

**DELAWARE COUNTY HEALTH DEPARTMENT**

**BED AND BREAKFAST ESTABLISHMENT AND/OR  
RETAIL FOOD ESTABLISHMENT ORDINANCE**

**ORDINANCE NO. 2004 – 013**

In Delaware County, State of Indiana

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The purpose of this ordinance is to safeguard public health and assure that food provided to consumers is safe, unadulterated, and honestly presented. It establishes definitions; sets standards for management and personnel; food operations, and equipment and facilities; and provides for Retail Food Establishment and/or Bed and Breakfast Establishment plan reviews, permits, inspections, and employee restrictions.

This ordinance defines Bed and Breakfast Establishment, Catering, Conflict of Interest, Commissary, Delaware County Health Department, Event Sponsor, Hazard Analysis Critical Control Point, Health Officer, Hearing Officer, Imminent Health Hazard, Inspection Report, Mobile Food Establishment, Operator, Order, Permit, Person, Public Official, Retail Food Establishment; Temporary Food Establishment; Vending Machine, and Vending Machine Location; requires construction and/or alteration plans; requires a Permit and payment of Permit fees for the operation of Bed and Breakfast Establishment, Retail Food Establishment, Mobile Food Establishment, and/or Temporary Food Establishment; prohibits sale of adulterated, unwholesome, or misbranded food; regulates inspection of such establishments; provides for compliance and the enforcement of this ordinance; provides penalties for violations of said ordinance; and incorporates by reference Indiana Code (IC) 16-42-1, IC 16-42-2, IC 16-42-5, Indiana State Department of Health Rule(s) 410 Indiana Administrative Code (IAC) 7-15.5, 410 IAC 7-20, 410 IAC 7-21-47, 410 IAC 7-22 and 410 IAC 7-23.

The Delaware County Health Department is hereby authorized to issue Bed and Breakfast Establishment, Retail Food Establishment, Mobile Food Establishment, and/or Temporary Food Establishment Permit, collect Permit fees and penalties, perform inspections, hold hearings, Order or otherwise compel correction of violations of this ordinance, and is otherwise authorized to perform all actions necessary for the administration and enforcement of this ordinance.

Be it ordained by the Board of Commissioners of Delaware County, State of Indiana, that:

## Section A: Definitions

**Bed and Breakfast Establishment** (as defined in 410 IAC 5-15.5) means an Operator occupied residence that:

- (1) provides sleeping accommodations to the public for a fee;
- (2) has no more than fourteen (14) guest rooms;
- (3) provides breakfast to its guests as part of the fee; and
- (4) provides sleeping accommodations for no more than thirty (30) consecutive days to a particular guest.

**Catering** means the preparation of food in an approved retail food establishment and may include the transportation of such food for service and consumption at some other site.

**Conflict of Interest** means a situation in which the private financial interest of a Public Official, Public Official's spouse, ex-spouse, siblings, in-laws, children and/or unemancipated child, may not influence the Public Official's judgment in the performance of a public duty. The Public Official(s) of Delaware County shall follow the code of ethics that was established for Public Officials in Delaware County Ordinance #2003-023, published in the Personnel Policy Handbook.

**Commissary** means a registered catering establishment, restaurant, or any food establishment in which food, food containers or food supplies are kept, handled, prepared, packaged or stored from which meals are catered and mobile retail food establishments or pushcarts are serviced.

**Delaware County Health Department** means the local health department in Delaware County or authorized representative having jurisdiction over Bed and Breakfast Establishment, Retail Food Establishment, Mobile Food Establishment, and/or Temporary Food Establishment.

**Event Sponsor** means a person, group, or organization that plans, coordinates, or guarantees an event, circumstance, or an occasion for the promotion, production, or sponsorship of an event and has the responsibility to direct the set up and management of any Mobile Food Establishment or Temporary Food Establishments.

**Hazard Analysis Critical Control Point (HACCP) Plan** means a written document that delineates the formal procedures for following the Hazard Analysis Critical Control Point principles developed by the National Advisory Committee on Microbiological Criteria for Foods.

**Health Officer** means the Health Officer having jurisdiction in Delaware County or his/her duly authorized representative.

**Hearing Officer** means the President of the Board of Health, or any other Board member that the President of the Board of Health deems appropriate.

**Imminent Health Hazard** means any circumstance or situation, which in the opinion of the Health Officer or his/her duly authorized representative presents a serious health risk to the public.

**Inspection Report** means the document prepared by the Delaware County Health Department that is completed as the result of the inspection and provided to the Operator.

**Mobile Food Establishment** means a retail food establishment that is wheeled, on skids, mounted on a vehicle, a marine vessel or otherwise readily movable, such as a pushcart or trailer.

**Operator** means the person who has a primary oversight responsibility for operation of the establishment through ownership, or lease or contractual agreement, and who is responsible for the storage, preparation, display, transportation, or serving of food to the public.

**Order** (derived from IC 4-21.5-1-9) means a Delaware County Health Department action of particular applicability that determines the legal rights, duties, privileges, immunities, or other legal interests of one (1) or more specific Persons. The term includes a permit.

**Permit** means the document issued by the Delaware County Health Department that authorizes a Person to operate a Bed and Breakfast Establishment, Retail Food Establishment, Mobile Food Establishment, and/or Temporary Food Establishment.

**Person** means an association; a corporation; an individual; partnership; or other legal entity, government, or governmental subdivision or agency.

**Public Official** means any Official of Delaware County, State of Indiana.

**Retail Food Establishment** (as derived from 410 IAC 7-20) means an operation that:

- (1) stores, prepares, packages, serves, vends, or otherwise provides food for human consumption, such as:
  - (A) a restaurant;
  - (B) satellite or catered feeding location;
  - (C) a catering operation if the operation provides food directly to a consumer or to a conveyance used to transport people;
  - (D) a market;
  - (E) a grocery store;
  - (F) a convenience store;

- (G) a vending location;
  - (H) a conveyance used to transport people;
  - (I) an institution; or
  - (J) a food bank;
  - (K) a commissary;
  - (L) a cottage industry;
  - (M) a hospice facility as defined in IC 16-25-11;
  - (N) a health care facility as defined in IC 16-21-2
  - (O) a health facility as defined in IC 16-18-2
  - (P) a childcare facility as defined in IC 12-13-5 such as;
    - (i) licensed child care centers licensed under 470 IAC 3-4.7
    - (ii) licensed child care institutions licensed under 470 IAC 3-11, 470 IAC 3-12, and 410 IAC 3-13; and
    - (iii) registered child care ministries registered under 470 IAC 3-4.5; and
  - (Q) an assisted living facility as defined in IC 12-10-15.
- (2) that relinquishes possession of food to a consumer directly or indirectly through a delivery service, such as home delivery of grocery orders or restaurant takeout orders, or delivery service that is provided by common carriers.

The term includes the following:

- (1) an element of the operation, such as a transportation vehicle or a central preparation facility that supplies a vending location or satellite feeding location unless the vending or feeding location is permitted by the regulatory authority.
- (2) an operation that is conducted in a mobile, stationary, temporary, or permanent facility or location, where consumption is on or off the premises, and regardless of whether there is a charge for the food.

**Temporary Food Establishment** means a Retail Food Establishment and/or Mobile Food Establishment that operates for a period of no more than fourteen (14) consecutive days in conjunction with a single event or celebration.

- (a) The term excludes the following from the fourteen (14) day requirement:
- (1) has a servicing area as an operating base location to which a mobile retail food establishment or transportation vehicle returns at least once each day for such functions as:
    - (A) vehicle and equipment cleaning;
    - (B) discharging liquid or solid wastes;
    - (C) refilling water tanks, ice bins, recharging of refrigeration unit(s);  
and
    - (D) boarding food.

**Vending Machine** means a self-service device that, upon activation, such as through the insertion of a coin, paper currency, token, card, key, or by optional manual operation, dispenses unit servings of food in bulk or in packages without the necessity of replenishing the device between each vending operation.

**Vending Machine Location** means the room, enclosure, space, or area where one (1) or more vending machines are installed and operated and includes the storage areas and areas on the premises that are used to service and maintain the vending machines.

### **Section B: Permits**

**General:** It shall be unlawful for any Person to operate any Bed and Breakfast Establishment, Retail Food Establishment, Mobile Food Establishment and/or Temporary Food Establishment in Delaware County, without first obtaining a valid Permit from the Health Officer. The valid Permit must be posted in a conspicuous location in the Bed and Breakfast Establishment, Retail Food Establishment, Mobile Food Establishment and/or Temporary Food Establishment.

Only persons who comply with the applicable requirements of 410 IAC 7-15.5 and /or 410 IAC 7-20 will be entitled to obtain and keep a Permit.

A separate Permit shall be required for each Bed and Breakfast Establishment, Retail Food Establishment, Mobile Food Establishment and/or Temporary Food Establishment operated or to be operated by any Person.

A Permit issued under this ordinance is **non-transferable**.

A Bed and Breakfast Establishment, Retail Food Establishment, Mobile Food Establishment, and/or Temporary Food Establishment Permitted by the Delaware County Health Department shall be considered registered as required in IC16-42-1-6.

**Permit Period:** A Permit for a Bed and Breakfast Establishment, Retail Food Establishment, and/or Mobile Food Establishment shall be issued for a term beginning January 1, and/or before commencement of operation, and expiring December 31, of the same year and shall be applied for by the Person and/or Operator annually.

A Permit for a Temporary Food Establishment shall be for the term of fourteen (14) days.

**Permit Content:** Any Permit issued by the Health Officer shall contain

- (1) the name and address of the Person and/or owner to whom the Permit is granted;
- (2) the location of the establishment for which the Permit is issued;
- (3) the issuance and expiration date(s); and
- (4) other such pertinent data as may be required by the Delaware County Health Officer.

**Application:** A Person desiring to operate a Bed and Breakfast Establishment, Retail Food Establishment, Mobile Food Establishment and/or Temporary Food Establishment shall submit to the Delaware County Health Department a written application for a Permit on a form provided by the Delaware County Health Department.

**Content of the Application:** The application shall include:

- (1) the name, mailing address, telephone number, and original signature of the Person and/or Operator applying for the Permit and the name, mailing address, and location of the Bed and Breakfast Establishment, Retail Food Establishment, Mobile Food Establishment and/or Temporary Food Establishment;
- (2) information specifying whether the Bed and Breakfast Establishment, Retail Food Establishment, Mobile Food Establishment, and/or Temporary Food Establishment owned by an association, corporation, individual, partnership, or other legal entity;
- (3) a statement specifying whether the Bed and Breakfast Establishment, Retail Food Establishment, Mobile Food Establishment, and/or Temporary Food Establishment:
  - (A) if not permanent, is mobile and/or temporary, and
  - (B) the operation includes one (1) or more of the following:
    - (1) prepares, offers for sale, or serves potentially hazardous food:
      - (a) only to order upon a consumer's request;

- (b) in advance in quantities based on projected consumer demand and discards food that is not sold or served at an approved frequency; or
- (c) using time, rather than temperature, as the public health control as specified under 410 IAC 7-20.

*(MUST HAVE AN APPROVED WRITTEN PROCEDURE ON FILE WITH THE DELAWARE COUNTY HEALTH DEPARTMENT TO USE TIME AS A CONTROL METHOD).*

- (d) prepares acidified foods as defined in 410 IAC 7-21-3.

- (2) prepares potentially hazardous food in advance using a food preparation method that involves two or more steps which may include combining potentially hazardous ingredients; cooking; cooling; reheating; hot or cold holding; freezing; or thawing;
- (3) prepares food as specified under item (3)(B)(2) of this section for delivery to and consumption at a location off the premises of the Bed and Breakfast Establishment and/or Retail Food Establishment where it is prepared;
- (4) prepares food as specified under item (3)(B)(2) of this section for service to a highly susceptible population, as defined in 410 IAC 7-20;  
*(MUST HAVE AN APPROVED PLACARD, NOTICE OR LETTER ON FILE WITH THE DELAWARE COUNTY HEALTH DEPARTMENT FOR USE IN THE ESTABLISHMENT)*
- (5) prepares only food that is not potentially hazardous; or
- (6) does not prepare, but offers for sale only prepackaged food that is not potentially hazardous.

(4) the name, title, address, and telephone number of the Operator directly responsible for the Bed and Breakfast Establishment, Retail Food Establishment, Mobile Food Establishment and/or Temporary Food Establishment.

(5) the name, title, address, and telephone number of the Person who functions as the immediate supervisor of the Person specified under subdivision (4) of this section such as the zone, district, or regional supervisor;

(6) the names, titles, and addresses of:

(A) the Persons comprising the legal ownership as specified under subdivision



- (2) of this section including the owners and Operators, and
  - (B) the local resident agent if one is required based on the type of legal ownership;
- (7) a statement signed by the applicant that:
  - (A) attests to the accuracy of the information provided in the application, and
  - (B) affirms that the applicant will:
    - (1) comply with this ordinance, and
    - (2) allow the Delaware County Health Department access to the Bed and Breakfast Establishment, Retail Food Establishment, Mobile Food Establishment, and/or Temporary Food Establishment and records as specified in 410 IAC 7-15.5 and 410 IAC 7-20;
- (8) Vending Machine Company and/or Vending Service must provide the following information;
  - (A) the name of the company, business, establishment, and/or other entity where the vending service provides vending machine(s);
  - (B) the location or address of the company, business, establishment, and/or other entity where the vending service provides vending machine(s);
  - (C) the type of vending machine(s) at the stated location, such as;
    - (1) hot and cold holding of potentially hazardous food;
    - (2) hot and cold holding of liquid food products;
  - (D) the total number(s) of vending machine(s) at the stated location, such as;
    - (1) hot and cold holding of potentially hazardous food;
    - (2) hot and cold holding of liquid food products;
  - (E) the day(s) of the week that the vending machine(s) and vending machine location(s) are serviced by the Vending company;
  - (F) the total number of vehicles that service the vending machine location(s) in Delaware County.
- (9) other information required by the Delaware County Health Department.

**Qualification:** To qualify for a Permit, an applicant must:

- (1) be an owner and/or Operator of the Bed and Breakfast Establishment, Retail Food Establishment, Mobile Food Establishment and/or Temporary Food Establishment;
- (2) comply with the requirements of this ordinance;
- (3) agree to allow access to the Bed and Breakfast Establishment, Retail Food Establishment, Mobile Food Establishment, and/or Temporary Food Establishment and provide required information; and;
- (4) pay the applicable Permit fees at the time the application is submitted.

**Plans Requirements:** The owner or other authorized agent of an existing or proposed Bed and Breakfast Establishment and/or Retail Food Establishment shall submit to the Delaware County Health Department properly prepared plans and specifications for review and approval before:

- (1) the construction of a Bed and Breakfast Establishment and/or Retail Food Establishment;
- (2) the conversion of an existing structure for use as a Bed and Breakfast Establishment and/or Retail Food Establishment; or
- (3) the remodeling of a Bed and Breakfast Establishment and/or Retail Food Establishment; or
- (4) a change of type of food operation; and
- (5) if the Delaware County Health Department determines that plans and specifications are necessary to ensure compliance with this section.
- (6) the plans and specifications for a Bed and Breakfast Establishment and/or Retail Food Establishment shall include,
  - (A) the layout of the building and equipment;
  - (B) the type of operation;
  - (C) the type of food preparation (as specified in Appendix B of the published version of 410 IAC 7-20), and
  - (D) the menu.
- (7) the plans and specifications shall be deemed satisfactory and approved by the Delaware County Health Department before a Permit can be issued.

- (8) a pre-operational inspection shows that the Bed and Breakfast Establishment and/or Retail Food Establishment is built or remodeled in accordance with the approved plans and specifications and that the establishment is in compliance with this ordinance, 410 IAC 7-20 and/or 410 IAC 7-15.5.

**Change of Ownership:** The Delaware County Health Department may renew a Permit for an existing Bed and Breakfast Establishment, and/or Retail Food Establishment or may issue a Permit to a new owner of an existing Bed and Breakfast Establishment and/or Retail Food Establishment after a properly completed application is submitted, reviewed, and approved, the fees are paid, and an inspection shows that the establishment is in compliance with this ordinance.

**Responsibilities of the Operator:** Upon acceptance of the Permit issued by the Delaware County Health Department, the Operator in order to retain the Permit shall:

- (1) comply with the provisions of this ordinance and all laws and rules adopted by reference herein and the conditions of any variances granted by the Indiana State Department of Health;
- (2) immediately discontinue affected operations and notify the Delaware County Health Department if an Imminent Health Hazard may exist;
- (3) immediately discontinue the sale of food that is unwholesome, adulterated or misbranded as provided in the Indiana Food, Drug, and Cosmetic Act, IC 16-1-31. Samples of food may be taken and examined by the Health Officer or his/her duly authorized representative as often as may be necessary to determine freedom from contamination, adulteration, or misbranding. The Health Officer or his/her duly authorized representative may, on written notice to the owner or operator, impound and forbid the sale of any food which is unwholesome, adulterated, or misbranded, or which he has probable cause to believe is unfit for human consumption, unwholesome, adulterated, or misbranded; provided that in the case of misbranding which can be corrected by proper labeling, such food may be released to the operator for correct labeling under the supervision of the Health Officer or his/her duly authorized representative. The Health Officer or his/her duly authorized representative may also cause to be removed or destroyed any dairy product, meat, meat product, seafood, poultry, poultry product, confectionery, bakery product, vegetable, fruit, or other perishable item.
- (4) allow representatives of the Delaware County Health Department access to the Bed and Breakfast Establishment and/or Retail Food Establishment at all reasonable times;
- (5) comply with directives of the Delaware County Health Department including time frames for corrective actions specified in Inspection Reports, notices, Orders, warnings, and other directives issued by the Delaware County Health Department in regard to the Operator's Bed And Breakfast Establishment and/or Retail Food Establishment or in response to community emergencies;

- (6) accept notices issued and served by the Delaware County Health Department; and
- (7) be subject to the administrative, civil, injunctive, and criminal remedies authorized in law for failure to comply with this ordinance or a directive of the Delaware County Health Department.
- (8) post the Permit in a location in the Bed and Breakfast Establishment and/or Retail Food Establishment that is conspicuous to consumers;

**Section C: Permit Fees**

It shall be unlawful for any Person to operate a Bed and Breakfast Establishment, Retail Food Establishment, Mobile Food Establishment and/or Temporary Food Establishment in Delaware County, who has not paid the Permit fee required to be paid for the operation of such establishment.

The fee shall be paid for a term beginning January 1, and/or before commencement of operation and expiring December 31, of the same year and shall be applied for by the Person and/or Operator annually.

Permit fees for the issuance of a Permit under this Ordinance to a Bed And Breakfast Establishment, a Retail Food Establishment, Mobile Food Establishment, and/or Temporary Food Establishment shall be set by the Delaware County Health Department, as provided by the Statutes of the State of Indiana. (See IC 16-20-1-27)

A receipt for the payment of such fee shall be provided by the Delaware County Health Department.

The payment of such fees shall be required for each Bed and Breakfast Establishment, Retail Food Establishment, Mobile Food Establishment and/or Temporary Food Establishment operated or to be operated by any Person.

**Permit Fees:**

**The annual permit fee for food service establishments shall be as follows:**

<b><u>Square feet of establishment:</u></b>	<b><u>Annual permit fee</u></b>
Less than 1000 sq. ft.....	\$55.00
1000 sq. ft. to 1999 sq. ft. ....	\$80.00
2000 sq. ft. to 2999 sq. ft. ....	\$95.00
3000 sq. ft. to 4999 sq. ft. ....	\$110.00
5000 sq. ft. and more.....	\$120.00

Permit fees for temporary food service establishments shall be \$10.00 per event.

Permit fees for vending machines shall be \$5.00 for each machine.

Permit fees for Bed and Breakfast facilities shall be \$100.00.

**Permits issued after July 1.** Any new Bed and Breakfast Establishment, Retail Food Establishment, and/or Mobile Food Establishment food service facility permit (except temporary) applied for and issued after July 1 of any year shall have the fee reduced to one half (1/2) the total annual permit fee for the year of issuance only.

**Exemption from Permit Fees:** No fee shall be required to be paid for a Retail Food Establishment Permit operated by religious, educational, charitable organization, or person's operating vending machines that dispense only prepackaged, non-perishable, and non-potentially hazardous food(s).

An organization that is exempt from the Indiana Gross Retail Tax under Indiana Code IC 6-2.5-5-21(b)(1)(B), IC 6-2.5-5-21(b)(1)(C), or IC 6-2.5-5-21(b)(1)(D) and offers food for sale to the final consumer at an event held for the benefit of the organization is exempt from the payment of fees. This exemption only applies to organization(s) that meet the criteria addressed in Indiana Code 16-42-5-4.

- (1) members of the organization prepare the food that will be sold;
- (2) events conducted by the organization under this section take place for no more than thirty (30) days in any calendar year; and
- (3) the name of each member who has prepared a food item is attached to the container in which the food item has been placed.

This section does not prohibit an exempted organization from waiving the exemption and applying for a permit under this section. A signed waiver form provided by Delaware County Health Department must be filled out and be on file.

The exemption does not prevent a local Health Department Inspector from addressing an imminent health risk or responding to a complaint.

The Health Officer shall be provided, upon request, proof of an organization's tax exemption.

**Late Fees:** A late fee for failure to pay the permit fee prior to the operation of the Bed and Breakfast Establishment and/or Retail Food Establishment or the late fee for failure to renew a permit after the expiration of the permit to operate Bed and Breakfast Establishment and/or Retail Food Establishment shall be assessed by the Delaware County Health Department. The late fee shall consist of 25% of the permit fee. The application for the annual renewal of a food service permit will be mailed to each existing establishment prior to December 31<sup>st</sup>. of each year. The completed application along with the appropriate fee must be returned to the Delaware County Health Department postmarked by January 31<sup>st</sup> of the new year permitted. A late fee of

25% of the permit fee will be established for applications not postmarked by January 31<sup>st</sup> of the permit year.

**The payment of fees under this ordinance is non transferable or refundable.**

#### **Section D: Inspection**

**General:** Each Retail Food Establishment, Bed and Breakfast Food Establishment, Mobile Food Establishment, and/or Temporary Food Establishment permit holder shall assist and cooperate with the inspection of their facility by the Health Officer or his/her duly authorized representative.

Failure to cooperate and/or assist in the inspection of the facility will result in the immediate suspension and/or revocation of the Retail Food Establishment, Bed and Breakfast Food Establishment and/or a Temporary Food Establishment permit.

Each Bed and Breakfast Food Establishment, Retail Food Establishment, Mobile Food Establishment, and/or Temporary Food Establishment permit holder shall permit the Health Officer or his/her duly authorized representative to inspect, collect evidence and/or exhibits, and to copy any or all records relative to the enforcement of this ordinance.

The Delaware County Health Department shall inspect a Bed and Breakfast Establishment and/or Retail Food Establishment at least once every 6 months.

The Delaware County Health Department may increase the interval between inspections beyond 6 months if:

- (1) the Bed and Breakfast Establishment and/or Retail Food Establishment is fully operating under an approved and validated Hazard Analysis Critical Control Point (HACCP) plan(s);
- (2) the Bed and Breakfast Establishment and/or Retail Food Establishment is assigned a less frequent inspection based on a written risk-based inspection schedule that is being uniformly applied throughout the jurisdiction.
- (3) the Delaware County Health Department may contact the Operator to determine that the nature of the food operation has not changed.
- (4) the Delaware County Health Department may inspect the establishment if the department has received a complaint.
- (5) the Delaware County Health Department may inspect the establishment if the department has reason to believe the establishment is not in compliance with any order(s) that was issued.

**Mobile Food Establishment and/or Temporary Food Establishment:** The Delaware County Health Department shall periodically inspect throughout its Permit period a Mobile Food

Establishment, and/or Temporary Food Establishment that prepares, sells, or serves unpackaged potentially hazardous food and may inspect a Mobile Food Establishment, and/or Temporary Food Establishment that prepares, sells or serves unpackaged, nonpotentially hazardous food that:

- (1) has improvised rather than permanent facilities or equipment for accomplishing functions such as handwashing, food preparation and protection, food temperature control, warewashing, providing drinking water, waste retention and disposal, and insect and rodent control; or
- (2) has untrained food employees.

**Performance and Risk Based Inspections:** Within the parameters specified in the above Inspection Subsection(s) of this Ordinance, the Delaware County Health Department shall prioritize, and conduct more frequent inspections based upon its assessment of a Bed and Breakfast Establishment and/or Retail Food Establishment's history of compliance with this ordinance and the Bed and Breakfast Establishment and/or Retail Food Establishment's potential as a vector of foodborne illness by evaluating:

- (1) past performance, for violations of 410 IAC 7-15.5, 410 IAC 7-20 and/or 410 IAC 7-22 and/or HACCP plan requirements that are critical or non-critical;
- (2) past performance, for numerous or repeat violations of 410 IAC 7-15.5 and/or 410 IAC 7-20 and/or HACCP plan requirements that are noncritical;
- (3) past performance, for complaints investigated and found to be valid;
- (4) the hazards associated with the particular foods that are prepared, stored, or served;
- (5) the type of operation including the methods and extent of food storage, preparation, and service;
- (6) the number of people served; and
- (7) whether the population served is a highly susceptible population.

**Access Allowed at Reasonable Times After Due Notice:** After the Delaware County Health Department presents official credentials and provides notice of the purpose of and the intent to conduct an inspection, the Operator shall allow the Delaware County Health Department to determine if the Bed and Breakfast Establishment, Retail Food Establishment, Mobile Food Establishment, and/or Temporary Food Establishment is in compliance with this ordinance by allowing access to the establishment, allowing inspection, and providing information and records specified in this ordinance. The Delaware County Health Department is entitled the information and records according to IC 16-42-1-13 and IC 16-42-5-23, during the Bed and Breakfast Establishment and/or Retail Food Establishment's hours of operation and other reasonable times.

Access is a condition of the acceptance and retention of a food establishment Permit to operate.

If access is denied, an Order issued by the appropriate authority allowing access may be obtained according to law. (See IC 16-20-1-26)

**Inspection Reports:** At the conclusion of the inspection, the Delaware County Health Department shall provide a copy of the completed Inspection Report and the notice to correct violations to the Operator or to the Person-in-charge, as required under IC 16-20-8-5.

**Timely Correction of Critical Violations:** Except as specified in the next paragraph, an Operator shall at the time of inspection correct a critical violation of 410 IAC 7-15.5, 410 IAC 7-20 and/or 410 IAC 7-22 and implement corrective actions for a HACCP plan provision that is not in compliance with its critical limit.

Considering the nature of the potential hazard involved and the complexity of the corrective action needed, the Delaware County Health Department may agree to or specify a longer time frame after the inspection, for the Operator to correct critical code violations or HACCP plan deviations.

After receiving notification that the Operator has corrected a critical violation or HACCP plan deviation, or at the end of the specified period of time, the Delaware County Health Department shall verify correction of the violation, document the information on an Inspection Report, and enter the report in the Delaware County Health Department's records.

**Refusal to Sign Acknowledgement:** Refusal to sign an acknowledgment of receipt will not affect the Operator's obligation to correct the violations noted in the Inspection Report within the time frames specified.

A refusal to sign an acknowledgment of receipt is noted in the Inspection Report and conveyed to the Delaware County Health Department historical record for the Bed and Breakfast Establishment, Retail Food Establishment, Mobile Food Establishment and/or Temporary Food Establishment.

The Operator is not necessarily in agreement with the findings of the Delaware County Health Department inspection by acknowledgement of receipt.

**Public Information:** Except as specified in section 176 (Trade Secrets) of 410 IAC 7-20, the Delaware County Health Department shall treat the Inspection Report as a public document and shall make it available for disclosure to a Person who requests it as provided in law. (See IC 16-20-8-6)

### **Section E: Compliance And Enforcement**

**Application Denial:** If an application for a plan review and/or Permit to operate a Bed and Breakfast Establishment, Retail Food Establishment, Mobile Food Establishment, and/or Temporary Food Establishment, is denied, the Delaware County Health Department shall provide the applicant with a notice that includes:



- (1) the specific reasons and rule citations for the application and/or Permit denial;
- (2) the actions, if any, that the applicant must take to qualify for the application and/or Permit; and
- (3) advisement of the applicant's right of appeal and the process and time frames for appeal that are provided in law.

**Immediate Permit Suspension:** The Health Officer may order the Immediate Suspension of any permit without a hearing if the Health Officer determines through inspection, or examination of employee(s), food(s), records, or other means as specified in this ordinance, that an Imminent Health Hazard to the Public exists and that the suspension is in the immediate best interests of the public due to an Imminent Health Hazard. Upon the Immediate Suspension of any Bed and Breakfast Establishment, Retail Food Establishment, Mobile Food Establishment and/or Temporary Food Establishment permit, the owner and/or proprietor shall immediately cease all retail operations until such time as the immediate suspension is vacated by the Health Officer or a court of competent jurisdiction.

Any person affected by an Immediate Suspension order without a hearing may challenge said order of the Health Officer in a court of competent jurisdiction within seventy-two (72) hours after the order was made. Failure to seek judicial relief within seventy-two (72) hours shall waive the right of the permit holder to obtain immediate judicial review of the Immediate Suspension order.

Any other suspension order issued by the Health Officer (except an Immediate Suspension order) is subject to the Appeals section listed in Section G of this Ordinance.

**Permit Suspension:** The Health Officer may suspend a Permit to operate a Bed and Breakfast Establishment, Retail Food Establishment, Mobile Food Establishment and/or Temporary Food Establishment with a hearing before the Health Officer if it determines through inspection, or examination of employee(s), food(s), records, or other means as specified in this ordinance, that an Imminent Health Hazard to the Public exists.

**Revocation of Permit:** The Health Officer may revoke a Bed and Breakfast Establishment, Retail Food Establishment, Mobile Food Establishment and/or Temporary Food Establishment Permit upon a hearing. The Health Officer shall preside at the hearing. The permit holder shall be allowed an opportunity to present witnesses, cross-examine witnesses and be represented by counsel at the hearing. Hearings may not be continued except for good cause as determined by the Health Officer.

The Health Officer shall provide notice to the permit holder of the intent to revoke their permit no less than twenty (20) days before the date of revocation. The permit holder may request a hearing in writing concerning the revocation no later than ten (10) days from the date of intent to revoke the permit. Failure to make a written request for a hearing shall waive the right to a hearing before the Health Officer.

The decision of the Health Officer is subject to the Appeals section listed in Section G of this Ordinance.

**Request for Re-instatement:** any Owner or Operator of a Bed and Breakfast Establishment, Retail Food Establishment, Mobile Food Establishment and/or Temporary Food Establishment whose permit has been suspended or revoked may make an application to the Health Officer for reinstatement of this permit. An Owner or Operator of a Bed and Breakfast Establishment, Retail Food Establishment, Mobile Food Establishment and/or Temporary Food Establishment may not request reinstatement more frequently than twice a year.

**Ceasing Operation and Contacting the Delaware County Health Department:** An Operator of a Bed and Breakfast Establishment, Retail Food Establishment, Mobile Food Establishment and/or Temporary Food Establishment shall immediately discontinue operations and notify the Delaware County Health Department if an Imminent Health Hazard may exist because of an emergency such as a fire, flood, extended interruption of electrical or water service, sewage backup, misuse of poisonous or toxic materials, onset of an apparent foodborne illness outbreak, gross insanitary occurrence or condition, or other circumstance that may endanger public health.

An Operator need not discontinue operations in an area of an establishment that is unaffected by the Imminent Health Hazard.

**Resuming Operation:** If a Bed and Breakfast Establishment, Retail Food Establishment, Mobile Food Establishment and/or Temporary Food Establishment has discontinued operations for the reasons stated above or otherwise according to law, the Operator must obtain approval from the Delaware County Health Department before resuming operations.

**Outstanding Fees:** Any outstanding fees may be a condition upon which a permit may not be issued.

**Enforcement Options:** The following are options available to Delaware County Health Department for consideration:

- (1) establish a process for the issuance of Notice of Violation based on violation(s) of the Retail Food Establishment and/or Bed and Breakfast Establishment Sanitation requirements.
- (2) once the Bed and Breakfast Establishment, Retail Food Establishment, Mobile Food Establishment and/or Temporary Food Establishment receives the Notice of Violation, said Establishment shall have a certain amount of time, to be determined by the Health Department inspector, in order to bring said Establishment into compliance. If said Establishment is not in compliance after said time period, the Delaware County Health Department shall conduct an administrative proceeding for the suspension and/or revocation of the Bed and Breakfast Establishment, Retail Food Establishment, Mobile Food Establishment and/or Temporary Food Establishment Permit in front of the Health Officer.

- (3) the Health Officer or his/her duly authorized representative may issue an "Order to Abate" based on a condition that may transmit, generate, or promote disease. Failure on the part of the Operator to comply with the Order to Abate could result in the enforcement of the Order to Abate in the court of jurisdiction by the initiation of an injunction by the County Attorney or County Prosecuting Attorney.
- (4) if the action concerning public health is an ordinance violation, request the County Attorney or County Prosecuting Attorney to institute a proceeding in the court(s) for the enforcement of the ordinance violation.
- (5) if the action concerning public health is a criminal offense, then the Health Department will contact the local Police Department having jurisdiction to initiate a case report to be filed with the County Prosecuting Attorney to institute a proceeding in the court(s) for enforcement.

#### **Section F: Penalties**

The Health Officer may enforce any provisions of this ordinance by injunction.

The responsible party shall be subject to a fine up to the amount of \$1,000.00 per violation of this ordinance. Each day in which a violation occurs shall constitute a separate violation.

The responsible party found to be in violation of this ordinance shall also be required to pay the attorney fees incurred by the Health Officer for enforcing this ordinance.

The Circuit Court that has jurisdiction over the violation(s) after hearing and determination that the offending party has violated the terms of this ordinance may assess penalties for the violation(s) listed on the most recent inspection sheet that has brought this to a court action, based on Schedule of Civil Penalties Title 410 IAC 7-23.

#### **Section G: Administrative Appeals Section**

Any Person(s) aggrieved by Orders issued under the Enforcement Options 1-3 of Section E above shall be entitled to a review of the final Order before a Hearing Officer by filing a written request therefore with the Health Officer. The written request must be mailed or hand delivered to:

Delaware County Health Officer  
100 West Main Street, Room 207  
Muncie, IN 47305

and must be received within fifteen (15) days after such final Order is issued.

Upon the Health Officer receipt of such request, the Hearing Officer shall hear the matter again in an open hearing after at least five (5) days written notice of the time, place and nature thereof. The time shall be measured pursuant to the rules of court of having jurisdiction. (A shorter period of time may be granted, if requested by either party and agreed upon.)

The notice of the hearing shall be served upon the Person requesting the review by hand delivery or mail by Certified Mail the notice to the address listed on the Permit application as the Person's mailing address or such other address, as the Person shall designate in the letter of request to the Health Officer.

The Hearing Officer establishes the Rules of Procedure and advises the parties prior to the start of the proceedings.

The Hearing Officer shall make written findings of facts and shall enter its final Order or determination of this matter in writing.

The Order completes the Administrative Appeals procedure.

The decision of the Hearing Officer may be appealed pursuant to the Administrative Orders and Procedure Act.

#### **Section H: Conflict of Interest**

No Delaware County Public Official shall conduct himself or herself in a manner that is or could have the appearance of a Conflict of Interest.

#### **Section I: Unconstitutionally Clause:**

Should any section, paragraph, sentence, clause, or phrase of this ordinance be declared unconstitutional or invalid for any reason, the remainder of this ordinance shall not be affected thereby.

#### **Section J: Repeal and Effective Date**

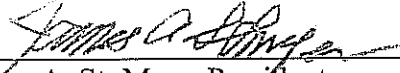
All ordinances and parts of ordinances in conflict with this ordinance are hereby repealed, and this ordinance shall be in full force and in effect thirty (30) days after its adoption and publication as provided by law.


Passed and adopted by the Commissioners of Delaware County, State of Indiana, on this


20<sup>th</sup> day of September, 2004

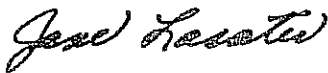
Signed:

Delaware County Board of Commissioners  
Delaware County, State of Indiana

  
\_\_\_\_\_  
James A. St. Myer, President

  
\_\_\_\_\_  
Jack L. Stonebraker, Jr., Vice-President

  
\_\_\_\_\_  
Larry L. Crouch, Member

  
ATTEST: \_\_\_\_\_  
Jane Lasater, Auditor