

ORDINANCE NUMBER 2017-12-18-1

**AMENDMENT TO THE RETAIL FOOD ESTABLISHMENT /
BED AND BREAKFAST ESTABLISHMENT
ORDINANCE 2015-3-2**

WHEREAS, it is the desire and duty of the County Board of Commissioners to protect human health; and

WHEREAS, in the opinion of the County Board of Commissioners, it is necessary to enact this Amendment to Ordinance 2015-3-2 to safeguard human health;

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF PUTNAM COUNTY, STATE OF INDIANA, as follows:

The purpose of this Amendment of Ordinance 2015-3-2 is to define Farmer's Markets, Roadside Stands, Homebased Vendors, Festivals, Potentially Hazardous Food Product, and the duties of the Market Master and/or Event and Festival coordinators. This amendment is to safeguard public health and assure that food provided to the consumers is safe, unadulterated, and honestly presented. This amendment does not replace Ordinance 2015-3-2. This Amendment to Ordinance 2015-3-2 incorporates by reference Indiana Codes IC 16-41-31, IC 16-42-1, IC 16-42-2, IC 16-42-5, IC 16-42-5.5, Indiana State Department of Health Administrative Codes Rule 410 IAC 7-15.5, Rule 410 IAC 7-22, Rule 410 IAC 7-23, Rule 410 IAC 7-24, IC 16-42-5-29.

The following definitions are hereby made a part of Ordinance 2015-3-2 Section 110.003 Definitions:

Event/Festival Coordinator: means the individual or group of individuals that are responsible for coordinating and organizing the event and/or festival.

Farmer's Market Vendor: means a Retail Food Establishment, excluding a Mobile Food Establishment, which operates with the 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 consumers.

Festivals: means an occasion that will last no longer than two (2) days, such as but not limited to:

- (1) Berry Street Festival;
- (2) Cloverween;
- (3) Fourth of July Festivals;
- (4) Rib Festivals;
- (5) Airport Appreciation Days;
- (6) National Night Out

Homebased Vendor (HBV): means an individual who:

- (1) Has made a non-potentially hazardous food product in their primary residence;
- (2) Is selling the food product they made, ONLY at a roadside stand or at a farmer's market; and
- (3) Complies with IC 16-42-5-29.

Market Master: means the individual or group of individuals that are responsible for coordinating and organizing the farmer's market.

Potentially Hazardous Food Product: means:

- (a) A food that is natural or synthetic and requires temperature control because it is in a form capable of supporting any of the following:
 - (1) The rapid and progressive growth of infectious or toxigenic microorganisms.
 - (2) The growth and toxin production of clostridium botulinum.
 - (3) In raw shell eggs, the growth of Salmonella enteritidis.
- (b) The term includes the following:
 - (1) A food of animal origin that is raw or heat treated.
 - (2) A food of plant origin that is heat treated or consists of raw seed sprouts.
 - (3) Cut melons.
 - (4) Garlic-in-oil mixtures that are not modified in a way that results in mixtures that do not support growth described in subsection (a).

It must be noted that this term, while not quite specific, is essentially the same term and has the same meaning as the commonly recognized term "Potentially Hazardous Food", which is used in other Indiana food laws, rules, and ordinances. It is suggested that, for the purpose of preventing possible confusion over very subtle differences in the two terms, the term "potentially hazardous food" may be used interchangeable with, or substituted for, the term "potentially hazardous food product". Scientifically recognized principles, such as pH, water activity (Aw), and

other intrinsic factors, will be used to determine whether or not a food must be time or temperature controlled to be safe within the context of either definition.

Roadside Stand: means a place, building, or structure along, or near, a road, street, lane, avenue, boulevard, or highway where a home-based vendor (HBV) sells their food product(s) to the public.

The following is hereby made a part of Ordinance 2015-3-2 Compliance and Enforcement as a new Section:

Homebased Vendor (HBV): A HBV is not a “food establishment” as defined in Ordinance 2015-3-2 and IC 16-18-2-137. IC 16-42-5-29 added a specification into the definition of food establishment which excludes an individual vendor of a farmers’ market or roadside stand meeting the requirements of IC 16-42-5-29. Because a HBV is not a food establishment, it is not subject to “food establishment” regulatory activities, such as registration, permitting/licensing and routine inspection activities usually conducted by local health departments, Indiana State Department of Health (ISDH), or other Indiana Food Regulatory Departments, provided the vendor has complied with IC 16-42-5-29(b).

The production area of a HBV is required to be in the vendor’s primary residence, which may include another building or structure on the HBV premises, and will not be routinely inspected. The HBV cannot commingle the activities of a HBV food product and those of a food establishment. If a HBV sells food products other than those produced in the home, then it becomes a food establishment. **One is either a HBV or a food establishment, not both.**

A HBV failing to meet the requirements of Section 29(b) means the vendor’s place of production and food product(s) become subject to all of the food safety requirements of a “food establishment”. Examples include the operation of a café, restaurant, or grocery store.

Food Products produced by a HBV (IC 16-18-287.8 and Section 29(b)(2)) include, but are not limited to:

Baked items, such as cookies, cakes, fruit pies, cupcakes, bars, yeast breads, fruit breads, baguettes

Candy and confections, such as caramels, chocolates, fudge, peanut brittle, chocolate covered fruits, bon bons, buckeyes, chocolate covered nuts

Produce, such as **unprocessed** fruits and vegetables (i.e. cherries, blackberries, cranberries, grapefruit, strawberries, oranges, blueberries, plums, tomato)

Tree nuts, legumes

Pickles processed in a traditional method

Honey, molasses, sorghum, maple syrup

The above food products may be refrigerated or frozen for quality purposes.

The above listed items are typical examples of food products that are either high acid and/or low water activity, therefore making them a “non-potentially hazardous food”.

Whole, uncut produce is not restricted from sale regardless of the locale of its origin.

Mushrooms grown as a product of agriculture are not restricted from sale. It is recommended that uncultivated (wild) mushrooms be certified in writing as to their species by a person competent to make such a certification.

Traditional jams, jellies, and preserves made from strawberries, grapes, raspberries, etc. are often made from acid foods and have a low Aw in its final form as safety factors. Special recipes of these products, including those which may be called "low sugar" or "no sugar added", as well as some fruit butters (pumpkin, pear) may fall into the category of acidified food or low-acid canned food and may not be allowed to be sold since they may be considered a potentially hazardous food.

A HBV's food product in its final form **shall not be potentially hazardous food**. HBV food products may NOT contain ingredients in any form which have as a component:

- Meat (domestic or wild),
- Poultry,
- Aquatic animal products,
- Dairy (including cheese, butter, yogurt, but excluding some baked items, i.e. cakes and cookies), or
- Egg products (excluding some baked items, i.e. cakes and cookies, and dried noodles), including fresh shell eggs.

In addition, a HBV's food product **shall not be**:

- A "canned" or other "hermitically sealed container" of acidified food, (i.e. salsas, chutney, chow-chow, pickled beets)
- A "canned" or other "hermitically sealed container" of low-acid food (i.e. cooked vegetables, meats, poultry, raw fish)
- Cut melons
- Raw seed sprouts that have been harvested
- Non-modified garlic-in-oil mixtures
- Cut tomatoes

Packaging considered to be "canned" or "hermitically sealed" consists of cans, glass jars, plastic containers, laminated pouches, paperboard containers, etc.

The use of "reduced oxygen packaging" method, such as the use of a vacuum packaging machine, is not allowed.

All state or federal laws governing the production and sale of the above listed items are still applicable.

If the food product of a HBV is found to be or contain any of the above listed items, it should be considered a violation of this Ordinance and IC 16-42-5-29, and according to IC 16-42-5-29(d), must not be sold.

Purdue University or other private consultants may serve as resources to assist in determining if a specific food product is acceptable to be produced and sold as an HBV food product.

Poultry up to 1000 birds can be sold to the end consumer at a Farmer's Market or roadside stand or from the farm. All poultry sold at a farmer's market, roadside stand or farm, must be sold frozen.

Rabbits that are slaughtered and processed on the farm to be sold at a farmer's market or at a roadside stand must be frozen.

Labeling/Misbranded of HBV Food Products:

There are some very specific labeling requirements for the food product of a HBV. Any food product provided by a HBV shall include a label which contain the following:

The name and address of the producer of the food product.

The common or usual name of the food product.

The ingredients of the food product, in descending order by predominance or by weight.

The net weight and volume of the food product by standard measure or numerical count.

The date on which the food product was processed.

The following statement in **at least 10 point type**: "This product is home produced and processed and the production area has not been inspected by the State Department of Health or the Putnam County Health Department."

This labeling **must** be present with and/or on the food at the point of sale regardless of whether or not the product is packaged. Unpackaged food, such as baked items, should be considered "labeled" when there is easily readable signage accompanying the food product stating all of the above listed items. Labeling (or signage) is not required for whole, uncut produce. A HBV food product which is not labeled according to Section 29(b)(5) is misbranded and may not be sold until the label is provided or corrected.

Roadside Stand or Farmer's Market:

To comply with the subsection 29(a), a "Home-Based Vendor" may sell their food product(s) **ONLY** in two places:

A farmer's Market; and

A Roadside stand

These products may not be sold at any other venue, such as a grocery store, restaurant, festival, carnival or any other event, without a permit issued by the Putnam County Health Department.

Market Master, Event and/or Festival Coordinator:

Market Master, Event/Festival Coordinators have control over the vendors who are allowed to participate and the product(s) each vendor may sell. The Market Master, Event/Festival Coordinator has the authority, above and beyond the Putnam County Health Department, to remove a vendor and/or food product from sale. It is recommended that the Putnam County Health Department educate the Market Masters and Event/Festival Coordinators on IC 16-42-5-29 and the implications it may have on their particular market, event/festival. The decision to allow the sale of products produced by a HBV lies with the Market Master and Event/Festival Coordinators. However, some permits may be required by the Putnam County Health Department. It is the responsibility of the Market Master and/or the Event/Festival Coordinator to contact the Putnam County Health Department to inform them of what is being sold at the farmer's market, event or festival and the dates times and location of the market, event, or festival. It is also the responsibility of the Market Master and/or the Event/Festival Coordinator to verify that vendors have the proper permits and certifications.

Inspections of the farmer's markets, events and festivals will be conducted during reasonable times and will be unannounced. Any person selling items not permitted under IC 16-42-5-29 will be asked to stop selling the unpermitted item. The Market Master and/or the Event/Festival Coordinator will be informed of the violation. If the vendor continues to sell the unpermitted product, the Market Master and/or the Event/Festival Coordinator could be held liable. All violations will be documented in writing at the time of the inspection.

Any vendor at a Farmer's Market, Festival or Event that is required to have a Retail Food Permit as defined in Rule 410 IAC 7-24 and/or Ordinance 2015-3-2 and does not have a permit will be asked to leave the event, the vendor, the Market Master, and/or the Event/Festival Coordinator will be issued a written violation notice at the time of the violation. If the vendor does not leave, the Market Master, and/or the Event/Festival Coordinator could be held liable.

The following is hereby made a part of Ordinance 2015-3-2 under Appeals Section 110.999 Penalty:

Civil Penalties: The Putnam County Health Department may commence an action to levy civil penalties against the Market Master, and/or the Event/Festival Coordinator who:

- (1) Fails to comply with IC 16-42-5-29 and/or this Ordinance; or
- (2) Interferes with or obstructs the Putnam County Health Department and/or its designated agent in the performance of duties under IC 16-42-5, Rule 410 IAC 7-21, Rule 410 IAC 7-24 or this Ordinance.

A civil penalty will be assessed at twenty-five dollars (\$25) for the first offense and fifty dollars (\$50) for each consecutive offense.

This Amendment to Ordinance 2015-3-2 is HEREBY, passed and adopted by the Board of Commissioners of Putnam County, State of Indiana, on this 18 day of Dec, 2017.

PUTNAM COUNTY COMMISSIONERS:

David E Berry
David Berry, President

Rick Woodall
Rick Woodall, Vice-President

Donald K. Walton
Donald Walton, Member

ATTEST BY:

Lorie Hallett
Lorie Hallett, Auditor

Prepared by: Putnam County Health Department.

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each social security number in this document, unless required by law. _____