

Ordinance No. 2012- 08

AN ORDINANCE REGULATING
FOOD ESTABLISHMENTS AND BED AND BREAKFAST ESTABLISHMENTS
IN JAY COUNTY, INDIANA AND REPEALING ORDINANCE 1990-5

WHEREAS, It is the obligation of the Jay County Board of Health and the Jay County Board of Commissioners to safeguard public health and food which is provided to consumers is safe, unadulterated, and honestly presented;

AND WHEREAS, the Jay County Board of Health and the Jay County Board of Commissioners finds there is a need to set standards for management, personnel, food operations, equipment, and facilities and intends to repeal existing ordinances;

AND WHEREAS, the Jay County Board of Health and the Jay County Board of Commissioners desire to require construction and/or alteration plans, require Permits and payment of Permit fees for the operation Food Establishments and/or Bed and Breakfast Establishments; to prohibit sale of adulterated, unwholesome, or misbranded food; to regulate inspection of such establishments; to provide for compliance and the enforcement of this ordinance; to provide penalties for violations of said ordinance; and to incorporate by reference Indiana Codes (IC) 16-42-1, IC 16-42-2, IC 16-42-5, IC 16-42-5.2 and Indiana State Department of Health Rules 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, as amended;

AND WHEREAS, the Jay County Board of Health and the Jay County Board of Commissioners hereby authorize the Jay County Health Department to issue Food Establishment, Bed and Breakfast Establishment and Temporary Food Establishment Permits, collect Permit fees and penalties, perform inspections, hold hearings, Order and 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;

NOW THEREFORE BE IT ORDAINED by the Board of Commissioners of Jay County, State of Indiana, that:

Section A: Definitions

Jay County Health Department means the local health department in Jay County or authorized representative having jurisdiction over a Food Establishment or Bed and Breakfast Establishment.

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

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.

Certified Food Handler means a food handler who holds a certificate recognized by the Conference for Food Protection or an equivalent nationally recognized certification program as determined by the Indiana State Department of Health.

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

Farmers' Market means a common facility where two or more farmers or growers gather on a regular basis to sell a variety of fruits, vegetables, and other farm products directly to consumers.

Food Establishment (as defined in IC 16-18-2-137) for purposes of IC 16-42-5 and IC 16-42-5.2, means any building, room, basement, vehicle of transportation, cellar, or open or enclosed area occupied or used for handling food.

The term does not include the following:

- (1) A dwelling where food is prepared on the premises by the occupants, free of charge, for their consumption or for consumption by their guests.
- (2) A gathering of individuals at a venue of an organization that is organized for educational purposes in a nonpublic educational setting or for religious purposes, if:
 - (A) The individuals separately or jointly provide or prepare, free of charge, and consume their own food or that of others attending the gathering; and
 - (B) The gathering is for a purpose of the organization. Gatherings for the purpose of the organization include funerals, wedding receptions, christenings, bar or bat mitzvahs, baptisms, communions, and other events or celebrations sponsored by the organization.
- (3) A vehicle used to transport food solely for distribution to the needy, either free of charge or for a nominal donation
- (4) A private gathering of individuals who separately or jointly provide or prepare and consume their own food or that of others attending the gathering, regardless of whether the gathering is held on public or private property.
- (5) Except for food prepared by a for-profit entity, a venue of the sale of food prepared for the organization:
 - (A) That is organized for: (i) religious purposes; or (ii) educational purposes in a nonpublic educational setting;
 - (B) That is exempt from taxation under Section 501 of the Internal Revenue Code; and
 - (C) That offers the food for sale to the final consumer at an event held for the benefit of the organization; unless the food is being provided in a restaurant or a cafeteria with an extensive menu of prepared foods.
- (6) Except for food prepared by a for-profit entity, an Indiana nonprofit organization that

- (A) Is organized for civic, fraternal, veterans, or charitable purposes
 - (B) Is exempt from taxation under Section 501 of the Internal Revenue Code; and
 - (C) Offers food for sale to the final consumer at an event held for the benefit of the organization; if the events conducted by the organization take place for not more than fifteen (15) days in a calendar year.
- (7) An individual vendor of a farmer's market or roadside stand if the individual meets the requirements of IC 16-42-5-29.

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.

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.

Health Board means a local board that manages the Jay County Health Department, and is composed of seven (7) members appointed as described in IC 16-20-2-3 through IC 16-20-2-12.

Hearing Officer means an individual or quorum (a majority of the total members of Jay County Board of Health) acting in the capacity of a Hearing Officer in an appeals process.

Home-Based Vendors (HBV) means individuals who have made a non-potentially hazardous food product at their primary residence; are selling the food product they made only at a roadside stand or at a farmer's market and comply with IC 16-42-5-29.

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].

Incorporation of Code and Administrative Code by Reference means incorporated into this ordinance by reference are Indiana Code (IC) 16-42-1, IC 16-42-2, IC 16-42-5, and Indiana State Department of Health Rule(s) 410 and Indiana Administrative Code (IAC) 7-24, 410 IAC 7-15.5, 410 IAC 7-21-47, 410 IAC 7-22 and 410 IAC 7-23, as amended.

Inspection Report means the document prepared by the Jay 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 means any Jay 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 Jay County Health Department that authorizes a Person to operate a Food Establishment or Bed and Breakfast Establishment.

Person shall include, but not be limited to, an association, corporation, individual, partnership, firm, business organization, municipality, or other legal entity, government, or governmental subdivision or agency.

Roadside Stand means a place, building, or structure along or near a road, street, lane, avenue, boulevard or highway where Home-Based Vendors sell their food product(s) to the public.

Single Event or Celebration means a gathering associated with a recognized special occasion. It shall not include an individual or group preparing food items for a limited time when not associated with such recognized occasions. An individual, a business, or a commercial entity may obtain a temporary food service permit for a recognized occasion, such as a promotional event, an auction, a fair, or a celebration for a time period of no longer than fourteen (14) consecutive days. Temporary Food Establishment Permits for an event or celebration may not be issued to an individual, business, or commercial entity on a routine or continuous basis in order to avoid compliance with 410 IAC 7-24.

Temporary Food Establishment means a 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: Plan Review

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

- (1) The construction of a Food Establishment or Bed and Breakfast Establishment; or
- (2) The conversion of an existing structure for use as a Food Establishment or Bed and Breakfast Establishment; or
- (3) The remodeling of a Food Establishment or Bed and Breakfast Establishment, or a change of type of Food Establishment or Bed and Breakfast Establishment. If the Jay County Health Department determines that plans and specifications are necessary to ensure compliance with this section.

The plans and specifications for a Food Establishment, Bed and Breakfast Establishment, or Temporary Food Establishment shall include:

- (1) The type of operation

- (2) The type of food preparation (as specified in Appendix B of the published version of 410 IAC 7-24), and the menu.

A plan review fee may be required to be submitted to the Jay County Health Department as established by the Jay County Commissioners.

The plans and specifications shall be deemed satisfactory and approved by the Jay County Health Department and plan review fee paid before a Permit can be issued.

A pre-operational inspection shall show that the Food Establishment or Bed and Breakfast 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.

Section C: Permits

General: It is unlawful for a Person to operate any Food Establishment, Bed and Breakfast Establishment, or Temporary Food Establishment in Jay County, without first obtaining a valid Permit from the Health Officer. The valid Permit shall be posted in a conspicuous location in the Food Establishment, Bed and Breakfast Establishment, 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 Food Establishment or Bed and Breakfast Establishment to be operated by any Person.

A Permit issued under this Ordinance is not transferable.

A Food Establishment or Bed and Breakfast Establishment permitted by the Jay County Health Department shall be considered registered as required in IC 16-42-1-6.

Permit Period:

(1) A Food Establishment Permit shall be issued to any Person and/or Operator of a Food Establishment, 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. Permits shall not be sold, assigned, loaned, or Transferred.

(2) A Bed and Breakfast Permit shall be issued to any Person and/or Operator of a Bed and Breakfast Establishment, 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.

(3) A Temporary Food Establishment Permit shall be issued to any Person and/or Operator of a Temporary Food Establishment, as defined in 410 IAC 7-24, at a fixed location for a period not to exceed fourteen (14) consecutive days in conjunction with a single event or celebration. Temporary Food Establishment Permits are not transferable with respect to the food establishment and/or the event.

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 Jay County Health Officer.

Application: A Person desiring to operate a Food Establishment, Bed and Breakfast Establishment, or Temporary Food Establishment shall submit to the Jay County Health Department a written application for a Permit on a form provided by the Jay County Health Department prior to commencement of operation of the establishment. A Person desiring to renew a permit must submit a written application for a Permit on a form provided by the Jay County Health Department on or before December 31st.

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 Food Establishment, Bed and Breakfast Establishment, or Temporary Food Establishment;
- (2) Information specifying whether the Food Establishment, Bed and Breakfast Establishment, or Temporary Food Establishment is owned by an association, corporation, individual, partnership, or other legal entity;
- (3) A statement specifying whether the Food Establishment, Bed and Breakfast Establishment, 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 Food Establishment, Bed and Breakfast Establishment, or 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 Food Establishment, Bed and Breakfast Establishment, or Temporary Food Establishment.
 - (5) The name, title, address, and telephone number of the Person who functions as the immediate supervisor of the Person specified under subdivision (4) of this section such as the zone, district, or regional supervisor;
 - (6) The names, titles, and addresses of:
 - (A) The Persons comprising the legal ownership as specified under subdivision (2) of this section including the owners and Operators, and
 - (B) The local resident agent if one is required based on the type of legal ownership;
 - (7) A statement signed by the applicant that:
 - (A) Attests to the accuracy of the information provided in the application, and
 - (B) Affirms that the applicant will:
 - (1) Comply with this ordinance, and
 - (2) Allow the Jay County Health Department access to the Food Establishment, Bed and Breakfast Establishment, 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 Jay County Health Department.

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

- (1) Submit to the Jay County Health Department a completed written application for a Permit on a form provided by the Jay County Health Department;
- (2) Be an owner and/or Operator of the Food Establishment, Bed and Breakfast Establishment, or Temporary Food Establishment;
- (3) Comply with the requirements of this ordinance;
- (4) Agree to allow access to the Food Establishment, Bed and Breakfast Establishment, or Temporary Food Establishment and provide required information; and
- (5) Pay the applicable Permit fees at the time the application is submitted.
- (6) Show proof of documentation of a Certified Food Handler Certificate by either the operator or an employee of the food establishment.

Change of Ownership: The Jay County Health Department may renew a Permit for an existing Food Establishment or Bed and Breakfast Establishment, or may issue a Permit to a new owner of an existing Food Establishment or Bed and Breakfast 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 Jay 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 Jay County Health Department if an Imminent Health Hazard may exist;
- (3) Allow representatives of the Jay County Health Department access to the Food Establishment, Bed and Breakfast Establishment, or Temporary Food Establishment at all reasonable times;
- (4) Comply with directives of the Jay County Health Department including time frames for corrective actions specified in Inspection Reports, Notices, Orders, Warnings, and other directives issued by the Jay County Health Department in regard to the Operator's Food Establishment, Bed And Breakfast Establishment, or Temporary Food Establishment in response to community emergencies;
- (5) Accept notices issued and served by the Jay County Health Department;
- (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 Jay County Health Department;

- (7) Post the Permit in a location in the Food Establishment, Bed and Breakfast Establishment, or Temporary Food Establishment that is conspicuous to consumers; and
- (8) Comply with applicable building and fire codes.

Permit Exemptions: Home-Based Vendors, Farmer's Markets or Roadside Stands that meet the requirements of IC 16-42-5-29 are exempt from having to obtain a permit.

Section D: Permit Fees

It shall be unlawful for any Person to operate a Food Establishment, Bed and Breakfast Establishment, or Temporary Food Establishment in Jay County, who has not paid the required Permit fee for the operation of such establishment, unless otherwise exempted from the provisions of this Ordinance.

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

The fee for a Temporary Food Establishment Permit shall be paid for a term beginning the date of commencement of the operation and expiring after each event.

Permit fees for the issuance of a Permit under this Ordinance for a Food Establishment, Bed And Breakfast Establishment, or Temporary Food Establishment shall be as established by the Jay County Commissioners.

A receipt for the payment of such fee shall be provided by the Jay County Health Department. No permits shall be issued or renewed until all fees have been paid in full. Payment is non-refundable.

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

Exemption from Permit Fees: An organization that is exempt from the state gross retail tax under IC 6-2.5-5-21(b)(1)(B), IC 6-2.5-5-21(b)(1)(C), of IC 6-2.5-5-21(b)(1)(D), and qualifies under IC 16-18-2-137 which offers food for sale to the final consumer at an event or celebration held for the benefit of the organization, is exempt from complying with the permit fee requirements of this ordinance.

Late Fees: A late fee for failure to pay the permit fee prior to beginning operation of the Food Establishment or Bed and Breakfast Establishment, or the late fee for failure to renew a permit before the close of business on the last working day of the year shall be assessed after January 15th as established by the Jay County Commissioners. Nothing in this section shall prevent the Health Officer from exercising any other of his/her rights and/or duties regarding suspension, closure, or revocation of the permit with regard to any Food Establishment, Bed and Breakfast Establishment or Temporary Food Establishment.

Reinstatement Fees: If a Food Establishment, Bed and Breakfast Establishment or Temporary Food Establishment has discontinued operation because the permit was suspended or revoked, or otherwise, according to law, the Operator must have the permit

reinstated by the Jay County Health Department before resuming operations. The fee for reinstating a permit will be the original fee charged. The payment of fees under this ordinance is not transferable or refundable.

Section E: Inspection

General: The Jay County Health Department shall inspect a Food Establishment, or a Bed and Breakfast Establishment, at least once every six months, unless a system of risk based inspections is utilized as stated below.

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

- (1) The Food Establishment or Bed and Breakfast Establishment is fully operating under an approved and validated Hazard Analysis Critical Control Point (HACCP) plan.
- (2) The Food Establishment or Bed and Breakfast 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 Jay County Health Department may contact the Operator to determine that the nature of the food operation has changed.
- (4) The establishment's operation involves only coffee service and other unpackaged or pre-packaged food that is not potentially hazardous (time/temperature control for safety of food) such as carbonated beverages and snack food such as chips, nuts, popcorn and pretzels.

Temporary Food Establishment: A Temporary Food Establishment shall notify the Jay County Health Department ten (10) days prior to operating at an event and the Health Department may inspect throughout the permit period 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 Jay County Health Department shall prioritize and conduct more frequent inspections based upon its assessment of a Food Establishment, Bed and Breakfast Establishment or Temporary Food Establishment's history of compliance with this ordinance and potential as a vector of food borne 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 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 Jay 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 Jay County Health Department to determine if the Food Establishment, Bed and Breakfast Establishment, 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 Jay County Health Department is entitled to information and records according to IC 16-42-1-13 and IC 16-42-5-22 & 23, during the Food Establishment, Bed and Breakfast Establishment, or Temporary Food Establishment's hours of operation and other reasonable times, including but not limited to all hours of operation and all times when food preparation and/or food service takes place.

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 under IC 16-20-1-26.

Authority to Copy Records: The Operator shall, upon the request of the Health Officer, permit the copying of any and all records relating to establishment ownership, as well as any and all records relating to food and beverage purchases, sources, storage, pest control, and overall sanitation of said Food Establishment or Bed and Breakfast Establishment.

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

Timely Correction of Critical Violations: Except as specified in the next paragraph, an Operator shall at the time of inspection correct a critical violation of 410 IAC 7-15.5, 410 IAC 7-24 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 Jay 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 Jay County Health Department

may verify correction of the violation, document the information on an Inspection Report, and enter the report in the Jay County Health Department's records.

Refusal to Sign Acknowledgement: Refusal to sign an acknowledgment of a receipt of an inspection report will not affect the Operator's obligation to correct the violations noted in the Inspection Report within the periods specified.

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

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

Public Information: Except as specified in Section 194 (Trade Secrets) of 410 IAC 7-24, the Jay 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 by law (IC 16-20-8).

Section F: Compliance and Enforcement

Application Denial: If an application for a plan review and/or Permit to operate a Food Establishment, Bed and Breakfast Establishment, or Temporary Food Establishment is denied, the Jay County Health Department shall provide the applicant with a written 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 Jay County Health Department may revoke a Permit to operate a Food Establishment, Bed and Breakfast Establishment, or Temporary Food Establishment for a period not to exceed 90 calendar days. If the Permit has been revoked in the past and a clear demonstration of non-compliance is demonstrated by the Permit Holder, then the Permit may be revoked for a longer period as determined by the Health Officer.

Permit Suspension: The Jay County Health Department may suspend a Permit to operate a Food Establishment, or Temporary Food Establishment as a result of the willful and/or continuous violation of any provision of this Ordinance; interference with the Health Officer or his/her authorized representatives in the performance of their duties (Interference shall be defined as the process of obstructing, hampering, or blocking the Health Officer in the performance of his/her duties.); or if it is determined 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 additional periods as determined by the Health Officer.

Ceasing Operation and Contacting the Jay County Health Department: An Operator of a Food Establishment, Bed and Breakfast Establishment, or Temporary Food Establishment shall immediately discontinue operations and notify the Jay 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 food borne 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 Food Establishment, Bed and Breakfast Establishment, or Temporary Food Establishment has discontinued operations for the reasons stated above or otherwise according to law, the Operator must obtain approval from the Jay County Health Department before resuming operations.

Outstanding Fees: Any outstanding fees and fines owed to the Jay County Health Department shall be paid prior to the issuance of a Permit.

Enforcement Options:

- (1) Any person who willfully violates any of the provisions of this Ordinance shall be subject to a fine as set forth in 410 IAC 7-23 and as amended hereafter. Each day the violation continues shall constitute a distinct and separate offense.
- (2) The Jay County Health Department shall be entitled to the payment by the violator of all legal fees, court costs and expenses incurred to enforce this Ordinance.
- (3) The Jay County Health Officer may issue an "Order to Abate" based upon a condition that may transmit, generate, or promote disease.
- (4) In the event the Order is not complied with, the Jay County Health Department Attorney may institute an action for abatement pursuant to I.C. 16-20-1-25, et seq.
- (5) If the action concerning public health is a criminal offense, the Jay County Prosecuting Attorney may institute a proceeding in the courts for enforcement

Section G: Appeals Section

- (1) Any Person(s) aggrieved by Orders issued under the Enforcement Options 1-3 of above 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, and must be received within fifteen (15) days after such final Order is issued.
- (2) Upon the Health Officer's receipt of such request, the Hearing Officer shall hear the matter again in an open hearing after at least five (5) day written notice of the time, place and nature thereof.

- (3) The notice of the hearing shall be served upon the Person requesting the review by hand delivering or Certified Mail 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 Order or determination of this matter in writing.
- (6) The Order completes the Administrative Appeals procedure.

Section H: Conflict of Interest

No Jay County Health Department Official shall conduct themselves in any manner that is or could have the appearance of a Conflict of Interest to this ordinance.

Section I: Unconstitutionality Clause

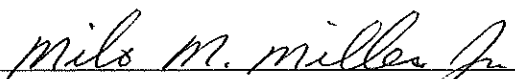
Should any section, paragraph, sentence, clause, or phrase of this ordinance be declared unconstitutional or invalid for any reason, the remainder of this ordinance shall not be affected thereby.

Section J: Repeal and Effective Date

All ordinances, including Jay County Ordinance 1990-5, 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 upon its adoption and publication as provided by law.

Passed and adopted by the Commissioners of Jay County, State of Indiana, on this 10 day of Sept, 2012.

Jay County Board of Commissioners:


Milo Miller, Jr., President


James Zimmerman


Faron Parr

ATTEST: 
Nancy Culy, Jay County Auditor