

## CHAPTER 117: ST. JOSEPH COUNTY FOOD ESTABLISHMENTS

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### § 117.01 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**APPLICANT.** Any person applying for renewal, new or temporary permit under this chapter.

**APPROVAL OF PLANS.** All retail food establishments that are hereafter constructed or altered shall conform to the applicable requirements of the Indiana State Department of Health and all applicable Building, zoning and Fire Codes. The Health Department shall review and approve all properly prepared plans and specifications before construction begins. Failure to obtain the Health Officer's approval shall be the basis for the issuance of a stop work order by the Health Officer.

**BED AND BREAKFAST ESTABLISHMENT.** As defined in 410 I.A.C. 5-15.5, an operator- occupied residence that meets all of the following:

- (1) Provides sleeping accommodations to the public for a fee;
- (2) Has no more than 14 guest rooms; and
- (3) Provides sleeping accommodations for no more than 30 consecutive days to particular guests.

**CERTIFIED FOOD HANDLER.** As defined in 410 I.A.C. 7-22, 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.** As derived from 68 I.A.C. 9-2-1, section (b), subsection (2), a situation in which the private financial interest of the Health Official, Health Official's spouse, ex-spouse, siblings, in-laws, children or unemancipated child may influence the Health Official's judgment in the performance of a public duty.

**EVENT COORDINATOR.** The person who is in charge of a temporary event and coordinates contacting temporary food establishment(s) to attend the event. It shall be the responsibility of the EVENT COORDINATOR to inform the temporary food establishment(s) of the requirements they must meet for the St. Joseph County Health Department. The EVENT COORDINATOR must submit to the St. Joseph County Health Department a "plan and review" 30 days prior to the event.

**FARMER'S MARKET.** Any food service establishment offering potentially hazardous foods in an enclosure, stall or other facility, whether fixed or temporary, and operating no more than four days per week.

**FOOD.** As defined in 410 I.A.C. 7-24, the following:

- (1) All articles used for food, drink, confectionery or condiment, whether simple, mixed or compound; and

(2) All substances or ingredients used in preparation thereof.

**FOOD DELIVERY VEHICLE.** Any type of vehicle that is motorized or is propelled by human power for the purpose of delivering or selling potentially hazardous foods to the public.

**HAZARD ANALYSIS CRITICAL CONTROL POINT (HAACP).** As defined in 410 I.A.C. 7-24, 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.** The Health Officer having jurisdiction in St. Joseph County or his or her representative(s).

**HEALTH OFFICER HEARING.** A hearing called by the Health Officer for a bed and breakfast establishment or retail food service/store establishment for failure to comply with this chapter or 410 I.A.C. 7-15.5 or 410 I.A.C. 7-24.

**HEARING OFFICER.** Shall mean an individual acting in the capacity of HEARING OFFICER in the proceedings. The HEARING OFFICER is not the Health Officer or any other employee of the St. Joseph County Health Department. The St. Joseph County Board of Health shall designate a HEARING OFFICER and decide all appeals under this chapter.

**IMMINENT HEALTH HAZARD.** As defined in 410 I.A.C. 7-24.

**INSPECTION REPORT.** The document prepared by the St. Joseph County Health Department that is completed as the result of the inspection and provided to the operator/person in charge of the establishment at the time of the inspection.

**INVOLUNTARY CLOSURE.** Any occurrence wherein the Health Department posts a closure sign and orders the establishment to cease operation. This sign shall not be removed by anyone except the Health Officer. After a re-opening inspection, the establishment shall re-apply for a new permit and pay all applicable fees associated with it.

**MULTI-UNIT OPERATION.** Any establishment that houses several retail food service establishments or retail food market establishments in one building. There must be one operator/person in charge of the MULTI-UNIT OPERATION.

**NONPROFIT ORGANIZATION.** Any organization that operates without being required to pay federal taxes and operates without exemption as stated in applicable state statutes and regulations. The NONPROFIT ORGANIZATION shall possess and upon request from the St. Joseph County Health Department show the federal tax identification number.

**OPENING INSPECTION.** Before a bed and breakfast establishment, retail food service/store establishment or temporary food establishment can begin operation or obtain a food permit in St. Joseph County, the owner/operator of the bed and breakfast establishment, retail food service/store establishment or temporary food establishment must contact the Health Department to schedule an OPENING INSPECTION.

**OPERATOR.** The person who has primary oversight responsibility for the 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.** As derived from I.C. 4-21.5-1-9, means Health Department action of particular applicability that determines the legal rights, duties, privileges, immunities or other legal interest of one or more specific persons. This term also includes the permit.

**PERMIT.** The document issued by the St. Joseph County Health Department that authorizes a person to operate a bed and breakfast establishment, retail food service/store establishment or temporary food establishment.

**PERSON.** An association, corporation, individual, partnership or other legal entity, governmental subdivision or agency.

**POTENTIALLY HAZARDOUS FOOD(S).**

(1) A food that is natural or synthetic and that requires temperature control because it is in a form capable of supporting:

- microorganisms;
- (a) The rapid and progressive growth of infectious or toxigenic
  - (b) The growth and toxin production of *Clostridium botulinum*; or
  - (c) The growth of *Salmonella enteritidis* in raw shell eggs.
- (2) **POTENTIALLY HAZARDOUS FOOD** does not include:
- (a) Foods that have a pH level of 4.6 or below or a water activity (Aw) value of 0.85 or less under standard conditions;
  - (b) Food products in hermetically sealed containers processed to prevent spoilage; or
  - (c) An air-cooled hard boiled egg with shell intact or a shell egg that is not hard-boiled, but has been treated to destroy all viable salmonella.

**RETAIL FOOD SERVICE ESTABLISHMENT.** As defined in 410 I.A.C. 7-24. This definition does not include private homes where food is prepared or served for individual family members', friends' or acquaintances' consumption. Private parties where an invitation is required (the general public is not invited) do not require a permit.

**RETAIL FOOD STORE ESTABLISHMENT.**

- (1) Includes but is not limited to the following:
  - (a) Grocery;
  - (b) Meat market;
  - (c) Poultry market;
  - (d) Fish market;
  - (e) Confectionery;
  - (f) Candy kitchen;
  - (g) Nut store;
  - (h) Retail bakery store; and
  - (i) Any food store establishment, whether fixed or moveable, where food is intended for human consumption off the premises and is manufactured, produced, stored, prepared, handled, sold, offered free or for a charge.
- (2) This term does not include the following:
  - (a) Establishment(s) that handle only prepackaged non-potentially hazardous food;
  - (b) Produce stands that offer only fresh, whole uncut fruits and vegetables for sale from farm to table;
  - (c) Slaughterhouses;
  - (d) Retail food service establishment(s); and
  - (e) Food and beverage vending machines.

**ST. JOSEPH COUNTY HEALTH DEPARTMENT.** The Health Department in St. Joseph County, Indiana, having jurisdiction over bed and breakfast, retail food service/store establishment and temporary food establishments.

**STOP WORK ORDER.** An order issued by the Health Officer to cease and desist any and all remodeling and/or new construction until the Health Officer has had an opportunity to review and approve all plans as required.

**TEMPORARY FOOD ESTABLISHMENT.** As defined in 410 I.A.C. 7-24, a retail food service establishment that operates for no more than seven consecutive days in conjunction with a single event or celebration.

**VOLUNTARY CLOSURE.** The voluntary posting of a "Closed" sign on an establishment's premises due to an imminent health hazard or noncompliance of this chapter or 410 I.A.C. 7-24 identified and documented by the Health Officer during an inspection. The establishment agrees not to open until the Health Officer gives approval.  
(Ord. 49-05, passed 5-10-2005)

§ 117.02 PERMIT.

(A) General. Under no circumstances shall any bed and breakfast establishment, food service/store establishment permit and temporary food establishment issued under this chapter be transferable between locations, operators and/or owners.

(1) It is unlawful for a person to operate any bed and breakfast establishment, retail food service/store establishment or temporary food establishment in St. Joseph 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 service/store or temporary food establishment.

(2) Only establishments who comply with the applicable requirements of 410 I.A.C. 7-15.5 and/or 410 I.A.C. 7-24 shall be entitled to obtain and hold a permit.

(3) A separate permit shall be required for each bed and breakfast establishment, retail food service/store establishment or temporary establishment to be operated by any person.

(4) A bed and breakfast establishment or retail food service/store establishment permitted by the Health Officer shall be considered registered as required in I.C. 16-42-1-6.

(5) For new construction and renovation (remodeling), plans and reviews regarding the work to be completed must be reviewed and approved by the Health Officer prior to beginning of any new construction and renovation (remodeling).

(B) Application for permit. A person desiring to operate a bed and breakfast establishment, retail food service/store establishment or temporary establishment shall submit to the Health Department a complete written application for a permit on a form provided by the Health Department.

(C) Content of the application. The application shall include the following information:

(1) The name, title, address and the telephone number of the operator and/or person directly responsible for or having legal ownership of the bed and breakfast establishment, retail food service/store establishment or temporary food establishment;

(2) Information specifying whether the bed and breakfast establishment or retail food service/store establishment is owned by an association, corporation, individual, partnership or other legal entity;

(3) The name, mailing address, telephone number and original signature of the person and/or operator applying for the permit and the name address and location of the bed and breakfast establishment, retail food service/store establishment or temporary establishment;

(4) A statement signed by the applicant that attests to the accuracy of the information provided on/in the application, affirms that the applicant shall:

(a) Comply with this chapter; and

(b) Allow the Health Officer access to the bed and breakfast establishment, retail food service/store establishment or temporary establishment and its records as specified in 410 I.A.C. 7-15.5 and 410 I.A.C. 7-24.

(5) Other information as required by the Health Officer.

(D) Qualifications. To qualify for a permit, an applicant must:

(1) Be an owner/operator of the bed and breakfast establishment, retail food service/store establishment or temporary food establishment;

(2) Comply with the requirements of this chapter and 410 I.A.C. 7-15.5 or 410 I.A.C. 7-24;

(3) Agree to allow access to the bed and breakfast establishment, retail food service/store establishment or temporary food establishment and its records as specified in 410 I.A.C. 7-15.5 and 410 I.A.C. 7-24;

- (4) Pay the applicable permit fee at the time the application is submitted; and
- (5) Pass an opening inspection.

(E) Permit content. Any permit issued by the Health Officer shall contain the following information:

- (1) The name and address of the establishment;
- (2) The owner or corporation name;
- (3) The permit number;
- (4) Expiration date of the permit; and
- (5) Other pertinent information as required by the St. Joseph County Health

Officer.

(F) Permit period.

(1) A permit for a bed and breakfast establishment or retail food service/store establishment shall be for a term of one year, beginning January 1 and expiring January 31 of the following year and must be renewed annually.

(2) A permit for temporary food establishments shall be for the term of one continuous operation. Temporary or seasonal permit holders shall have seasonal opening inspections and obtain the permit before the first day of operation in St. Joseph County.

(G) Interim permit. A new owner/operator taking ownership over a continuously operating bed and breakfast establishment or retail food service/store establishment shall be entitled to a nonrenewable interim permit. This permit allows the new operator to make the necessary changes (i.e., add a mop sink, change ceiling tiles and the like), prior to receiving an annual permit.

(1) The new owner/operator taking ownership of a continuously operating bed and breakfast, retail food service/store establishment shall call the Health Department for an opening inspection.

(2) The operator shall complete an application for an annual bed and breakfast establishment or retail food service/store establishment interim permit and pay all applicable fees. The interim permit shall be issued after an opening inspection has been completed.

(3) The interim permit shall be valid for a period of time not to exceed 90 days and shall be effective on the date of the application. The interim permit cannot be extended or renewed.

(4) The new owner/operator shall obtain the annual permit within the time frame noted on the interim permit or the Health Officer will revoke the interim permit and the owner/operator will need to begin the application and permit process over. The annual permit will only be issued after the owner/operator has complied with all of the applicable code requirements.

(H) Change of ownership. The Health Officer may issue a permit to a new owner of an existing bed and breakfast or retail food service/store establishment after an opening inspection has been completed. After the Health Officer has granted permit approval, the operator shall complete the application form supplied by the Health Department. The permit shall be issued after all applicable fees have been paid.

(I) Separate permits. If a person owns a retail food service/store establishment that has different entities that are in the same building, the person must obtain a separate permit for each entity.

(J) Temporary food establishment. A permit for a temporary food establishment shall be for a term not to exceed seven consecutive days, in conjunction with any single event or location. A temporary permit will not be issued without the temporary food establishment first having a yearly opening inspection by the Health Department.

(K) Request for reinstatement of permit. Any bed and breakfast establishment, retail food service/store establishment or temporary food establishment that has had a permit

suspended or revoked, may at any time during the business hours of the Health Department make application to the Health Officer for the reinstatement of the establishment's permit. In the event the application is denied, the appeals process shall be utilized as set forth in this chapter.

(L) Opening without a permit. Any bed and breakfast establishment or retail food service/store establishment that opens without first contacting the Health Department, for an opening inspection and passes the inspection shall be assessed penalties for operating without a permit as set forth in the Civil Penalties Rule I.A.C. 7-23.

(M) Responsibilities of the operator. Upon acceptance of the permit that has been issued by the Health Officer, the operator, in order to retain the permit shall:

(1) Comply with the provisions of this chapter, all laws and rules adopted by reference herein and the conditions of any variances granted by the Indiana State Department of Health;

(2) Allow the Health Officer access to the bed and breakfast establishment, retail food service/store establishment or temporary food establishment at reasonable times;

(3) Immediately discontinue affected operations and notify the Health Department if an imminent hazard exists;

(4) Comply with directives of the Health Department including time frames for corrective actions as specified in the inspection report(s), notices, orders, warnings and other directives issued by the Health Department in regards to the operator's bed and breakfast establishment, retail food service/store establishment or temporary food establishment in response to community emergencies;

(5) Accept notices issued and served by the Health Department;

(6) Be subject to the administrative, civil, injunctive and criminal remedies authorized in law for failure to comply with this chapter, 410 I.A.C. 7-15.5 and 410 I.A.C. 7-24 or the directive of the St. Joseph County Health Department; and

(7) Post the permit in a location in the bed and breakfast establishment, retail food service/store establishment or temporary food establishment that is conspicuous to consumers.

(Ord. 49-05, passed 5-10-2005)

#### § 117.03 CONSTRUCTION, RENOVATION AND ALTERATION.

(A) Plan requirements.

(1) The owner or other authorized agent of an existing or proposed bed and breakfast establishment or retail food service/store establishment shall submit to the St. Joseph County Health Department properly prepared plans and specifications for review and approval before:

(a) The construction of a bed and breakfast establishment or retail food service/store establishment;

(b) The conversion of an existing structure for use as a bed and breakfast establishment or retail food service/store establishment; or

(c) The remodeling of a bed and breakfast establishment or retail food service/store establishment or food operation if the St. Joseph County Health Department determines that the plans and specifications are necessary to ensure compliance with this section.

(2) The plans and specifications for a bed and breakfast establishment or retail food service/store establishment shall include the type of operation, type of food preparation (as specified in the published versions of 410 I.A.C. 7-24) and the menu.

(3) The plans, specifications and blueprints submitted to the Health Department must show the interior and exterior layout of the bed and breakfast establishment or retail food service/store establishment. The plans must be deemed satisfactory and approved by the Health Officer before starting construction.

(4) A pre-operational inspection (opening inspection) is conducted to ensure the bed and breakfast establishment or retail food service/store establishment was built or remodeled in accordance with the approved plans and specifications and that the establishment is in compliance with this chapter, 410 I.A.C. 7-24 or 410 I.A.C. 7-15.5.

(B) Equipment. All equipment installed in a bed and breakfast establishment, retail food service/store establishment or temporary food establishment for use in the cleansing and bactericidal treatment of utensils, or in the preparation, storing, handling, cleaning, sanitizing, serving or displaying of any food or beverage products shall be of a type conforming to all applicable requirements with regard to proper holding temperatures, design, construction, location and materials. Any piece of equipment that may fail to meet these requirements shall be prohibited from use.

(C) Compliance. All bed and breakfast establishments, retail food service/store establishments or temporary food establishments shall fully comply at all times with all local and state Building, zoning and Fire Codes. Failure of any bed and breakfast establishment, retail food service/store establishments or temporary establishments to fully comply with any applicable Building, zoning and Fire Codes shall be the basis for the suspension, immediate closure or revocation of any permit hereunder.

(D) Exemptions.

(1) Unless exempted by the St. Joseph County Building Department, all retail food service/service establishments shall be required to install a grease interceptor. This will be located in the waste line, leading from sinks, drains and other fixtures or equipment where grease may be introduced into the drainage or sewage systems in quantities that can effect line stoppage or hinder sewage treatment. It shall be located in an area that is easily accessible for cleaning. The grease interceptor must be installed in such a manner that it meets all applicable requirements of the Building Department.

(2) If the retail food service/store establishment has a private septic system, the system must comply with all state and county regulations.

(Ord. 49-05, passed 5-10-2005)

§ 117.04 FEES.

(A) Generally; permit required. It shall be unlawful for any bed and breakfast establishment, retail food service/store establishment or temporary establishment to operate in St. Joseph County without a permit.

(1) The payment of a permit fee shall be required for each bed and breakfast establishment, retail food service/store establishment or temporary food establishment before the establishment can operate in St. Joseph County.

(2) The fee for each bed and breakfast establishment and retail food service/store establishment permit shall be paid for a term beginning January 1 and/or before commencement of operation and expiring January 31 of the following year, and shall be applied for in person by the operator (permits shall not be mailed).

(3) Permit fees for the issuance of a permit under this chapter to a bed and breakfast establishment, retail food service/store establishment or temporary establishment shall be set by the Health Department as derived from I.C. 16-20-1-27.

(4) The operator of a bed and breakfast establishment or retail food service/store establishment shall apply for the establishment's permit. This fee will be based on the total amount of gross sales, including alcohol, from the time of the application to December 31 (see § 117.10).

(B) Annual permit fee. An operator of a bed and breakfast establishment or retail food service/store establishment shall appear at the Health Department and sign a legal affidavit, provided by the Health Department, stating the establishment's total gross sales of food, including all beverages and alcohol, for the preceding year. In the event the operator did not

operate the bed and breakfast or retail food service/store for a full year prior to the application, the operator shall use the amount of total gross food sales, including beverages and alcohol for the first month of operation completed in the preceding year multiplied by a factor of 12 to give the total gross sales. This does not include multi-unit operation permits (see § 117.10).

(C) Multi-unit operation fees. A retail food service/store establishment that has multiple retail food service/store establishments housed in one building may purchase a multi-unit permit for the first food establishment, then in addition, a permit shall be obtained for each unit thereafter housed in the same building.

(D) Exemption from permit fees. An organization that is exempt from the Indiana Gross Income Tax under I.C. 6-3-2, 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 a fee. The exemption only applies to organizations that meet the criteria addressed in applicable state statutes and regulations. The Health Officer shall be provided with, upon request, proof of an organization's tax-exempt status.

(E) Late fees.

(1) Late fees of 25% of the original fee shall be assessed for the following reasons:

(a) Failure to obtain a permit prior to the January 31 expiration date. A late fee as set forth in the Appendix: Schedule of Fines and Fees will be assessed for failure to renew a permit after the permit's expiration date. Late fees apply only to bed and breakfast establishments or retail food service/store establishments;

(b) Failure to obtain a permit before assuming operation of a bed and breakfast establishment, retail food service/store establishment and/or temporary food establishment; and/or

(c) Failure to obtain a permit one week after receiving an opening inspection and receiving permit approval to operate a bed and breakfast establishment or retail food service/store establishment.

(2) The payment of fees under this chapter is nontransferable and nonrefundable.

(F) Lost or stolen permits. In the event that a bed and breakfast establishment, a retail food service/store establishment or temporary food establishment permit is lost, stolen, misplaced or destroyed by fire and the like, a replacement fee shall be assessed (see § 117.10).

(G) Administrative fee. A newly constructed or renovated (remodeled) bed and breakfast establishment or retail food service/store establishment shall be required to pay an administrative fee for the review of plans and specifications. This fee is nonrefundable and nontransferable between locations, owners/operators or establishments (see § 117.11).

(H) Suspended permit fee. If a permit has been suspended by any of the entities listed below, the operator shall complete an application for a new permit and pay all applicable fees:

(1) The St. Joseph County Health Officer;

(2) The St. Joseph County Health Department for:

(a) Failure to meet the requirements of the Building Department;

(b) Failure to meet the requirements of the South Bend Fire

Department; or

(c) Failure to meet the requirements of the Mishawaka Fire

Department.

(3) The Indiana State Department of Health; or

(4) Any court having jurisdiction.

(Ord. 49-05, passed 5-10-2005)

§ 117.05 OTHER VENUE FEES.



(A) Temporary establishment permit fees. Temporary permit fees will be collected no less than one week prior to the specified event(s) (see § 117.10). Copies of temporary permits are not valid permits. A new temporary food establishment permit is required for each temporary event.

(B) Vending machine fees. A food decal shall be required for any vending machine that dispenses either unpackaged or potentially hazardous food.

(C) Food delivery vehicle fees.

(1) Any vehicle that is motorized and is contracted to deliver potentially hazardous foods from a retail food service/store establishment to a different address for a fee must pay for a food delivery decal.

(2) Any vehicle that is propelled by human power and is selling potentially hazardous food must pay for a food delivery decal.

(D) Mobile establishment permit fees.

(1) Fees for mobile temporary food establishments will be collected for any vehicle that can pull to and set up at any location, then prepare/grill food.

(2) All vehicle license plates for each mobile establishment vehicle must be on file at the Health Department in order for the decal mobile permit to be valid.

(E) Fees for copies of Administrative Code Books and this chapter.

(1) It is a requirement for retail food service/store establishments and/or temporary food establishments to retain copies of 410 I.A.C. 7-24, 410 I.A.C. 7-22 and this chapter on premises at all times.

(2) If the retail food sanitation requirements, 410 I.A.C. 7-24, 410 I.A.C. 7-22 or this chapter are lost or misplaced and cannot be located by the owner/manager of the establishment, a new copy may be obtained from the Health Department for a fee.

(Ord. 49-05, passed 5-10-2005)

#### § 117.06 INSPECTIONS.

(A) Frequency of inspections. The Health Officer shall inspect a bed and breakfast establishment or retail food service/store establishment as required by Indiana law. The Health Officer may decrease or increase the interval between inspections if the following applies for that bed and breakfast establishment or retail food service/store establishments:

(1) The bed and breakfast establishment or retail food service/store establishment is assigned a less frequent inspection frequency based on a written risk-based inspection schedule currently being uniformly applied throughout the jurisdiction; or

(2) A bed and breakfast establishment or retail food service/store establishment's inspections shall be increased if any of the following occurs:

(a) A change in the food preparation process;

(b) The bed and breakfast establishment or retail food service/store establishment has been issued a "repeat violation" correspondence from the Health Department;

(c) The bed and breakfast establishment or retail food service/store has received an "abatement order" correspondence from the Health Department;

(d) The bed and breakfast establishment or retail food service/store establishment has been placed on probation by the Health Department; or

(e) There has been an imminent health hazard.

(B) Performance and risk based inspections. Within the parameters specified in the above inspection division(s) of this chapter, the Health Officer shall prioritize and conduct less frequent inspections based upon the assessment of a bed and breakfast or retail food service/store establishment as follows.

(1) Menu One type establishments will be inspected at least one time per year.

(a) The establishments provides packaged or unpackaged, non-potentially hazardous foods that are considered ready-to-eat. These foods include:

1. Carbonated beverages;
2. Snack foods, such as potato chips, nuts, popcorn, pretzels and donuts; and

3. Coffee service.

(b) There is limited preparation of non-potentially hazardous foods.

(2) Menu Two type establishments will be inspected no less than two times per year and more frequently if needed. Menu Two type establishments provide a limited menu of foods that are prepared to order for the customer. If raw ingredients are used, they should require minimal assembly. Most food products are cooked or prepared and served immediately. The hot and cold holding of potentially hazardous foods are restricted to a single meal service. The preparation, cooking, cooling and reheating processes are limited to one or two potentially hazardous foods.

(3) Menu Three type establishments will be inspected three to four times per year. Menu Three type establishments are classified as number 3, 4 and 5 on the inspection report form. These establishments have extensive handling of raw ingredients. The preparation process includes cooking, cooling and reheating of potentially hazardous food. Menu Type 3 establishments includes deli and seafood departments. This category also includes those establishments that serve a highly susceptible population and those establishments that process food at the retail level, i.e., smoking, curing and reduce oxygen packaging for extending shelf life.

(C) Pre-opening consultation. The operator of a bed and breakfast establishment or retail food service/store establishment may request a pre-opening consultation with the Health Officer. This inspection is to ensure the newly constructed or renovated (remodeled) establishment can satisfactorily pass an opening inspection.

(D) Opening inspection for a new establishment. The operator of a newly constructed bed and breakfast or retail food service/store establishment shall have approval from the Building and Fire Departments and satisfactorily pass the Building and Fire Departments' inspections before calling the St. Joseph County Health Department for an opening inspection. The administrative fee entitles each new establishment to one consultation, one initial inspection and one follow-up inspection. Additional inspections will require payment of additional fees.

(1) Before a newly constructed bed and breakfast establishment or retail food service/store establishment obtains a permit from the Health Department, the establishment shall satisfactorily pass a Health Department inspection.

(2) Remodeled establishment. Before a remodeled bed and breakfast establishment or retail food service/store establishment obtains a permit from the Health Department, the establishment shall satisfactorily pass a Health Department inspection.

(E) Access allowed at reasonable times after due notice.

(1) After the Health Officer presents official credentials and provides notice of the purpose of and the intent to conduct an inspection, the operator shall allow the Health Officer to determine if the bed and breakfast establishment, retail food service/store establishment or temporary establishment is in compliance with this chapter and 410 I.A.C. 7-24, by allowing access to the establishment to conduct an inspection and providing information and records specified in this chapter, and 410 I.A.C. 7-24 and 410 I.A.C. 7-15.5. The Health Department is entitled to the information and records, according to I.C. 16-42-1-13 and I.C. 16-42-5-23, during the bed and breakfast establishment, retail food service/store establishment or temporary food establishment's hours of operation and at other reasonable times.

(2) 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 I.C. 16-20-1-26.

(F) Inspection reports. At the conclusion of the inspection, the Health Officer shall provide a copy of the completed inspection report and the notice to correct violations to the owner/operator or person in charge, as required under I.C. 16-20-8-5.

(G) Timely correction of critical violations.

(1) Except as specified in the next division, the operator shall at the time of the inspection correct a critical violation of 410 I.A.C. 7-15.5, 410 I.A.C. 7-24 and/or 410 I.A.C. 7-22 and implement corrective actions for a HACCP provision that is not in compliance with its critical limits.

(2) Considering the nature of the potential hazard involved and the complexity of the corrective action(s) needed, the Health Officer may agree to or specify a longer time frame after the inspection for the operator to correct critical code violations or HACCP plan deviations.

(3) After receiving notifications that the operator has corrected any and all critical violations or HACCP plan deviations, or at the end of the specified period of time, the Health Officer shall verify correction(s) of the violation(s), document the information on the inspection report and enter the report in the Health Department's records.

(H) Refusal to sign acknowledgment. Refusal to sign an acknowledgment of receipt will not affect the operator's obligation to correct the violations noted on the inspection report within the specified time frame(s) given.

(1) A refusal to sign an acknowledgment of receipt is noted in the inspection report and conveyed to the Health Department's historical records for the bed and breakfast establishment, retail food service/store establishment or temporary food establishment.

(2) By signing the inspection report, the operator is not necessarily agreeing with the findings of the Health Officer's inspection.

(I) Public information. Except as specified in 410 I.A.C. 7-24, § 194, Confidentiality of Trade Secrets, the Health Officer 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 I.C. 24-2-3 and 5-14-3.

(J) Ceasing operation and contacting the St. Joseph County Health Department.

(1) The owner/operator of a bed and breakfast establishment, retail food service/store establishment or temporary food establishment shall immediately discontinue operations and notify the Health Officer if an imminent health hazard exists, because of an emergency such as a fire, flood, extended interruption of electrical or water service, sewage backup, misuse of poisonous or toxic materials, onset of an apparent foodborne illness outbreak, gross unsanitary occurrence or condition, or other circumstances that may endanger the public's health.

(2) The operator need not discontinue operation in an area of an establishment that is unaffected by the imminent health hazard.

(K) Resuming operation. If a bed and breakfast establishment, retail food service/store establishment or temporary food establishment discontinues operations for the reasons stated above or otherwise according to law, the operator must obtain approval from the Health Officer before resuming operations. If an establishment chooses to close for more than four weeks due to but not limited to vacations or cleaning, the establishment shall have an opening inspection before resuming business. If temporary closure occurs during the same calendar year, the purchase of a new permit will not be required.

(L) Inspections of temporary food establishments. Throughout the permit period, the Health Officer shall inspect a temporary food establishment that prepares, sells or serves unpackaged potentially hazardous foods that also:

(1) Has improvised rather than permanent facilities or equipment for 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 food employees who have never worked in a temporary food establishment.

(M) Frequency of inspections for temporary food establishments. Temporary food establishments servicing an event shall be inspected at least once every 24-hour period by the Health Officer. The Health Officer may reduce or increase the frequency of the inspections when appropriate.

(Ord. 49-05, passed 5-10-2005)

#### § 117.07 COMPLIANCE AND ENFORCEMENT.

(A) Enforcement; authority to adopt rules and regulations. The County Board of Health may adopt, amend or rescind any such rules and regulations and standards as deemed necessary for proper enforcement and to carry out the purpose and intent of this chapter. This shall be accomplished using public comment periods, public meetings and public hearings in accordance with state law and upon the advice of the County Board of Health.

(B) Retail sanitation rule. All bed and breakfast establishments, retail food service/store establishments or temporary food establishments, and vending machine operators shall comply with the minimum requirements specified by the Indiana State Department of Health Retail Sanitation Rule 410 I.A.C. 7-24 and Indiana State Department of Health Rule 410 I.A.C. 7-15.5 for bed and breakfast establishments.

(C) Application and permit denial. If an application for a “plan and review” and/or permit to operate a bed and breakfast establishment, retail food service/store establishment or temporary food establishment is denied, the Health Officer shall provide the applicant with a notice that includes the following:

(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) Advice regarding the applicant’s right of appeal and the process and time frame for appeal as provided in this chapter.

(D) Abatement order.

(1) After a routine or re-check inspection of a bed and breakfast establishment, retail food service/store establishment or temporary food establishment reveals numerous and/or repeat violations from previous inspections, the bed and breakfast establishment or retail food service/store establishment will be found noncompliant with 410 I.A.C. 7-15.5 or 410 I.A.C. 7-24 or this chapter, an abatement order will be issued. This will include the following information:

(a) The name and complete address of the establishment;

(b) The date of the abatement order;

(c) The violation(s) of the code or ordinance;

(d) The date violation(s) are to be corrected; and

(e) The legal action that shall be taken if the violation(s) stated in the abatement order are not corrected.

(2) Because the abatement order is based on conditions that may transmit, generate or promote disease, failure on the part of the bed and breakfast establishment, retail food service/store establishment or temporary food establishment to comply with the abatement order could result in the enforcement of the abatement order in the court of jurisdiction by the initiation of an action by the Health Department’s Attorney or the county’s Prosecuting Attorney pursuant to I.C. 16-20-1-25.

(E) Probation.

(1) If after a bed and breakfast establishment or retail food service/store establishment has received an abatement order and the bed and breakfast establishment or retail

food service/store establishment continues its noncompliant practices relative to 410 I.A.C. 7-15.5, 410 I.A.C. 7-24 and this chapter, the bed and breakfast or retail food service/store will be placed on probation. The establishment will be notified of this probationary status by a hand-delivered correspondence. Information included in the probation notification shall include:

- (a) The reason for being placed on probation;
- (b) The length of the probation;
- (c) Steps that will be taken if:

1. The bed and breakfast establishment or retail food service/store establishment's inspections continue to show noncompliance with the 410 I.A.C. 7-15.5 and/or 410 I.A.C. 7-24;

2. The establishment fails to comply with any part of this chapter; and

- 3. An imminent health hazard occurs.

(2) When a bed and breakfast establishment or retail food service/store has been placed on probation, the bed and breakfast establishment or retail food service/store establishment will receive increased inspections during the length of the probation.

(F) Voluntary/involuntary closure.

(1) Voluntary closure. If after being placed on probation, the bed and breakfast establishment's, retail food service/store establishment's or temporary food establishment's probation inspection shows noncompliance with 410 I.A.C. 7-15.5 or 410 I.A.C. 7-24, an imminent health hazard or failure to comply with any part of this chapter, the bed and breakfast establishment or retail food service/store operator will be asked to voluntarily close, allowing them to post a sign stating the establishment is closed.

(2) Involuntary closure. If the owner/operator of a bed and breakfast establishment, retail food service/store or temporary food establishment refuses or fails to voluntarily post a closure sign, the Health Department shall post the closure sign. If the Health Department posts the sign, the owner/operator of the bed and breakfast establishment, retail food service/store establishment or temporary food establishment must apply for a new permit and pay all applicable fees. The owner/operator of the bed and breakfast establishment, retail food service/store establishment or temporary food establishment shall appear at a Health Officer's hearing.

(G) Permit suspension. The Health Officer may, upon inspection, suspend a permit to operate a bed and breakfast establishment, retail food service/store establishment or temporary food establishment for any of the following reasons:

(1) The operation, in the opinion of the Health Officer constitutes an imminent health hazard. This hazard could be created by loss of the power supply, sewage backup, loss of water supply, fire, flood, tornado or other natural or unnatural causes. Under this section, a bed and breakfast establishment's, retail food service/store establishment's or temporary food establishment permit may be immediately suspended prior to a Health Officer's hearing;

(2) Interference with the Health Officer in the performance of his or her duties;

(3) Failure to correct a critical violation at the time of inspection that constitutes an imminent health hazard;

(4) The bed and breakfast establishment and/or retail food service/store establishment has been placed on probationary status more than one time in a calendar year;

(5) Failure to appear for a Health Officer's hearing; or

(6) Failure to pay civil penalty fines.

(H) Health Officer's hearing.

(1) Any permit issued under this chapter may be temporarily suspended by the Health Officer with or without notice for a period not to exceed 30 days, if any section/part of 410 I.A.C. 7-24 or this chapter is violated or if it is determined through inspection or examination or other means as specified in this chapter that an imminent health hazard exists. The Health Officer shall have 15 business days following the delivery of the suspension notice to notify the owner/operator of the establishment to appear at a Health Officer's hearing. The Health Officer shall notify the owner/operator of the bed and breakfast establishment and/or retail food service/store establishment five days prior to the hearing. The notice of the Health Officer's hearing shall be delivered by hand.

(2) The notice shall contain the following information:

- (a) The date of the Health Officer's hearing;
- (b) The time of the hearing; and
- (c) The location of the hearing.

(3) The owner/operator of a bed and breakfast establishment or retail food service/store establishment shall be called to a Health Officer's hearing, if any of the following has occurred:

- (a) The Health Officer has suspended operations due to an imminent health hazard;
- (b) The bed and breakfast establishment's or retail food service/store establishment's permit has been suspended for any other violations under 410 I.A.C. 7-24 or this chapter; or
- (c) The bed and breakfast establishment or retail food service/store establishment violated their terms of the probation.

(Ord. 49-05, passed 5-10-2005)

#### § 117.08 PENALTIES.

(A) Penalties shall be imposed against those owners/operators of establishments that, on a continuous basis, have repeat violations in accordance with the Civil Penalties Rule, 410 I.A.C. 7-23.

(B) Penalty fees shall be determined in accordance with the Schedule of Civil Penalties, 410 I.A.C. 7-23.

(Ord. 49-05, passed 5-10-2005)

#### § 117.09 APPEALS PROCESS.

The appeals process will follow the steps listed below.

(A) Any person or owner/operator of an establishment aggrieved by order under the compliance and enforcement section shall be entitled to review of the final order before a hearing officer. Request for the review shall be made in writing and filed with the Health Officer (Secretary of the St. Joseph County Board of Health, I.C. 16-20-1-10). The written request must be mailed or hand delivered to the Health Officer, County/City Building, 8th Floor, 227 West Jefferson Blvd., South Bend, Indiana 46601, and must be postmarked or hand-delivered within 15 days after the final order is issued.

(B) Upon the Health Officer's receipt of the request, the County Board of Health will be notified to appoint a hearing officer. A hearing date shall be set and a written notice shall be completed and hand-delivered within five days. The notice shall specify the date, time, location and nature of the hearing. The hearing will be scheduled no later than ten days from the date of the request. The appointed Hearing Officer shall hear the matter in an open hearing. A shorter period of time may be granted if requested by either party.

(C) The notice of the hearing shall be served upon the person requesting the review via hand delivery or certified mail to the address listed on the permit application as the person's mailing address or any other address as the person shall designate in the letter of the request to the Health Officer.

(D) The Hearing Officer shall establish the rules of procedures and advise the parties prior to the start of the proceedings.

(E) The Hearing Officer shall make written findings of the facts and shall enter the final order or determination of this matter in writing.

(F) The order completes the appeals process.  
(Ord. 49-05, passed 5-10-2005)

§ 117.10 MISCELLANEOUS.

(A) Gratuities. The Health Officer shall not accept any gratuities from a bed and breakfast establishment, retail food service/store establishment or temporary food establishment.

(B) Unwholesome, adulterated or misbranded foods. It shall be unlawful for any person or establishment to sell, through a food establishment (fixed, mobile or machine), any food that is unwholesome, adulterated or misbranded, as provided in the Indiana Food, Drug and Cosmetic Act, I.C. 16-42.

(1) Samples of food may be taken and examined by the Health Office as often as may be necessary to determine freedom from the following:

- (a) Contamination;
- (b) Adulteration; or
- (c) Misbranding.

(2) With adequate proof, the Health Officer may require any food in his or her opinion, is unsound (containing any filthy, decomposed or putrid substance) or determined to be unsafe for consumption, to be removed from inventory and/or destroyed immediately.

(C) Sanitation certification.

(1) All bed and breakfast establishments, retail food service/store establishments or temporary food establishments which prepare or serve potentially hazardous food shall have at least one certified food handler who is in compliance with the minimum requirements as specified by the Indiana State Department of Health as provided in 410 I.A.C. 7-24 and as defined in 410 I.A.C. 7-22. These regulations and any changes and amendments thereto, which may be adopted or promulgated, are by reference herein and made part thereof.

(2) A bed and breakfast establishment, retail food service/store establishment or temporary food establishment selling only prepackaged foods and non-potentially hazardous foods is exempt from the provisions of division (C)(1) above.

(3) A CERTIFIED FOOD HANDLER is any person who has successfully completed any course of study that has been approved by the Indiana State Department of Health. A copy of the certificate must be available at the request of the Health Officer.

(D) I.C. 34-30-5, "Immunity From Civil Liability for Gifts of Food to Charitable Entities". A person who in good faith makes a gift of a food item to a charitable entity is not liable for civil damages arising from the use, condition, quality or content of that food item, unless the damage is the result of that person's intentional knowingly, and recklessly set out in divisions (a) through (c) of I.C. 35-41-2-2.

(E) Charitable contributions. There are no Indiana State Department of Health requirements that prohibit the donation of unused food items from a food source. The Indiana State Department of Health strongly supports donating food in sound condition that is free from spoilage or other contamination and is safe for human consumption. However, when leftover foods have been extended beyond the recommended shelf life, and have gone through an appreciable loss of quality, there may be a significant public health hazard. In addition, potential hazards exist in the areas of handling, transportation, re-service and storage of foods, particularly those that are considered potentially hazardous.

(F) Conflict of interest. No Health Department Official shall conduct himself or herself in a manner that is or could have the appearance of a conflict of interest.

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

(Ord. 49-05, passed 5-10-2005)

§ 117.11 FEE SCHEDULE; APPROVAL REQUIRED.

The County Health Officer shall inform the Board of County Commissioners of his or her desire to increase or decrease the fee schedule(s) and the Board of County Commissioners must approve a new fee schedule(s). The fee schedule(s) for fees to be collected and deposited in accordance with this chapter are set forth in the Appendix: Schedule of Fines and Fees.

(Ord. 49-05, passed 5-10-2005)

§ 117.12 EFFECTIVE DATE.

This chapter shall be in full force and effect 30 days after its adoption and publication as provided by law.

(Ord. 49-05, passed 5-10-2005)