

JEFFERSON COUNTY RETAIL FOOD ESTABLISHMENT, TEMPORARY FOOD ESTABLISHMENT AND/OR BED AND BREAKFAST ESTABLISHMENT

ORDINANCE NO. 2006-7

In JEFFERSON COUNTY, Indiana

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; set standards for management and personnel; food operations, and equipment and facilities; and provides for Retail Food Establishment, Temporary Food Establishment, and/or Bed and Breakfast Establishment plan reviews, permits, inspections, and employee restrictions.

This ordinance defines Bed and Breakfast Establishment, Conflict of Interest, Jefferson County Health Department, Jefferson County Official, Hazard Analysis Critical Control Point, Health Officer, Hearing Officer, Imminent Health Hazard, Inspection Report, Operator, Order, Permit, Person, Retail Food Establishment, Temporary Food Establishment; 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 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(s) (IC) 16-42-1, IC 16-42-2, IC 16-42-5, IC 16-42-5.2 and Indiana State Department of Health Rule(s) 410 Indiana Administrative Code (IAC) 7-15.5, 410 IAC 7-24, 410 IAC 7-21-47, 410 IAC 7-22 and 410 IAC 7-23.

The Jefferson County Health Department is hereby authorized to issue Bed And Breakfast Establishment Retail Food Establishment and/or Temporary 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 Jefferson County, State of Indiana, that:

Section A: Definitions

Bed and Breakfast Establishment (as defined in 410 IAC 7-15.5) 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.

Conflict of Interest (derived from 68 IAC 9-1-1(b)(2)) means a situation in which the private financial interest of Jefferson County Official, Jefferson County Official's spouse, ex-spouse, siblings, in-laws, children and/or unemancipated child, may influence the Jefferson County Official's judgment in the performance of a public duty.

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

Jefferson County Official means any Official of Jefferson County, Indiana.

Hazard Analysis Critical Control Point (HACCP) Plan (as defined in 410 IAC 7-24) 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 as specified in IC-16-20-2-16, or his/her duly authorized representative, as specified in IC 16-2-1-14, who may conduct inspections and make a final decision on an enforcement action.

Hearing Officer means an individual or panel of individuals acting in the capacity of a Hearing Officer in proceedings. The Hearing Officer is not the Health Officer or any other employee of the Jefferson County Health Department. (Examples of Hearing Officer could be the Jefferson County Health Board, a subcommittee of Jefferson County Health Board, a subcommittee of health professionals from the community or other non-bias third party appointed by the Health Board.)

Imminent Health Hazard means a significant threat or danger to health that is considered to exist when there is evidence sufficient to show that a product, practice, circumstance, or event creates a situation that requires immediate correction or cessation of operation to prevent injury or illness based on the number of potential injuries and illnesses and the nature, severity and duration of the anticipated injury or illness [e.g., sewage backing up in a food preparation area or contamination of food products with toxic materials].

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

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 Jefferson 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 Jefferson County Health Department that authorizes a Person to operate a Bed and Breakfast Establishment Retail 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.

Retail Food Establishment means

- (a) an operation that:
 - (1) stores, prepares, packages, serves, 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; and
 - (K) 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.
- (b) 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 that operates for a period of no more than fourteen (14) consecutive days in conjunction with a single event or celebration.

Section B: Permits

General: It is unlawful for a Person to operate any Bed and Breakfast Establishment Retail Food Establishment and/or Temporary Food Establishment in Jefferson 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 and/or Temporary Food Establishment.

Only persons who comply with the applicable requirements of 410 IAC 7-15.5 and /or 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 Retail Food Establishment and/or Temporary Food Establishment operated or to be operated by any Person.

A Permit issued under this ordinance is not transferable.

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

Anyone not in compliance with 410 IAC 7-15.5 and or 410 IAC 7-24 by year end shall not be issued a permit to operate the consecutive year beginning January 1.

Permit Period: A Permit for a Bed and Breakfast Establishment, Retail Food Establishment, and/or Temporary 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 one continuous operation.

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 Jefferson County Health Officer.

Application: A Person desiring to operate a Bed and Breakfast Establishment, Retail Food Establishment, and/or Temporary Food Establishment shall submit to the Jefferson County Health Department a written application for a Permit on a form provided by the Jefferson 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, and/or Temporary Food Establishment;
- (2) Information specifying whether the Bed and Breakfast Establishment, Retail Food Establishment and/or Temporary Food Establishment is owned by an association, corporation, individual, partnership, or other legal entity;
- (3) A statement specifying whether the Bed and Breakfast Establishment Retail 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 7-24.
 - (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 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 the delivery to and consumption at a location off the premises of the Bed and Breakfast Establishment, Retail Food Establishment, and/or Temporary 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 7-24;
 - (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, Retail 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
 - (2) Allow the Jefferson County Health Department access to the Bed and Breakfast Establishment, Retail Food Establishment and/or Temporary Food Establishment and records as specified in 410 IAC 7-15.5 and 410 IAC 7-24;
- (8) Other information required by the Jefferson 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, 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 and/or Temporary 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, Retail Food Establishment and/or Temporary Food Establishment shall submit to the Jefferson 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 a change of type of Bed and Breakfast Establishment and/or Retail Food Establishment of food operation if the Jefferson County Health Department determines that plans and specifications are necessary to ensure compliance with this section. Retail Food Establishment of food operation if the Jefferson 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 and/or Retail 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 Jefferson County Health Department before a Permit can be issued.
 - (d) 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 7-24 and/or 410 IAC 7-15.5.

Change of Ownership: The Jefferson 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 Jefferson 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 Jefferson County Health Department if an Imminent Health Hazard may exist;
- (3) Allow representatives of the Jefferson County Health Department access to the Bed and Breakfast Establishment and/or Food Establishment at all reasonable times;
- (4) Comply with directives of the Jefferson County Health Department including time frames for corrective actions specified in Inspection Reports, notices, Orders, warnings, and other directives issued by the Jefferson County Health Department in regard to the Operator's Bed And Breakfast Establishment and/or Retail Food Establishment or in response to community emergencies;
- (5) Accept notices issued and served by the Jefferson 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 Jefferson County Health Department.
- (7) Post the Permit in a location in the Bed and Breakfast Establishment and/or Food Establishment that is conspicuous to consumers;
- (8) All Bed and Breakfast Establishment and/or Retail Food Establishment employees must obtain a Tuberculin Skin Test and test result file should be maintained at the Bed and Breakfast Establishment and/or Retail Food Establishment to be made available for Jefferson County Health Department Officials. Failure to comply will result in a critical violation.

Section C: Permit Fees

It shall be unlawful for any Person to operate a Bed and Breakfast Establishment Retail Food Establishment and/or Temporary Food Establishment in Jefferson 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, Retail Food Establishment and/or a Temporary Food Establishment shall be set by the Jefferson County Health Department, as provided by the Statutes of the State of Indiana. (See IC 16-20-1-27)

Fees Schedule

One – five employees	\$ 80.00
Six – ten employees	\$160.00
Eleven and over	\$240.00

New Bed and Breakfast Establishment and/or Retail Food Establishment starting after July 1st, or any change of ownership of a Bed and Breakfast and/or Retail Food Establishment shall pay the following:

One – five employees	\$ 40.00
Six – ten employees	\$ 80.00
Eleven and over	\$120.00

Follow up inspection fee \$ 25.00

Temporary Food Establishments:

(1) for each event of operation \$30.00

(2) Three or more events of operation in Jefferson County annual \$75.00

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

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

Exemption from Permit Fees: An organization that is exempt from the 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 organization(s) that meet the criteria addressed in Indiana Code 16-42-5-4. The Health Officer shall be provided, upon request, proof of an organization's tax exemption. Although a permit is still required.

Non-Profit Organizations: All organizations/Non-Profit Organizations that are opened for more than thirty (30) days of operation per year will be charged the minimum annual fee of \$80.00.

Late Fees: A late fee for failure to pay the permit fee prior to the operation of the Bed and Breakfast Establishment, Retail Food Establishment and/or Temporary Food Establishment or the late fee for failure to renew a permit after the expiration of the permit to operate Bed and Breakfast Establishment, Retail Food Establishment and/or Temporary Food Establishment shall be assessed \$100.00 as set by the Jefferson County Health Board.

The payment of fees under this ordinance is not transferable or refundable.

Section D: Inspection

General: The Jefferson County Health Department shall inspect a Bed and Breakfast Establishment and/or Retail Food Establishment at least once every 3 months.

Temporary food Establishment: The Jefferson County Health Department shall daily inspect throughout its Permit period a temporary Food Establishment that prepares, sells, or serves potentially hazardous food and shall inspect a 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 hand washing, food preparation and protection, food temperature control, ware washing, providing drinking water, waste retention and disposal, and insect and rodent control; or
- (2) Has untrained food employees.

Temporary Food Establishments shall not operate prior to first inspection and issuance of permit.

Performance and Risk Based Inspections: Within the parameters specified in the above Inspection Subsection(s) of this Ordinance, the Jefferson 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 7-24 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 7-24 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 Jefferson 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 Jefferson County Health Department to determine if the Bed and Breakfast Establishment Retail 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 Jefferson 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, Retail Food Establishment and/or Temporary 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 Jefferson 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.

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 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 Jefferson 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 Jefferson County Health Department shall verify correction of the violation, document the information on an Inspection Report, and enter the report in the Jefferson 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 Jefferson County Health Department historical record for the Bed and Breakfast Establishment, Retail Food Establishment and/or Temporary Food Establishment.

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

Public Information: Except as specified in Section 194 (Trade Secrets) of 410 IAC 7-24, the Jefferson 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)

Section E: Compliance And Enforcement

Certification of Food Handler Requirements (410 IAC 7-22)

- (a) A corporation, or local health department, may not impose any registration, certification or licensing requirements on food handling or food handlers.
- (b) After December 31, 2004 at least (1) food handler at a food establishment must be a certified food handler. A food handler's certification must be recognized by the Conference for Food Protection or an equivalent nationally recognized certification Examination as determined by the department.
- (c) A food establishment shall have a least one (1) certified food handler responsible for all periods of the food establishment's operation. However, a certified food handler need not be present at the food establishment during all hours of operation. It shall be the responsibility of the certified food handler to provide the certificate, letter or document for verification of passing the examination.
- (d) A food establishment that begins operation or changes ownership shall comply with Section (b) of this rule not later than six (6) months after beginning operation or changing ownership.
- (e) If a food establishment does not have a certified food handler because the certified food handler terminates employment with the food establishment, the owner or operator of the food establishment shall comply with section (b) of this rule not later than three (3) months after the termination date of the previous certified food handler

- (f) If more than one (1) food establishment operated by the same individual is located on the same property or on contiguous properties, only one (1) certified food handler is required for the food establishments.
- (g) The certified food handler requirements does not apply to a food establishment when the food establishment's food handling activities are limited solely to one (1) or more of the following:
 - (1) Heating or serving precooked hot dog or sausage products, popcorn, nachos, pretzels, or frozen pizza;
 - (2) Preparing or serving a continental breakfast such as roils, coffee, juice, milk, and cold cereal;
 - (3) Preparing or serving nonalcoholic beverages, or ice;
 - (4) Grinding coffee beans;
 - (5) Packaged foods that are not potentially hazardous foods in accordance with the rules adopted by the executive board;
 - (6) Heating when it is the only step for a bakery product; or
 - (7) Providing prepackaged food in its original package
- (h) The certified food handler requirement does not apply to the following institutions:
 - (1) Hospitals licensed under IC 16-21;
 - (2) Health facilities licensed under IC 16-28;
 - (3) Housing with services establishment that are required to file disclosure statements under IC 13-10-15 or;
 - (4) Continuing care retirement communities required to file disclosure statements under IC 23-2-4.

Application Denial: If an application for a plan review and/or Permit to operate a Bed and Breakfast Establishment and/or Retail Food Establishment is denied, the Jefferson 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.

Permit Revocation: The Jefferson County Health Department may revoke a Permit to operate a Bed and Breakfast Establishment, Retail Food Establishment and/or Temporary Food Establishment for a time period not to exceed 90 calendar days. If the Permit has been revoked in the past and a clear demonstration of noncompliance is demonstrated by the Permit Holder then the Permit may be revoked for a longer period of time as determined by the Health Officer.

Permit Suspension: The Jefferson County Health Department may suspend a Permit to operate a Bed and Breakfast Establishment Retail Food Establishment and/or Temporary Food Establishment if it determines through inspection, or examination of employee, food, records, or other means as specified in this ordinance, that an Imminent Health

Hazard exists. A suspension shall not exceed 30 calendar days. The Permit may be suspended for a longer period of times as determined by the Health Officer.

Ceasing Operation and Contacting the Jefferson County Health Department: An Operator of a Bed and Breakfast Establishment, Retail Food Establishment and/or Temporary Food Establishment shall immediately discontinue operations and notify the Jefferson 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 unsanitary 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 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 Jefferson 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 Jefferson County Health Department for consideration:

- (1) Under consideration of the Administrator and/or Assistant Administrator and the Food Specialist, establish a process for the issuing of tickets based on violation of the Bed and Breakfast, Retail Food Establishment and or Temporary Food Establishment requirements.
- (2) Conduct administrative proceeding for suspension and/or revocation of the Bed and Breakfast Establishment, Retail Food Establishment and/or Temporary Food Establishment Permit in front of a Hearing Officer.
- (3) The Jefferson County Health Officer 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 could result in the enforcement of the Order in the court of jurisdiction by the initiation of an action by the Jefferson County Health Department attorney.
- (4) If the action concerning public health is an ordinance violation, request the Jefferson County Health Department attorney to institute a proceeding in the courts for the enforcement of the ordinance violation.
- (5) If the action concerning public health is a criminal offense, request the Jefferson County Health Department attorney to institute a proceeding in the courts for enforcement.

Civil Penalty: The Jefferson County Health Department may commence an action under IC 4-21.5-3-8 to levy civil penalties against a person who:

- (1) Fails to comply with IC 16-42-5, 410 IAC 7-21, or 410 IAC 7-24; or
- (2) Interferes with or obstructs the Indiana state department of health or its designated agent in the performance of duties pursuant to IC 16-42-5, 410 IAC 7-21, or 410 IAC 7-24.
 - (a) A civil penalty in an amount in the appropriate range specified in subsection (d), (e), or (f), or any combination thereof, may be sought for each day of each violation.
 - (b) In determining the seriousness of the violation and the specific amount of the civil penalty to be sought for each violation, the Indiana state department of health will consider, but is not limited to, the following:
 - (1) The potential for harm or imminent threat to public health.
 - (2) The extent of deviation from statutory or regulatory requirements.
 - (3) Degree of willfulness or negligence.
 - (4) History of noncompliance.

The absence of direct harm will not result in assessment of a lower penalty for a violation.

- (c) Unless adjusted as provided in subsections (g) and (h), and if penalties are to be assessed to a food establishment, as defined in IC 16-42-5, then they shall be assessed in accordance with the following:

**INDIANA CODE (IC 16-42-5) SECTION
PENALTY RANGE**

IC 16-42-5-6; IC 16-42-5-11; IC 16-42-5-19; IC 16-42-5-21 **\$0 to \$1,000**

IC 16-42-5-7; IC 16-42-5-12; IC 16-42-5-13; IC 16-42-5-14; IC 16-42-5-15; IC 16-42-5-17; IC 16-42-5-8; IC 16-42-5-20 **\$0 to \$500**

IC 16-42-5-8; IC 16-42-5-9; IC 16-42-5-10; IC 16-42-5-16; IC 16-42-5-22 **\$0 to \$100**

- (d) Unless adjusted as provided in subsections (g) and (h), and if penalties are to be assessed to a retail food establishment, as defined in 410 IAC 7-24, then they shall be assessed in accordance with the following:

SECTIONS OF 410 IAC 7-24 PENALTY RANGE

107; 121; 129; 139; 142; 165; 171; 182; 269; 376; 423; **\$0-\$500**

108; 109; 110; 111; 114; 117; 120; 137; 141(d); 143; 144; 146; 147; 149; 150; 151; 153; 154; 155; 157; 160; 162; 164; 166; 167; 168; 169; 172; 173; 181(a); 183; 186; 187; 188; 189; 193; 195; 196; 205; 241; 274; 294; 303; 320; 321; 322; 323; 324(a)(1); 325; 329; 334; 336; 337; 339; 343; 344; 350; 357; 375; 77; 415; 437; 438; 439; 440; 441; 442; 443; 444; 445; 446; 447; 448; 450 **\$0-\$250**

113; 115; 118; 123; 128; 131; 132; 135; 136; 141(a); 141(b); 141(c); 152; 156; 190; 191; 201; 204; 229; 240; 259; 264; 295(a); 296; 297; 326; 368; 424; 435; 436 **\$0-\$100**

119; 122; 130; 133; 134; 138; 140; 145; 148; 158; 159; 161; 163; 170; 174; 175; 176; 177; 178; 179; 180; 181(b); 181(c); 185; 197; 198; 199; 202; 203; 206; 207; 208; 209; 210; 211; 212; 213; 214; 215; 216 ; 217; 218; 219; 220; 221; 222; 223; 224; 225; 226; 227; 228; 230; 231; 232; 233; 234; 235;236; 237; 238; 239; 242; 243; 244; 245; 246; 247; 248; 249; 250; 251; 252; 253; 254; 255; 256; 257; 258; 260; 261; 262; 263; 265; 266; 267; 268; 270; 271; 272; 273; 275; 276; 277; 278; 279; 280; 281; 282; 283; 284; 285; 286; 287; 288; 289; 290; 291; 292; 293; 295(b); 295(c); 298; 301; 302; 304; 305; 306; 307; 308; 309; 310; 311; 312; 313; 314; 315; 316; 317; 318; 324(a)(2); 327; 328; 330; 331; 332; 333; 335; 338; 340; 341; 342; 345; 346; 347; 348; 349; 351; 352; 353; 354; 355; 356; 358; 359; 360; 361; 362; 363; 364; 365; 366; 367; 369; 371; 372; 373; 378; 379; 380; 381; 382; 383; 384; 385; 386; 387; 388; 389; 390; 391; 392; 393; 394; 395; 396; 397; 398; 399; 400; 401; 402; 403; 404; 405; 406; 407; 408; 409; 410; 411; 412; 413; 414; 416; 417; 418; 419; 420; 421; 425; 426; 427; 428; 429; 430; 431; 432; 433; 434; 449; 451 **\$0-\$50**

(e)Unless adjusted as provided in subsections (g) and (h), and if penalties are to be assessed to a wholesale food establishment, as defined in 410 IAC 7-21, then they shall be assessed in accordance with the following:

SECTIONS OF 410 IAC 7-21 PENALTY RANGE

35; 36(1); 36(2); 36(3); 36(4); 36(5); 39(b)(8); 40; 41; 42(b); 45(c); 45(n); 45(p); 45(q); 45(r); 46; 7(9)(B); 48; 49(d); 49(e); 50(d) **\$0-\$1,000**

36(8); 37; 38; 39(a); 39(b)(1); 39(b)(2); 39(b)(3); 39(b)(4); 39(b)(5); 39(b)(6); 39(b)(7); 42(a); 42(d); 42(e); 44(i); 45(a); 45(b); 45(d); 45(e); 45(f); 45(g); 45(h); 45(i); 45(j); 45(k); 45(l); 45(m); 45(o); 45(s); 7(2); 47(3); 47(4); 47(5); 47(6); 47(7); 47(9)(A); 47(9)(C); 50(c); 50(f); 51(a); 51(c); 51(d) **\$0-\$500**

36(6); 36(7); 42(c); 43(b); 43(c); 43(d); 44(c); 44(e); 44(h); 47(1); 47(8); 49(a); 49(b); 49(c); 50(b); 51(b) **\$0-\$250**

36(9); 43(a); 43(e); 44(a); 44(b); 44(d); 44(f); 44(g); 45(t); 47(10); 47(11); 47(12); 47(13); 47(14); 47(15) **\$0-\$100**

(f) Each individual penalty assessed under subsection ©, (d), or (e) or any combination thereof, will be multiplied by the number of days the particular violation has been documented by the Jefferson County Health Department, or its authorized representative.

(g) Penalties for violations documented in two (2) consecutive inspection by the Jefferson County Health Department, or its authorized representative, shall be assessed on the basis that the violations have remained uncorrected over the period of time between the two (2) inspections.

(h) *The Jefferson County Health Department, or its authorized representative, may*

reduce the penalty determined in accordance with subsection (c), (d), or (e) or any combination thereof, if the person found in violation has requested re-inspection and has produced substantive evidence that violation(s) have been corrected. In that case the penalty amount shall be assessed only for the period between initial discovery of the violation and the date of receipt of the request for re-inspection.

- (i) Penalties for all violations documented in an inspection or series of inspection at an establishment will be totaled and sought in one (1) cause of action.
- (j) After filing an action pursuant to IC 4-21.5, and in attempt to resolve violations of IC 16-42-5, 410 IAC 7-24, or 410 IAC 7-21 without resort to a hearing, the Jefferson County Health Department, or its authorized representative, may negotiate and enter into agreed orders. An agreed order may suspend all or part of the civil penalty calculated in accordance with this rule.

Section F: Appeals Section

- (1) 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 an administrative written request therefore with the Health Officer (Secretary of the Jefferson County Board of Health See IC 16-20-1-10). The written request must be mailed or hand delivered to Health Officer, (715 Green Road, Madison, IN 47250) and must be received within fifteen (15) days after such final Order is issued.
- (2) 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 the jurisdiction. (A shorter period of time may be granted, if requested by either party and agreed upon.)
- (3) The notice of the hearing shall be served upon the Person requesting the review by hand delivering or mailing 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.
- (4) The Hearing Officer establishes the Rules of Procedure and advises the parties prior to the start of the proceedings.
- (5) The Hearing Officer shall make written findings of facts and shall enter its final administrative Order or determination of this matter in writing.
- (6) The administrative Order completes the Administrative Appeals procedure.

Section G: Conflict of Interest

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

Section H: Unconstitutionality 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 I: 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 effect thirty (30) days after its adoption and publication as provided by law.

Passed and adopted by the Commissioners of Jefferson County, State of Indiana, on this _____ day of _____ 200_.

Signed
