animal , has bitten or otherwise caused Severe Injury to Domestic Livestock or Domestic Pet without provocation; or
- (4) Any animal which, when unprovoked and off the property of the Owner or keeper of the animal has cause the death of Domestic Livestock or Domestic Pet, or Severe Injury to multiple Domestic Livestock or Domestic Pets, without provocation;
- (5) Any Wolf Hybrid or Coydog.

Notwithstanding the foregoing, the term “Dangerous Animal” exclude any K-9 dog or police dog that is owned, used or maintained by a law enforcement agency.

**DOMESTIC LIVESTOCK:** Any animal, other than a Domestic Pet, that is kept for agricultural or commercial purposes, or in connection with a 4-H or FFA activity, and is one (1) of the following: alpaca, bison, elk, cattle, donkey, goat, horse, llama, mule, ostrich, emu, swine, poultry (chicken, turkey, duck or goose), rabbit or sheep.

**DOMESTIC PET.** Any animal that is commonly kept for pleasure rather than for commercial purposes, including without limitation the following species:

- (1) Dogs (*canis lupus familiaris*);
- (2) Domestic cats (*felis catus*);
- (3) Guinea pigs (*cavia porcellus*);
- (4) Hamsters (any species of the genus *mesocricetus*);
- (5) Gerbils (any species of the genus *gerbillus*); and
- (6) Ferrets (*mustela putorius furo*)

**INDIVIDUAL:** A human being.

**LAW ENFORCEMENT OFFICER.** A county sheriff; a state, county or city police officer; a town marshal; a prosecuting attorney; a conservation officer; or a deputy of any of such persons.

**MICROCHIP:** A computer chip implanted underneath the skin of an animal that contains identification information relating to that animal.

**NON-DANGEROUS ANIMAL:** Any animal which is not a Dangerous Animal.

**OWNER:** Any Person owning, keeping or harboring one (1) or more animals.

**PERSON:** Any Individual, firm, association, partnership, limited liability company, corporation, trust or estate.

**SERIOUS BODILY INJURY:** Any injury to an Individual that (1) results in death of the Individual; (2) creates a substantial risk of the Individual’s death; or (3) causes serious permanent disfigurement, unconsciousness, extreme pain, permanent or protracted loss or impairment of the function of a bodily member or organ, or loss of human fetus.

**SEVERE INJURY:** Any physical injury to a Domestic Pet or Domestic Livestock that results in multiple bites, broken bones, muscle tears or disfiguring lacerations, or requires multiple sutures or corrective or cosmetic surgery.

**STRAY:** Any animal that does not appear, upon reasonable inquiry, to have an Owner.

**WOLF HYBRID:** “Wolf Hybrid: shall have the meaning prescribed by I.C. 15-20-1-5(a)(3), as amended or recodified from time to time. (Commissioners Ord. 2010-1, passed 9-23-10)

**§97.02 JURISDICTION**

The provisions of this Chapter shall apply to all areas in Montgomery County outside the corporate limits of the City of Crawfordsville and of any incorporated towns. (Commissioners Ord. 2010-1, passed 9-23-10)

**§97.03 DOMESTIC PET CARE STANDARDS**

Each Owner or Agent having custody or charge of, harboring, or exercising control over any Domestic Pet shall provide the following minimum standards of care for each such animal:

- (A)** Each Domestic Pet shall have access to a shelter which will protect it from the weather and allow it to stand, sit, turn around, and lie down without restriction. The shelter must be structurally sound, moisture-proof and windproof, and provide adequate protection from the cold and heat, including bedding to provide insulation and protection against cold and dampness and promote the retention of body heat in cold weather. The shelter must be placed in a dry area free of debris, feces, and standing water.
- (B)** Each Domestic Pet shall have sufficient and wholesome food and water, which is proper and nutritional for that species of animal.
- (C)** If a Domestic Pet is ill, diseased or injured, it shall receive proper veterinary care as necessary to promote the good health of the Domestic Pet and prevent the transmittal of disease to the other animals or humans.
- (D)** No Domestic Pet shall be abandoned, beaten, ill-treated, tormented, or otherwise abused or neglected, or involved in any dog fight, or other fight between animals or between animals and humans.
- (E)** A Domestic Pet shall be kept under restraint when in heat so as to prevent unintentional breeding.
- (F)** If a Domestic Pet is chained or tethered, the chain or tether shall not weigh more than one eighth (1/8) of the animal’s body weight, shall be at least ten (10) feet in length and have swivels on both ends, so as to reduce the likelihood of entanglement. A chain or tether used to restrain a Domestic Pet must, by design and placement, be unlikely to become entangled.

**(G)** No Domestic Pet shall be kept or maintained on a tether for a period of more than ten (10) continuous hours, nor for more than twelve (12) hours in any twenty-four (24) hour period, nor for any duration under conditions which threaten the health or well being of the Domestic Pet.

**(H)** A muzzle may not be worn by a dog continuously as a means for controlling barking.

(Commissioners Ord. 2010-1, passed 9-23-10)

#### **§97.04 ANIMAL NUISANCES**

An animal Owner or Agent shall exercise due care and control of all animals within his care, custody or control, so as to prevent them from becoming Animal Nuisances.

(Commissioners Ord. 2010-1, passed 9-23-10)

#### **§97.05 WOLF HYBRIDS AND COYDOGS PROHIBITED**

It shall be unlawful for any person to possess or harbor a Wolf Hybrid or Coydog.

(Commissioners Ord. 2010-1, passed 9-23-10)

#### **§97.06 IMPOUNDMENT**

**(A)** *Grounds for Impoundment.* Any Law Enforcement Officer or Animal Control Agent may immediately capture and impound any of the following animals:

- (1)** Any At Large animal;
- (2)** Any Stray animal;
- (3)** Any Wolf Hybrid or Coydog;
- (4)** Any unattended animal that is ill, or otherwise in need of emergency care;
- (5)** Any animal that is reasonably suspected of having rabies;
- (6)** Any unattended animal that is exhibiting aggressive or dangerous behavior is not sufficiently confined to the property of its Owner;
- (7)** Any animal that a Law Enforcement Officer or Animal Control Agent has probable cause to believe is a Dangerous Animal; or

(8) Any animal that a Law Enforcement Officer or Animal Control Agent has probable cause to believe has been the subject of or involved in a violation under I.C. 15-20-1-4 or I.C. 35-46-3.

**(B) *Actions to Prevent Harm to Individuals or Other Animals.*** If any animal is found At Large and cannot be safely captured, a Law Enforcement Officer may seek assistance from an Animal Control Agent, or take other action deemed appropriate, including tranquilizing or killing such animal to prevent Serious Bodily Injury to Individuals, or Severe Injury to Domestic Pets or Domestic Livestock.

**(C) *Identification of Impounded Animals; Notice to Owners.***

(1) Any animals which are impounded pursuant to this Chapter shall be scanned or examined by the Animal Control Facility for a Microchip, collar tag or other identification containing the Owner's name, address and/or phone number, unless doing so presents an unreasonable risk of Serious Bodily Injury to an Animal Control Agent.

(2) If an impounded animal's Owner can be identified, the Animal Control Facility shall notify the Owner by the end of the next business day that the animal has been impounded, and that unless the animal is claimed by the Owner within ten (10) days from the date of impoundment, the animal may be placed for adoption or humanely euthanized. Notwithstanding the foregoing, in the case of a second or subsequent impoundment, the impounded animal may be placed for adoption or humanely euthanized if not claimed within five (5) days after the Owner is notified.

(3) Stray animals without any means of identification of their Owners shall be held at the Animal Control Facility a minimum of three (3) days in order to permit an Owner adequate time to reclaim them. A Stray animal which is unclaimed after having been impounded for three (3) days may be placed for adoption or humanely euthanized, except that the Stray shall be euthanized if it is a Dangerous Animal.

**(D) *Release from Impoundment.***

(1) Subject to the requirements and conditions of § 97.08 of this Chapter, a Non-Dangerous Animal may be returned to its Owner.

(2) The return of a Dangerous Animal to its Owner is subject to the requirements and conditions of both § 97.07 and § 97.08 of this Chapter.

**(E) *Treatment or Euthanizing of Sick or Injured Animals.*** The Animal Control Facility shall have authority to take whatever action is reasonably necessary, including humane euthanization, to deal with a sick or injured animal, to prevent unnecessary suffering of the animal, or to prevent the spread of communicable diseases. Nothing in

this Chapter shall limit the Animal Control Facility's ability to take whatever action is reasonably necessary to provide veterinary care by a veterinarian for a sick or injured animal.

(Commissioners Ord. 2010-1, passed 9-23-10)

## **§97.07            DANGEROUS ANIMALS**

**(A)        *Impoundment.*** A Dangerous Animal which has been captured and impounded by a Law Enforcement Officer or Animal Control Agent shall remain impounded subject to the requirements of this Section.

**(B)        *Euthanization of Dangerous Animals.*** A Dangerous Animal which has been impounded shall be euthanized if:

**(1)** The Owner fails to request a hearing before the Board of Commissioners, pursuant to Subsection (C) of this § 97.07, within seven (7) days after having been notified of the impoundment;

**(2)** The Owner fails to satisfy the registration and confinement requirements of subsection (D) of this § 97.07 within fourteen (14) days after the Board of Commissioners' determination that the animal is a Dangerous Animal;

**(3)** The Owner waives in writing all ownership interests in the Dangerous Animal;

**(4)** The Dangerous Animal's Owner cannot be identified or located, and the animal remains unclaimed for three (3) days after having been impounded; or

**(5)** The Dangerous Animal is re-impounded after having previously been registered under subsection (D) of this § 97.07 within five (5) days after the Owner is notified of the re impoundment.

**(C)        *Hearings and Appeals.*** If an Owner makes a timely request for a hearing pursuant to subsection (B)(1) above, the Board of Commissioners shall conduct a public hearing.

**(1)** At such hearing, a Law Enforcement Officer, Animal Control Officer or Animal Control Agency shall present evidence supporting a determination that the animal is a Dangerous Animal, and the Owner shall have the opportunity to confront and cross-examine the witnesses supporting such determination, and to present evidence opposing the determination.

**(2)** Following the hearing, the Board of Commissioners shall make a finding whether the animal is a Dangerous Animal.

**(3)** If the Board of Commissioners determine that the animal is not a Dangerous Animal, they shall order the animal released to the Owner, subject to the requirements of § 97.08 of this Chapter.

**(4)** If the Board of Commissioners determine that the animal is a Dangerous Animal, the animal may not be released to the Owner until the Owner complies with registration and confinement requirements of subsection (D) of this § 97.07, in addition to the requirements of § 97.08 of this Chapter.

**(D)** *Dangerous Animal Registration and Confinement Requirements.* A Dangerous Animal may not be released from impoundment until the Owner has registered the Dangerous Animal with the Montgomery County Health Department, and has paid a registration fee of \$500.00. As part of the registration process, the registrant shall provide:

**(1)** Proof of payment of all costs of caring for the Dangerous Animal during the period of impoundment, including the costs of boarding, and veterinary treatment if necessary;

**(2)** A valid driver's license or government issued picture identification showing the Owner's name and current address;

**(3)** Proof that the applicant owns or has possessory rights to the animal and is eighteen (18) years of age or older;

**(4)** One copy of the current immunization and health records for a dog, cat or ferret over the age of three (3) months, showing that the animal has a current rabies vaccination;

**(5)** Proof that the registrant has insurance coverage for not less than \$300,000.00 for any injury, damage, or loss caused by the animal;

**(6)** Four photographs of the animal from four different sides taken not more than one month before the date of the registration. Such photographs shall consist of a front, back, left, and right side view of the animal;

**(7)** The name, address, and phone number of the animal's previous Owner, if applicable;

**(8)** Proof that the animal is spayed or neutered, or otherwise altered to prevent it from procreating; and

**(9)** Proof of Microchip implanting and the identification information implanted.

**(10)** Proof that the Dangerous Animal will be confined, at all times, within a habitable

locked and secured dwelling and/or a locked and secured kennel, which may be inspected by a Law Enforcement Officer or Animal Control Agent at any time, and shall meet the following minimum requirements:

- (a) If chain-link fencing is used for the kennel, it must be made of at least 11gauge chain-link steel. Other fencing must be of such material that the animal cannot chew, dig, or otherwise free itself from inside the closure.
- (b) The top must be chain-link or of an engineered roofing material from which the animal cannot escape;
- (c) The floor must be cement, brick, or engineered flooring from which the animal cannot escape;
- (d) Sides of the enclosure must be buried at least two feet (2') into the ground, or securely fastened to the floor;
- (e) An outdoor enclosure must include an adequate structure to protect the animal from the elements, such as a doghouse;
- (f) The enclosure must be kept locked at all times to prevent both escape and accidental entry; and
- (g) Habitable dwellings, such as a house or garage, must be capable of being locked and secured. Such dwellings may be required to be modified on a case-by-case basis to ensure the Dangerous Animal cannot exit the dwelling of its own volition, such as when a door or window screen are the only obstacles that prevent the animal from exiting.
- (h) The enclosure for a non-dog Dangerous Animal must be adequate to contain the species of animal kept. It may be inspected on a case-by-case basis to ensure that it is indeed escape-proof, as well as a humane method for the type of animal to be kept. This inspection will be made by or with a person competent to evaluate the type of animal involved.
- (i) Except for medical treatment or examination, the Owner will maintain the Dangerous Animal exclusively on the Owner's property. When taken off of the Owner's property for medical treatment or examination, a Dangerous Animal shall at all times be fitted with a securely attached muzzle.
- (j) The Owner shall post signs on the Owner's property where the Dangerous Animal will be kept, clearly visible from the public roadway or from fifty feet (50'), whichever is less. These signs shall advise the general public that a Dangerous Animal is on the premises.

**(E) *Other Provisions Applicable to Dangerous Animals.***

- (1)** The Owner and Owner's agent of a Dangerous Animal under this Section shall notify the Montgomery County Sheriff and the Animal Control Agency immediately if the Dangerous Animal escapes, is running at large, has been stolen, or has attacked an Individual, Domestic Pet or Domestic Livestock.
- (2)** A Law Enforcement Officer or Animal Control Agent may visually inspect the premises and enclosure where the Dangerous Animal is kept. The inspection may also include the placement of warning signs, the animal leash, the muzzle, and the locks. An Animal Control Agent must be satisfied that the Owner has met all Dangerous Animal requirements. If the Owner refuses to allow access to the premises for an inspection, a Law Enforcement Officer or Animal Control Agent may apply to a court for warrant for the right to conduct an investigatory inspection of the premises.
- (3)** If the Owner or Owner's Agent of a Dangerous Animal violates any provisions of this Section, the Dangerous Animal may be re-impounded and held pending a court hearing. The Owner must request a court hearing within five (5) days after having been notified of the reimpoundment. At such hearing, the court shall determine whether, in fact, a violation of this Section has occurred. If the court determines that a violation of this Section has occurred, it shall have the authority to impose a fine and/or order the animal humanely euthanized.
- (4)** In the event that a Dangerous Animal changes Owner, the new Owner must reregister the animal and satisfy the requirements of subsection (D) above. The original Owner shall notify the Montgomery County Health Department that ownership of the animal has been transferred and provide the name and address of the new Owner.
- (5)** The Owner of a Dangerous Animal shall notify the Montgomery County Health Department if the address changes where the Dangerous Animal will be kept. The Owner must report the new address so an inspection may be made of the premises.  
(Commissioners Ord. 2010-1, passed 9-23-10)

**§97.08 OTHER CONDITIONS FOR RELEASE FROM IMPOUNDMENT**

- (A) *Costs of Impoundment.*** The Owner of an impounded animal shall be responsible for all costs of impoundment, and must pay such costs in full prior to the animal's release from impoundment.
- (B) *Microchip Implantation.*** Prior to the return to its Owner of any impounded dog or cat which at the time of impoundment did not bear a Microchip, collar tag or other means of identification, the Animal Control Agency shall cause a Microchip with a registered identification number to be implanted in the dog or cat at the Owner's expense.

The Animal Control Agency shall be entitled to retain the dog or cat until the microchip implantation fee is paid.

**(C) *Payment of County Option Dog Tax.*** No dog impounded pursuant to this Chapter shall be released to its Owner until the Owner presents proof of payment of all applicable Countyt Option Dog Tax with respect to such dog, as prescribed by Chapter 35 of this Code of Ordinances. Any dog so impounded shall be considered to be unclaimed until such tax is paid. (Commissioners Ord. 2010-1, passed 9-23-10)

#### **§97.09 ANIMAL CONTROL FUND**

**(A)** An Animal Control Fund is hereby established.

**(B)** Fines imposed and collected pursuant to this Chapter shall be deposited into the Animal Control Fund. This shall be a non-reverting fund.

**(C)** Requests for appropriations from the Animal Control Fund shall be submitted to the Board of Commissioners. The Board of Commissioners will review each request and determine whether to forward the request to the County Council with a recommendation for approval. The Board of Commissioners may also initiate and submit requests for appropriations from the Animal Control Fund to the County Council.

(Commissioners Ord. 2010-1, passed 9-23-10)

#### **§97.99 PENALTY**

Any Person who violates the provisions of §§ 97.03, 97.04 or 97.05 of this Chapter shall be subject to a fine of:

- (a)** \$25.00 for the first offense committed during a 12 month period;
- (b)** \$100.00 for the second offense committed during a 12 month period;
- (c)** \$200.00 for the third offense and each subsequent offense committed during a 12 month period.

Each day of violation shall constitute a separate violation.”

(Amended Ord. 2011-18, passed 12-29-11)

