

Food Establishment and Bed and Breakfast Ordinance



Ordinance No. 2013-15

Adopted by:
Board of Commissioners, La Porte County, Indiana—December 2013

FOOD ESTABLISHMENT AND BED AND BREAKFAST ESTABLISHMENT ORDINANCE
ORDINANCE NO. 2013-15

In La Porte County, Indiana

Whereas, Indiana Code Sections 36-1-3-1 et seq. permit any county in the State of Indiana to exercise any power or to perform any function necessary to the public interest in the context of its county or internal affairs, which is not prohibited by the Constitution of the United States or of the State of Indiana, or denied or pre-empted by any other law, or is not expressly granted by any other law to another governmental entity;

Whereas, The Board of Commissioners of La Porte County, Indiana (“Commissioners”) is the County Legislative body and is by law authorized to adopt ordinances for the performance of functions in the County of La Porte, Indiana;

Whereas, The Board of Commissioners of La Porte County, Indiana deem it to be reasonable, appropriate, and in the best interests for the public health, safety, and general welfare of the citizens of the County of La Porte, Indiana to adopt an Ordinance regulating the inspection of food service establishments. 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 Food Store and/or Bed and Breakfast Establishment plan reviews, permits, inspections, and employee restrictions;

Whereas, The Indiana State Department of Health has published and otherwise promulgated and mandated enforcement of food rules by county health departments in the State of Indiana 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, 410 IAC 7-23, 410 IAC 6-10.1 and all as amended from time to time as promulgated by the Indiana State Department of Health;

Thus, The La Porte County Health Department is hereby authorized to issue Bed And Breakfast Establishment, Food Establishment and Food Store, Farmers’ Market vendor, Mobile Unit, Pushcart, Seasonal Operator, and Temporary Vendor 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,

NOW, THEREFORE, BE IT ORDAINED by the Board of Commissioners of La Porte County, State of Indiana, as follows:

SECTION 1. TITLE.

This Ordinance may be referred to as the “LaPorte County Food Service Ordinance.”

SECTION 2. ADOPTION OF REGULATIONS BY REFERENCE.

The regulations of the Indiana State Department of Health located at 410 IAC 7- 20 et seq. Entitled “Retail Food Establishment Sanitation Requirements,” 410 IAC 7-15.5 et seq. entitled “Bed and Breakfast Establishments,” as amended from time to time, and as promulgated by the Indiana State Department of Health, are hereby incorporated and adopted by reference.

SECTION 3. DEFINITIONS.

110.03 Definitions

1. **Administrative Hearing** a hearing called by the La Porte County Health Department's Health Officer for a Bed and Breakfast, Food Establishment or Food Store for failure to comply with this Ordinance or 410 IAC 7-15.5 or 410 IAC 7-24.
2. **Administrative Probation** means an enforcement status an establishment is placed on for failure to meet minimum sanitation requirements of Extended Probation or 410 IAC 7-15.5 or 410 IAC 7-24.
3. **Bed and Breakfast Establishment** (as defined in 410 IAC 7-15.5) means an Operator occupied residence that:
 - (a) provides sleeping accommodations to the public for a fee;
 - (b) has no more than fourteen (14) guest rooms;
 - (c) provides breakfast to its guests as part of the fee; and
 - (d) provides sleeping accommodations for no more than thirty (30) consecutive days to a particular guest.
4. **Board** shall mean the La Porte County Board of Health.
5. **Certified Food Handler** as defined in 410 IAC 7-22, shall mean a food handler who holds a certificate recognized by the Conference for Food Protection or an equivalent nationally recognized certifications program as determined by the Indiana State Department of Health.
6. **Commissary** shall mean licensed facility used to receive, store and prepare food items that will be sold at another location.
7. **Conflict of Interest** (derived from 68 IAC 9-1-1(b)(2)) means a situation in which the private financial interest of La Porte County Official, La Porte County Official's spouse, ex-spouse, siblings, in-laws, children and/or unemancipated child, may influence the La Porte County Official's judgment in the performance of a public duty
8. **County** shall mean that County of LaPorte, State of Indiana.
9. **Employee** shall mean any person hired whether full time or part time, manager, supervisor, family member, or volunteer that works in a food permitted establishment.
10. **Extended Probation** means an enforcement status for failure to meet Probation inspection sanitation criteria or Thirty (30) Day Probationary Status violations/minimum sanitation standards according to 410 IAC 15.5 or 410 IAC 7-24.
11. **Farmers' Market** is a common facility where two or more farmers or growers gather on a regular recurring basis to sell a variety of fruits, vegetables and other farm products directly to the consumer. The market is locally advertised, in a fixed location, established, and operating no longer than 6 month in a calendar year.
12. **Food Establishment** (as defined in IC 16-18-2-137) for purposes of IC 16-42-5 and IC 16-42-5.2

(a) 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.

(8) This definition also includes a Retail Food Establishment as defined in 410 IAC 7-24.

13. Food Store shall mean the following, but not limited to, a grocery store, convenience store, salvage store, discount store, meat market, poultry market, fish market, confectionery, candy kitchen, nut store, retail bakery store, or any food store establishment, whether fixed or movable, where food, intended for human consumption off the premises, is manufactured, produced, stored, prepared, handled, sold or offered with or without charge. The provisions of this Ordinance shall not include meat or poultry slaughterhouses.

14. 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.

15. **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.
16. **Hearing Officer** means the La Porte County Health Board 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 La Porte County Health Department.
17. **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].
18. **Inspection Report** means the document prepared by the La Porte County Health Department that is completed as the result of the inspection and provided to the Operator.
19. **La Porte County Health Department** means the local health department in La Porte County or authorized representative having jurisdiction over a Bed and Breakfast, Food Establishment, or Food Store.
20. **La Porte County Official** means any Official of La Porte County, Indiana.
21. **Lunch Service Vehicle** is a vehicle from which ready-to-eat food and drinks are dispensed that have been prepared and sealed or packaged in a licensed establishment.
22. **Mobile Unit** is a unit such as a trailer, which is fully enclosed by windows or screens, self-contained, on wheels or skids and that is readily movable. This unit shall have all necessary equipment to prepare, hold and serve food in a safe and sanitary manner. The unit must also have all equipment necessary to wash, rinse and sanitize equipment and utensils plus a separate handwashing station. All liquid waste holding tanks must be available and sized 15% larger than the fresh water holding tank.
23. **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.
24. **Order** (derived from IC 4-21.5-1-9) means a La Porte 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.
25. **Permit** means the document issued by the La Porte County Health Department that authorizes a Person to operate a Bed and Breakfast, Food Establishment or Food Store.
26. **Person** means an association; a corporation; an individual; partnership; or other legal entity, government, or governmental subdivision or agency.
27. **Plan Review** means process for ensuring that a proposed establishment will meet standard sanitary operating procedures and physical facility requirements that promote compliance with 410 IAC 15.5 or 410 IAC 7-24.

28. **Prepackaged** shall mean food intended for sale or resale in the original container with no preparation.
29. **Probation** means an enforcement status an establishment is placed on for failure to meet minimum sanitation requirements; comply with this Ordinance or with 410 IAC 7-15.5 or 410 IAC 7-24.
30. **Pushcart** shall mean a movable open-air food operation designed so that the operator stands next to and vends limited food items from the cart. The cart shall have a permanently installed hand sink with free flowing hot and cold water, fresh water holding tank, waste holding tank 15% larger than fresh water tank and overhead protection. Constructed of food grade, easily cleanable surfaces. A licensed commissary shall be required.
31. **Seasonal** shall mean operating less than 180 continuous days in a calendar year.
32. **Temporary Food Establishment** defined in Indiana State Retail Food Establishment rule 410 IAC 7-24 as a food establishment that operates for a period of no more than fourteen (14) consecutive days in conjunction with a single event or celebration with the approval of the organizers of the event or celebration.
33. **Thirty (30) Day Probationary Status** a minimum of thirty (30) days for all new operators, new construction or remodels, after approval of all plans at the time of opening inspection. Full compliance with all applicable provisions of this Ordinance shall be required prior to Permit issuance. A probationary fee shall be a paid before opening the Bed and Breakfast, Food Establishment or Food Store.

SECTION 4. PLAN REVIEW.

110.04 Plan Review

1. The owner or other authorized agent of an existing or proposed Bed and Breakfast, Food Establishment or Food Store shall submit to the La Porte County Health Department properly prepared plans and specifications for review and approval before:
 - (a) the construction of a Bed and Breakfast, Food Establishment or Food Store;
 - (b) the conversion of an existing structure for use as a Bed and Breakfast, Food Establishment or Food Store; or
 - (c) the remodeling of a Bed and Breakfast, Food Establishment or Food Store or a change in type of Bed and Breakfast, Food Establishment or Food Store or food operation if the La Porte County Health Department determines that plans and specifications are necessary to ensure compliance with this section.
2. The plans and specifications for a Bed and Breakfast, Food Establishment or Food Store 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.
3. The plans and specifications shall be deemed satisfactory and approved by La Porte County Health Department before a Permit can be issued.

4. A pre-operational inspection shows that the Bed and Breakfast, Food Establishment or Food Store 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.
5. Unless exempted by the La Porte County Building Department or any municipal building department of jurisdiction in La Porte County, all Food Establishments or Food Stores may be required to install a grease interceptor 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 such an area that is easily accessible for cleaning. Bed and Breakfasts, Food Establishments or Food Stores on a private septic system shall comply with the State of Indiana's Commercial Onsite Wastewater Disposal rule 410 IAC 6-10.1 and County regulations.

SECTION 5. PERMITS.

110.05 Permits

1. General: It is unlawful for a Person to operate any Bed and Breakfast, Food Establishment or Food Store or other food vendor in La Porte 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, Food Establishment or Food Store.

- (a) 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.
- (b) Only persons who comply with applicable State of Indiana building, fire and wastewater services; La Porte County building, fire and wastewater services; and/or Local municipality building, fire and wastewater services will be entitled to obtain and keep a Permit.
- (c) A separate Permit shall be required for each Bed and Breakfast, Food Establishment or Food Store operated or to be operated by any Person.
- (d) A Permit issued under this ordinance is not transferable.
- (e) A Bed and Breakfast, Food Establishment or Food Store permitted by La Porte County Health Department shall be considered registered as required in IC16-42-1-6.

2. Permit Period

- (a) A Permit for a **Bed and Breakfast, Food Establishment or Food Store** 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.
- (b) A Permit for a **Farmers' Market vendor** shall be for the term of one season at one market as locally advertised and established operating for no longer than 6 months. If a vendor operates at multiple markets, a separate Permit shall be required for each market
- (c) A Permit for a **Mobile Unit** shall be granted to serve food on an unlimited basis throughout the county. Permit period shall be issued for a term beginning January 1 and expiring December 31 of the same year and shall be applied for by the Person and/or Operator annually. Any person operating a Mobile Unit shall comply with all Mobile Unit guidelines developed by the La Porte County Health Department and approved by the La Porte County Board of Health.

- (d) A Permit for a **Pushcart** shall be granted to serve food on an unlimited basis throughout the county. Permit period shall be issued for a term beginning January 1 and expiring December 31 of the same year and shall be applied for by the Person and/or Operator annually.
- (e) A Permit for a **Seasonal** operation shall be granted to serve food less than 180 continuous days in a calendar year. Permit period shall be issued for a term from the date the season begins and expiring 180 continuous days from the season's beginning date.
- (f) A Permit for a **Temporary Food Establishment** shall be for the term of one continuous operation, and shall not be granted for longer than 14 consecutive days in conjunction with a single event. Each Temporary Food Service Establishment must be able to meet basic minimum sanitation requirements to safely prepare and serve food. Any person operating a Temporary Food Establishment shall comply with all Temporary Retail Food Establishment guidelines developed by the La Porte County Health Department and approved by the La Porte County Board of Health.

3. Permit Content: Any Permit issued by the Health Officer may contain:

- (a) the name and address of the Person and/or owner to whom the Permit is granted;
- (b) the location of the establishment for which the Permit is issued;
- (c) the issuance and expiration date(s); and
- (d) other such pertinent data as may be required by the La Porte County Health Officer.

4. Application: A Person desiring to operate a Bed and Breakfast, Food Establishment or Food Store shall submit to the La Porte County Health Department a written application for a Permit on a form provided by the La Porte County Health Department.

5. Content of the Application: The application may include:

- (a) The name, mailing address, telephone number, electronic mailing address 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, Food Establishment or Food Store;
- (b) Information specifying whether the Bed and Breakfast Establishment, Food Establishment or Food Store is owned by an association, corporation, individual, Partnership or other legal entity;
- (c) A statement specifying whether the Bed and Breakfast, Food Establishment or Food Store:
 - (1) If not permanent, is mobile, temporary, farmer's market, lunch service vehicle, pushcart, and/or seasonal and
 - (2) If the operation prepares, offers for sale or serves potentially hazardous food includes one (1) or more of the following:
 - (i) Only to order upon a consumer's request;
 - (ii) In advance in quantities based on projected consumer demand and discards food that is not sold or served at an approved frequency; or
 - (iii) Using time, rather than temperature, as the public health control as specified under 410 IAC 7-24.
 - (iv) Prepares acidified foods as defined in 410 IAC 7-21-3.
 - (v) 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;
 - (vi) Prepares food as specified under item (3)(B)(2) of this section for delivery to and consumption at a location off the premises where it is prepared;
 - (vii) 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;
 - (viii) Prepares only food that is not potentially hazardous; or
 - (ix) Does not prepare, but offers for sale only prepackaged food that is not potentially hazardous.
- (d) The name, title, address, and telephone number of the Operator directly responsible for the Bed and Breakfast, Food Establishment or Food Store.
- (e) 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;
- (f) The names, titles, and addresses of:
 - (1) The Persons comprising the legal ownership as specified under subdivision (2) of this section including the owners and Operators, and
 - (2) The local resident agent if one is required based on the type of legal ownership;
- (g) A statement signed by the applicant that:
 - (1) Attests to the accuracy of the information provided in the application, and
 - (2) Affirms that the applicant will:
 - (i) Comply with this ordinance, and
 - (ii) Allow the La Porte County Health Department access to the Bed and Breakfast, Food Establishment or Food Store and records as specified in 410 IAC 7-15.5 and 410 IAC 7-24;
- (h) Other information required by the La Porte County Health Department.

6. Qualification: To qualify for a Permit, an applicant must:

- (a) Be an owner and/or Operator of the Bed and Breakfast, Food Establishment or Food Store;
- (b) Comply with the requirements of this ordinance;
- (c) Agree to allow access to the Bed and Breakfast, Food Establishment or Food Store, provide required information; and
- (d) Pay the applicable Permit fees at the time the application is submitted.

7. Application Denial: If an application for a plan review and/or Permit to operate a Bed and Breakfast, Food Establishment or Food Store is denied, the La Porte County Health Department shall provide the applicant with a notice that includes:

- (a) The specific reasons and rule citations for the application and/or Permit denial;
- (b) The actions, if any, that the applicant must take to qualify for the application and/or Permit; and
- (c) Advisement of the applicant's right of appeal and the process and time frames for appeal that are provided in law.

8. Change of Ownership: The La Porte County Health Department may issue a Permit to a new owner of an existing Bed and Breakfast, Food Establishment or Food Store 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.

9. Responsibilities of the Operator: Upon acceptance of the Permit issued by the La Porte County Health Department, the Operator in order to retain the Permit shall:

- (a) 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;
- (b) Immediately discontinue affected operations and notify the La Porte County Health Department if an Imminent Health Hazard may exist;
- (c) Allow representatives of the La Porte County Health Department access to the Bed and Breakfast, Food Establishment or Food Store at all reasonable times;
- (d) Comply with directives of the La Porte County Health Department including time frames for corrective actions specified in Inspection Reports, notices, Orders, warnings, and other directives issued by the La Porte County Health Department in regard to the Operator's Bed and Breakfast, Food Establishment or Food Store in response to community emergencies;
- (e) Accept notices issued and served by the La Porte County Health Department;
- (f) 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 La Porte County Health Department; and
- (g) Post the Permit in a location in the Bed and Breakfast, Food Establishment or Food Store that is conspicuous to consumers;

110.06 Permit Fees

1. Fee

- (a) It shall be unlawful for any Person to operate a Bed and Breakfast, Food Establishment, Food Store, Mobile Unit, Pushcart or Temporary in La Porte County, who has not paid the Permit fee required for the operation of such establishment.
- (b) 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. Temporary vendors shall pay a permit fee in advance of scheduled venue.
- (c) All new operators, new construction or remodels, after approval of all plans, at the time of opening inspection shall pay a Thirty (30) day probationary status fee. After the Thirty (30) day probationary status is complete, the operator shall pay the Permit fee of the risk-based inspection schedule.
- (d) A Bed and Breakfast, Food Establishment or Food Store opening after June 30 of any year, shall be charged ½ the Permit fee of the risk-based inspection schedule.
- (e) Permit fees for the issuance of a Permit under this Ordinance shall be set by the La Porte County Board of Commissioner's Schedule of Fees and amended from time to time, as provided by the Statutes of the State of Indiana. (See IC 16-20-1-27)

- (f) A receipt for the payment of such fee shall be provided by the La Porte County Health Department.
 - (g) The payment of such fees shall be required for each Bed and Breakfast, Food Establishment or Food Store operated or to be operated by any Person.
2. **Exemption from Permit Fees:** An organization that is exempt under IC 16-18-2-137 will not be subject to permit fees.
 3. **Late Fees:** A late fee for failure to pay the Permit fee prior to the operation of the Bed and Breakfast, Food Establishment or Food Store or the late fee for failure to renew a Permit prior to the expiration date of Permit shall be assessed a penalty of 50% of the permit fee for each day payment is not received. A Temporary permit not paid seven (7) days in advance of scheduled venue will pay a late fee equal to \$10.00 per day not to exceed \$120.00 per event.
 4. **The payment of fees under this ordinance is not transferable or refundable.**

SECTION 6. INSPECTION.

110.07 Inspection

1. **General:** The La Porte County Health Department may inspect a Bed and Breakfast, Food Establishment or Food Store based on the risk-based schedule below:
 - (a) **Risk Category A-** Pre-packaged potentially hazardous foods only. Limited preparation of non-potentially hazardous foods. One inspection per year.
 - (b) **Risk Category B-** Limited menu (1 or 2 main items). Pre-packaged raw ingredients are cooked or prepared to order. Food establishments operations exclude deli or seafood departments. Raw ingredients require minimal assembly. Most products are cooked/prepared and served immediately. Hot and cold holding of potentially hazardous foods is restricted to single meal service. Preparation processes requiring cooking, cooling and reheating are limited to one or two potentially hazardous foods. Two inspections per year.
 - (c) **Risk Category C-** Extensive handling of raw ingredients. Preparation process includes the cooking, cooling, and reheating of potentially hazardous foods. Advanced preparation for next-day service is limited to two or three items. Food establishment operations include deli and seafood departments. Three inspections per year.
 - (d) **Risk Category D-** Extensive handling of raw ingredients. Preparation processes include cooking, cooling, and reheating of potentially hazardous foods. A variety of processes require hot and cold holding of potentially hazardous foods. Food processes include advanced preparation for next-day service. Category would also include those facilities whose service population is highly susceptible. Four inspections per year.
2. **Mobile Units, Pushcarts, Farmers' Market Vendors & Seasonal operations:** Shall be inspected at least one time per permitted season or as often as deemed necessary by the Health Officer.
3. **Probation or Extended Probation:** The Health Officer may inspect a Bed and Breakfast, Food Establishment or Food Store at least once every five (5) working days or as often as deemed necessary. The inspection dates and times will be determined by the Health Officer at random during the prescribed time frame and without prior notice to Permit holder.

- (a) After the probation inspection period is completed with satisfactory results, the establishment will be placed in routine inspection rotation within the risk-based schedule.
4. **Administrative Probation:** Shall require three (3) inspections to be conducted within a thirty (30) day period. The inspection dates and times will be determined by the Health Officer at random during the prescribed time frame and without prior notice to Permit holder.
- (a) After the administrative probation inspection period is over with satisfactory results, the establishment will be placed in routine inspection rotation within the risk-based schedule.
5. **Thirty (30) Day Probationary Status:** After the 30-day period has ended, the Health Officer shall conduct an inspection, and based on satisfactory results, the establishment shall be removed from Thirty (30) Day Probationary Status and placed in routine inspection rotation within the risk-based schedule.
6. **Temporary Food Establishment:** The La Porte 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:
- (a) Has improvised rather than permanent facilities or equipment for accomplishing functions such as handwashing, food preparation and protection, food temperature control, warewashing, providing drinking water, waste water retention and disposal, and insect and rodent control; or
- (b) Has food employees that have not demonstrated knowledge, as per 410 IAC 7-24, of food operations and/or when required does not have a certified food handler as provided in 410 IAC 7-22.
7. **Performance and Risk Based Inspections:** Within the parameters specified in the above Inspection Subsection(s) of this Ordinance, the La Porte County Health Department shall prioritize, and conduct more frequent inspections based upon its assessment of a Bed and Breakfast, Food Establishment, Food Store or Temporary Food Establishment's history of compliance with this ordinance and the Bed and Breakfast, Food Establishment, Food Store or Temporary Food Establishment's potential as a vector of foodborne illness by evaluating:
- (a) 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;
- (b) Past performance, for numerous or repeat violations of 410 IAC 7-15.5 and/or 410 IAC 7-24 and/or HACCP plan requirements that are noncritical;
- (c) Past performance, for complaints investigated and found to be valid;
- (d) The hazards associated with the particular foods that are prepared, stored, or served;
- (e) The type of operation including the methods and extent of food storage, preparation, and service;
- (f) The number of people served; and
- (g) Whether the population served is a highly susceptible population as defined by Indiana law.
8. **Petition to Reassign Inspection Frequency:** Any Bed and Breakfast, Food Establishment or Food Store that is risk category C or D over the course of four consecutive inspections results in:
- (a) No critical violations; and
- (b) No more than two (2) non-critical violations and;
- (c) No repeated violations; then the Permit holder may petition the Health Officer for a reassignment of risk category.

9. Access Allowed at Reasonable Times After Due Notice: After the La Porte 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 La Porte County Health Department to determine if the Bed and Breakfast, Food Establishment or Food Store is in compliance with this ordinance by allowing access to the establishment, allowing inspection, and providing information and records specified in this ordinance. The La Porte County Health Department is entitled to the information and records according to IC 16-42-1-13 and IC 16-42-5-23, during the Bed and Breakfast, Food Establishment or Food Store hours of operation and other reasonable times.

(a) Access is a condition of the acceptance and retention of a Permit to operate.

(b) If access is denied, an Order issued by the appropriate authority allowing access may be obtained according to law under IC 16-20-1-26.

10. Certified Food Handler: When required as provided in 410 IAC 7-22; or, as the same may be hereafter changed or amended a Bed and Breakfast, Food Establishment, Food Store or other food vendor shall employ a certified food handler.

11. Inspection Reports: The La Porte County Health Department shall provide a copy of the completed Inspection Report with the notice to correct violations to the Operator or to the Person-in-charge, as required under IC 16-20-8.

12. Timely Correction of Critical Violations: Except as specified, 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 La Porte 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.

(a) Corrections of all violations except as specified above shall apply as follows:

(i) If an imminent health hazard is determined by the Health Officer to exist, such as, but not limited to, fire, flood, an extended interruption of electrical or water service, a sewage backup, a misuse of poisonous or toxic materials, an onset of an apparent foodborne illness outbreak, a gross unsanitary occurrence or condition or other circumstance that may endanger public health, the Operator shall immediately discontinue operations. Such operations shall not be resumed until authorized by the Health Officer.

(ii) All violations shall be corrected in the time specified by the Health Officer.

(iii) The occurrence of a critical violation that cannot be immediately corrected and is interpreted by the Health Officer to constitute a threat to public health, may result in the establishment being placed on immediate probation or the immediate discontinuation of operations until the violation can be corrected and prevented from reoccurring or until deemed necessary by the Health Officer.

(iv) A Temporary Food Establishment shall correct all critical violations immediately. If such is unable to correct said violation immediately, operations shall cease until the correction is made.

13. Refusal to Sign Acknowledgement:

(a) 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.

- (b) A refusal to sign an acknowledgment of receipt is noted in the Inspection Report and conveyed to the La Porte County Health Department historical record for the Bed and Breakfast, Food Establishment or Food Store.
- (c) The Operator is not necessarily in agreement with the findings of the La Porte County Health Department inspection by acknowledgement of receipt.

14. Public Information: Except as specified in Section 194 (Trade Secrets) of 410 IAC 7-24, the La Porte 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 under IC 16-20-8.

SECTION 7. COMPLIANCE AND ENFORCEMENT.

110.08 Compliance And Enforcement

1. **Excessive Violation Letter:** The Excessive Violation Letter serves as a reminder that the establishment shall improve its compliance to avoid enforcement actions that include, and is not limited to: probation, fines, license suspension and/or closure. A Bed and Breakfast, Food Establishment or Food Store may receive an excessive violation letter if:
 - (a) Upon completion of a routine inspection the establishment scores an excessive number of critical and/or non-critical violations; and
 - (b) It is not meeting minimum sanitation standards according to 410 IAC 15.5 or 410 IAC 7-24.

2. **Probation:** A Bed and Breakfast, Food Establishment or Food Store may be placed on probation or be required to attend an Administrative Hearing if:
 - (a) Upon completion of a routine inspection, the establishment scores: Five (5) or more critical violations and/or ten (10) or more non-critical violations;
 - (b) Two (2) or more REPEATED critical violations and/or four (4) or more REPEATED non-critical violations on consecutive inspections;
 - (c) The behavior of the owner, manager, employees or patron is threatening, violent or in any way interferes with the actions of the Health Officer;
 - (d) The establishment does not correct a critical violation within the specified time period;
 - (e) Two routine inspections within the past twelve (12) month period warrant an Excessive Violation Letter;
 - (f) The establishment has not met the Certified Food Handler requirement.
 - (g) An establishment may be placed on probation for other reasons as deemed necessary by the Health Officer.
 - (h) An establishment on probation may be inspected once every five (5) working days or as often as deemed necessary. The inspection dates and times will be determined by the Health Officer at random during the prescribed time frame and without prior notice to Permit holder.
 - (i) After the probation inspection period is completed with satisfactory results, the establishment will be placed in routine inspection rotation within the risk-based schedule.

3. **Extended Probation:** A Bed and Breakfast, Food Establishment or Food Store may be placed on extended probation or be required to attend an Administrative Hearing if:
 - (a) During a Probation inspection there are one (1) or more REPEATED critical and/or two (2) or more REPEATED non-critical violations;

- (b) During the Thirty (30) Day Probationary Status Inspection, violations written on the Probationary Food Service Permit are not corrected as determined by feasibility, reasonable attempt and cooperation by the Health Officer;
 - (c) During the Thirty (30) Day Probationary Status period an establishment is found after inspection not to be meeting minimum sanitation standards according to 410 IAC 15.5 or 410 IAC 7-24.
 - (d) An establishment on extended probation may be inspected once every five (5) working days or as often as deemed necessary. The inspection dates and times will be determined by the Health Officer at random during the prescribed time frame and without prior notice to permit holder.
 - (e) After the extended probation inspection period is over with satisfactory results, the establishment will be placed in routine inspection rotation within the risk-based schedule.
4. **Administrative Probation:** A Bed and Breakfast, Food Establishment or Food Store may be placed on administrative probation and be required to attend an Administrative Hearing, prior to Permit suspension, for failure to meet the sanitation criteria of Extended Probation.
- (a) Administrative Probation shall require three (3) inspections to be conducted within a thirty (30) day period with inspection results on each inspection to be zero (0) critical and no more than two (2) non-critical. Failure to meet the inspection criteria will result in Permit suspension. The inspection dates and times will be determined by the Health Officer at random during the prescribed time frame and without prior notice to Permit holder.
 - (b) After the administrative probation inspection period is over with satisfactory results, the establishment will be placed in routine inspection rotation within the risk-based schedule.
5. **Permit Suspension:** The La Porte County Health Department may suspend a Permit to operate a Bed and Breakfast, Food Establishment or Food Store for a period not to exceed 30 calendar days, after providing opportunity for an Administrative Hearing for any of the following reasons:
- (a) Determined through inspection, examination of employee, food, records, or other means as specified in this ordinance that an Imminent Health Hazard exists;
 - (b) Interference with the Health Officer in the performance of his or her duties;
 - (c) The establishment has been placed on Probation more than once in a calendar year;
 - (d) Failure to appear at an Administrative Hearing;
 - (e) Failure to meet sanitation criteria as set forth in the Administrative Probation Hearing.
 - (f) If during the subsequent twelve (12) month period after the Permit suspension has been lifted, the establishment has a routine inspection resulting in violations as noted under Probation (1) and/or (2), the Permit may be revoked.
 - (g) Permit suspension is effective immediately upon service of written notice to the Permit holder.
6. **Permit Revocation:** The La Porte County Health Department may revoke a Permit to operate a Bed and Breakfast, Food Establishment or Food Store for a time period not to exceed 90 calendar days, after providing opportunity for an Administrative Hearing for any of the following reasons:
- (a) Interference with the Health Officer in the performance of his or her duties;
 - (b) As a result of a Permit suspension;
 - (c) Failure to correct an imminent health hazard;

- (d) Failure to appear at an Administrative Hearing.
 - (e) If the Permit has been revoked in the past and non-compliance is further demonstrated by the Permit Holder then the Permit may be revoked for a longer period of time as determined by the Health Officer.
 - (f) Prior to Permit revocation, the Health Officer shall notify the Permit holder, in writing, of the reasons for which such Permit is subject to revocation.
- 7. Ceasing Operation and Contacting the La Porte County Health Department:** An Operator of a Bed and Breakfast, Food Establishment or Food Store shall immediately discontinue operations and notify the La Porte 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.
- (a) An Operator need not discontinue operations in an area of an establishment that is unaffected by the Imminent Health Hazard.
- 8. Fines.** For non-compliance issues as set forth in this instant section, The LaPorte County Health Department has discretion to impose any and all appropriate fines and costs, according to the schedule of fines set forth in Civil Penalties Rule, Title 410 IAC 7-23 or other relevant code/regulation section(s). A
- 9. Resuming Operation:** If a Bed and Breakfast, Food Establishment or Food Store has discontinued operations for the reasons stated above or otherwise according to law, the Operator must obtain approval from the La Porte County Health Department before resuming operations.
- (a) **If the Permit was suspended,** the operator shall submit written communication in person to the La Porte County Health Department outlining the following:
 - (i) What actions were instituted to correct violations;
 - (ii) What the plans are for future compliance;
 - (iii) Proof of Certified Food Handler, if applicable, shall be presented with the written communication.
 - (iv) The Operator shall then pay all applicable probationary fees.
 - (b) **If the Permit was revoked,** the operator shall submit written communication in person to the La Porte County Health Department outlining the following:
 - (i) What actions were instituted to correct violations;
 - (ii) What the plans are for future compliance;
 - (iii) What date the establishment will be ready for an opening inspection;
 - (iv) Proof of Certified Food Handler, if applicable, shall be presented with the written communication.
 - (v) The Operator shall then submit a written application for a Permit on a form provided by the La Porte County Health Department. At the time of the opening inspection the operator shall pay a Thirty (30) day probationary status fee, and after the 30-day probationary status is complete, the operator shall pay the Permit fee based on the risk-based inspection schedule.

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

110.09 Administrative Hearing

1. The Health Officer shall conduct the administrative hearings provided for in this Ordinance at a time and place designated by the Health Officer. The Health Officer shall make a final finding based upon the complete hearing record and shall sustain, modify or rescind any notice or order considered in the Hearing. The Health Officer shall furnish a written report of the hearing to the Permit holder within ten (10) days of the hearing. The Permit holder shall immediately comply with an order or decision of the Health Officer.
2. In the event that the Permit holder or their appointed designee fails to attend said hearing; the Permit holder shall be deemed to have accepted the decision of the Health Officer.
3. In the event that the Permit holder fails to abide by the hearing decision or written order of the Health Officer, the Health Officer may furnish written evidence of the violation to the County Prosecutor or the La Porte County Health Board attorney for appropriate action against the Permit holder for violations of provisions of this Ordinance.

SECTION 8. PENALTIES AND FINES.

110.10 Penalties and Fines

1. **Penalties and Fines:** All penalties charged as a result of failure to comply with applicable State Code or State Administrative Code sections, shall be levied and collected according to the schedule of fines set forth in Civil Penalties Rule, Title 410 IAC 7-23 or other relevant code/regulation section(s). Additionally, all penalties charges as a result of failure to comply with the provisions of the Ordinance, exclusive of violations of state code or administrative regulations, shall be levied and collected according to the schedule of fines or in accordance with the provisions specified in this section.
 - (a) Temporary Food Establishments shall not be charged a fee for failure to comply with applicable provisions of the Ordinance. Temporary Food Establishments that fail to fully comply with such requirements shall not be issued a Permit, and shall likewise be ordered to cease operations.
 - (b) Any person operating a Bed and Breakfast, Food Establishment or Food Store without a Permit shall be assessed a fine in accordance with the provisions specified in this section. The Health Officer may require an existing establishment to temporarily close until all applicable requirements have been met.
 - (c) If any person violates any provisions of this Ordinance, upon conviction, they may be fined not more than Five Hundred Dollars (\$500.00) for the first offense, and not more than One Thousand Dollars (\$1000.00) for the second and subsequent offense. Each violation of this Ordinance shall constitute a separate offense. Each day that an Ordinance violation continues, after the time period permitted for correction, if applicable, shall constitute a separate offense. In addition to other specific enforcement mechanisms contained within this Ordinance, the Health Officer may furnish written evidence of any violation of this Ordinance to the La Porte County Prosecutor or the La Porte County Health Board attorney for appropriate action against the Permit holder, including prosecution and enforcement action, for violations of provisions of this Ordinance.

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

SECTION 9. APPEALS.

110.11 Appeals

1. Any Person(s) aggrieved by Orders issued under the Compliance and Enforcement Section 7 above shall be entitled to a review of the final Order before a Hearing Officer by filing a written request therefore with the Health Officer (*Secretary of the La Porte County Board of Health See IC 16-20-1-10*). The written request must be mailed or hand delivered to the Health Officer, 809 State Street, County-Complex Building Suite 401A, La Porte, IN 46350 and must be received within fifteen (15) days after such final Order is issued.
2. Upon the Health Officer's receipt of such request, the board shall hear the matter again in an open hearing after at least five (5) days written notice of the time, place and nature thereof. The time shall be measured pursuant to the rules of court of the jurisdiction. A shorter period of time may be granted, if requested by either party and agreed upon.
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.
4. The board establishes the Rules of Procedure and advises the parties prior to the start of the proceedings.
5. The board 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 10. CONFLICT OF INTEREST.

110.12 Conflict of Interest:

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

SECTION 11. GRATUITIES.

110.13 Gratuities:

1. The Health Officer shall not accept any gratuities from an Operator or from an Operator's employee of any entity Permitted under this Ordinance.

SECTION 12. SERVICE OF NOTICE.

110.14 Service of Notice

1. A notice provided for in this Ordinance is properly served when it is delivered to the Permit holder or the person-in-charge or when it is sent by registered or certified mail, return receipt requested, to the last known address of the holder of such Permit or by electronic submission to

the last known electronic address of the holder of such Permit. A copy of such notice shall be filed in the records of the La Porte County Health Department.

SECTION 13. EXAMINATION AND CONDEMNATION OF FOOD.

110.15 Examination and Condemnation of Food:

1. It shall be unlawful for any Person to sell or distribute, through a Permitted establishment any food which is unwholesome, adulterated, misbranded, obtained from an unapproved source or which is otherwise prohibited as provided in the Indiana Food, Drug and Cosmetic Act, IC 16-42-1 et seq. through IC-42-2 et seq.
2. Food may be examined or sampled by the Health Officer for the purpose of determining compliance with this Ordinance. The Health Officer may prohibit the sale or distribution of any food, which he or she may believe is in violation of any section of this Ordinance and which may pose a health hazard to the public provided:
 - (a) A written notice is issued to the holder of the Permit or the person in charge;
 - (b) The notice specifies in detail the reasons for the order.
3. The Health Officer shall tag, label or otherwise identify any food subject to such order. No food subject to such order shall be used, sold, moved from the establishment or be destroyed without permission from the Health Officer.
4. The written notice of order shall state that a written request for a hearing may be filed with the Health Officer within ten (10) days. Based on evidence presented at such hearing, the order may be vacated or the Permit holder directed by written order to denature or destroy such food. If the food is to be denatured or destroyed, such action shall be taken under supervision of the Health Officer.

SECTION 14. UNCONSTITUTIONALLY CLAUSE.

110.16 Unconstitutionally Clause:

1. 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 15. REPEAL AND EFFECTIVE DATE.

110.17 Repeal and Effective Date

- (1) 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 _____ County, State of Indiana, on this _____ day of _____ 2013.

Signed:

_____ County Board of Commissioners

_____, Indiana