

RETAIL FOOD ESTABLISHMENT AND/OR BED AND BREAKFAST
ESTABLISHMENT ORDINANCE
ORDINANCE No. 2008-1
In Daviess 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 established definitions; sets standards for management and personnel; food operators, 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, Conflict of Interest, Daviess County Health Department, Official Hazard Analysis Critical Control Point, Health Officer, Hearing Officer, Imminent Health Hazard, Inspection Report, Operator, Order, Permit, Person, Retail Food Establishment; and 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 (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 (effective May 2003), 410 IAC 7-23 (effective November 13, 2004) and 410 IAC 7-24 (effective January 2005).

The Daviess 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 Daviess 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) Provided 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 Daviess County Official, Daviess County Official's spouse, ex-spouse, siblings, in-laws, children and/or unemancipated child, may influence the Daviess County Official's judgment in the performance of a public duty. (Note:) The Daviess County Officials should follow the code of ethics if a code of ethics was established for the Daviess County Officials.

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

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

Hazard Analysis Critical Control Point (HACCP) Plan (as defined in 410 IAC 7-24) means a written document that delineates for 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 Daviess County or his duly authorized representative.

Hearing Officers 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 Daviess County Health Department. (Examples of Hearing Officer could be the Daviess County Health Board, a subcommittee of the Daviess County Health Board, a subcommittee of health professionals from the community or any other non-bias third party appointed by the Health Board).

Imminent Health Hazard means any circumstance or situation, which in the opinion of the Health Officer, endangers the health of the general public.

Inspection Report means the document prepared by the Daviess 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 Daviess 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 Daviess 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 (as derived from 410 IAC 7-24) means

- (a) an operation that:
 - (1) stores, prepares, packages, serves, vends, or otherwise provides food for human consumption, such as:
 - (A) A restaurant;
 - (B) A 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 retail meat market, fresh fruit & vegetable market, poultry market, fish market, delicatessen, confectionery, candy kitchen, nut store or retail bakery;
 - (E) A grocery store;
 - (F) A convenience store;
 - (G) A vending location;
 - (H) A Conveyance used to transport people;
 - (I) A private, public or non-profit organization routinely serving food;
 - (J) A tavern, bar, cocktail lounge, night club, tea room, coffee shop, café, cafeteria, or soda fountain;
 - (K) An institution; or
 - (L) A food bank; and
 - (M) 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 carrier.

- (b) The term includes the following:
- (1) An element of the operation, such as 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 (as defined in 410 IAC 7-24 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 with the approval of the organizers of the 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 Daviess 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 and/or Retail Food Establishment Permitted by Daviess County Health Department shall be considered registered as required in IC16-42-1-6.

Permit Period: A Permit for a Bed and Breakfast Establishment and/or Retail 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 name and 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 Daviess 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 Daviess County Health Department a written application for a Permit on a form provided by the Daviess 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 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 7-24;
 - (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 or 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 application 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 Daviess 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 Daviess County Health Department.

Qualifications: 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.

Plans Requirements: (a) The owner or other authorized agent of an existing or proposed Bed and Breakfast Establishment and/or Retail Food Establishment shall submit to the Daviess 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 or food operation if the Daviess 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 B of the published version of 410 IAC 7-24), and the menu.
 - (c) The plans and specifications shall be deemed satisfactory and approved by the Daviess 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 Daviess 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 Daviess 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 Daviess County Health Department if an Imminent Health Hazard may exist;
- (3) Allow representatives of the Daviess County Health Department access to the Bed and Breakfast Establishment and/or Retail Food Establishment at all reasonable times;
- (4) Comply with directives of the Daviess County Health Department including time frames for corrective action specified in Inspection Reports, notices, Orders, warnings, and other directives issued by the Daviess 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 Daviess 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 Daviess County Health Department.
- (7) 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 and/or Temporary Food Establishment in Daviess 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 and/or Temporary Food Establishment shall conform to the fee schedule ordinance approved by the Daviess County Commissioners, as provided by the Statutes of the State of Indiana.

A receipt for the payment of such fee shall be provided by the Daviess County Health Department and all funds received from the Permit fees shall be transferred to the Health Fund of Daviess County.

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.

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 a Bed and Breakfast Establishment and/or Retail Food Establishment shall be assessed. All assessed late fees shall conform to the fee schedule ordinance approved by the Daviess County Commissioners and upon receipt shall be transferred to the Health Fund of Daviess County. (See 410 IAC 7-24)

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

Section D: Inspection

General: The Daviess County Health Department shall inspect a Bed and Breakfast Establishment and/or Retail Food Establishment at least once per calendar year.

The Daviess County Health Department may increase the interval between inspections beyond 1 year 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 frequency based on a written risk-based inspection schedule that is being uniformly applied throughout the jurisdiction.
- (3) The Daviess County Health Department may contact the Operator to determine that the nature of the food operation has not changed.

Temporary Food Establishment: The Daviess County Health Department shall periodically inspect throughout its Permit period a Temporary Food Establishment that prepares, sells, or serves unpackaged potentially hazardous food and may inspect a Temporary Food Establishment that prepares, sells or serves unpackaged, non-potentially 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.

Performance and Risk Based Inspections: Within the parameters specified in the above Inspection Subsection(s) of this Ordinance, the Daviess 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 410 IAC 7-24 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 IAC 7-24 and/or HACCP plan requirements that are non-critical;
- (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 Daviess 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 Daviess 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 Daviess 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 Daviess County Health Department shall provide a copy of the completed Inspection Report and the notice to correct violations to the Operator or 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 /or 410 IAC 7-24 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 Daviess 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 Daviess County Health Department shall verify correction of the violation, document the information on an Inspection Report, and enter the report in the Daviess 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 Daviess 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 Daviess County Health Department inspection by acknowledgement of receipt.

Public Information: Except as specified in section 176 (Trade Secrets) of 410 IAC 7-20, the Daviess 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 renew and/or Permit to operate a Bed and Breakfast Establishment, Retail Food Establishment and/or Temporary Food Establishment is denied, the Daviess 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 Suspension: The Daviess County Health Department may suspend a Permit to operate a Bed and Breakfast Establishment, Retail Food Establishment and/or Temporary Food Establishment without notice or hearing for a period of no more than thirty (30) days, if it is determined through inspection, or examination of employees, food, records, or other means as specified in this ordinance, that an Imminent Health Hazard exists.

Ceasing Operation and Contacting the Daviess 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 Daviess 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. The Daviess County Health Department may be contacted during normal business hours at (812) 254-8666; or through The Daviess County Sheriff's Department 911 Dispatch during non-business hours.

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 Daviess 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: (See IC 16-42-5-28 (g))

Section F: Appeals Section

- (1) Any Person(s) aggrieved by Order 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 (*Secretary of the Daviess County Board of Health See IC 16-20-1-10*). The written request must be mailed or hand delivered to the Health Officer, 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 advised the parties prior to the start of the proceedings.
- (5) The Hearing Officer shall make written findings of facts and shall enter its final Order or determination of this matter in writing.
- (6) The Order completes the Administrative Appeals procedure.

Section G: Conflict of Interest

No Daviess 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 part of ordinances in conflict with this ordinance are hereby repealed, and this ordinance shall be in full force and effect on March 01, 2008

Passed and adopted by the Commissioners of Daviess County, State of Indiana, on this _____ day of _____ 2008.

BOARD OF COMMISSIONERS OF
DAVIESS COUNTY, INDIANA

By _____
Steven A. Myers

By _____
James T. Truelove

By _____
Anthony D. Wichman

ATTEST:

Gail Doades, Auditor