

1 RETAIL FOOD ESTABLISHMENT, BED AND BREAKFAST
2 ESTABLISHMENT AND/OR **FARMER'S MARKET** ORDINANCE

3 ORDINANCE NO. 2015-18

4 In Cass County, Indiana

5
The purpose of this ordinance is to safeguard public health and assure that food provided to consumers is safe, unadulterated and honestly presented. It establishes definitions; sets standards for management and personnel; food operations; and equipment and facilities; and provides for Retail Food Establishment, Bed and Breakfast Establishment and/or Farmer's Market plan reviews, permits, inspections and employee restrictions.

6 The Cass County Health Department is hereby authorized to issue Farmer's Market, Bed
7 and Breakfast Establishment, Retail Food Establishment and/or Temporary Food
8 Establishment permits; collect permit fees and penalties; perform inspections; hold
9 hearing; Order or otherwise compel correction of violations of this ordinance; and is
10 otherwise authorized to perform all actions necessary for the administration and
11 enforcement of this ordinance.

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

13
14 **Section A: Definitions**

15 **Bed and Breakfast Establishment** (as defined in 410 IAC 7-15.5) means an operator
16 occupied residence that:

- 17 (1) Provides sleeping accommodations to the public for a fee;
18 (2) Has no more than fourteen (14) guest rooms;
19 (3) Provides breakfast to its guests as a part of the fee; and
20 (4) Provides sleeping accommodation for no more than thirty (30) consecutive days to
21 a particular guest.

22
23 The term does not include hotels, motels, boarding houses, or food service
24 establishments.

Conflict of Interest [derived from 68 IAC 9-1-1 (b) (2)] means a situation in which a member's private interest, usually of a financial nature, may influence the member's judgment in the performance of the member's public duty.

A conflict of interest includes, but is not limited to, the following:

(A) Any conduct that would lead a reasonable person, knowing all of the circumstances, to conclude that a member is biased.

(B) Acceptance of any form of compensation other than from the commission for any services rendered as part of the member's official duties for the commission.

(C) Participation in any business being transacted with the commission by any person in which the member or the member's spouse or child has a financial interest.

(D) Use of the member's position, title, or any authority associated with it in a manner designed for personal gain or benefit.

(E) Demonstration, through work or action in the performance of the member's official duties, of any preferential attitude or treatment toward any person.

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

Cass County Official means any appointed or elected Official of Cass County, Indiana

Farmer's Market Vendor means a Retail Food Establishment, who's operation shall not exceed (6) months in a calendar year. It will also operate with the prior approval of the Market Master at a common facility where two (2) or more farmers or growers gather on a regular recurring basis to sell a variety of fruits, vegetables and other farm products directly to the consumer. This does not constitute a Mobile Retail Food Establishment.

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

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

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 Cass County Health Department. (Examples of Hearing Officer could be

63 Cass County Health Board, a subcommittee of Cass County Health Board, a subcommittee of
64 health professionals from the community or other non-biased third party appointed by the
65 Health Board.)

66 **Imminent health hazard** (as defined in 410 IAC 7-24) means a significant threat or
67 danger to health that is considered to exist when there is evidence sufficient to show that a
68 product, practice, circumstance, or event creates a situation that requires immediate
69 correction or cessation of operation to prevent injury or illness based on the:

- 70 (1) number of potential injuries or illnesses; and
71 (2) nature, severity, and duration of the anticipated injury or illness.

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

74 **Mobile Retail Food Establishment** means a retail food establishment that is:

- 75 (1) Wheeled;
76 (2) On skids;
77 (3) Mounted on a vehicle;
78 (4) A marine vessel; or
79 (5) Otherwise readily movable; such as a pushcart or trailer;
80 (6) And complies with all sanitation requirements as provided in Title 410 IAC 7-24.

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

85 **Order** means an agency action of particular applicability that determines the legal rights, duties,
86 privileges, immunities, or other legal interests of one (1) or more specific persons. The term
87 includes:

- 88 (1) a license; or
89 (2) a determination under IC 4-21.5-3-6(a) (3) or IC 4-21.5-3-6(a) (4).

90 *As added by P.L.18-1986, SEC.1. Amended by P.L.42-1995, SEC.1.*

91 **Permit** means the document issued by the Cass County Health Department that authorizes
92 a Person to operate a Bed and Breakfast Establishment, Retail Food Establishment,
93 Temporary Food Establishment, and/or as a vendor at a Farmer's Market.

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

96 **Retail Food Establishment** (410 IAC 7-24) means an operation as follows that:

(1) Stores, prepares, packages, serves, vends, or otherwise provides food for human consumption, such as the following:

- (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 market.
- (E) A grocery store.
- (F) A convenience store.
- (G) A vending location.
- (H) A conveyance used to transport people.
- (I) An institution.
- (J) A food bank.
- (K) A commissary.
- (L) A cottage industry.
- (M) A hospice facility as defined in IC 16-25-11.
- (N) A health care facility as defined in IC 16-21-2.
- (O) A health facility as defined in IC 16-18-2.
- (P) A child care facility as defined in IC 12-13-5, such as the following:
 - (i) Licensed child care centers licensed under 470 IAC 3-4.7.
 - (ii) Licensed child care institutions licensed under 470 IAC 3-11, 470 IAC 3-12, and 470 IAC 3-13.
 - (iii) Registered child care ministries registered under 470 IAC 3-4. 5.
- (Q) An assisted living facility as defined in IC 12-10-15.

(2) 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 operation, such as a transportation vehicle or a central preparation facility that supplies a vending location or satellite feeding location unless vending or feeding location is permitted by the regulatory authority.

(2) An operation that is conducted in a:

- (A) mobile;
- (B) stationary;
- (C) temporary; or
- (D) permanent;

facility or location, where consumption is on or off the premises and regardless of whether there is a charge for the food.

(c) The term does not include the following:

- (1) An establishment that offers only prepackaged foods that are not potentially hazardous.
- (2) A produce stand that offers only whole, uncut fresh fruits and vegetables.
- (3) A food processing plant operated under IC 16-42-5.
- (4) A private home where food is prepared by a member of an organization that is operating under IC 16-42-5-4.

- (5) An area where food that is prepared as specified in subdivision (4) is sold or offered for human consumption.
- (6) A bed and breakfast establishment as defined and regulated under IC 16-41-31 and 410 IAC 7-15.5.
- (7) A private home that receives catered or home-delivered food.
- (8) A private home.

Seasonal Food Establishment means an annual retail food establishment that operates during a time period of not more than nine (9) months in a calendar year.

Temporary Food Establishment (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 shall be deemed unlawful for a person to operate any Bed and Breakfast Establishment, Retail Food Establishment, Temporary Food Establishment and/or as a Farmer's Market Vendor in Cass 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, Temporary Establishment and/or Farmer's Market Booth.

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, Temporary Food Establishment and/or Farmer's Market Vendor 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 Cass County Health Department shall be considered registered as required in IC 16-42-1-6.

Permit Period: A permit for an annual Bed and Breakfast Establishment and/or Retail Food Establishment shall be issued for a term of one (1) year; beginning January 1 and expiring December 31, of the same year and shall be applied for by the Person and/ or Operator annually.

A permit for a Seasonal Food Establishment and/ or Farmer's Market Vendor shall be applied for annually or a minimum of thirty (30) days prior to the day of operation.

A permit for a Temporary Food Establishment shall be for the term of one (1) continuous operation, and applied for a minimum of five (5) days prior to the day of operation.

Permit Content: Any Permit Issued by the Health Officer shall contain:

1. The name and address of Person and/ or Operator to whom the Permit is granted;
2. The address and/or 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 Cass County Health Officer.

Application: A Person desiring to operate a Bed and Breakfast Establishment, Retail Food Establishment, Temporary Food Establishment and/or Farmer's Market Vendor shall submit to the Cass County Health Department a written application for a Permit on a form provided by the Cass 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, Temporary Food Establishment and/or Farmer's Market Vendor;
2. Information specifying whether the Bed and Breakfast, 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, Temporary Food Establishment and/or Farmer's Market Vendor:
 - (A) If not permanent, is a 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.
 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 section (3) subsection (B, 2) of this article 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 section (3) subsection (B, 2) of this article 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, Temporary Food Establishment and/or Farmer's Market Booth.
 5. The name, title, address and telephone number of the Person who functions as the immediate supervisor of the Person specified under section (4) of this article such as the zone, district, or regional supervisor;
 6. The names, titles, and address of:
 - a. The person(s) comprising the legal ownership as specified under section (2) of this article including the Owner(s) and Operator(s), 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 application will:
 - i. Comply with this ordinance, and
 - ii. Allow the Cass County Health Department access to the Bed and Breakfast, Retail Food Establishment, Temporary Food Establishment and/or Farmer's Market Booth and records as specified in 410 IAC 7-15.5 and 410 IAC 7-24.
 8. Other information required by the Cass 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, Temporary Food Establishment and/or Farmer's Market Booth;
2. Comply with the requirements of this ordinance;
3. Agree to allow access to the Bed and Breakfast Establishment, Retail Food Establishment, Temporary Food Establishment and/ or Farmer's Market Booth and provide required information; and
4. Pay the applicable Permit Fees at the time the application is submitted.

Plans Requirements: The owner or other authorized agent of an existing or proposed Bed and Breakfast Establishment and/ or Retail Food Establishment shall submit to the Cass 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

- 277 3. The remodeling of a Bed and Breakfast Establishment and/or Retail Food
278 Establishment or a change of type of Bed and Breakfast Establishment and/or
279 Retail Food Establishment or food operation if the Cass County Health
280 Department determines that plans and specifications are necessary to ensure
281 compliance with this section.
- 282 a. The plans and specifications for a Bed and Breakfast Establishment
283 and/or Retail Food Establishment shall include, the type of operation,
284 type of food preparation as specified in Appendix A (CONT.) of the
285 published version of 410 IAC 7-24), and the menu.
 - 286 b. The plans and specifications shall be deemed satisfactory and complete,
287 before approved by Cass County Health Department and a Permit can be
288 issued.
 - 289 c. A pre-operational inspection shows that the Bed and Breakfast
290 Establishment and/or Retail Food Establishment is built or remodeled in
291 accordance with the approved plans and specifications and that the
292 Establishment is in compliance with this ordinance, 410 IAC 7-24 and/or
293 410 IAC 7-15.5.
- 294

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

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

- 304 1. Comply with the provisions of this ordinance and all laws and rules adopted by
305 reference herein and the conditions of any variances granted by the Indiana State
306 Department of Health;
- 307 2. Immediately discontinue affected operations and notify the Cass County Health
308 Department if an Imminent Health Hazard may exist;
- 309 3. Allow representatives of the Cass County Health Department access to the Bed
310 and Breakfast Establishment, Retail Food Establishment, Temporary Food
311 Establishment and/or Farmer's Market Vendor at all reasonable times;
- 312 4. Comply with directives of the Cass County Health Department including time
313 frames for corrective actions specified in Inspection Reports, Notices, Orders,
314 Warnings, and other directives issued by the Cass County Health Department in
315 regard to the Bed and Breakfast Establishment, Retail Food Establishment,
316 Temporary Food Establishment and/or Farmer's Market Vendor or in response
317 to community emergencies;
- 318 5. Accept notices issued and served by the Cass County Health Department; and
- 319 6. Be subject to the administrative, civil, injunctive, and criminal remedies
320 authorized in law for failure to comply with this ordinance or a directive of the
321 Cass County Health Department.

7. Post the Permit in a conspicuous location in the Bed and Breakfast Establishment, Retail Food Establishment and/or Farmer's Market Booth.

Section C: Permit Fees

It shall be unlawful for any Person to operate a Bed and Breakfast Establishment, Retail Food Establishment, Temporary Food Establishment and/ or Farmer's Market Booth in Cass County, whom has not paid the Permit Fee required for the operation of such an establishment.

The fee shall be paid annually for a term beginning January 1 and expiring on December 31, of the same year and shall be applied for by the Person or Operator. Fees for a Seasonal Retail Food Establishment shall be paid a minimum of thirty (30) days prior to operation. Temporary and/ or a Farmer's Market Vendor shall be paid a minimum of five (5) days prior to the day of operation.

Permit fees for the issuance of a Permit under this Ordinance to a Bed and Breakfast Establishment, a Retail Food Establishment, Temporary Food Establishment and/or a Farmer's Market Vendor shall be set by the Cass County Health Department, as provided by the Statutes of the State of Indiana (IC 16-20-1-27)

A receipt for the payment of such fees shall be provided by the Cass County Health Department.

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

Schedule of Permit Fees:

The permit fees for the operation of a Bed and Breakfast Establishment, Retail Food Establishment, Temporary Food Establishment and/or Farmer's Market Vendor in Cass County shall be scheduled in accordance to menu category.

1. Menu 1: \$50.00/annual
2. Menu 2-5: \$100.00/annual
3. Catering Permit: \$20.00 per day
4. Temporary Food Establishment: \$20.00 per day
5. Farmers Market Permit (potentially hazardous foods): \$25.00 per season

Late Fees & Penalties: A penalty for operating without first registering with the Cass County Health Department shall be assessed equal to the late fee. If a Bed and Breakfast Establishment, Retail Food Establishment, Temporary Food Establishment and/ or

Farmer's Market Vendor fail to register with the Cass County Health Department for continuous days, then that violation shall be assessed in accordance with (410 IAC 7-23) at a rate of \$250.00 per day.

A late fee for failure to pay the permit fee prior to operation of the Bed and Breakfast Establishment, Retail Food establishment and/ or Farmer's Market Booth or the late fee for failure to renew a permit after the expiration of the permit to operate a Bed and Breakfast and/or Retail Food Establishment shall be assessed as set by the Cass County Health Board. Late fee for failure to register with the Cass County Health Department shall be assessed at fifty dollars (\$50) per day of operation.

Late Fees: The payment of fees under this ordinance is non-transferable or refundable.

Exemption from Permit Fees: An organization that is exempt from taxation under Section 501 of the Internal Revenue Code; offers the food for sale to the final consumer at an event held for the benefit of an organization; and the events conducted take place for not more than fifteen (15) days in a calendar year. (SEA 190) The Health Officer shall be provided, upon request, proof of an organization's 501 tax exemption certification.

Section D: Inspection

General: The Cass County Health Department shall inspect a Bed and Breakfast Establishment and/or Retail Food Establishment at least once every six (6) months.

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

1. The Bed and Breakfast Establishment and/or Retail Food Establishment are fully operating under an approved and validated Hazard Analysis of Critical Control Points (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 Cass County Health Department may contact the Operator to determine that the nature of the food operation has not changed.

Temporary Food Establishment: The Cass 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 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;
 - a. functions such as hand washing, food preparation and protection, food temperature
 - b. control, ware washing, providing drinking water, waste retention and disposal, and
 - c. insect and rodent control; or
2. Has untrained food employees.

Farmer's Market Vendor: The Cass County Health Department shall periodically inspect throughout its Permit period a Farmer's Market Vendor that sells or serves potentially hazardous foods.

1. Has improvised rather than permanent facilities or equipment for accomplishing;
 - a. functions such as hand washing, food preparation and protection, food temperature control
 - b. ware washing, providing drinking water, waste retention and disposal, and
 - c. 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 Cass County Health Department shall prioritize, and conduct more frequent inspections based upon its assessment of a Bed and Breakfast Establishment, Retail Food Establishment, Temporary Food Establishment and/or Farmer's Market Vendor's history of compliance with this ordinance and the Bed and Breakfast Establishment, Retail Food Establishment, Temporary Food Establishment and/or Farmer's Market Vendor'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;
 - a. The number of people served; and
 - b. Whether the population served is a highly susceptible population.

Access Allowed at Reasonable Times After Due Notice: After the Cass 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 Cass County Health Department to determine if the Bed and Breakfast Establishment, Retail Food Establishment, Temporary Food Establishment and/or Farmer's Market Vendor is in

compliance with this ordinance by allowing access to the establishment, allowing inspection, and providing information and records specified in this ordinance. The Cass 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 Cass 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 Cass 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 Cass County Health Department shall verify correction of the violation, document the information on an Inspection Report, and enter the report in the Cass 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 Cass County Health Department historical record for the Bed and Breakfast Establishment, Retail Food Establishment, Temporary Food Establishment and/or Farmer's Market Vendor.

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

Public Information: Except as specified in section 194 (Trade Secrets) of 410 IAC 7-24, the Cass 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. (IC 16-20-8-6)

Section E: Compliance and Enforcement

Application Denial: If an application for a plan review and/or Permit to operate a Bed and Breakfast Establishment, Retail Food Establishment, Temporary Food Establishment and/or Farmer's Market Vendor is denied, the Cass 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 Cass County Health Department may suspend a Permit to operate a Bed and Breakfast Establishment, Retail Food Establishment, Temporary Food Establishment and/or Farmer's Market Vendor 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.

Inspection protocol: The Standard Operating Procedure (SOP) for the Cass County Health Department in regarding inspections of a Bed and Breakfast Establishment, Retail Food Establishment, Temporary Food Establishment and/or Farmer's Market Vendor shall be as follows:

1. The first (1st) inspection will be known as a routine inspection, and depending on the severity of violations may warrant a follow-up inspection;
2. The second (2nd) inspection will be known as a follow-up inspection to ensure compliance and corrective measures have been taken, during this inspection if it is found that an establishment has repeat violations persisting from the first (1st) inspection, fines will be issued at a frequency of (\$25) per each non-critical violation which has been repeated and at a frequency of (\$50) per each critical violation which has been repeated; If during the second (2nd) inspection it is found that corrective measures have not been taken resulting in ongoing issues with non-compliance;
3. A third (3rd) inspection is necessitated, the third inspection will be known as an additional follow-up to ensure compliance, at this time if violations found in this

515 inspection are continually being repeated from the first (1st) and second (2nd)
516 inspections it will result in a minimum twenty four hour (24 hr) closure of the
517 establishment or until such time that all violations have been corrected
518 whichever is longer.

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

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

529 **Resuming Operation:** If a Bed and Breakfast Establishment, Retail Food Establishment,
530 Temporary Food Establishment and/or Farmer's Market Vendor have discontinued
531 operations for the reasons stated above or otherwise according to law, the Operator must
532 obtain approval from the Cass County Health Department before resuming operations.

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

535 **Enforcement Options:** *(See IC 16-42-5-28(g))*

536 The following are options available to Cass County Health Department for consideration:

- 537 1. Issue citation based upon Cass County Ordinance 2012-03 Citation Ordinance and
538 Retail Food Establishment and/or Bed and Breakfast Establishment requirements.
539 (See IC 16-42-5-28(g) and IC 33-6-3-1 for guidance) (See also the Appeals Section
540 of this Ordinance to ensure that due process is followed.)
- 541 2. Conduct administrative proceeding for suspension and/or revocation of the Bed and
542 Breakfast Establishment, Retail Food Establishment, Temporary Food
543 Establishment and/or Farmer's Market Vendor Permit in front of a Hearing Officer.
544 (See the Appeals Section of this Ordinance to ensure that due process is followed.)
- 545 3. The Cass County Health Officer may issue an "Order to abate" based on a condition
546 that may transmit, generate, or promote disease. Failure on the part of the Operator
547 to comply with the Order could result in the enforcement of the Order in the court of
548 jurisdiction by the initiation of an action by the county attorney or county

prosecuting attorney. (See IC 16-20-1-25; See also the Appeals Section of this Ordinance to ensure that due process is followed.)

4. If the action concerning public health is an ordinance violation, request the county attorney or county prosecuting attorney to institute a proceeding in the courts for the enforcement of the ordinance violation. (See IC 34-28-5-1)
5. If the action concerning public health is a criminal offense, request the county attorney or county prosecuting attorney to institute a proceeding in the courts for enforcement. (See IC 16-20-1-25 (c)).

Section F: Appeals Section

Any Person(s) aggrieved by Orders issued under the Enforcement Options 1-3 of Section E above shall be entitled to a review of the final Order before a Hearing Officer by filing a written request therefore with the Health Officer (*Secretary of the Cass County Board of Health*)(See IC 16-20-1-10). The written request must be mailed or hand delivered to Health Officer, 512 High St., Logansport, IN 46947, and must be received within fifteen (15) days after such final Order is issued.

1. 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.)
2. 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.
3. The Hearing Officer establishes the Rules of Procedure and advises the parties prior to the start of the proceedings.
4. The Hearing Officer shall make written findings of facts and shall enter its final Order or determination of this matter in writing.
5. The Order completes the Administrative Appeals procedure.

Section G: Conflict of Interest

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

583 **Section H: Unconstitutionally Clause**

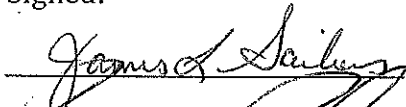
584 Should any section, paragraph, sentence, clause, or phrase of this ordinance be declared
585 unconstitutional or invalid for any reason, the remainder of this ordinance shall not be
586 affected thereby.

587 **Section I: Repeal and Effective Date**

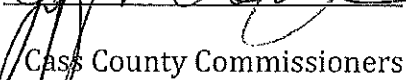
588 All ordinances and parts of ordinances in conflict with this ordinance are hereby repealed,
589 and this ordinance shall be in full force and effect thirty (30) days after its adoption and
590 publication as provided by law.

591 Passed and adopted by the Commissioners of Cass County, State of Indiana, on this 19
592 day of October 2015.

593 Signed:

594 

595 

596 

597 Cass County Commissioners

609 ATTEST:

610

611

Noreen M. De

612 Cass County Auditor

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