

FOOD ESTABLISHMENT AND/OR BED AND BREAKFAST ESTABLISHMENT ORDINANCE

AN ORDINANCE TO REPEAL AND REPLACE ORDINANCE NO. 2013-1

WARREN COUNTY, INDIANA

ORDINANCE NO. 2018-001

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

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

Be it ordained by the Board of Commissioners of Warren 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 Health Official, Health Official's spouse, ex-spouse, siblings, in-laws, children and/or unemancipated child, may influence the Health Official's judgment in the performance of a public duty. (Note: The Health Officials should follow the code of ethics if a code of ethics was established for Health Officials.

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

(b) The term does not include the following:

- (1) A dwelling where food is prepared on the premises by the occupants, free of charge, for their consumption or for consumption by their guests.
- (2) A gathering of individuals at a venue of an organization that is organized for educational purposes in a nonpublic educational setting or for religious purposes, if:
 - (A) the individuals separately or jointly provide or prepare, free of charge, and consume their own food or that of others attending the gathering; and
 - (B) the gathering is for a purpose of the organization.

Gatherings for the purpose of the organization include funerals, wedding receptions, christenings, bar or bat mitzvahs, baptisms, communions, and other events or celebrations sponsored by the organization.

(3) A vehicle used to transport food solely for distribution to the needy, either free of charge or for a nominal donation.

- (4) A private gathering of individuals who separately or jointly provide or prepare and consume their own food or that of others attending the gathering, regardless of whether the gathering is held on public or private property.
- (5) Except for food prepared by a for-profit entity, a venue of the sale of food prepared for the organization:
 - (A) that is organized for:
 - (i) religious purposes; or
 - (ii) educational purposes in a nonpublic educational setting;
 - (B) that is exempt from taxation under Section 501 of the Internal Revenue Code; and
 - (C) that offers the food for sale to the final consumer at an event held for the benefit of the organization;

unless the food is being provided in a restaurant or a cafeteria with an extensive menu of prepared foods.

- (6) Except for food prepared by a for-profit entity, an Indiana nonprofit organization that:
 - (A) is organized for civic, fraternal, veterans, or charitable purposes;
 - (B) is exempt from taxation under Section 501 of the Internal Revenue Code; and
 - (C) offers food for sale to the final consumer at an event held for the benefit of the organization;

if the events conducted by the organization take place for not more than fifteen (15) days in a calendar year.

- (7) An individual vendor of a farmers' market or roadside stand if the individual meets the

requirements of IC 16-42-5-29.

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

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

Health Official means any Official of Warren County, Indiana.

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

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

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

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

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

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

Order (derived from IC 4-21.5-1-9) means a Fountain/Warren 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 Fountain/Warren County Health Department that authorizes a Person to operate a Bed and Breakfast Establishment and/or *Food Establishment*.

- (Full Time Establishment 6 months or more)

- (Temporary, Seasonal and Mobil 6 months or fewer)

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

Section B: Plan Review

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

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

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

(c) The plans and specifications shall be deemed satisfactory and approved by Fountain/Warren County Health Department before a Permit can be issued.

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

Section C: Permits

General: It is unlawful for a Person to operate any Bed and Breakfast Establishment and/or *Food Establishment* in Warren County, without first obtaining a valid Permit from the Health Officer. The valid Permit must be posted in a location conspicuous to customers in the Bed and Breakfast Establishment and/or *Food Establishment*.

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

A separate Permit shall be required for each Bed and Breakfast Establishment, and/or *Food Establishment* operated or to be operated by any Person.

A Permit issued under this ordinance is not transferable.

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

Permit Period: (*Full Time Establishment 6 months or more*) A Permit for a Bed and Breakfast Establishment and/or *Food Establishment* shall be issued for a term beginning January 1, and/or before commencement of operation, and expiring December 31, of the same year and shall be applied for by the Person and/or Operator annually. If a Permit is applied for after July 1, a prorated fee could apply to get on a regular schedule.

A Permit for a temporary *Food Establishment* shall be for the term of (**6 months or fewer of continuous operation**).

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 Fountain/Warren County Health Officer.

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

Content of the Application: The application shall include:

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

- (5) Prepares only food that is not potentially hazardous; or
- (6) Does not prepare, but offers for sale only prepackaged food that is not potentially hazardous.
- (4) The name, title, address, and telephone number of the Operator directly responsible for the Bed and Breakfast Establishment and/or *Food Establishment*.
- (5) The name, title, address, and telephone number of the Person who functions as the immediate supervisor of the Person specified under subdivision (4) of this section, such as the zone, district, or regional supervisor;
- (6) The names, titles, and addresses of:
 - (A) The Persons comprising the legal ownership as specified under subdivision (2) of this section including the owners and Operator(s), 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 Fountain/Warren County Health Department access to the Bed and Breakfast Establishment and/or *Food Establishment* and records as specified in 410 IAC 7-15.5 and 410 IAC 7-24;
- (8) Other information required by the Fountain/Warren County Health Department.

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

- (1) Be an owner and/or Operator of the Bed and Breakfast Establishment and/or Food Establishment;
- (2) Comply with the requirements of this ordinance;
- (3) Agree to allow access to the Bed and Breakfast Establishment and/or *Food Establishment* and provide required information; and
- (4) Pay the applicable Permit fees at the time the application is submitted.

Change of Ownership: The following must be done prior to the change of ownership;

- 1. Notification to the Fountain/ Warren County Health Department
- 2. Inspection of the facility by the Fountain/Warren County Health Department.
- 3. The Fountain/Warren County Health Department may renew a Permit for an existing Bed and Breakfast Establishment, and/or *Food Establishment* or may issue a Permit to a new owner of an existing Bed and Breakfast Establishment and/or *Food Establishment* after a properly completed application is submitted, reviewed, and approved, the fees are paid, and an inspection shows that the establishment is in compliance with this ordinance.

Responsibilities of the Operator: The Owner or Operator will notify the Fountain/Warren County Health Department when permanently closing a facility.

Upon acceptance of the Permit issued by the Fountain/Warren 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 Fountain/Warren County Health Department if an Imminent Health Hazard may exist;
- (3) Allow representatives of the Fountain/Warren County Health Department access to the Bed and Breakfast Establishment and/or *Food Establishment* at all reasonable times;
- (4) Comply with directives of the Fountain/Warren County Health Department including time frames for corrective actions specified in Inspection Reports, notices, Orders, warnings, and other directives issued by the Fountain/Warren County Health Department in regard to the Operator's Bed And Breakfast Establishment and/or *Food Establishment* or in response to community emergencies;
- (5) Accept notices issued and served by the Fountain/Warren 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 Fountain/Warren County Health Department.
- (7) Post the Permit in a location in the Bed and Breakfast Establishment and/or Food Establishment that is conspicuous to consumers;

Section D: Permit Fees

It shall be unlawful for any Person to operate a Bed and Breakfast Establishment and/or *Food Establishment* in Fountain/Warren County, who has not paid the Permit fee required to be paid for the operation of such establishment. The fee shall be paid for a term beginning January 1, and/or before commencement of operation and expiring December 31, of the same year and the permit shall be applied for by the Person and/or Operator annually. A prorated Permit may be applied if the application is after July 1,

Permit fees for the issuance of a Permit under this Ordinance to a Bed And Breakfast Establishment and/or a *Food Establishment* shall be set by the Fountain/Warren 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 Fountain/Warren County Health Department.

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

Exemption from Permit Fees:

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

Late Fees: A late fee for failure to pay the permit fee prior to the operation of the Bed and Breakfast Establishment and/or *Food Establishment* or the late fee for failure to renew a permit after the expiration of the permit to operate Bed and Breakfast Establishment and/or *Food Establishment* shall be assessed as set by the Fountain/Warren County Health Board.

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

Section E: Inspection

General: The Fountain/Warren 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 Fountain/Warren County Health Department may modify the interval between inspections beyond 6 months if:

- (1) The Bed and Breakfast Establishment and/or *Food Establishment* is fully operating under an approved and validated Hazard Analysis Critical Control Point (HACCP) plan(s); (OR)
- (2) The Bed and Breakfast Establishment and/or *Food Establishment* is *assigned a less frequent inspection frequency* based on a written risk-based inspection schedule that is being uniformly applied throughout the jurisdiction and at least once every 6 months the establishment is contacted by telephone or other means by the regulatory authority to ensure that the establishment manager and the nature of food operation are not changed; or
- (3) The establishment's operation involves only coffee service and other unpackaged or prepackaged food that is not potentially hazardous (TIME/TEMPERATURE CONTROL FOR SAFETY FOOD) such as carbonated beverages and snack food such as chips, nuts, popcorn, and pretzels. (*Information taken from the 2009 FDA Model Food Code Section 8-401.10 Establishing Inspection Intervals*)

Temporary Food Establishment: The Fountain/Warren 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, non-potentially hazardous food that:

- (1) Has improvised rather than permanent facilities or equipment for accomplishing functions such as hand washing, food preparation and protection, food temperature control, ware washing, providing drinking water, waste retention and disposal, and insect and rodent control; or
- (2) Has food employees that have not demonstrated knowledge, as per 410 IAC 7-24, of food operations.

Performance and Risk Based Inspections: Within the parameters specified in the above Inspection Subsection(s) of this Ordinance, the Fountain/Warren 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 noncritical;
- (3) Past performance, for complaints investigated and found to be valid;
- (4) The hazards associated with the particular foods that are prepared, stored, or served;

- (5) The type of operation including the methods and extent of food storage, preparation, and service;
- (6) The number of people served; and
- (7) Whether the population served is a highly susceptible population as defined by Indiana law.

Access Allowed at Reasonable Times After Due Notice: After the Fountain/Warren 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 Fountain/Warren County Health Department to determine if the Bed and Breakfast Establishment and/or *Food Establishment*, is in compliance with this ordinance by allowing access to the establishment, allowing inspection, and providing information and records specified in this ordinance. The Fountain/Warren 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, all inspection findings shall be recorded on an inspection report form and a copy given to the person in charge (PIC) at the time of inspection, as provided by IC 16-20-8. The Health Department Environmental Health Specialist (EHS) will review any recorded violations with the PIC and provide education on appropriate guidelines and actions needed to correct any violation.

Each inspection will be scored and assigned a letter grade for the food establishment. The grade will correspond with the standard numerical scoring system based on critical and non-critical violations noted during the inspection. Critical and non-critical violations are determined by the Indiana State Board of Health, Retail Food Establishment Sanitation Requirements, Title 410 IAC 7-24. Scoring will be as follows, with points for noted violations subtracted from a perfect score of 100 points (no violations): Critical Violation=3 points and Non-Critical Violations=2 points.

Letter grades shall be assigned as follows: a score between 90-100 shall be assigned an A; a score between 80-89 shall be assigned a B; a score between 70-79 shall be assigned a C; and a score below 70 shall result in **CLOSURE** of the food establishment until a subsequent inspection results in a letter grade being assigned. The EHS will also provide a food establishment score form displaying the letter grade based on the inspection report. The food establishment score form shall be posted in a place for public viewing and shall not be tampered with, mutilated, or removed, subject to the penalties provided for violations of this ordinance, until it is replaced by a food establishment score form by the EHS following a subsequent inspection. The Health Department may, at its discretion, also publicly post the name of food establishments inspected and the letter grade the establishment received approximately two weeks following each inspection.

Inspection reports shall establish a specific, reasonable time frame in which all listed violations, if any are found, shall be corrected. Follow-up inspections may be needed depending on the violations listed in the initial inspection report.

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

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

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

Section F: Compliance And Enforcement

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

Permit Suspension: The Fountain/Warren County Health Department may suspend a Permit to operate a Bed and Breakfast Establishment and/or *Food Establishment* if it determines through inspection, or examination of employee, food, records, or other means as specified in this ordinance, that an Imminent Health Hazard exists. A suspension shall not exceed 30 calendar days. The permit may be suspended for a longer period of time as determined by the Health Officer.

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

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

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

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

Enforcement Options:

The following are options available to the Fountain/Warren County Health Department for consideration:

A. Critical Violation(s) – Immediate Action

The following critical violations are examples of violations that warrant immediate action.

- a) Vermin activity that results in food adulteration
- b) Vermin evidence that indicates current activity that may result in food adulteration
- c) Food that contains any filthy, decomposed or putrid substances, unsound food, or food that may be poisonous or deleterious to health or otherwise unsafe
- d) Severe environmental conditions causing food contamination such as fire, floods, toxic chemical release, sewage/plumbing disrepair and water contamination
- e) Employee hygienic practices or health conditions that may result in gross contamination, such as:
 - (i) Employee ill, skin lesions or other conditions as in 410 IAC 7-21-35
And 410 IAC 7-24-120, or

- (ii) Bare hand contact of ready-to-eat foods or lack of hand washing facilities
- f) Misbranded products
- g) Potentially hazardous foods not cooked to proper temperature
- h) Potentially hazardous food not held at proper cold/hot temperatures or properly cooled
- i) A cutting board used to cut raw meat not cleaned and sanitized prior to being used to cut lettuce for salad preparation
- j) Raw meats stored over ready-to-eat foods

If immediate action is required at the time of inspection, one or more of the following options may be utilized:

- a) Destruction or denaturing of adulterated product(s) (See IC 16-42-2-6)
- b) Voluntary disposition by removing the affected food from sale and the Fountain/Warren County Health Department witnessing the disposition
- c) Embargo the food(s) by placing a completed *Public Notice of Embargo* form on designated products to hold products for five (5) days. (See IC 16-42-1-18) Embargoing may be used when a firm refuses to discard adulterated or misbranded products. If appropriate, food samples can be collected for analysis
- d) Reconditioning or salvaging of food may be appropriate, such as relabeled, reheated or converted to animal feed
- e) Cease and Desist Order(s) may be issued when violation(s) constitute an imminent health hazard or when a firm operates without a valid permit
- f) Suspension of the permit(s) to operate the establishment(s) until the imminent health hazard is abated

A follow-up inspection may be conducted when deemed necessary and new violations may be documented as observed.

B. Critical Violations – Consecutive Inspections

The enforcement options listed in this section may be used if the same critical violation is documented on consecutive inspections, whether corrected or uncorrected at the time of the visit. A history of noncompliance is established when there are **two (2) consecutive inspections documenting the same critical violation(s)**.

- (1) After a **first or second follow-up inspection** has been conducted, one or more the following options may be utilized:
 - a) Letter of warning
 - b) A follow-up inspection within thirty (30) days in which new violations may be documented as observed
- (2) In addition to the options listed in B(1), after the **third or more follow-up inspection**, one or more of the following options may be utilized:
 - a) Issue a notice of violation from the Health Officer which may include the following:
 - (i) Levying civil penalties as provided in Indiana Code (IC) 16-19-3-4, IC 16-42-5-28, 410 IAC 7-22 and 410 IAC 7-23, and/or
 - (ii) Developing an agreement (consent decree) between the two (2)

parties involved as part of the action. The agreement may include but is not limited to:

- (AA) Training provided by the Fountain/Warren County Health Department, food safety consulting firm or the Indiana State Department of Health
- (BB) Maintaining a documented cleaning schedule and have available for review
- (CC) Maintaining pest control records and have available for Review
- (DD) Correction of all violations within a specified period of time
- (EE) A follow-up inspection of the establishment(s), in which the action has been initiated, may be scheduled within thirty (30) days of adoption of the agreement (consent decree). New violations may be documented as observed.

b) Issue a notice of permit revocation.

C. Critical Violations – Non-Consecutive Inspections

The enforcement options listed in Sections B(1) and B(2) may be used if the same critical violation is documented on non-consecutive inspections, which is corrected after each documentation. A history of noncompliance is established when there are **three (3) non-consecutive inspections documenting the same critical violation(s)**.

D. Non-Critical Violations – Consecutive Inspections

The enforcement options listed in this section may be used if the same non-critical violation is documented on consecutive inspections, whether corrected or uncorrected at the time of the visit. A history of noncompliance is established when there are **three (3) consecutive inspections documenting the same non-critical violation(s)**. The enforcement options listed in Sections B(1) and B(2) may also be utilized if, in the opinion of the Health Officer, such action is warranted.

- (1) After a **first or second follow-up inspection** has been conducted, one or more of the following option may be utilized:
 - (a) Letter of warning
- (2) In addition to the options listed in Section D(1), after the **third or more follow-up inspection**, one or more of the following options may be utilized:
 - (a) Issuing a notice of violation from the Health Officer:
 - (b) A follow-up inspection within thirty (30) days in which new violations may be documented as observed:
- (3) In addition to the options listed in Sections D(1) and D(2), **after the fourth follow-up inspection**, one or more of the following options may be utilized:
 - a) Issue a notice of violation from the Health Officer which may include the following:
 - (i) Levying civil penalties as provided in Indiana Code (IC) 16-19-3-4, IC 16-42-5-28, 410 IAC 7-22 and 410 IAC 7-23, and/or;

- (ii) Developing an agreement (consent decree) between the two (2) parties involved as part of the action. The agreement may include but is not limited to:
 - (AA) Training provided by the Fountain/Warren County Health Department, food safety consulting firm or the Indiana State Department of Health
 - (BB) Maintaining a documented cleaning schedule and have available for review
 - (CC) Maintaining pest control records and have available for review
 - (DD) Correction of all violations within a specified period of time
 - (EE) A follow-up inspection of the establishment(s), in which the action has been initiated, may be scheduled within thirty (30) days of adoption of the agreement (consent decree). New violations may be documented as observed.
- b) Issue a notice of permit revocation:
 - (4) In addition to the options listed in Sections D(1), D(2), and D(3), **after the fifth or more follow-up inspection** has been conducted, issue a notice of permit revocation.

E. Non-Critical Violations – Non-Consecutive Inspections

The enforcement options listed in Sections D(1), D(2), D(3), and D(4) may be used if the same non-critical violation is documented on non-consecutive inspections, which is corrected after each documentation. A history of noncompliance is established when there are **four (4) non-consecutive inspections documenting the same non-critical violation(s)**.the enforcement options listed in Sections B(1) and B(2) may also be utilized if, in the opinion of the Health Officer, such action is warranted.

Section G: Appeals Section

- (1) Any Person(s) aggrieved by Orders issued under Section F: Compliance and Enforcement 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 Fountain/Warren County Board of Health See IC 16-20-1-10*). The written request must be mailed or hand delivered to the Health Officer, 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 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 H: Conflict of Interest

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

Section I: Unconstitutionally Clause:

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


Section J: Repeal and Effective Date

Ordinance No. 2013-1 is hereby repealed on the date this ordinance takes effect. This ordinance shall be in full force and effect thirty (30) days after its adoption and publication as provided by law.

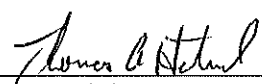
Section K: Civil Penalties

Any person violating this Ordinance, as determined by a Health Official, may be punished for the first offense by a fine of not more than One Hundred Dollars (\$100.00); for the second offense by a fine of not more than Two Hundred Dollars (\$200.00); and for the third and each subsequent offense by a fine of not more than Three Hundred Dollars (\$300.00). Each day after expiration of any time limit for compliance with this ordinance as ordered by the Health Official shall constitute a distinct and separate offense.

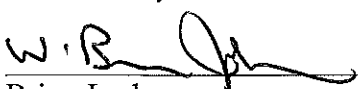
Passed and adopted by the Commissioners of Warren County, State of Indiana, on this 19th day of March 2018.




 Steve Eberly



 Tom Hetrick



 Brian Jordan

Attest: 

 Auditor

This instrument prepared by Teryl D. Martin, Attorney, Covington, Indiana.

I affirm under the penalties of perjury I have taken reasonable care to redact each Social Security number in this document, unless required by law. /s/ Teryl D. Martin