
LOCAL BOARD HANDBOOK



Indiana Alcohol and Tobacco Commission

Revised August 2023

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Welcome from the Chair

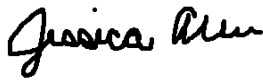
Thank you for accepting the responsibility of serving your community and the State of Indiana by fulfilling your duties as a member of the Local Alcoholic Beverage Board ("Local Board"). The Indiana Alcohol and Tobacco Commission ("Commission") appreciates the vital role that local government plays in the lives of Hoosiers.

As a member of the local board, you will represent the Commission to members of your community and participate in public meetings at which applications for alcoholic beverage permits will be considered and voted upon. You will be able to listen and respond to the concerns of your community to help ensure that all Hoosiers have a voice in their government.

As you consider the concerns of the local community, it is important that you follow and adhere to state law. While each local board should be responsive to their communities, the laws regulating alcoholic beverages must be applied and enforced uniformly throughout Indiana. If you have any questions about Indiana's alcoholic beverage laws and rules, please feel free to contact me or local board coordinator, Sgt Brian Stewart. We will be happy to provide further assistance.

Thank you again for your service, and I hope that you find this handbook helpful.

Sincerely,

A handwritten signature in black ink that reads "Jessica Allen". The signature is written in a cursive, flowing style.

Jessica Allen, Chair
Indiana Alcohol and Tobacco Commission

I. A Brief History of the Indiana Alcohol and Tobacco Commission

Passed by the U.S. Congress on February 20, 1933 and fully ratified by the states on December 5, 1933, the 21st Amendment to the U.S. Constitution repealed national prohibition and expressly granted states the authority to regulate the manufacture, distribution, sale, and possession of alcohol. With the adoption of the 21st Amendment, the Indiana General Assembly of 1935 created the Alcoholic Beverage Commission to control and regulate the sale, manufacture, distribution, and possession of alcohol within the state of Indiana. In 2001, the agency's name was formally changed to the Indiana Alcohol and Tobacco Commission ("Commission"). The Indiana State Excise Police acts as the law enforcement division of the Commission.

II. Purposes of the Commission

Under Indiana Code § 7.1-1-1-1, the mission and goals of the Commission are:

1. To protect the economic welfare, health, peace, and morals of the people of the state of Indiana;
2. To regulate and limit the manufacture, sale, possession, and use of alcohol and alcoholic beverages;
3. To regulate the sale, possession, and distribution of tobacco products;
and
4. To provide for the raising of revenue.

III. Commission Appointments and Meetings

The Commission is comprised of four members who are appointed by the Governor. One of those members serves and acts as the Chair, who is also appointed by the Governor. Additionally, one member of the Commission serves and acts as Chair Pro Tempore in the absence of the Chair.

The Commission meets twice a month on the first and third Tuesday of each month. The Commission may also hold special meetings as necessary.

IV. Local Board Member Appointments and Compensation

Each of Indiana's 92 counties has a local alcoholic beverage board which investigates all applications for retailer (on premises consumption) and dealer (off premises consumption) alcoholic beverage permits in its respective county. Each local board is made up of four members – one appointed by the board of county commissioners, one appointed by the chief executive of the largest city or town in the county, one appointed by the county fiscal body, and one designated by the Commission, who is typically an Excise officer. An appointed member of a local board must possess the following qualifications:

- (1) The person must be at least twenty-one (21) years of age;

- (2) The person must be a bona fide resident of the county in which the person is to serve for at least five (5) years immediately preceding the person's appointment; and
- (3) The person may not have a conviction within ten (10) years before the date of appointment of:
 - (A) a federal crime having a sentence of at least one (1) year;
 - (B) an Indiana Class A, Class B, or Class C felony (for a crime committed before July 1, 2014) or a Level 1, Level 2, Level 3, Level 4, or Level 5 felony (for a crime committed after June 30, 2014); or
 - (C) a crime in a state other than Indiana having a penalty equal to the penalty for an Indiana Class A, Class B, or Class C felony (for a crime committed before July 1, 2014) or a Level 1, Level 2, Level 3, Level 4, or Level 5 felony (for a crime committed after June 30, 2014).

Each local board elects a president who presides over meetings and signs the meeting minutes, as well as a secretary. The member of the board designated by the Commission (typically an Excise officer) also conducts on-site inspections of permit premises and is charged with recording meetings and transmitting the recordings, votes, exhibits, and other evidence from the local board meeting to the Commission.

Each local board member receives an annual salary of \$240 from the State, paid in monthly installments. Each member also receives \$3 for each application he or she reviews and votes on. Local board members are also compensated for mileage.

V. Functions of the Local Board

Local boards review and investigate each retailer (on premises consumption) and dealer (off premises consumption) permit applications received by the Commission at public meetings. The local board considers applications for new permits, the renewal of existing permits, and transfers of ownership and/or location of an existing permit.

VI. Local Board Hearings

Local board meetings are advertised, open to the public, and must be conducted in accordance with Indiana's Open Door laws. All local board meetings must have a quorum of at least three (3) members in attendance in order to conduct official business and take a vote on any application.

During a local board hearing, the local board receives and reviews evidence and votes on permit applications. All local board hearings are recorded to preserve a record of the proceeding for review by the Commission. The official record for the local board hearing includes all testimony and documentary evidence presented at the local board hearing. No dialogue should take place off the record.

A. New Permit Applications

During a local board hearing for a new permit application, the applicant has the burden to prove that he/she is qualified to hold the desired permit at the proposed location.

In determining whether to grant or deny a new permit application, the local board must first determine whether the applicant is of good moral character and of good repute. In doing so, the local board shall consider whether acts or conduct of the applicant (or the applicant's employees or agents), would constitute action or conduct prohibited by the Indiana Penal Code (I.C. 35-41-1-1 *et seq.*), or a criminal offense under the laws of the United States. The local board may also consider the esteem in which the person is held by members of the community. Such assessment of the applicant's character may reasonably be inferred from police reports, evidence admitted in court and administrative proceedings, information contained in public records, and other sources of information as permitted by I.C. 7.1-3-19-8 and I.C. 7.1-3-19-10.

Additionally, the local board must also investigate the desirability of the permit as it relates to the proposed geographic location of the permit. In doing so, the local board may consider – but is not limited to – the following factors:

- a. The need for such services at the location of the permit.
- b. The desire of the neighborhood or the community to receive such services.
- c. Impact of such services on other business in the neighborhood or community.
- d. Impact of such services on the neighborhood or community.

In conclusion, an application for a **new permit** may be denied for any of the following reasons:

1. The applicant does not maintain a high and fine reputation in the community;
2. There is no need for the services of the applicant at the proposed location;
3. The neighborhood and/or community do not desire the services;
4. The services at the proposed location would have a negative impact on other businesses in the neighborhood as well as a negative impact on the neighborhood in general;
5. The permit premises is within 200 feet of a church or school; and/or
6. The permit premises is in a residential area as referred to in I.C. 7.1-1-3-38 and 905 IAC 1-18-1.

Members of the local community may appear and speak in support of or in opposition to a permit application. Persons who wish to speak or offer evidence against the applicant are known as “remonstrators.” Under the Commission’s rules, remonstrator means a person who appears, personally or by counsel, at the local board hearing to speak against a permit. Remonstrators who appear before the local board must provide their name and address or telephone number with the local board. If necessary, the local board may limit the testimony of remonstrators, particularly if the testimony is repetitive or is not relevant to the application at issue. The local board may consider all information presented at the local board hearing, including properly submitted petitions; however, it may not consider information obtained outside the hearing process.

Following the presentation of evidence by the applicant and any remonstrators, the local board votes on the permit application. If the application is denied, the local board must state the reason(s) for the denial on the local board and advise the applicant of such. The local board must follow and adhere to all the law when taking official action on any application. The Commission will reject a local board recommendation if the reasons for the grant or denial of a permit are not in accordance with the law.

B. “Location Pending” Permit Applications

Often times, applicants will apply for a permit without a proposed location at which the permit will be placed and put into operation. When this occurs, the permit application should identify the address for the permit premises as a “pending location.” When this happens, the local board (and Commission) should only consider whether the applicant is qualified to hold the permit at that time.

In determining an applicant's eligibility to hold a permit, particularly whether the applicant is of good moral character and of good repute, the local board (and Commission) shall consider whether acts or conduct of the applicant, or his/her employees or agents, would constitute action or conduct prohibited by the Indiana Penal Code (I.C. 35-41-1-1 et seq.), or a criminal offense under the laws of the United States. The local board (and Commission) may also consider the esteem in which the person is held by members of the community. Such assessment of the applicant’s character may reasonably be inferred from police reports, evidence admitted in court and administrative proceedings, information contained in public records, and other sources of information as permitted by I.C. 7.1-3-19-8 and I.C. 7.1-3-19-10.

If a “location pending” permit application is approved by the local board and Commission, it is immediately deposited into escrow and will remain inactive until the applicant submits an application for a transfer of location. Once a transfer application has been submitted to the Commission, the permittee must appear before the local board again for approval of the proposed permit location (see subsection E below).

C. Renewal of Existing Permits

A permit to sell alcoholic beverages is limited in duration. Each permit must be renewed annually by submitting a renewal application along with the appropriate fees to the Commission. The local board is required to examine and vote upon each permit renewal application at least every two (2) years. A permittee is not required to attend a local board hearing for a renewal application unless it has received a violation since its last renewal, or if the permittee is otherwise ordered to appear before the local board by the Commission. A renewal application may not be denied without notice to the permittee and an opportunity to be heard at the local board.

An application for the **renewal** of a permit is treated similarly to a new permit application; however, the local board shall consider only the three factors set forth in 905 IAC 1-27-1 and 905 IAC 1-27-2:

1. whether the applicant of good moral character;
2. whether the permit premises has become a public nuisance; and
3. whether any criminal offenses have taken place at the permit premises.

D. Transfer of Ownership

When the holder of an existing permit requests to transfer a permit to another individual or entity, the transferee must appear before the local board for the transfer application to be considered. A permit application for a transfer of ownership is similar to a new permit application in that the transferee must establish that they meet the eligibility criteria as a new permit applicant.

E. Transfer of Location

Upon application for a **transfer of location** of an existing permit, the local board (and Commission) shall investigate the desirability of the permit as it relates to the proposed geographical location of the permit. In doing so, the local board (and Commission) may consider – but is not limited to – the following factors:

- a. The need for such services at the location of the permit.
- b. The desire of the neighborhood or the community to receive such services.
- c. The impact of such services on other business in the neighborhood or community.
- d. The impact of such services on the neighborhood or community.

VII. Post-Hearing Procedures

After a local board meeting, the local board's recommendations for approval or denial are

submitted to the Commission so that it may make a final determination on each permit application. The Commission reviews each recommendation of the local board and votes to grant, deny, or remand the permit application back to the local board for further proceedings. Ind. Code § 7.1-3-19-11 sets forth the standard of review for local board recommendations, and states that Commission must follow the recommendation of the local board unless it determines that the local board's recommendation is:

1. Arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law;
2. Contrary to constitutional right, power, privilege or immunity;
3. In excess of, or contrary to, statutory jurisdiction, authority, limitations or rights;
4. Without observance of procedure required by law; or
5. Unsupported by substantial evidence.

The Commission's review of the local board's recommendation is *de novo*, which means the Commission is not bound by the local board's recommendation or any factual findings made by its members. Split 2-2 votes of the local board do not constitute an affirmative recommendation owed deference under Ind. Code § 7.1-3-19-11. Similarly, votes of the local board in which only two or fewer local board members cast votes, due to one or more local board members abstaining on a particular vote, do not constitute an affirmative recommendation to the Commission. Although local board proceedings are not as formal as those followed in a court of law, local boards must still base their recommendations on the evidence before them and the current state of Indiana law.

VIII. Public Meeting & Open Door Law Requirements

Under the Indiana Open Door Law ("ODL"), all public meetings held by the governing bodies of public agencies must be open to the public. Public agencies must also provide notice to the public prior to holding a public meeting.

Because local boards act as an arm of the Commission and the Commission is a public agency for purposes of the ODL, local board hearings are also subject to the ODL requirements. Failure to comply with any applicable laws can result in a reversal of the local board's recommendation and attorney fees may be awarded to a party who is directly injured as a result of the violation.

A. Public Notice

Public notice of local board hearings must be posted at least 48 hours in advance of the hearing at the location where the meeting will take place. Post the agenda at the entrance of the meeting location.

If the time, date, or location of the local board hearing changes, public notice of the change(s) must also be posted at least 48 hours in advance. If the location of the meeting is changed, the public notice must be posted at the former location and the

new location.

B. Public Record

At a public meeting (such as a local board hearing), all official action taken by the governing body of an agency must be taken by official record. The ODL prohibits a local board from discussing or deciding any matters related to a permit application outside of the local board hearing.

Meeting minutes or memoranda must be made available within a reasonable period of time after the meeting for the purpose of informing the public of the governing body's actions. Under the ODL, the following information must be included in the meeting minutes or memoranda pertaining to the public meeting:

1. The date, time, and place of the meeting.
2. The members of the governing body recorded as either present or absent.
3. The general substance of all matters proposed, discussed, or decided.
4. A record of all votes taken by individual members if there is a roll call.

APPENDIX A:

Recommended Procedure for Local Board Hearings

Ask if there are any individuals present who wish to remonstrate against a permit, and if so, ask all remonstrators to stand and make sure that they have signed the remonstrator sign-in sheet. Verify that each applicant and remonstrator has taken an oath.

If no one signs the remonstrator sheet, the Commission will automatically assume that there were no remonstrators present at the hearing. If there is no remonstrator sheet and it is later determined that remonstrators were present, an application may be remanded back to the local board for a second hearing.

All individuals testifying, including applicants and remonstrators, must position themselves near the audio recorder. (Note: It is critical that recording equipment is in good working order and positioned in such a manner that all questions and responses are clearly recorded. Failure to ensure there is a reviewable recording will result in a second hearing). Each person must state his or her name and address or telephone number.

An applicant or permittee shall have the right to question remonstrators. After all remonstrators have spoken, the applicant or permittee shall have the right to offer evidence in support of the application or in rebuttal to any evidence submitted by remonstrators.

Renewals:

Allow remonstrators to proceed first. If remonstrators appear to remonstrate against a permit scheduled for renewal without a violation, the permittee shall be notified to appear at the next meeting. The permit hearing should be continued until the next meeting at which a hearing will be conducted on the permit application.

New Permit:

Allow applicant to proceed first. Remonstrators then present testimony and evidence. The applicant may then present evidence to rebut the remonstrance. If the applicant wants a continuance to hire an attorney or prepare a response, he or she should be given at least one continuance.

Continuances:

A total of only three continuances should be allowed per permit application. Pursuant to Indiana law, only a designated member may grant continuances. Each continuance may not exceed thirty days. If a fourth or subsequent continuance is requested by any party, it should only be approved by the Executive Secretary or the Commission Chair.

APPENDIX B:

Local Board Hearing Outline

1. Call the meeting to order.
2. Let the record reflect this is a meeting of the Alcoholic Beverage Board of _____ County on this__ day of _____, at ____ a.m./p.m. The members of the Local Board are _____, _____, _____, and _____.
3. Are there any individuals here who wish to voice opposition to any permits on the agenda today? If so, please make sure you have signed in, then stand and state the permit you wish to remonstrate against.
4. Will all those in attendance seeking a new permit, requesting a change of location or ownership, or seeking a renewal after violation stand [with the remonstrators], raise your right hand, and take the following oath:

“Do each of you solemnly swear or affirm under the penalties of perjury that the answers that you have given on your application and any testimony you may give or in response to any questions asked by this board, to be the truth, the whole truth, and nothing but the truth?”

5. Ask the local board for a motion to approve automatic permit renewals (no violations and no remonstrators).
6. Proceed with new permits, transfers of location and/or ownership, and renewals with a violation and/or remonstrators. State the permit number and type, the name of applicant or permit holder, the name of business, and the location and purpose of business. Ask the applicant or applicant’s representative to stand, introduce themselves, and answer questions from the board members.

APPENDIX C:

An Overview of the Indiana State Excise Police



The Indiana State Excise Police (“ISEP”) is charged with the primary responsibility of enforcing the alcoholic beverage and tobacco laws in the state. ISEP enforce the laws which regulate permit holders (those who are legally permitted to sell and serve alcoholic beverages) and non-permittees (those not legally entitled to sell alcoholic beverages and tobacco certificate holders).

One of the duties of ISEP officers is representing the state on the local board in each county. These meetings allow residents of the county to voice their concerns and suggestions about renewals or issuance of permits. Officers also investigate each permit location before a permit is renewed to determine whether the permittee has met legal standards and is qualified to continue selling and servicing alcoholic beverages.

ISEP officers work closely with the alcoholic beverage industry, conducting training sessions to educate permit holders about alcohol. ISEP officers also conduct statewide public information programs targeted to increase awareness about alcohol among members of the general public as well as the alcohol industry. These public information campaigns allow ISEP to work cooperatively with the alcohol industry and the public as an alternative to enforcement. ISEP officers are available for presentations at schools and organizations free of charge.

For more information, please contact your local Excise district office.

APPENDIX D:

**Indiana State Excise Police
Contact Information**

<p>District 1 52422 County Road 17 Bristol, IN 46507 (574) 264-9480</p>	<p>District 2 1353 South Governors Drive Columbia City, IN 46725 (260) 244-4285</p>
<p>District 3 41 W. 300 North Crawfordsville, IN 47933 (765) 362-8815</p>	<p>District 4 651 S. Commerce Drive Seymour, IN 47274 (812) 523-8314</p>
<p>District 5 3650 S. US 41 Vincennes, IN 47591 (812) 882-1292</p>	<p>District 6 6400 E. 30th Street Indianapolis, IN 46219 (317) 541-4100</p>
<p>General Headquarters Indiana Government Center South 302 W. Washington Street, Room E-114 Indianapolis, IN 46204 (317) 232-2452 www.in.gov/atc</p>	

Superintendent	(317) 232-2452
Office of Professional Standards	(317) 232-4826
Media & Communications	(317) 232-2469
Local Board Coordinator	(317) 232-2468

APPENDIX E:

Indiana State Excise Police
District Map

