



WAYNE COUNTY  
**Health Department**

**Where Caring Meets the Community**

# Wayne County Food Ordinance

Ordinance Number: 2021-011

Adopted: Wayne County

# **FOOD ESTABLISHMENT AND/OR BED AND BREAKFAST ESTABLISHMENT ORDINANCE**

**ORDINANCE NO. 2021-011**

**In Wayne County, Indiana**

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

This ordinance defines Bed and Breakfast Establishment, Conflict of Interest, Wayne County Health Department, Wayne County Health Official, Hazard Analysis Critical Control Point, Health Officer, Hearing Officer, Imminent Health Hazard, Inspection Report, Operator, Order, Permit, Person, Food Establishment; requires construction and/or alteration plans; requires a Permit and payment of Permit fees for the operation of Bed and Breakfast Establishment and/or Food Establishment; prohibits sale of adulterated, unwholesome, or misbranded food; regulates inspection of such establishments; provides for compliance and the enforcement of this ordinance; provides penalties for violations of said ordinance; and incorporates by reference Indiana Code(s) (IC) 16-41-31, 16-42-1, IC 16-42-2, IC 16-42-5, IC 16-42-5.2 and Indiana State Department of Health Rule(s) 410 Indiana Administrative Code (IAC) 7-15.5, 410 IAC 7-24, 410 IAC 7-21-47, 410 IAC 7-22 and 410 IAC 7-23.

The Wayne County Health Department is hereby authorized to issue Bed and Breakfast Establishment and/or Food Establishment permits, collect Permit fees and penalties, perform inspections, hold hearings, Order, or otherwise compel correction of violations of this ordinance, and is otherwise authorized to perform all actions necessary for the administration and enforcement of this ordinance.

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

## **Section A: Definitions**

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

- (1) provides sleeping accommodations to the public for a fee;
- (2) has no more than fourteen (14) guest rooms;
- (3) provides breakfast to its guests as part of the fee; and
- (4) provides sleeping accommodations for no more than thirty (30) consecutive days to a particular guest.

**Commissary** (defined in 410 IAC 7-24-16) means a registered catering establishment, restaurant or any retail food establishment in which food, food containers, or food supplies are:

- 1) Kept;
- 2) Handled;
- 3) Prepared;
- 4) Packaged; or
- 5) Stored;

from which meals are catered and mobile retail food establishments or pushcarts are served. The Wayne County Health Department reserves the right to deny the use of a commissary for any reason including the commissary does not have adequate accommodation for safe food handling.

**Conflict of Interest** (derived from 68 IAC 9-1-1(b)(2)) means a situation in which the private financial interest of Wayne County Health Official, Wayne County Health Official's spouse, ex-spouse, siblings, in-laws, children and/or unemancipated child, may influence the Wayne County Health Official's judgement in the performance of a public duty

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

(b) The term does not include the following:

- (1) A dwelling where food is prepared on the premises by the occupants, free of charge, for their consumption or for consumption by their guests.
- (2) A gathering of individuals at a venue of an organization that is organized for educational purposes in a nonpublic educational setting or for religious purposes, if:
  - (A) the individuals separately or jointly provide or prepare, free of charge, and consume their own food or that of others attending the gathering; and
  - (B) the gathering is for a purpose of the organization.Gatherings for the purpose of the organization include funerals, wedding receptions, christenings, bar or bat mitzvahs, baptisms, communions, and other events or celebrations sponsored by the organization.
- (3) A vehicle used to transport food solely for distribution to the needy, either free of charge or for a nominal donation.
- (4) A private gathering of individuals who separately or jointly provide or prepare and consume their own food or that of others attending the gathering, regardless of whether the gathering is held on public or private property.
- (5) Except for food prepared by a for-profit entity, a venue of the sale of food prepared for the organization:
  - (A) that is organized for:
    - (i) religious purposes; or
    - (ii) educational purposes in a nonpublic educational setting;
  - (B) that is exempt from taxation under Section 501 of the Internal Revenue Code; and
  - (C) that offers the food for sale to the final consumer at an event held for the benefit of the organization;unless the food is being provided in a restaurant or a cafeteria with an extensive menu of prepared foods.
- (6) Except for food prepared by a for-profit entity, an Indiana nonprofit organization that:
  - (A) is organized for civic, fraternal, veterans, or charitable purposes;
  - (B) is exempt from taxation under Section 501 of the Internal Revenue Code; and
  - (C) offers food for sale to the final consumer at an event held for the benefit of the organization; if the events conducted by the organization take place for not more than fifteen (15) days in a calendar year.
- (7) An individual vendor of a farmers' market or roadside stand if the individual meets the requirements of IC 16-42-5-29.

This definition also includes a Retail Food Establishment as defined in 410 IAC 7-24; however, it does not include a Bed and Breakfast Establishment.

**Food Service Event** means any event that is open to the public that has more than one food vendors, mobile food establishments or other food services providers.

**Health Official** means any Official of Wayne County Health Department, Wayne County Indiana.

**Hazard Analysis Critical Control Point (HACCP) Plan** (as defined in 410 IAC 7-24) means a written document that delineates the formal procedures for following the Hazard Analysis Critical Control Point principles developed by the National Advisory Committee on Microbiological Criteria for Foods.

**Health Officer** means the person, appointed as specified in IC-16-20-2-16, or his/her duly authorized representative, as specified in IC 16-20-1-14, who may conduct inspections and make a final decision on an enforcement action.

**Hearing Officer** means an individual or panel of individuals acting in the capacity of a Hearing Officer in an appeals process. The Hearing Officer is not the Health Officer or any other employee of the Wayne County Health Department. (Examples of Hearing Officer could be the Wayne County Health Board, a subcommittee of the Wayne County Health Board, a subcommittee of health professionals from the community or other non-bias third party appointed by the Health Board.)

**Imminent Health Hazard** means a significant threat or danger to health that is considered to exist when there is evidence sufficient to show that a product, practice, circumstance, or event creates a situation that requires immediate correction or cessation of operation to prevent injury or illness based on the number of potential injuries and illnesses and the nature, severity and duration of the anticipated injury or illness [e.g., sewage backing up in a food preparation area or contamination of food products with toxic materials].

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

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

**Order** (derived from IC 4-21.5-1-9) means a Wayne County Health Department action of particular applicability that determines the legal rights, duties, privileges, immunities, or other legal interests of one (1) or more specific Persons. The term includes a permit.

**Permit** means the document issued by the Wayne County Health Department that authorizes a person to operate a Bed and Breakfast Establishment and/or Food Establishment, which includes, mobile food units and temporary food vendors.

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

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

## **Section B: Plan Review**

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

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

(b) The plans and specifications for a Bed and Breakfast Establishment and/or Food Establishment shall include, the type of operation, type of food preparation (as specified in Appendix A of the published version of 410 IAC 7-24), and the menu.

(c) The plans and specifications shall be deemed satisfactory and approved by the Wayne County Health Department before a permit can be issued.

(d) A pre-operational inspection shows that the Bed and Breakfast Establishment and/or Food Establishment is built or remodeled in accordance with the approved plans and specifications and that the establishment is in compliance with this ordinance, 410 IAC 7-24 and/or 410 IAC 7-15.5.

## **Section C: Permits**

**General:** It is unlawful for a Person to operate any Bed and Breakfast Establishment and/or Food Establishment in Wayne 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 and/or Food Establishment.

Only persons who comply with the applicable requirements of 410 IAC 7-15.5 and /or 410 IAC 7-24 will be entitled to obtain and keep a Permit.

A separate Permit shall be required for each Bed and Breakfast Establishment, and/or Food Establishment operated or to be operated by any person. This applies to multiple establishments located within the same structure, operating with different names, menus, and/or management.

A Permit issued under this ordinance is not transferable.

A Bed and Breakfast Establishment and/or Food Establishment permitted by the Wayne County Health Department shall be considered registered as required in IC16-42-1-6.

**Permit Period:** A Permit for a Bed and Breakfast Establishment and/or Food Establishment shall be issued for a term beginning January 1, and/or before commencement of operation, and expiring December 31, of the same year and shall be applied for by the Person and/or Operator annually, by the first business day in February.

A Permit for a Temporary Food Establishment shall be for the term of one continuous operation, not to exceed fourteen (14) continuous days. Temporary Food Establishments shall apply for their permit at least 7 days in advance of their event. No permit will be issued for establishments failing to comply with this time frame.

**Permit Content:** Any Permit issued by the Health Officer shall contain;

- (1) the name and address of the Person and/or owner to whom the Permit is granted;
- (2) the location of the establishment for which the Permit is issued;
- (3) the issuance and expiration date(s); and
- (4) other such pertinent data as may be required by the Wayne County Health Officer.

**Application:** A Person desiring to operate a Bed and Breakfast Establishment and/or Food Establishment shall submit to the Wayne County Health Department a written application for a Permit on a form provided by the Wayne Health Department.

**Content of the Application:** The application shall include:

- (1) The name, mailing address, email 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 and/or Food Establishment;
- (2) Information specifying whether the Bed and Breakfast Establishment and/or Food Establishment is owned by an association, corporation, individual, partnership, or other legal entity;
- (3) A statement specifying whether the Bed and Breakfast Establishment and/or Food Establishment:
  - (A) If not permanent, is mobile and/or temporary, and
  - (B) If the operation includes one (1) or more of the following:
    - (1) Prepares, offers for sale, or serves potentially hazardous food:
      - (a) Only to order upon a consumer's request;
      - (b) In advance in quantities based on projected consumer demand and discards food that is not sold or served at an approved frequency; or
      - (c) Using time, rather than temperature, as the public health control as specified under 410 IAC 7-24.
      - (d) Prepares acidified foods as defined in 410 IAC 7-21-3.
    - (2) Prepares potentially hazardous food in advance using a food preparation method that involves two or more steps which may include combining potentially hazardous ingredients; cooking; cooling; reheating; hot or cold holding; freezing; or thawing;
    - (3) Prepares food as specified under item (3)(B)(2) of this section for delivery to and consumption at a location off the premises of the Bed and Breakfast Establishment and/or Food Establishment where it is prepared;
    - (4) Prepares food as specified under item (3)(B)(2) of this section for service to a highly susceptible population, as defined in 410 IAC 7-24;
    - (5) Prepares only food that is not potentially hazardous; or
    - (6) Does not prepare, but offers for sale only prepackaged food that is not potentially hazardous.
  - (4) The name, title, address, and telephone number of the Operator directly responsible for the Bed and Breakfast Establishment and/or Food Establishment.
  - (5) The name, title, address, and telephone number of the Person who functions as the immediate supervisor of the Person specified under subdivision (4) of this section, such as the zone, district, or regional supervisor;
  - (6) The names, titles, and addresses of:

- (A) The Persons comprising the legal ownership as specified under subdivision (2) of this section including the owners and Operators, and
- (B) The local resident agent if one is required based on the type of legal ownership;
- (7) A statement signed by the applicant that:
  - (A) Attests to the accuracy of the information provided in the application, and
  - (B) Affirms that the applicant will:
    - (1) Comply with this ordinance, and
    - (2) Allow the Wayne County Health Department access to the Bed and Breakfast Establishment and/or Food Establishment and records as specified in 410 IAC 7-15.5 and 410 IAC 7-24;
- (8) Other information required by the Wayne 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 and/or Food Establishment;
- (2) Comply with the requirements of this ordinance;
- (3) Agree to allow access to the Bed and Breakfast Establishment and/or Food Establishment and provide required information; and
- (4) Pay the applicable Permit fees at the time the application is submitted.

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

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

- (1) Comply with the provisions of this ordinance and all laws and rules adopted by reference herein and the conditions of any variances granted by the Indiana Department of Health;
- (2) Immediately discontinue affected operations and notify the Wayne County Health Department if an Imminent Health Hazard may exist;
- (3) Allow representatives of the Wayne County Health Department access to the Bed and Breakfast Establishment and/or Food Establishment at all reasonable times;
- (4) Comply with directives of the Wayne County Health Department including time frames for corrective actions specified in Inspection Reports, notices, Orders, warnings, and other directives issued by the Wayne County Health Department in regard to the Operator's Bed and Breakfast Establishment and/or Food Establishment or in response to community emergencies;
- (5) Accept notices issued and served by the Wayne County Health Department; and
- (6) Be subject to the administrative, civil, injunctive, and criminal remedies authorized in law for failure to comply with this ordinance or a directive of the Wayne County Health Department.

(7) Post the Permit in a location in the Bed and Breakfast Establishment and/or Food Establishment that is conspicuous to consumers;

#### **Section D: Permit Fees**

It shall be unlawful for any Person to operate a Bed and Breakfast Establishment and/or Food Establishment in Wayne County, who has not paid the Permit fee required to be paid for the operation of such establishment.

The fee shall be paid for a term beginning January 1, and/or before commencement of operation and expiring December 31, of the same year and the permit shall be applied for by the Person and/or Operator annually, by the first business day in February.

Permit fees for the issuance of a Permit under this Ordinance to a Bed and Breakfast Establishment and/or a Food Establishment shall be set by the Wayne County Health Department, as provided by the Statutes of the State of Indiana. (See IC 16-20-1-27)

A receipt for the payment of such fee shall be provided by the Wayne County Health Department.

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

#### **Exemption from Permit Fees:**

An organization that is exempt under IC 16-18-3-137 will not be subject to permit fees.

**Late Fees:** A late fee for failure to pay the permit fee prior to the operation of the Bed and Breakfast Establishment and/or Food Establishment or the late fee for failure to renew a permit after the expiration of the permit to operate Bed and Breakfast Establishment and/or Food Establishment shall be assessed, two (2) times the original permit fee, in addition to the original permit fee, as set by the Wayne County Health Board.

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

#### **Event Registration:**

Any food service event must register with the Wayne County Health Department at least 30 day prior to the beginning of the event. The food service event application will be provided by the Wayne County Health Department. Fees for registering a food service event are included in the Wayne County Health Department Fee Ordinance.

#### **Section E: Inspection**

**General:** The Wayne County Health Department shall inspect a Bed and Breakfast Establishment and/or Food Establishment at least once every 6 months, unless a system of risk-based inspections is utilized as stated below.

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

- (1) The Bed and Breakfast Establishment and/or Food Establishment is fully operating under an approved and validated Hazard Analysis Critical Control Point (HACCP) plan(s); (OR)
- (2) The Bed and Breakfast Establishment and/or 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 and at least once every 6 months the establishment is contacted by telephone or other means by the regulatory authority to ensure that the establishment manager and the nature of food operation are not changed; or
- (3) The establishment's operation involves only coffee service and other unpackaged or prepackaged that is not potentially hazardous (time/temperature control for safety food) such as carbonated beverages and snack food such as chips, nuts, popcorn, and pretzels. (Information taken from the 2009 FDA Model Food Code Section 8-401.10 Establishing Inspection Intervals)

The Wayne County Health Department should contact the Operator to determine that the nature of the food operation has not changed.

**Temporary Food Establishment:** The Wayne County Health Department shall periodically inspect throughout its Permit period a temporary Food Establishment that prepares, sells, or serves unpackaged potentially hazardous food and may inspect a temporary Food Establishment that prepares, sells or serves unpackaged, nonpotentially hazardous food that:

- (1) Has improvised rather than permanent facilities or equipment for accomplishing functions such as handwashing, 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 that have not demonstrated knowledge, as per 410 IAC 7-24, of food operations.

**Performance and Risk Based Inspections:** Within the parameters specified in the above Inspection Subsection(s) of this Ordinance, the Wayne County Health Department shall prioritize, and conduct more frequent inspections based upon its assessment of a Bed and Breakfast Establishment and/or Food Establishment's history of compliance with this ordinance and the Bed and Breakfast Establishment and/or Food Establishment's potential as a vector of foodborne illness by evaluating:

- (1) Past performance, for violations of 410 IAC 7-15.5, 410 IAC 7-24 and/or 410 IAC 7-22 and/or HACCP plan requirements that are critical or non-critical;
- (2) Past performance, for numerous or repeat violations of 410 IAC 7-15.5 and/or 410 IAC 7-24 and/or HACCP plan requirements that are non-critical;
- (3) Past performance, for complaints investigated and found to be valid;
- (4) The hazards associated with the particular foods that are prepared, stored, or served;
- (5) The type of operation including the methods and extent of food storage, preparation, and service;
- (6) The number of people served; and
- (7) Whether the population served is a highly susceptible population as defined by Indiana law.

**Access Allowed at Reasonable Times After Due Notice:** After the Wayne 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 Wayne County Health Department to determine if the Bed and Breakfast Establishment and/or Food Establishment, is in compliance with this ordinance by allowing access to the establishment, allowing inspection, and providing information and records specified in this ordinance. The Wayne 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 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 Wayne 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. The operator or person in charge shall post the most recent **routine** inspection report in a location visible to the public adjacent to the front public entrance.

**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 Wayne 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 Wayne County Health Department shall verify correction of the violation, document the information on an Inspection Report, and enter the report in the Wayne 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 Wayne County Health Department historical record for the Bed and Breakfast Establishment and/or Food Establishment.

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

**Public Information:** Except as specified in Section 194 (Trade Secrets) of 410 IAC 7-24, the Wayne County Health Department shall treat the Inspection Report as a public document and shall make it available for disclosure to a Person who requests it as provided in law. (See IC 16-20-8)

## **Section F: Compliance and Enforcement**

**Application Denial:** If an application for a plan review and/or Permit to operate a Bed and Breakfast Establishment and/or Food Establishment is denied, the Wayne 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 Revocation:** The Wayne County Health Department may revoke a Permit to operate a Bed and Breakfast Establishment and/or Food Establishment for a time period not to exceed 90 calendar days. If the permit has been revoked in the past and a clear demonstration of non-compliance is demonstrated by the permit holder then the permit may be revoked for a longer period of time as determined by the Health Officer.

**Permit Suspension:** The Wayne County Health Department may suspend a Permit to operate a Bed and Breakfast Establishment and/or Food Establishment 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. A suspension shall not exceed 30 calendar days. The permit may be suspended for a longer period of time as determined by the Health Officer.

**Ceasing Operation and Contacting the Wayne County Health Department:** An Operator of a Bed and Breakfast Establishment and/or Food Establishment shall immediately discontinue operations and notify the Wayne County Health Department if an Imminent Health Hazard may exist because of an emergency such as a fire, flood, extended interruption of electrical or water service, sewage backup, misuse of poisonous or toxic materials, onset of an apparent foodborne illness outbreak, gross insanitary occurrence or condition, or other circumstance that may endanger public health.

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

**Resuming Operation:** If a Bed and Breakfast Establishment and/or Food Establishment has discontinued operations for the reasons stated above or otherwise according to law, the Operator must obtain approval from the Wayne County Health Department before resuming operations.

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

### **Enforcement Options:**

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

- (1) Establish a process for the issuing of tickets based on violation of the Food Establishment and/or Bed and Breakfast Establishment requirements. (See IC 16-42-5-28 (g)) (See also the Appeals Section of this Ordinance to ensure that due process is followed.) The Wayne County Health Department will document and issue violations of the Indiana Food Code on State Form 48669 (R2/2-05), Retail Food Inspection Report. A report copy will be provided to the Retail Food Establishment Owner/Manager, and a copy will be stored at the Wayne County Health Department. The Wayne County Health Department may set dates and times to check compliance on documented violations.
- (2) Conduct administrative proceeding for suspension and/or revocation of the Bed and Breakfast Establishment and/or Food Establishment Permit in front of the Health Officer. (See the Appeals Section of this Ordinance to ensure that due process is followed.) If a Food Establishment and/or

Bed and Breakfast has a documented violation(s) and fails to be compliant with the Wayne County Health Department's orders, The Wayne County Health Department has the authority to suspend or terminate the establishment's operating permit after administrative proceedings have been held with the Health Officer and/or Executive Director.

- (3) The Wayne County Health Officer may issue an "Order to Abate" based on a condition that may transmit, generate, or promote disease. Failure on the part of the Operator to comply with the Order could result in the enforcement of the Order in the court of 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 G: Appeals Section**

- (1) Any Person(s) aggrieved by Orders issued under the Enforcement Options 1-3 of Section F above shall be entitled to a review of the final Order before a Hearing Officer by filing an administrative written request therefore with the Health Officer and/or Executive Director. The written request must be mailed, or hand delivered to the Health Officer and/or Executive Director and must be received within fifteen (15) days after such final Order is issued.
- (2) Upon the Health Officer and/or Executive Director's receipt of such request, the Hearing Officer shall hear the matter again in an open hearing after at least five (5) working days written notice of the time, place, and nature thereof. The time shall be measured pursuant to the rules of court of the jurisdiction. A shorter period of time may be granted, if requested by either party and agreed upon.
- (3) The notice of the hearing shall be served upon the Person requesting the review by hand delivering or mailing by Certified Mail the notice to the address listed on the Permit application as the person's mailing address or such other address, as the person shall designate in the letter of request to the Health Officer and/or Executive Director.
- (4) The Hearing Officer establishes the Rules of Procedure and advises the parties prior to the start of the proceedings.
- (5) The Hearing Officer shall make written findings of facts and shall enter its final administrative order or determination of this matter in writing.
- (6) The administrative order completes the Administrative Appeals procedure.

#### **Section H: Conflict of Interest**

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

### **Section I: Unconstitutionally Clause:**

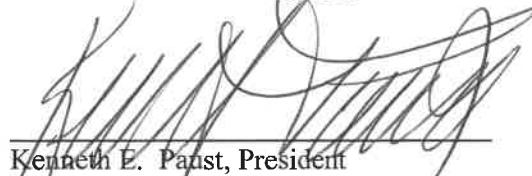
Should any section, paragraph, sentence, clause, or phrase of this ordinance be declared unconstitutional or invalid for any reason, the remainder of this ordinance shall not be affected thereby.

### **Section J: Repeal and Effective Date**

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

Passed and adopted by the Commissioners of Wayne County, State of Indiana, on this 8th day of September, 2021.

WAYNE COUNTY BOARD OF COMMISSIONERS:



Kenneth E. Paust, President

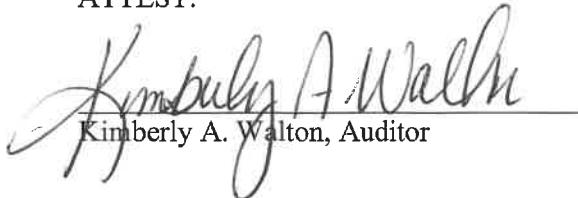


Mary Anne Butters, Member



Jeffrey C. Plasterer, Member

ATTEST:



Kimberly A. Walton, Auditor