

ORDINANCE 2016-05

BOONE COUNTY BOARD OF COMMISSIONERS

FOOD ORDINANCE

WHEREAS, the State of Indiana has established laws and regulations concerning the preparation and serving of food and consumables; and

WHEREAS, Local governments may adopt ordinances to protect the health and welfare of their citizens (Home Rule); and

WHEREAS, The State of Indiana has delegated to local health departments responsibility for the inspection of food preparation and service; and

WHEREAS, ensuring the safe and sanitary preparation and service of food and consumables is in the public interest, and is necessary to promote the health, safety and welfare of the residents of Boone County; and

WHEREAS, an improperly prepared or served food or consumable could have serious and detrimental effects upon the citizens of Boone County, Indiana; and

WHEREAS, there exists a very real and distinct possibility of the transmission of foodborne illness or communicable diseases due to the improper preparation or service of food; and

WHEREAS, the Boone County Commissioners are empowered to protect the health and safety of the citizens of Boone County; and

WHEREAS, the Boone County Health Department can best inspect and provide the necessary training and expertise to oversee the preparation and service of food; and

WHEREAS, the Boone County Commissioners believe that any person that prepares or serves food to the public should be licensed and subjected to reasonable inspections of the Health Department, and

WHEREAS, the Boone County Commissioners desire to adopt an ordinance to regulate the preparation and service of food and food service businesses in Boone County, Indiana

NOW THEREFORE BE IT ORDAINED THAT THE FOLLOWING ORDINANCE SHALL BE ADOPTED AS FOLLOWS:

The preparation and service of food or any consumable products to the public within Boone County shall be governed and regulated as set forth in the Attached Exhibit, which shall become effective on January 1, 2017.

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.

IT IS SO ORDAINED AND AOPTED THIS 21st DAY OF NOVEMBER 2016.

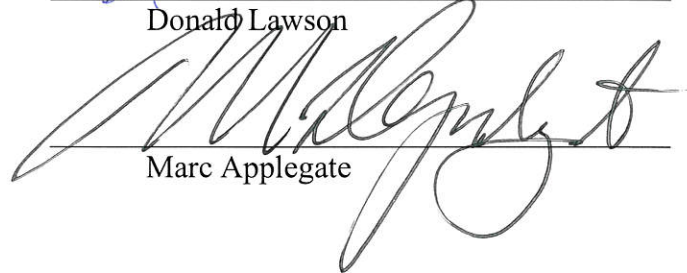
BOONE COUNTY BOARD OF
COMMISSIONERS



Jeff Wolfe, President



Donald Lawson



Marc Applegate

ATTEST:



Heather Myers, Boone County Auditor

EXHIBIT A
ORDINANCE 2016-05

Boone County

Food Ordinance

Adopted

NOVEMBER 21, 2016

BOONE COUNTY FOOD ORDINANCE No. 2016-05

In Boone County, Indiana

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

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

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

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

Section A: Definitions

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

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

- (4) provides sleeping accommodations for no more than thirty (30) consecutive days to a particular guest.

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

Consecutive Inspections 1) means a violation which occurs directly after another inspection. The type of inspection or period of time between inspections is not significant. 2) means an inspection which follows one another in uninterrupted succession or order; successive. The type of inspection or period of time between inspections is not significant.

Food Establishment (as defined in IC 16-18-2-137) means any building, room, basement, vehicle of transportation, cellar, or open or enclosed area occupied or used for handling food. This definition also includes a Retail Food Establishment as defined in 410 IAC 7-24: however, it does not include a Bed and Breakfast establishment.

Farmers' Market means a common facility where two (2) or more farmers or growers gather on a regular reoccurring basis to sell a variety of fruits, vegetables, and other farm products directly to the consumer.

Farmers' Market Food Establishment means a Retail Food Establishment, excluding a Mobile Food Establishment, which operates with the approval of the market master at a Farmers' Market.

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

Local Official means any Official of Boone County, Indiana.

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

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

Hearing Officer means an individual or panel of individuals acting in the capacity of a Hearing Officer in proceedings. The Hearing Officer is not the Health Officer or any other employee of the Boone County Health Department.

Imminent Health Hazard means a significant threat or danger to health that is considered to exist when there is evidence sufficient to show that a product, practice, circumstance, or event

creates a situation that requires immediate correction or cessation of operation to prevent injury or illness based on the number of potential injuries and illnesses and the nature, severity and duration of the anticipated injury or illness [e.g., sewage backing up in a food preparation area or contamination of food products with toxic materials].

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

Market Master means the individual or group of individuals that are responsible for coordinating and organizing the Farmers' Market.

Mobile Food Establishment means a Retail Food Establishment that is wheeled; on skids; mounted on a vehicle; a marine vessel; or otherwise readily movable; such as a pushcart or trailer that changes locations too frequently to be candidate for permanent utility connections, as determined by the Health Officer.

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 Boone County Health Department action of particular applicability that determines the legal rights, duties, privileges, immunities, or other legal interests of one (1) or more specific Persons. The term includes a permit.

Permit means the document issued by the Boone County Health Department that authorizes a Person to operate a Bed and Breakfast Establishment, Mobile Food Establishments, Farmers' Market, Farmers' Market Food Establishments, Food Establishment, and/or Temporary Food Establishment.

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

Temporary Food Establishment means a Food Establishment that operates for a period of no more than fourteen (14) consecutive days in conjunction with a single event or celebration.

Section B: Permits

General: It is unlawful for a Person to operate any Bed and Breakfast Establishment, Mobile Food Establishments, Farmers' Market, Farmers' Market Food Establishments, Food Establishment and/or Temporary Food Establishment in Boone County, without first obtaining a valid Permit from the Health Officer. The valid Permit must be posted in a conspicuous location in the Bed and Breakfast Establishment, Mobile Food Establishments, Farmers' Market, Farmers' Market Food Establishments, Food Establishment and/or Temporary Food Establishment.

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

A separate Permit shall be required for each Bed and Breakfast Establishment, Mobile Food Establishments, Farmers' Market, Farmers' Market Food Establishments, Food Establishment and/or Temporary Food Establishment operated or to be operated by any Person.

A Permit issued under this ordinance is **not transferable or refundable**.

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

Permit Period:

- (1) Bed and Breakfast Establishment and/or Food Establishment shall be issued for a term beginning January 1, and/or before commencement of operation, and expiring December 31, of the same year and shall be applied for by the Person and/or Operator annually.
- (2) Temporary Food Establishment shall be for the term of one continuous operation at one location. This permit is not to exceed fourteen (14) consecutive days.
- (3) Mobile Food Establishment shall include expiration on December 31st of the same calendar year in which the permit is issued.
- (4) Farmers' Market and Farmers' Market Food Establishments shall include expiration on December 31st of the same calendar year in which the permit is issued.

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

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

Application: A Person desiring to operate a Bed and Breakfast Establishment, Mobile Food Establishments, Farmers' Market, Farmers' Market Food Establishments, Food Establishment and/or Temporary Food Establishment shall submit to the Boone County Health Department a written application for a Permit on a form provided by the Boone County Health Department.

Content of the Application: The application may include:

- (1) The name, mailing address, telephone number, and original signature of the Person and/or Operator applying for the Permit and the name, mailing address, and location of the Bed and Breakfast Establishment, Mobile Food Establishments, Farmers' Market, Farmers' Market Food Establishments, Food Establishment and/or Temporary Food Establishment;
- (2) Information specifying whether the Bed and Breakfast Establishment, Mobile Food Establishments, Farmers' Market, Farmers' Market Food Establishments, Food

Establishment and/or Temporary Food Establishment is owned by an association, corporation, individual, partnership, or other legal entity;

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

the immediate supervisor of the Person specified under subdivision (4) of this section such as the zone, district, or regional supervisor;

- (6) The names, titles, and addresses of:
 - (A) The Persons comprising the legal ownership as specified under subdivision (2) of this section including the owners and Operators, and
 - (B) The local resident agent if one is required based on the type of legal ownership;
- (7) A statement signed by the applicant that:
 - (A) Attests to the accuracy of the information provided in the application, and
 - (B) Affirms that the applicant will:
 - (1) Comply with this ordinance, and
 - (2) Allow the Boone County Health Department access to the Bed and Breakfast Establishment, Mobile Food Establishments, Farmers' Market, Farmers' Market Food Establishments, Food Establishment and/or Temporary Food Establishment and records as specified in 410 IAC 7-15.5 and 410 IAC 7-24
- (8) Other information required by the Boone County Health Department.

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

- (1) Be an owner and/or Operator of the Bed and Breakfast Establishment, Mobile Food Establishments, Farmers' Market, Farmers' Market Food Establishments, 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, Mobile Food Establishments, Farmers' Market, Farmers' Market Food Establishments, 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.

Plans Requirements: (a) The owner or other authorized agent of an existing or proposed Bed and Breakfast Establishment and/or Food Establishment shall submit to the Boone County Health Department properly prepared plans and specifications for review and approval thirty (30) working days prior to:

- (1) the construction of a Bed and Breakfast Establishment and/or Food Establishment;

- (2) the conversion of an existing structure for use as a Bed and Breakfast Establishment and/or Food Establishment; or
 - (3) the remodeling of a Bed and Breakfast Establishment and/or Food Establishment or a change of type of Bed and Breakfast Establishment and/or Food Establishment or food operation if the Boone County Health Department determines that plans and specifications are necessary to ensure compliance with this section.
- (b) The plans and specifications for a Bed and Breakfast Establishment and/or Food Establishment shall include, the type of operation, type of food preparation (as specified in Appendix B of the published version of 410 IAC 7-24, and the menu.
 - (c) The plans and specifications shall be deemed satisfactory and approved by the Boone County Health Department before a Permit can be issued.
 - (d) A pre-operational inspection shows that the Bed and Breakfast Establishment and/or Food Establishment is built or remodeled in accordance with the approved plans and specifications and that the establishment is in compliance with this ordinance, 410 IAC 7-24 and/or 410 IAC 7-15.5.

Responsibilities of the Operator: Upon acceptance of the Permit issued by the Boone 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 Boone County Health Department if an Imminent Health Hazard may exist;
- (3) Allow representatives of the Boone County Health Department access to the Bed and Breakfast Establishment Mobile Food Establishments, Farmers' Market, Farmers' Market Food Establishments, Food Establishment and/or Temporary Food Establishment at all reasonable times;
- (4) Comply with directives of the Boone County Health Department including time frames for corrective actions specified in Inspection Reports, notices, Orders, warnings, and other directives issued by the Boone County Health Department in regard to the Operator's of a Bed and Breakfast Establishment Mobile Food Establishments, Farmers' Market, Farmers' Market Food Establishments, Food Establishment and/or Temporary Food Establishment at all reasonable times; or in response to community emergencies;
- (5) Accept notices issued and served by the Boone County Health Department;
- (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 Boone County Health Department.

- (7) Post the Permit in a location in the Bed and Breakfast Establishment Mobile Food Establishments, Farmers' Market, Farmers' Market Food Establishments, Food Establishment and/or Temporary Food Establishment at all reasonable times; that is conspicuous to consumers;

Section C: Permit Fees

It shall be unlawful for any Person to operate a Bed and Breakfast Establishment, Mobile Food Establishments, Farmers' Market, Farmers' Market Food Establishments, Food Establishment and/or Temporary Food Establishment in Boone County, who has not paid the Permit fee required to be paid for the operation of such establishment as set forth in Boone County Ordinance 2005-12.

The fee shall be paid for a term of one year and shall be renewed annually, on or before January 1st and expiring on December 31st of the same year and shall be applied for by the Person and/or Operator annually.

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

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

The payment of such fees shall be required for each Bed and Breakfast Establishment, Mobile Food Establishments, Farmers' Market, Farmers' Market Food Establishments, Food Establishment and/or Temporary Food Establishment operated or to be operated by any Person.

Exemption from Permit Fees: An organization that is exempt from the Indiana Gross Income Tax under Indiana Code 6-2.1-3-20 through 6-2.1-3-22 and offers food for sale to the final consumer at an event held for the benefit of the organization is exempt from the payment of fees. This exemption only applies to organization(s) that meet the criteria addressed in Indiana Code 16-42-5-4. The Health Officer shall be provided, upon request, proof of an organization's tax exemption.

Late Fees: A late fee for failure to pay the permit fee prior to the operation of the Bed and Breakfast Establishment and/or Food Establishment or the late fee for failure to renew a permit after the expiration of the permit to operate Bed and Breakfast Establishment and/or Food Establishment shall be assessed as set forth in Boone County Ordinance 2005-12 by the Boone County Health Board. Permit application for a Mobile Food Establishments, Farmers' Market, Farmers' Market Food Establishments, and Temporary Food Establishments must be submitted to the Health Department at least two (2) business days prior to the start of the event or operation, or a late fee shall be assessed as set forth in Boone County Ordinance 2005-12 by the Boone County Health Board.

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

Section D: Inspection

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

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

- (1) The Bed and Breakfast Establishment and/or Food Establishment are fully operating under an approved and validated Hazard Analysis Critical Control Point (HACCP) plan(s);
- (2) The Bed and Breakfast Establishment and/or Food Establishment is assigned a less frequent inspection frequency based on a written risk-based inspection schedule that is being uniformly applied throughout the jurisdiction.
- (3) The Boone County Health Department may contact the Operator to determine that the nature of the food operation has not changed.

Mobile Food Establishments, Farmers' Market, Farmers' Market Food Establishments, & Temporary Food Establishment: The Boone County Health Department shall periodically inspect throughout its Permit period a Mobile Food Establishments, Farmers' Market, Farmers' Market Food Establishments, and Temporary Food Establishment that prepares, sells, or serves potentially hazardous food and may inspect Mobile Food Establishments, Farmers' Market, Farmers' Market Food Establishments, and Temporary Food Establishment that prepares, sells or serves unpackaged, non-potentially hazardous food that:

- (1) Has improvised rather than permanent facilities or equipment for accomplishing functions such as handwashing, food preparation and protection, food temperature control, warewashing, providing drinking water, waste retention and disposal, and insect and rodent control; or
- (2) Has untrained food employees.

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

- (1) Past performance, for violations of 410 IAC 7-15.5, 410 IAC 7-24 and/or 410 IAC 7-22 and/or HACCP plan requirements that are critical or non-critical;

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

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

Access is a condition of the acceptance and retention of a food establishment Permit to operate.

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

Inspection Reports: At the conclusion of the inspection, the Boone 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.

Timely Correction of Critical Violations: Except as specified in the next paragraph, an Operator shall at the time of inspection correct a critical violation of 410 IAC 7-15.5, 410 IAC 7-24 and/or 410 IAC 7-22 and implement corrective actions for a HACCP plan provision that is not in compliance with its critical limit.

Considering the nature of the potential hazard involved and the complexity of the corrective action needed, the Boone County Health Department may agree to or specify a longer time frame after the inspection, for the Operator to correct critical code violations or HACCP plan deviations.

After receiving notification that the Operator has corrected a critical violation or HACCP plan deviation, or at the end of the specified period of time, the Boone County Health Department shall verify correction of the violation, document the information on an Inspection Report, and enter the report in the Boone County Health Department's records.

Refusal to Sign Acknowledgement: Refusal to sign an acknowledgment of receipt will not affect the Operator's obligation to correct the violations noted in the Inspection Report within the time frames specified.

A refusal to sign an acknowledgment of receipt is noted in the Inspection Report and conveyed to the Boone County Health Department historical record for the Bed and Breakfast Establishment, Mobile Food Establishments, Farmers' Market, Farmers' Market Food Establishments, Food Establishment and/or Temporary Food Establishment.

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

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

Section E: Compliance And Enforcement

Application Denial: If an application for a plan review and/or Permit to operate a Bed and Breakfast Establishment, Mobile Food Establishments, Farmers' Market, Farmers' Market Food Establishments, Food Establishment, and/or Temporary Food Establishment is denied, the Boone County Health Department shall provide the applicant with a notice that includes:

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

Permit Revocation: The Boone County Health Department may revoke a Permit to operate a Bed and Breakfast Establishment, Mobile Food Establishments, Farmers' Market, Farmers' Market Food Establishments, Food Establishment and/or Temporary Food Establishment for a time period not to exceed ninety (90) calendar days. If the Permit has been revoked in the past and a clear demonstration of non-compliance is demonstrated by the Permit Holder then the Permit may be revoked for a longer period of time as determined by the Health Officer.

Permit Suspension: The Boone County Health Department may suspend a Permit to operate a Bed and Breakfast Establishment, Mobile Food Establishments, Farmers' Market, Farmers' Market Food Establishments, Food Establishment and/or Temporary Food Establishment if it determines through inspection or examination of employee, food, records, or other means as specified in this ordinance, that an Imminent Health Hazard exists. A suspension shall not exceed thirty (30)

calendar days. The Permit may be suspended for a longer period of time as determined by the Health Officer.

Ceasing Operation and Contacting the Boone County Health Department: An Operator of a Bed and Breakfast Establishment, Mobile Food Establishments, Farmers' Market, Farmers' Market Food Establishments, Food Establishment and/or Temporary Food Establishment shall immediately discontinue operations and notify the Boone 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 unsanitary occurrence or condition, or other circumstance that may endanger public health.

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

Resuming Operation: If a Bed and Breakfast Establishment, Mobile Food Establishments, Farmers' Market, Farmers' Market Food Establishments, Food Establishment and/or Temporary Food Establishment have discontinued operations for the reasons stated above or otherwise according to law, the Operator must obtain approval from the Boone County Health Department before resuming operations.

Outstanding Fees: Any outstanding fees may be a condition upon which a permit may not be issued.

Enforcement: The Boone County Health Department may:

(1) Conduct administrative proceeding for suspension and/or revocation of the Bed and Breakfast Establishment, Mobile Food Establishments, Farmers' Market, Farmers' Market Food Establishments, Food Establishment and/or Temporary Food Establishment Permit in front of the Health Officer.

(See the Appeals Section of this Ordinance to ensure that due process is followed.)

(2) The Boone County Health Officer may issue an "Order To Abate" based on a condition that may transmit, generate, or promote disease. Failure on the part of the Operator to comply with the Order could result in the enforcement of the Order in the court of jurisdiction by the initiation of an action by the county attorney or county prosecuting attorney. (See IC 16-20-1-25; See also the Appeals Section of this Ordinance to ensure that due process is followed.)

(3) If the action concerning public health is an ordinance violation, request the county attorney or county prosecuting attorney to institute a proceeding in the courts for the enforcement of the ordinance violation. (See IC 34-28-5-1)

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

Section F: Appeals Section

- (1) Any Person(s) aggrieved by Orders issued under Enforcement of Section E above shall be entitled to a review of the final Order before a Hearing Officer by filing an administrative written request therefore with the Health Officer (*Secretary of the Boone County Board of Health See IC 16-20-1-10*). The written request must be mailed or hand delivered to Health Officer, 116 W. Washington St. Lebanon, IN 46052 and must be received within fifteen (15) days after such final Order is issued.
- (2) Upon the Health Officer receipt of such request, the Hearing Officer 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 Hearing Officer establishes the Rules of Procedure and advises the parties prior to the start of the proceedings.
- (5) The Hearing Officer shall make written findings of facts and shall enter its final administrative Order or determination of this matter in writing.
- (6) The administrative Order completes the Administrative Appeals procedure.

Section G: Conflict of Interest

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

Section H: Unconstitutionality Clause

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

Section I: Repeal and Effective Date

All ordinances and parts of ordinances in conflict with this ordinance are hereby repealed, and this ordinance shall be in full force and effect commencing January 1, 2017 as provided by law.

