

Dubois County Retail Food Establishment/Bed and Breakfast Establishment Ordinance No. 2016-05

SECTION 1. Purpose

The purpose of this ordinance is to safeguard public health and to establish sanitary regulations for bed and breakfast establishments, retail food establishments, seasonal retail food establishments, mobile retail food establishment, and temporary retail food establishments, in Dubois County; 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 (IC) 16-42-1, IC 16-42-2, IC 16-42-5, 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.

SECTION 2. Definitions

The following definitions shall apply in the interpretation and enforcement of this chapter:

"**Adulterated**" has the meaning set forth in IC 16-42-1 through 16-42-5.

"**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.

"**Certified Food Handler**" means a food handler who holds a certificate recognized by the Conference of Food Protection or an equivalent nationally recognized certification program as determined by the department.

"**Closed**" means fitted together snugly, leaving no openings large enough to permit the entrance of vermin.

"**Commissary**" means a registered catering establishment, restaurant or any other retail food establishment in which food, containers or supplies are kept, handled, prepared or stored.

“Conflict of Interest” (derived from 68 IAC 9-1-1(b)(2)) means a situation in which the private financial interest of Dubois County Official, Dubois County Official’s spouse, ex-spouse, siblings, in-laws, children and/or un-emancipated child, may influence the Dubois County Official’s judgement in the performance of a public duty.

"Corrosion-Resistant Materials" means those materials that maintain their original surface characteristics under prolonged influence of the food to be contacted, the normal use of cleaning compounds and sanitizing solutions and other conditions of use.

“Critical Item” means a violation of the 410IAC 7-24 Retail Food Establishment Sanitation Requirements that, if in noncompliance, is more likely than other violations to contribute to food contamination, illness, or environmental degradation. Critical items will be denoted as such on the inspection form.

"Easily Cleanable" means that surfaces are readily accessible and made of such materials and finish and so fabricated that residue may be effectively removed by normal cleaning methods.

"Employee" means the permit holder, an individual having supervisory or management duties, person on the payroll, family member, volunteer person performing work under contractual agreement or any other person working in a retail food establishment.

"Equipment" means items other than utensils used in the storage, preparation, display and transportation of food such as stoves, ovens, hoods, slicers, grinders, mixers, scales, meat blocks, tables, food shelving, reach-in refrigerators and freezers, sinks, ice makers and similar items used in the operation of a bed and breakfast establishment, retail food establishment, seasonal retail food establishment, mobile retail food establishment, or temporary retail food establishment. This item does not include fork lift trucks or dollies.

"Food" means any raw, cooked or processed edible substance, ice, beverage or ingredient used, or intended for use, or for sale in whole, or in part, for human consumption.

"Food-Contact Surface" means those surfaces of equipment and utensils with which food normally comes in contact, and those surfaces from which food or other contaminants may drain, drip or splash back onto surfaces normally in contact with food.

“Foodborne Disease Outbreak” means an incident, in which:

- (A) two or more persons experience a similar illness after ingestion of a common food;
- (B) epidemiological analysis implicates the food as the source of the illness; or
- (C) a single case of illness from botulism or chemical poisoning.

“HACCP Plan” means a written document that delineates the formal procedures for following the Hazard Analysis Critical Control Point principles developed by the National Advisory Committee on Microbiological Criteria for Foods.

“Hazard” means a biological, chemical, or physical property that may cause an unacceptable consumer health risk.

“Health Department” means the Dubois County Health Department, which is the full-time County Health Department and includes the Dubois County Board of Health, the Dubois County Health Officer and authorized representatives of the Health Officer.

“Health Officer” means the County Health Officer or his/her duly authorized representative.

“Hearing Officer” means an individual or panel of individuals acting in the capacity of a Hearing Officer in proceedings. The Hearing Officer is not the Health Officer or any other employee of the Dubois County Health Department. The Hearing Officer shall be the Dubois County Board of Health or a subcommittee of the Dubois County Board of Health.

“Hermetically Sealed Container” means a container designed and intended to be secure against the entry of microorganisms and to maintain the commercial sterility of its contents after processing.

“Imminent Health Hazard” means a significant threat or danger to health that is considered to exist when there is evidence to show that a product, practice, circumstance, or event creates a situation that requires immediate correction or cessation of operation to prevent illness based on:

- (A) the number or potentially ill persons; and
- (B) the nature, severity, and duration of the anticipated illness.

“410 IAC 7-24” refers to the Indiana State Department of Health Retail Food Establishment Sanitation Requirements which is the state regulation governing retail food establishments.

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

"Kitchenware" means all multi-use utensils other than tableware.

"Law" means all applicable state and local statutes, ordinances, rules and regulations.

“mg/L” means milligrams per liter, which is the metric equivalent of parts per million (ppm).

"Misbranded" has the meaning provided in the Uniform Indiana Food, Drug and Cosmetic Act as amended.

"Mobile Retail Food Establishment" means any retail food establishment without a fixed location which is capable of being readily moved intact from location to location that is wheeled, on skids, mounted on a vehicle, a marine vessel, pushcart or trailer.

"New Retail Food Establishment" means an establishment which has not been previously issued a permit; a permitted retail food establishment which has ceased operation for six (6) or more consecutive months; or has changed ownership.

“Non-potentially Hazardous Foods” means those foods with a water activity (Aw) value of 0.85 or less, a food with a hydrogen ion concentration (pH) level of 4.6 or below when measured at 75°F, or foods for which laboratory evidence exists that demonstrates that rapid or progressive growth of infectious and toxigenic microorganisms or slower growth of Clostridium botulinum cannot occur. Some examples include candies, cookies, commercial pastries, fresh uncut fruits and vegetables, and commercially prepared unopened hermetically sealed containers which do not require refrigeration.

“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 Dubois 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.

"Packaged" means bottled, canned, cartoned, bagged or securely wrapped.

"Permit" means the document issued by the Dubois County Health Department that authorizes a person to operate a bed and breakfast establishment, retail food establishment, mobile retail food establishment, and/or temporary food establishment.

"Person" means any individual, partnership, corporation, association or other legal entity.

"Person In Charge" means the individual present in a bed and breakfast establishment, retail food establishment, mobile retail food establishment, and/or temporary retail food establishment who is the supervisor of the establishment at the time of inspection. If no individual is the apparent supervisor, then any employee present is the person in charge.

"Potentially Hazardous Food" means any food that is natural or synthetic and is in a form capable of supporting:

- (A) the rapid and progressive growth of infectious or toxigenic microorganisms; or
- (B) the growth and toxin production of *C. botulinum*.

Potentially hazardous foods include foods that are of animal origin that are raw or heat-treated; foods of plant origin that are heat treated or consist of raw seed sprouts; cut melons; and garlic and oil mixtures. The term includes foods with a water activity (*A_w*) value above 0.85 and foods with a pH level above 4.6 when measured at 75°F.

"Reconstituted" means dehydrated food products recombined with water or other liquids.

"Regulatory Authority" means the state and/or local enforcement authority having jurisdiction over the bed and breakfast establishment, retail food establishment, mobile retail food establishment, and/or temporary retail food establishment.

"Restricted Use Pesticide" means a pesticide product that contains the active ingredients specified in the US Code 40 CFR (Code of Federal Regulations) 152.175; that are classified for restricted use; and that are limited to use by, or under direct supervision of, a certified applicator.

"Retail Food Establishment" means an operation as follows that:
(1) Stores, prepares, packages, serves, vends, or otherwise provides food for human consumption, such as the following:

- (A) A restaurant.
- (B) A satellite or catered feeding location.
- (C) A catering operation if the operation provides food directly to a consumer or to a conveyance used to transport people.
- (D) A market.
- (E) A grocery store.
- (F) A convenience store.
- (G) A vending location.
- (H) A conveyance used to transport people.
- (I) An institution.
- (J) A food bank.
- (K) A commissary.
- (L) A cottage industry.
- (M) A hospice facility as defined in IC 16-25-11.
- (N) A health care facility as defined in IC 16-21-2.
- (O) A health facility as defined in 16-18-2.
- (P) A child care facility as defined in IC 12-13-5, such as the following:
 - (i) Permitted child care centers permitted under 470 IAC 3-4.7.
 - (ii) Permitted child care institutions permitted under 470 IAC 3-11, 470 IAC 3-12, and 470 IAC 3-13.
 - (iii) Registered child care ministries registered under 470 IAC 3-4.5
- (Q) An assisted living facility as defined in IC 12-10-5.

(2) Relinquishes possession of food to a consumer directly or indirectly through delivery service, such as home delivery of grocery orders or restaurant takeout orders, or delivery service that is provided by common carriers.

(A) The term includes the following:

- (1) An element of the operation, such as a transportation vehicle or a central preparation facility that supplies a vending location or satellite feeding location unless the vending or feeding location is permitted by the regulatory authority.
- (2) An operation that is conducted in a:
 - (A) mobile;
 - (B) stationary;
 - (C) temporary; or
 - (D) permanent; facility or location, where consumption is on or off the premises and regardless of whether there is a charge for the food.

(B) The term does not include the following:

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

- (5) An area where food that is prepared as specified in subdivision (4) is sold or offered for human consumption.
- (6) A bed and breakfast establishment as defined and regulated under IC 16-41-37 and 410 IAC 7-15.5.
- (7) A private home that receives catered or home delivered food.
- (8) A private home.

"Safe Materials" means:

- (A) articles manufactured from or composed of materials that may not reasonably be expected to result, directly or indirectly, in their becoming a component or otherwise affecting the characteristics of any food;
- (B) a food additive or color additive as defined in Section 201 (s) or (t) of the Federal Food, Drug, and Cosmetic Act and which are used as specified in Section 409 or 706 of the Act; or
- (C) other materials which are not food additives or color additives as defined in Section 201 (s) or (t) of the Federal Food Drug and Cosmetic Act and which are used in conformity with applicable regulations of the Food and Drug Administration; and
- (D) articles used in conformity with requirements of the Indiana Food, Drug and Cosmetic Act (IC 16-42-2-1 and IC 16-42-2-4). Other materials are safe only if they are used in conformity with all applicable laws and rules of the Indiana State Board of Health.
- (E) applied to potentially hazardous foods, means food temperatures of forty-one degrees (41°F) or below or one hundred thirty-five degrees (135°F) or above.

"Sanitize" means effective bactericidal treatment by a process that provides enough accumulative heat or concentration of chemicals on a clean surface that, when evaluated for efficacy, yields a reduction of five logs, which is equal to a 99.999% reduction, of representative disease microorganisms of public health importance.

"Seasonal Retail Food Establishment" means a retail food establishment that operates not more than eight (8) months in a calendar year.

"Sewage" means the water-carried waste derived from ordinary living processes, including, but not limited to, human excreta and waste water derived from water closets, urinals, laundries, sinks, utensil-washing machines, bathing facilities or similar facilities or appliances.

"Single-Service Articles" means cups, containers, lids, closures, plates, knives, forks, spoons, stirrers, paddles, straws, napkins, wrapping materials, toothpicks and similar articles intended for one-time, one-person use and then discarded. The term does not include "single use" articles such as Number 10 cans, aluminum pie pans, bread wrappers, and similar articles into which food has been packaged by the manufacturer.

"Tableware" means multi-use eating and drinking utensils, including flatware (knives, forks and spoons).

"Temporary Retail Food Establishment" means a retail food establishment that operates at a fixed location for a period of time not more than fourteen (14) consecutive days in conjunction with a single event or celebration such as a fair, carnival, circus, public exhibition or similar transitory gathering.

"Utensil" means any food-contact implement used in the storage, preparation, transportation or dispensing of food.

"Wholesome" means in sound condition, clean, free from adulteration and otherwise suitable for use as human food.

SECTION 3. Submission and Approval of Plans for Construction or Alteration of a Bed and Breakfast Establishment, Retail Food Establishment, Seasonal Retail Food Establishment, or Mobile Retail Food Establishment and Pre-Operational Inspection

- (A) Before a bed and breakfast establishment, retail food establishment, seasonal retail food establishment, mobile retail food establishment, or portion thereof, except for a temporary retail food establishment or vending machine location, is constructed, altered, or remodeled or before an existing structure is converted to the use as a bed and breakfast establishment, retail food establishment, mobile retail food establishment or portion thereof, the owner, operator, or designated agent shall submit plans and specifications for the bed and breakfast establishment, retail food establishment, seasonal retail food establishment, mobile retail food establishment or portion thereof to the Dubois County Health Department for review and approval. The plans and specifications shall indicate the proposed layout, arrangement, mechanical plans and construction materials of work areas, and the type and model of proposed fixed equipment and facilities. A transmittal letter shall be submitted with the plans and specifications. This letter shall identify and summarize the plans or projects and shall indicate the

owner, operator or designated agent. The Dubois County Health Department shall approve the plans and specifications if they meet the requirements of this chapter. No bed and breakfast establishment, retail food establishment, seasonal retail food establishment, or mobile retail food establishment shall be constructed, remodeled or converted except in accordance with plans and specifications approved by the Dubois County Health Department.

- (B) The owner or other authorized agent of an existing or proposed bed and breakfast establishment, retail food establishment, seasonal retail food establishment, and/or mobile retail food establishment, shall submit to the Dubois County Health Department properly prepared plans and specifications for review and approval before:
- (1) the construction of a bed and breakfast establishment, retail food establishment, seasonal retail food establishment, and/or mobile retail food establishment
 - (2) the conversion of an existing structure for use as a bed and breakfast establishment, retail food establishment, seasonal retail food establishment, mobile retail food establishment; or
 - (3) the remodeling of a bed and breakfast establishment, retail food establishment, seasonal retail food establishment, and/or mobile retail food establishment or a change of type of bed and breakfast establishment, retail food establishment, seasonal retail food establishment, and/or mobile retail food establishment or food operation if the Dubois County Health Department determines that plans and specifications are necessary to ensure compliance with this section.

The plans and specifications for a bed and breakfast establishment, retail food establishment, seasonal retail food establishment, and/or mobile retail food establishment shall include, the type of operation, type of food preparation (as specified in Appendix B of the published version of 410 IAC 7-24), and the menu.

The plans and specifications shall be deemed satisfactory and approved by Dubois County Health Department before a permit can be issued.

A pre-operational inspection shows that the bed and breakfast establishment, retail food establishment, seasonal retail food establishment, and/or mobile retail 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.

- (C) If an application for a plan review and/or permit to operate a bed and breakfast establishment, retail food establishment, seasonal retail food establishment, mobile retail food establishment, and/or temporary retail food establishment is denied the Dubois County Health Department shall provide the applicant with a notice within five (5) to seven (7) business days 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.
- (D) When plans and specifications required by this section are to be submitted to the Dubois County Health Department, the Dubois County Health Department shall inspect the bed and breakfast establishment, retail food establishment, seasonal retail food establishment, or mobile retail food establishment prior to the start of operations to determine compliance with the approved plans and specifications and with the requirements of this section.

SECTION 4. Permit: Requirements, Procedure for Issuance, Fees and Exemptions

- (A) It shall be unlawful for any person to operate a bed and breakfast establishment, retail food establishment, seasonal retail food establishment, mobile retail food establishment or temporary retail food establishment in Dubois County if the person does not possess a valid permit from the Health Department. A separate permit shall be required for each bed and breakfast establishment, retail food establishment, seasonal retail food establishment, mobile retail food establishment, or temporary retail food establishment operated by any person. When separate areas for food service or preparation are located in one building and are operated by one owner, the establishment shall be considered as one establishment and only one permit shall be required.
- (B) Only persons who comply with the applicable requirements of this section shall be entitled to receive and retain such a permit. A permit shall be issued to any person upon application and only after inspection of the bed and breakfast establishment, retail food

establishment, seasonal retail food establishment, mobile retail food establishment, or temporary retail food establishment and upon approval by the Dubois County Health Department. No permit, or renewal thereof, shall be denied or revoked on arbitrary or capricious grounds.

- (C) The permit for a bed and breakfast establishment or retail food establishment shall be for a term of one (1) year, beginning January 1st and expiring December 31st of the calendar year and shall be renewed annually. Failure to pay the fee for the renewal of a permit by December 15th of the current calendar year shall result in the assessment of a delinquent fee against the bed and breakfast establishment or retail food establishment. The delinquent fee shall be in addition to the annual fee.
- (D) The permit for a seasonal retail food establishment shall be for a term of not more than eight (8) months in a calendar year, and shall be renewed annually. The fee for the permit shall be due and payable at the time of application to, and approval by, the Dubois County Health Department.
- (E) The permit for a mobile retail food establishment shall be for a term beginning the date of application to, and approved by, the Health Department and expiring at 12a.m. (midnight) on the last day of the event listed on the application. The fee for the permit shall be due and payable at the time of application to, and approval by, the Dubois County Health Department. Each mobile unit shall be permitted and charged a fee.
- (F) The permit for a temporary retail food establishment shall be for a term beginning the date of application to, and approval by, the Dubois County Health Department and expiring at 12a.m. (midnight) on the last day of the event listed on the application and shall expire no later than fourteen (14) consecutive days after the date the establishment begins operating. The fee for the permit shall be due and payable at the time of application to and approval by the Dubois County Health Department.
- (G) Any permit issued by the Dubois County Health Department shall contain the permit number, name and address of the establishment, the name of the person to whom the permit is granted, the type of establishment to which the permit is being issued, the issuance and expiration date(s), the name of the health officer, the name of the food safety specialist, and any such pertinent data as may be required by the Health Department. The permit shall be posted in a conspicuous place in the bed and breakfast establishment, retail

food establishment, seasonal retail food establishment, mobile retail food establishment, or temporary retail food establishment.

- (H) A permit is not transferable to another location or to another person. In the event of a change of ownership by conveyance, sale contract, lease or other means, the current permit shall become void and a new permit shall be required. A permit shall not be issued to a bed and breakfast establishment, retail food establishment, seasonal retail food establishment, or mobile retail food establishment under new ownership until it is in full compliance with all applicable State and local laws.

In the event the Dubois County Health Department is not notified of a change of ownership of a bed and breakfast establishment, retail food establishment, seasonal retail food establishment, or mobile retail food establishment a permit for the next year shall not be issued until:

- (1) the bed and breakfast establishment, retail food establishment, seasonal retail food establishment, or mobile retail food establishment, is in full compliance with all applicable State and local laws; and
 - (2) the past year's permit is paid for in full, including delinquent fees.
- (I) No permit shall be required and no permit fee shall be paid for any bed and breakfast establishment, retail food establishment, seasonal retail mobile food establishment, mobile retail food establishment or temporary retail food establishment operated by any charitable, educational, government, religious or other non-profit organization exempted under the Indiana Gross Income Tax Law.
- (J) A person desiring to operate a bed and breakfast establishment, retail food establishment, seasonal retail food establishment, mobile retail food establishment, or temporary retail food establishment shall submit to the Dubois County Health Department a written application for a permit on a form provided by the Dubois County Health Department.

The application shall include:

The date, name of business, telephone number, physical address, mailing address, email address for notifications, name of owner(s), owner's emergency telephone number, owner's mailing address, days and hours of operation, name and certificate expiration date of certified food handler(s), type of business, if off-site catering is

available, foods to be served, and the name of the on-site supervisor(s);

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 Dubois County Health Department access to the bed and breakfast establishment, retail food establishment, mobile retail food establishment, or temporary retail food establishment and records as specified in 410 IAC 7-15.5 and 410 IAC 7-24;

(K) To qualify for a permit, an applicant must:

- (1) Be an owner and/or operator of the bed and breakfast establishment, retail food establishment, seasonal retail food establishment, mobile retail food establishment, and/or temporary food establishment;
- (2) Comply with the requirements of this ordinance;
- (3) Agree to allow access to the bed and breakfast establishment, retail food establishment, seasonal retail food establishment, mobile retail food establishment, and /or temporary food establishment and provide required information; and
- (4) Pay the applicable permit fees at the time the application is submitted.

(L) If an application for a plan review and/or permit to operate a bed and breakfast establishment, retail food establishment, seasonal retail food establishment, and/or temporary food establishment is denied, the Dubois 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.

- (M) In the event of a change of ownership the Dubois County Health Department may renew a permit for an existing bed and breakfast establishment, retail food establishment, seasonal retail food establishment, and/or mobile retail food establishment or may issue a permit to a new owner of an existing bed and breakfast establishment, retail food establishment, seasonal retail food establishment, and/or mobile retail 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.
- (N) Upon acceptance of the permit issued by the Dubois County Health Department, the operator in order to retain the permit shall:
- (1) Comply with the provisions of this ordinance and all laws and rules adopted by reference herein and the conditions of any variances granted by the Indiana State Department of Health;
 - (2) Immediately discontinue affected operations and notify the Dubois County Health Department if an Imminent Health Hazard may exist;
 - (3) Allow representatives of the Dubois County Health Department access to the bed and breakfast establishment, retail food establishment, seasonal retail food establishment, and/or mobile retail food establishment at all reasonable times;
 - (4) Comply with directives of the Dubois County Health Department including time frames for corrective actions specified in inspection reports, notices, orders, warnings, and other directives issued by the Dubois County Health Department in regard to the operator's bed and breakfast establishment, retail food establishment, seasonal retail food establishment, and/or mobile retail food establishment or in response to community emergencies;
 - (5) Accept notices issued and served by the Dubois 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 Dubois County Health Department.

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

SECTION 5. Sanitation and Education Requirements

- (A) All bed and breakfast establishments, retail food establishments, seasonal retail food establishment, mobile retail food establishments, and temporary retail food establishments shall comply with the sanitation requirements specified by the Indiana State Department of Health as now provided in its Rule 410 IAC 7-24 or as the same may be changed or amended. This Rule and any changes or amendments to it that may be adopted or promulgated are incorporated by reference and made part of this section.
- (B) Under the Indiana Retail Food Establishment Sanitation Requirements, Title 410 IAC 7-22-15, it is law to employ at least one (1) certified food handler per establishment. This person is required to oversee the storage, preparation, display or serving of food to the public. A food establishment's designated certified food handler must not allow their certification to expire; and the certified food handler shall become recertified as defined in Section 13 of the above mentioned code.

SECTION 6. Sale, Examination and Condemnation of Unwholesome, Adulterated and Misbranded Food

- (A) It shall be unlawful for any person to sell, through a bed and breakfast establishment, retail food establishment, seasonal retail food establishment, mobile retail food establishment or temporary retail food establishment, any food that is unwholesome, adulterated, or misbranded.
- (B) Samples of food may be taken and examined by the Dubois County Health Department as often as may be necessary to determine freedom from contamination, adulteration or misbranding. The Dubois County Health Department may, on written notice to the owner or operator, impound and forbid the sale of any food that is unwholesome, adulterated or misbranded, or that it has probable cause to believe is unfit for human consumption, unwholesome, adulterated or misbranded. However, in the case of misbranding that can be corrected by proper labeling, such food may be released to the operator for correct labeling under the supervision of the Dubois County Health

Department. The Dubois County Health Department may also cause to be removed or destroyed any dairy product, meat, meat product, seafood, poultry, poultry product, confectionery, bakery product, vegetable, fruit or other perishable article that in its opinion is unsound, contains any filthy, decomposed or putrid substance, or may be poisonous or deleterious to health or otherwise unsafe.

SECTION 7. Disease Control

- (A) No employee, while infected with a disease in a communicable form that can be transmitted by foods, or who is a carrier of organisms that cause such a disease, or while afflicted with a boil, an infected wound, or an acute respiratory infection, shall work in a bed and breakfast establishment, retail food establishment, seasonal retail food establishment, mobile retail food establishment or temporary retail food establishment in any capacity in which there is a likelihood of such person contaminating food or food-contact surfaces with pathogenic organisms or transmitting disease to other persons. If the person in charge of any bed and breakfast establishment, retail food establishment, seasonal retail food establishment, mobile retail food establishment or temporary retail food establishment has reason to believe that any employee has contracted any disease which can be transmitted by food, he/she shall notify the Dubois County Health Department immediately.

- (B) When the Health Department has reason to believe there exists a possibility of transmission of infection from any bed and breakfast establishment employee, retail food establishment employee, seasonal retail food establishment employee, mobile retail food establishment employee or temporary retail food establishment employee, the Dubois County Health Department is authorized to require any or all of the following measures:
 - (1) the immediate exclusion of the employee from all bed and breakfast establishment, retail food establishments, seasonal retail food establishments, mobile retail food establishments and temporary retail food establishments;
 - (2) the immediate closing of the bed and breakfast establishment, retail food establishment, seasonal retail food establishments, mobile retail food establishment or temporary retail food establishment concerned until no further danger of disease outbreak exists in the opinion of the Dubois County Health Department; and/or

- (3) adequate medical examination of the employee and of his/her associates with such laboratory examinations as may be indicated at no cost to the Dubois County Health Department.

SECTION 8. Bed and Breakfast Establishment, Retail Food Establishment, Seasonal Retail Food Establishment, and Mobile Retail Food Establishment: Inspection, Correction of Violations and Revocation of Permit.

- (A) Each bed and breakfast establishment, retail food establishment, seasonal retail food establishment, or mobile retail food establishment will receive unannounced compliance inspections at a frequency determined by the Dubois County Health Department using a risk-based analysis of the establishment. Each bed and breakfast establishment, retail food establishment, seasonal retail food establishment and mobile retail food establishment shall be inspected by the Dubois County Health Department at least once a year.
- (B) The person operating the bed and breakfast establishment, retail food establishment, seasonal retail food establishment, or mobile retail food establishment shall, upon the request of the Dubois County Health Department, permit the Dubois County Health Department access to all parts of such bed and breakfast establishment, retail food establishment, seasonal retail food establishment, or mobile retail food establishment and shall permit the Dubois County Health Department to collect evidence and exhibits and to copy any or all records relative to the enforcement of this chapter.
- (C) At the conclusion of the inspection, the Dubois County Health Department shall provide a copy of the completed Inspection Report and the notice to correct violations to the operator or to the person-in-charge, as required under IC 16-20-8-5.
- (D) If during the inspection of any bed and breakfast establishment, retail food establishment, seasonal retail food establishment, or mobile retail food establishment the Dubois County Health Department discovers the violation of any of the requirements in the provisions of this chapter, it shall issue a written order listing such violations to the owner or to the person in charge and shall fix a time within which the owner or the person in charge of such bed and breakfast establishment, retail food establishment, seasonal retail food establishment, or mobile retail food establishment shall abate and remedy such violations. A copy of the written order shall be filed with the records of the Dubois County Health Department. As

required under IC 16-20-8-5.

- (E) If at the conclusion of the inspection the person operating the bed and breakfast establishment, retail food establishment, seasonal retail food establishment, or mobile retail food establishment refuses to sign an acknowledgment of receipt, it 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 Dubois County Health Department historical record for the bed and breakfast establishment, retail food establishment, seasonal retail food establishment, or mobile retail food establishment. The operator is not necessarily in agreement with the findings of the Dubois County Health Department inspection by acknowledgement of receipt.
- (F) All critical violations shall be corrected within the period of time specified by the Dubois County Health Department, but in any event, not to exceed ten (10) days following an inspection. Within fifteen (15) days after the inspection the owner or person in charge of the bed and breakfast establishment, retail food establishment, seasonal retail food establishment, or mobile retail food establishment may be required to submit a written report to the Dubois County Health Department stating the action taken to correct the critical items. Purchase orders or work contracts with a work completion date satisfactory to the Dubois County Health Department may be accepted as interim corrective action.
- (G) If upon a second and final inspection the Dubois County Health Department finds that such bed and breakfast establishment, retail food establishment, seasonal retail food establishment, or mobile retail food establishment, person, or employee is violating any of the provisions of this chapter that were in violation on the previous inspection and concerning which a written order was issued:
 - (1) the Dubois County Health Department may promptly issue a written order to the owner or to the person in charge of such bed and breakfast establishment, retail food establishment, seasonal retail food establishment, or mobile retail food establishment to appear for an administrative hearing at a certain time and place, no later than ten (10) days from the date of final inspection, to show cause why a permit issued under provisions of this chapter should not be revoked; or

- (2) the Dubois County Health Department shall furnish evidence of the violation(s) to the Dubois County Attorney, and he/she shall prosecute all persons violating the provisions of this chapter.
- (H) If at the administrative hearing the owner or person in charge should fail to show cause as to why his/her permit should not be suspended or revoked, the Dubois County Health Department shall suspend or revoke the permit of such bed and breakfast establishment, retail food establishment, seasonal retail food establishment, or mobile retail food establishment and shall promptly give written notice of such action to the owner or person in charge. The Dubois County Health Department shall maintain a permanent record of its proceedings which shall be filed in the office of the Dubois County Health Department.
- (I) Those establishments having their permit suspended or revoked by the Dubois County Health Department shall be placarded by the Dubois County Health Department with an official notice to the effect that the establishment is closed by order of the Dubois County Health Department. It shall be illegal to remove, damage, or deface such notice prior to the establishment being allowed to resume operation by the Dubois County Health Department.
- (J) Except as specified in section 176 (Trade Secrets) of 410 IAC 7-24, the Dubois 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 16-20-8-6)

SECTION 9. Temporary Food Service Establishment: Inspection, Correction of Violations, Revocation of Permit and Penalty

- (A) The Dubois County Health Department may inspect a temporary retail food establishment for which a permit is required under the provisions of this chapter.
- (B) If during the inspection of any temporary retail food establishment the Dubois County Health Department discovers the violations of any of the requirements in the provisions of this chapter, it shall order the immediate correction of the violation(s).
- (C) The person operating the temporary retail food establishment shall, upon the request of the Dubois County Health Department, permit the Dubois County Health Department access to all parts of the temporary retail food establishment and shall permit the collecting

of evidence and exhibits and the copying of any or all records relative to the enforcement of this chapter.

- (D) Upon failure of any person maintaining or operating a temporary retail food establishment to comply with any order of the Dubois County Health Department, it shall be the duty of the Dubois County Health Department to immediately revoke or suspend the permit of such person and establishment and to forbid the further sale or serving of food therein. Any person continuing to sell or serve food in such temporary retail food establishment whose permit has been revoked or suspended shall be subject to the penalties specified in Section 11.
- (E) Those establishments having their permit suspended or revoked by the Dubois County Health Department shall be placarded by the Dubois County Health Department with an official notice to the effect that the establishment is closed by order of the Dubois County Health Department. It shall be illegal to remove, damage, or deface such notice prior to the establishment being allowed to resume operation by the Dubois County Health Department.
- (F) Except as specified in section 176 (Trade Secrets) of 410 IAC 7-24, the Dubois 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 16-20-8-6)

SECTION 10. Temporary Suspension of Permit

- (A) Any permit issued under this chapter may be temporarily suspended by the Dubois County Health Department without notice or hearing for a period not to exceed thirty (30) days for any of the following reasons:
 - (1) an imminent health hazard such as lack of refrigeration, sewage backup into the bed and breakfast establishment, retail food establishment, seasonal retail food establishment, or mobile retail food establishment loss of hot water supply, major rodent or insect infestation, fire, flood, or an extended power outage. The bed and breakfast establishment, retail food establishment, seasonal retail food establishment, or mobile retail food establishment shall immediately cease retail food operations. An operator need not discontinue operations in an area of

an establishment that is unaffected by the imminent health hazard.

- (2) unsanitary or other conditions that in the Dubois County Health Department's opinion endangers the public's health;
 - (3) interference with the Dubois County Health Department in the performance of its duties; and/or
 - (4) undue harassment of Dubois County Health Department Food Safety Specialist in the performance of their duties.
- (B) Any person whose permit has been suspended may at any time make application to the Dubois County Health Department for the reinstatement of his/her permit.
- (C) The Dubois County Health Department shall conduct an administrative proceeding for suspension and/or revocation of the bed and breakfast establishment, retail food establishment, seasonal retail food establishment, mobile retail food establishment, and/or temporary food establishment permit. Which shall occur no later than five (5) days from written application from the bed and breakfast establishment, retail food establishment, seasonal retail food establishment, mobile retail food establishment, and/or temporary food establishment permit.
- (D) Any such suspension order shall be issued by the Dubois County Health Department, in writing, and served upon the owner or person in charge by leaving a copy at his/her usual place of business, or by delivery of registered or certified mail to such address. Operations shall not be resumed until authorized by the Dubois County Health Department.
- (E) If a bed and breakfast establishment, retail food establishment, seasonal retail food establishment, mobile retail food establishment, and/or temporary retail food establishment has discontinued operations for the reasons stated above or otherwise according to law, the operator must obtain approval from the Dubois County Health Department before resuming operations.

SECTION 11. Penalties for Violations

- (A) A person who violates any of the provisions of this chapter commits an ordinance violation:
- (B) Each day of operation of a bed and breakfast establishment, retail food establishment, seasonal retail food establishment, mobile retail food establishment or temporary retail food establishment in

violation of the provisions of this chapter, or after the expiration of the time limit for abating insanitary conditions and completing improvements to abate such conditions as ordered by the Dubois County Health Department, shall constitute a distinct and separate violation.

- (C) In addition to the penalties prescribed above, the Dubois County Health Department may seek injunctive relief and all the remedies available in a court of equity.
- (D) In addition to the penalties prescribed above, any person who violates any provision of this chapter shall be liable for the costs of litigation including, but not limited to, attorney fees, deposition fees, the costs of expert witnesses, lab testing expenses and court costs.
- (E) In the enforcement of the provisions of this ordinance, the Dubois County Health Department may proceed and/or recommend one or more enforcement options:
 - (1) The Dubois County Board of Health may adopt a policy for the issuing of citations based on violation of the Retail Food Establishment and/or Bed and Breakfast Establishment requirements. For this purpose, the Clerk of Dubois County is hereby designated as the ordinance violations clerk, and a civil penalty for such violation may be imposed according to penalty schedule to be adopted by the Dubois County Board of Health, but with no single civil penalty to exceed \$100.00 (IC 33-6-3-1). Penalties so collected shall be deposited into the County General Fund. Appeals from any citation shall follow the procedure set forth in Section 10 (B).
 - (2) The Dubois 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 may 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).
 - (3) If the action concerning public health is an ordinance violation, the county attorney or county prosecuting attorney may institute a proceeding in the courts for the enforcement of the ordinance violation, in that manner set forth by IC 34-28-5-1. The maximum penalty which may be levied for such violation may not exceed \$1000.00.

- (2) If the action concerning public health is a criminal offense, the county prosecuting attorney may institute a proceeding in the courts for enforcement.(See IC 16-20-1-25).

SECTION 12. Enforcement

This chapter shall be enforced by the Dubois County Health Department, with the assistance of the Dubois County Attorney, or his/her appointed deputies, and, in appropriate cases, by the Dubois County Prosecuting Attorney.

SECTION 13. This ordinance shall be effective upon its adoption and publication according to law.

Adopted this _____ day of _____, 2016.

Two (2) copies of this Rule are on file, in the office of the Auditor and in the Dubois County Health Department for public inspection.

DUBOIS COUNTY BOARD OF COMMISSIONERS

YEAS

NAYS

Larry Vollmer, President

Larry Vollmer, President

Randy Fleck, Vice-President

Randy Fleck, Vice-President

Elmer Brames, Member

Elmer Brames, Member

ATTEST: _____, 2016

Kathy Hopf, Dubois County Auditor