

AN ORDINANCE REGULATING FOOD ESTABLISHMENTS AND BED
AND BREAKFAST ESTABLISHMENTS ORDINANCE NO. 2007-85-1
WABASH COUNTY, INDIANA

The purpose of this ordinance is to assure that the rules and regulations of the Indiana State Department of Health pertaining to the operation of food establishments as well as bed and breakfast establishments are properly met in Wabash County, Indiana, and that the public health is safeguarded.

This ordinance incorporates by reference IC 16-42-1, IC 16-42-2, IC 16-42-5, IC 16-42-5.2, IAC 7-15.5, 410 IAC 7-24, 410 IAC 7-21-47, 410 IAC 7-22 and 410 IAC 7-23.

The Wabash County Health Department is hereby authorized to issue bed and breakfast establishment permits and food establishment permits, 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 Wabash County, State of Indiana, as follows:

SECTION A: DEFINITIONS

Bed and Breakfast Establishment 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.

Conflict of Interest means a situation in which the private financial interest of official, official's spouse, ex-spouse, siblings, in-laws, children or unemancipated child, may influence the official's judgment in the performance of a public duty.

Food Establishment means any building, room, basement, vehicle of transportation, cellar, or open or enclosed area occupied or used for handling food. This definition also includes a Retail food establishment as defined in 410 IAC 7-24; however, it does not include a bed and breakfast establishment.

Health Department means the Wabash County Health Department, or its authorized representative having jurisdiction over a bed and breakfast establishment or food establishment.

Official means any official of Wabash County, Indiana.

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 person appointed pursuant to the health laws of Indiana, or his duly authorized representative, who may conduct inspections and make a final decision on an enforcement action.

Hearing Officer means the Wabash County Health Board, or a subcommittee of the Wabash County Health Board, or some other non-bias third party appointed by the Health Board. Neither the Health Officer nor any other employee of the Health Department shall be a hearing officer.

Imminent Health Hazard. means any significant and imminent danger to human health.

Inspection Report means a document prepared by the Health Department following an inspection.

Operator means a person who has primary oversight responsibility for operation of an establishment by reason of ownership, leasehold or contract, and who is responsible for the storage, preparation, display, transportation or serving of food to the public.

Order means an order issued by the Wabash County Health Department. The term includes a permit.

Permit means a document issued by the Wabash County Health Department that authorizes a person to operate a bed and breakfast establishment or a food establishment.

Person means an individual, association, corporation, LLC, partnership, or other entity, government, or governmental subdivision or agency.

SECTION B: PERMITS

General: It is unlawful for any person to operate a bed and breakfast establishment or food establishment in Wabash County, Indiana, without having first obtained a valid permit from the Wabash County Health Officer. Such permit shall be posted in a conspicuous location in the establishment for which it was issued.

Only persons who comply with the applicable requirements of 410 IAC 7-15.5 and 410 IAC 7-24 will be entitled to obtain and keep a permit.

A separate permit shall be required for each bed and breakfast establishment or food establishment.

No permit issued under this ordinance is transferable.

A bed and breakfast establishment or food establishment permitted by the Wabash County Health Department shall be considered registered in IC 16-42-1-6.

Permit Period: A bed and breakfast establishment permit or a food establishment permit shall be obtained prior to commencing operation, and each January 1st thereafter.

A permit for a temporary food establishment shall be for the term of one continuous operation.

Permit Content: Any permit issued by the Health Officer or his duly authorized representative shall contain the following:

- (1) the name and address of the person 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; and
- (4) other such pertinent information as may be required by the Wabash County Health Officer.

Application: A person desiring to operate a bed and breakfast establishment or food establishment shall submit to the Health Department a written application for a permit on a form provided by the Health Department.

Content of the Application: The application shall include:

- (1) The name, mailing address, telephone number, and original signature of the person or operator applying for the permit and the name, mailing address, and location of the bed and breakfast establishment or food establishment;
- (2) Information specifying whether the bed and breakfast establishment or food establishment is owned by an association, corporation, individual, partnership, or other legal entity;
- (3) A statement specifying whether the bed and breakfast establishment or food establishment:

(A) If not permanent, is mobile or temporary, and (B)

Does any 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 7-24.
- (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 of the following steps: 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 or food establishment;

(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 7-24;

(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 or 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 Wabash County Health Department access to the bed and breakfast establishment or food establishment and records as specified in 410 IAC 7-15.5 and 410 IAC 7-24;

(8) Other information required by the Wabash County Health Department.

Qualification: To qualify for a permit, an applicant must:

(1) Be an owner or operator of the bed and breakfast establishment or food establishment;

(2) Comply with the requirements of this ordinance;

- (3) Agree to permit the Wabash County Health Department access to the bed and breakfast establishment or food establishment and provide required information; and
- (4) Pay the applicable permit fees at the time the application is submitted.

Plan Requirements: (a) The owner or other authorized agent of an existing or proposed bed and breakfast establishment or food establishment shall submit to the Wabash County Health Department properly prepared plans and specifications for review and approval before:

- (1) the construction of a bed and breakfast establishment or food establishment;
- (2) the conversion of an existing structure for use as a bed and breakfast establishment or food establishment; or
- (3) the remodeling of a bed and breakfast establishment or food establishment or a change of type of bed and breakfast establishment or food establishment or food operation if the Wabash County Health Department determines that plans and specifications are necessary to ensure compliance with this section.

(b) The plans and specifications for a bed and breakfast establishment or food establishment shall include the type of operation, type of food preparation (as specified in Appendix A of the published version of 410 IAC 7-24), and the menu.

(c) The plans and specifications shall be deemed satisfactory and approved by Wabash County Health Department before a permit can be issued.

(d) A pre-operational inspection must show that the bed and breakfast establishment or food establishment is built or remodeled in accordance with the approved plans and specifications and that the establishment is in compliance with this ordinance.

Change of Ownership: The Health Department may renew a permit for an existing bed and breakfast establishment or food establishment or may issue a permit to a new owner of an existing bed and breakfast establishment or 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 Wabash County Health Department, in order to retain the permit, the operator 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 Wabash County Health Department if an Imminent Health Hazard may exist;
- (3) Allow representatives of the Wabash County Health Department access to the bed and breakfast establishment or food establishment at all reasonable times;

- (4) Comply with directives of the Wabash County Health Department including time frames for corrective actions specified in Inspection Reports, notices, orders, warnings, and other directives issued by the Health Department in regard to the operator's bed and breakfast establishment or food establishment or in response to community emergencies;
- (5) Accept notices issued and served by the Wabash County Health Department; and
- (6) 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 Health Department.
- (7) Post the permit in a location in the bed and breakfast establishment or 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 or food establishment in Wabash County who has not paid a fee required by this ordinance.

A bed and breakfast establishment permit or a food establishment permit shall be obtained prior to commencing operation, and each January 1st thereafter.

Permit fees shall be established by the Wabash County Health Board in accordance with state law.

The Wabash County Health Department shall issue receipts for all fees paid.

Exemption from Permit Fees: An organization that is exempt from Indiana Gross Income Tax under Indiana Code 6-2.1-3-20 through 6-2.1-3-22 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 organizations that meet the criteria addressed in Indiana Code 16-42-5-4. The Health Officer shall be provided, upon request, with proof of an organization's tax exemption.

Late Fees: The Wabash County Health Board may assess a late charge against any person who fails to timely pay a fee required by this ordinance. No fees paid hereunder are refundable or transferable.

SECTION D: INSPECTION

General: The Health Department shall inspect a bed and breakfast establishment or food establishment at least once every 6 months, unless a system of risk based inspections is utilized as stated below.

The Wabash County Health Department may modify the interval between inspections beyond 6 months if:

- (1) The bed and breakfast establishment or food establishment is fully operating under an approved and validated Hazard Analysis Critical Control Point (HACCP) plan.
- (2) The bed and breakfast establishment or 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 Wabash County Health Department contacts the operator and determines that the nature of the food operation has not changed.

Temporary Food Establishment: Because temporary food establishments often have untrained food handlers, and improvised facilities, the Health Department shall periodically inspect any temporary food establishment that prepares, sells, or serves potentially hazardous food, and may inspect a temporary food establishment that prepares, sells or serves unpackaged, nonpotentially hazardous food.

Performance and Risk Based Inspections: The Health Department may conduct more frequent inspections based upon its assessment of an establishment's history of compliance with this ordinance, and upon the establishment's potential as a vector of foodborne illness. The Health Department may consider:

- (1) Past performance for violations of 410 IAC 7-15.5, 410 IAC 7-24 or 410 IAC 7-22, or of HACCP plan requirements that are critical or noncritical;
- (2) Past performance for numerous or repeated violations of 410 IAC 7-15.5, 410 IAC 7-24 or of the HACCP plan requirements that are noncritical;
- (3) Past violations of health statutes or rules;
- (4) Hazards associated with the particular foods that are prepared, stored, or served;
- (5) The type of operation, including 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 a Health Department representative presents official credentials and states the purpose of an intended inspection, the operator shall allow the Health Department representative to inspect the establishment, and shall provide requested information and records as specified in this ordinance and at Indiana Code 16-42-113 and 16-42-5-23.

An establishment's permit shall be conditioned upon the holder allowing the Health Department access to such information and records.

Inspection Reports: Immediately following an inspection, the Health Department shall provide a copy of the inspection report to the operator, together with any notice to correct violations.

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 7-24 or 410 IAC 7-22, and shall implement corrective actions for a HACCP plan provision that is not in compliance with its critical limit.

When warranted by difficult corrective action and acceptable health risk, the Health Department may grant a reasonable extension of the time for the operator to correct critical code violations or HACCP plan deviations.

The Health Department shall note in its records when a required correction has been completed.

Refusal to Sign Acknowledgement: All violations noted in an inspection report must be corrected timely, whether or not an operator acknowledges receipt of the report. An operator's refusal to sign acknowledging receipt of a report shall be noted in the inspection report. Acknowledging receipt of a report shall not constitute acquiescence in the inspector's findings.

Public Information: Except as provided at 410 IAC 7-24, Section 194, an inspection report shall be considered a public record and may be available to any person who requests it.

SECTION E: COMPLIANCE AND ENFORCEMENT

Application Denial: If a permit application to operate a bed and breakfast establishment or food establishment is denied, the Health Department shall provide the applicant with a notice that includes:

- (1) The specific reasons and rule citations for the denial;
- (2) The action, if any, that the applicant must take to qualify for the permit; and
- (3) Notice of the applicant's right to appeal, including the process and time limits involved.

Permit Suspension: The Health Department may suspend any permit if it finds that an imminent health hazard exists. Such suspension may continue until the Health Officer determines that the imminent health hazard has been obviated. A permit may be revoked when the Health Officer determines that a serious health hazard has not been corrected within a reasonable time.

Ceasing Operation and Contacting the Health Department: An operator of a bed and breakfast establishment or food establishment shall immediately discontinue operations and notify the Wabash 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 or food establishment has discontinued operations for the reasons stated above or otherwise according to law, the operator must obtain approval from the Health Department before resuming operations.

Enforcement: The Wabash County Health Department may enforce this ordinance, the applicable rules established by the Indiana Department of Health, and the schedule of civil penalties established by the Indiana State Department of Health.

No penalty shall exceed one thousand dollars (\$1,000) for each violation per day.

Any civil penalties collected under this ordinance shall be deposited in the general fund of the Wabash County Health Department pursuant to Indiana Code 16-42-5-28.

The Wabash County Health Department may issue an order of compliance or impose a civil penalty included in the schedule of civil penalties established by the Indiana Department of Health, or both, against a person who does any of the following:

- (1) Fails to comply with this ordinance or a rule adopted by the Indiana Department of Health.
- (2) Interferes with or obstructs the Wabash County Health Department or the Department's designated agent in the performance of duties under this ordinance.

The Wabash County Health Department:

- (1) may bring an administrative action to enforce this ordinance, applicable rules adopted by the Indiana State Department of Health, or the schedule of civil penalties established by the Indiana State Department of Health.
- (2) may use tickets or citations to enforce this ordinance, applicable rules adopted by the Indiana State Department of Health, or the schedule of civil penalties established by the Indiana State Department of Health.

For each violation of the state law or rules concerning food handling or food establishments, the Wabash County Health Department may bring an enforcement action against a food establishment.

A health officer, upon hearing of the existence of an unlawful health condition within Wabash County, Indiana, shall order the abatement of such condition. The order shall:

- (1) be in writing if demanded;
- (2) specify the conditions that may transmit disease; and
- (3) name the shortest reasonable time for abatement.

If a person refuses or neglects to obey an order issued under this section, the Health Department may institute proceedings in the Circuit or Superior Court for enforcement. An order may be enforced by injunction. If the action concerning public health is a criminal offense, an action may be brought by the Wabash County Prosecuting Attorney.

SECTION F: APPEALS SECTION

- (1) Any person aggrieved by an order issued by the Health Department shall be entitled to a review of the final order before a hearing officer by filing a written request with the Health Officer. The written request must be mailed or hand delivered to the Health Officer, 89 West Hill Street, Wabash, IN 46992, and must be received within fifteen (15) days after such order is issued.

(2) Following receipt of a timely request, a hearing officer shall schedule a hearing upon five days written notice to the party requesting the review, which notice shall state of the time and place of such hearing. If both the appellant and the Health Officer agree, the hearing may occur with fewer than five days' notice.

(3) Notice of the hearing shall be served upon the person requesting the review by personal delivering or by certified mail.

(4) Following the hearing, the hearing officer shall prepare a written order that includes findings of fact.

SECTION G: CONFLICT OF INTEREST

No Health Department official shall engage in conduct that is, or could have, the appearance of a conflict of interest.

SECTION H: UNCONSTITUTIONALITY CLAUSE

Should a court of law determine any portion of this ordinance to be invalid, the unaffected portions hereof shall remain effective.

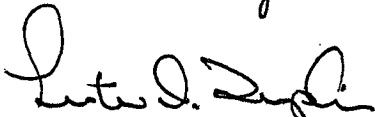
SECTION I: ATTORNEY FEES

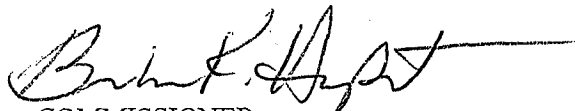
Any person violating any of the provisions of this Ordinance shall be liable for the expense, loss or damage occasioned by reason of such violation, including reasonable attorney's fees and costs, including all costs of enforcement.

SECTION J: REPEAL AND EFFECTIVE DATE

Any prior Wabash County ordinance concerning food establishments or bed and breakfast establishments that conflicts with this ordinance is hereby repealed. This ordinance shall be in full force and effect thirty (30) days after its adoption and publication as provided by law.

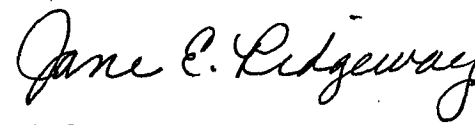
Passed and adopted by the Board of Commissioners of Wabash County, Indiana, this 5th day of February, 2007.


COMMISSIONER


COMMISSIONER


COMMISSIONER

ATTEST:


AUDITOR