BILL NO. G-08-06 ORDINANCE NO. G-08-14

# AN ORDINANCE ESTABLISHING PUBLIC HEALTH SAFEGUARDS FOR FOOD ESTABLISHMENTS AND BED AND BREAKFASTS IN FLOYD 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 Retail Food Establishment and/or Bed and Breakfast Establishment plan reviews, permits, inspections, and employee restrictions.

This ordinance defines Bed and Breakfast Establishment, Chief Food Specialist, Conflict of Interest, Critical Violation, Environmental Health Specialist, Health Department, Health Official, Hazard Analysis Critical Control Point, Health Officer, Hearing Officer, Imminent Health Hazard, Inspection Report, Operator, Order, Permit, Person, Person in Charge, Retail Food Establishment, Retail Food Market Establishment, Retail Food Service Establishment, and Temporary Food Establishment; requires construction and/or alteration plans; requires a Permit and payment of Permit fees for the operation of a Bed and Breakfast Establishment, Retail Food Establishment, or Temporary Food Establishment; regulates inspection of such establishments; prohibits sale of adulterated, unwholesome, or misbranded food; provides for compliance and the enforcement of this ordinance; provides fees for multiple inspections and late fees required to enforce this ordinance; and is intended to be construed in *pari materia* with, and incorporates by reference, Indiana Code (IC) 16-42-1, IC 16-42-2, IC 16-42-5, Indiana State Department of Health Rule(s) 410 Indiana Administrative Code (IAC) 7-15.5,410 IAC 7-24,410 IAC 7-21-47, 410 IAC 7-22 and 410 IAC 7-23, as the foregoing statutes and regulations may be amended.

The Floyd County Health Department is hereby authorized to issue Bed And Breakfast Establishment, Retail Food Establishment, and Temporary Food Establishment permits, to collect permit fees, late fees, and inspection fees, to perform inspections, to hold hearings, to Order or otherwise compel correction of violations, and to perform all actions necessary for the administration and enforcement of this ordinance.

Be it ordained by the New Albany Common Council, that:

## Section A: Definitions

**Bed and Breakfast Establishment** (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.

**Chief Food Specialist** means the Official, as defined below, who has primary responsibility over Bed And Breakfast Establishment, Retail Food Establishment, and Temporary Food Establishment inspections.

**Conflict of Interest** means, for purposes of this ordinance, a situation in which the private financial interest of the Official, the Official's spouse, ex-spouse, siblings, in-laws, children and/or unemancipated child, may influence the judgment in the performance of a public duty. The Official may be subject to other ethical requirements in addition to those set forth herein.

**Critical Violation** means a condition that is more likely than other violations to significantly contribute to food contamination, illness, or an environmental health hazard.

**Environmental Health Supervisor** means the Official who has primary responsibility over all Environmental Health Specialists.

**Environmental Health Specialist** means an official hired by the Health Officer and designated as Environmental Health Specialist.

**Health Department** means the Floyd County Health Department, having jurisdiction over a Bed and Breakfast Establishments, Retail Food Establishments, and Temporary Food Establishments.

**Hazard Analysis Critical Control Point (HACCP) Plan** (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, duly appointed, by the Floyd County Health Department under IC 16-20-2-16 having jurisdiction in Floyd County or his/her duly authorized representative.

**Hearing Board** means a subcommittee of Floyd County Board of Health comprised of at least four (4) members of the Floyd County Board of Health. The Hearing Board shall not include the Health Officer or any other employee of the Health Department.

**Imminent Health Hazard** means any circumstance or situation, which in the opinion of the Health Officer, presents a serious health risk to the public.

**Inspection Report** means the document prepared by the Health Department that is

completed as the result of the inspection and provided to an Operator, as defined below.

**Official** means any Environmental Health Specialist of Floyd County, Indiana.

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

**Order** means a 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, including a Permit, as defined below.

**Permit** means the document issued by the Health Department that authorizes a Person, as defined below, to be an Operator of a Bed and Breakfast Establishment, Retail Food Establishment, or Temporary Food Establishment.

**Person** means and includes, an individual, agent, association, business organization, cooperative, corporation, entity, firm, institution, municipality or governmental unit, partnership, proprietorship, school, trust or estate.

**Person in Charge** shall mean the individual present at a retail food establishment who is responsible for the operation at the time of inspection.

**Retail Food Establishment** (410 IAC 7-24) means:

(a) An establishment that stores, prepares, packages, serves, or otherwise provides food for human consumption, including:
   - A. a restaurant;
   - B. a satellite or catered feeding location;
   - C. a catering operation if the operation provides food directly or indirectly to a consumer;
   - D. a market;
   - E. a grocery store;
   - F. a convenience store;
   - G. an institution;
   - H. a food bank; or
   - I. a food service establishment that relinquishes possession of food to a consumer directly or indirectly through a delivery service, such as home delivery of grocery orders or restaurant takeout orders, or other delivery service.

(b) The term *"Retail Food Establishment"* includes, but is not limited to, the following:
   - 1) An element of the establishment, such as a transportation vehicle that supplies a vending location or satellite feeding location.

2) An operation that is conducted in a mobile, stationary, temporary, or permanent facility or location, where consumption is on or off the premises, and regardless of whether there is a charge for the food.

(c) The term *"Retail Food Establishment"* does not include the following:

1) An establishment that offers only prepackaged foods that are not potentially hazardous.
2) A produce stand that only offers whole, uncut fresh fruits and vegetables.
3) A food processing plant operated under IC 16-42-5.
4) A private home where food is prepared by a member of an organization that is operating under IC 16-42-5-4 and is sold or offered for human consumption.
5) A bed and breakfast establishment as defined and regulated under IC 16-41-31 and 410 IAC 7-15.5.
6) A private home that receives catered or home-delivered food.
7) A private home which provides childcare and is not subject to IC 12-13-5.
8) A private home which provides residential care and is not subject to IC 12-15 and/or IC 23-2-4.
9) A private home.

**Retail Food Market Establishment** means any Retail Food Establishment, including, but not limited to, a grocery store, convenience store, salvage store, discount store, meat market, poultry market, fish market, fresh fruit and vegetable market, delicatessen, confectionary, candy kitchen, nut store, retail bakery store, or any food establishment, whether fixed or movable, where food is intended primarily for human consumption off the premises of such Retail Food Establishment, is manufactured, produced, stored, prepared, handled, sold, or offered with or without charge. Provided, however, that the provisions of this Ordinance shall not include meat or poultry slaughterhouses.

**Retail Food Service Establishment** means any Retail Food Establishment, including, but not limited to, a restaurant, coffee shop, cafeteria, short-order café, luncheonette, tavern, sandwich stand, soda fountain, commissary, drive-in restaurant, drink establishment, snack bar, food counter, dining room, food catering facility, seasonal establishments opened for more than 6 months out of the year, industrial feeding establishment, private, public, or non-profit organization or institution routinely serving food, and any other eating or drinking establishment, where food or drink products are prepared, served, or provided primarily for human consumption at such Retail Food Establishment, with or without charge. The term does not include private homes where food is prepared or served for individual family consumption.

**Temporary Food Establishment** (410 IAC 7-24) means a Retail 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 to operate any Bed and Breakfast Establishment, Retail Food Establishment, or Temporary Food Establishment in Floyd County, without first obtaining a Permit from the Health Department.

**Posting:** The Permit must be posted in a conspicuous location in the Bed and Breakfast Establishment, Retail Food Establishment, or Temporary Food Establishment.

**Separate Permits**: A separate Permit shall be required for each Bed and Breakfast Establishment, Retail Food Establishment, or Temporary Food Establishment operated or to be operated by any Person.

**Permit Issuance:** A Permit may only be issued to Persons who comply with the applicable requirements of 410 IAC 7-15.5 and/or 410 IAC 7-24. Any permit issued under this ordinance is not transferable. Upon the change of location of any Bed and Breakfast, Retail Food Establishment, or Temporary Food Establishment, all existing Permits become void. A Permit shall not be sold, assigned, licensed, or transferred.

**Term:** Permits issued by the Health Officer shall be valid according to the following periods:

A. The Permit for a Retail Food Establishment or Bed and Breakfast Establishment shall be for a term of one (1) year. Said Permit shall be renewed annually beginning on July 1st of current year and expiring on June 30th of the following year.

B. The Permit for a Temporary Food Establishment shall be for a term not to exceed fourteen (14) consecutive days. A Temporary Food Establishment Permit shall be for the term of one continuous operation.

**Permit Content:** Permits issued by the Health Officer shall contain:

(1) the name and address of the Operator 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 Health Officer.

**Application:** A Person desiring to operate a Bed and Breakfast Establishment, Retail Food Establishment and/or Temporary Food Establishment shall submit to the Health Department a written application for a Permit on a form provided by the Health Department (State Form 50033).

**Content of the Application:** The application shall 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, Retail Food Establishment, and/or Temporary Food Establishment;

(2) Information specifying whether the Bed and Breakfast Establishment, Retail Food Establishment, and/or Temporary Food Establishment is owned by an association, corporation, individual, partnership, or other legal entity;

(3) The name, title, address, and telephone number of the Operator directly responsible for the Bed and Breakfast Establishment, Retail Food Establishment, and/or Temporary Food Establishment;

(4) 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;

(5) The names, titles, and addresses of:

A. The Person(s) comprising the legal owners of the Operator and/or the Person authorized to accept service of process and notices, and
B. The local resident agent of the Operator or the Person holding the Permit, if one is required for such Operator or Person;

(6) 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:

I. Comply with this ordinance, and

II. Allow the Health Department access to the Bed and Breakfast Establishment, Retail Food Establishment, and/ or Temporary Food Establishment and records as specified in 410 IAC 7-15.5 and 410 IAC 7-24;

(7) Other information required by the Health Department.

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

(1) Be an owner and/or Operator of the Bed and Breakfast Establishment, Retail Food Establishment, and/or Temporary Food Establishment;

(2) Comply with the requirements of this ordinance;

(3) Agree to allow access to the Bed and Breakfast Establishment, Retail Food Establishment, and or Temporary Food Establishment and provide required information; and

(4) Pay the applicable Permit fees at the time of issuance or renewal.

**Plans Requirements:** (a) The owner or other authorized agent of an existing or proposed Bed and Breakfast Establishment, and/or Retail Food Establishment shall submit to the Health Department properly prepared plans and specifications, in accordance with State Form 50004 plan review questionnaire for review and approval before:

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

(2) the conversion of an existing structure for use as a Bed and Breakfast Establishment and/or Retail Food Establishment; or

(3) the remodeling of a Bed and Breakfast Establishment and/or Retail Food Establishment or a change of type of Bed and Breakfast Establishment, and/or Retail Food Establishment or food operation if the 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 Retail Food Establishment shall include, the type of operation, type of food preparation (as specified in Appendix B of the published version of 410 IAC 7-24), and the menu.

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

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

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

**Responsibilities of the Operator:** Upon acceptance of the Permit issued by the 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 Health Department if an Imminent Health Hazard may exist;

(3) Allow representatives of the Health Department access to the Bed and Breakfast Establishment and/or Retail Food Establishment at all reasonable times;

(4) Comply with directives of the Health Department including time frames for corrective actions specified in Inspection Reports, Notices, Orders, warnings, and other directives issued by the Health Department in regard to the Operator's Bed And Breakfast Establishment and/or Retail Food Establishment or in response to community emergencies;

(5) Accept notices issued and served by the 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 Health Department; and

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

**Equipment:** All equipment installed in a food establishment for use in the cleansing and bactericidal treatment of utensils, or in the preparation, storing, handling, cleaning, sanitizing, serving, or displaying of any food or beverage products, shall be of a type conforming with all applicable requirements with regard to proper holding temperatures, design, construction, location and materials, as required in 410 IAC 7-24, and as amended hereafter. The Floyd County Health Department may prohibit the further use of any equipment that fails to meet the requirements above.

### Section C: Permit Fees

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

Permit fees to be paid for the issuance of a Permit under this Ordinance for a Bed And Breakfast Establishment, a Retail Food Establishment and/or a Temporary Food Establishment shall be set by the Health Department, as provided by the Statutes of the State of Indiana, (see IC 16-20-1-27), and as set forth and approved by Floyd County Council and Floyd County Board of Commissioners.

For permits which upon initial issuance will expire in fewer than 180 days from the date

thereof, the applicant shall pay one-half of the fees set forth by the Health Department.

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

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

**Exemption from Permit Fees:** A not for profit organization that 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 organizations 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 (i) for failure to pay the Permit fee prior to the commencement of operation of the Bed and Breakfast Establishment, Retail Food Establishment, and/or Temporary Food Establishment and (ii) for failure to renew a Permit prior to its expiration shall be paid in the amount of 50% of the above annual fee for such Permit, or in such amount as set from time to time by the Floyd County Health Board.

Credit for the payment of fees under this ordinance is not transferable or refundable.

## Section D: Inspection

**General:** The Health Department shall inspect a Bed and Breakfast Establishment and/or Retail Food Establishment Bi-annually, or less frequently if indicated under the risk based assessment method as outlined by the Indiana State Department of Health. The Floyd County Board of Health may inspect more frequently if a risk is posed by any of the following: the establishment has had critical violations in the last inspection, the establishment serves an at-risk population, or a consumer complaint or a report of a food-borne illness has been reported to the department.

**Temporary Food Establishment:** The 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 untrained food employees.

**Performance and Risk Based Inspections:** Within the parameters for risk specified above, the Health Department shall prioritize, and conduct more frequent inspections based upon its assessment of a Bed and Breakfast Establishment and/or Retail Food Establishment's history of compliance with this ordinance and the Bed and Breakfast Establishment and/or Retail Food Establishment's potential as a vector of food-borne 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.

**Application and Permit Fees:** The application for any Permit shall be tendered with the following application fees:

A. Each new Retail Food Establishment shall be required to pay an application fee of $100.00 for the review of plans and specifications and for the initial inspection of such establishment. This fee is in addition to the Permit fee.

B. Permit fees for Retail Food Establishments are payable as follows:

Permit fees for Retail Food Market Establishments:

| | |
|---|---|
| 1) Up to and including 3,000 square feet | $125.00 |
| 2) 3,000 up to and including 20,000 square feet | $175.00 |
| 3) 20,000 up to and including 70,000 square feet | $225.00 |
| 4) 70,000 square feet and above | $275.00 |

Permit fees for Retail Food Service Establishments:

| | |
|---|---|
| 1) 1-5 employees | $125.00 |
| 2) 6-9 employees | $175.00 |
| 3) 10-15 employees | $225.00 |
| 4) 16-20 employees | $275.00 |
| 5) 21 or more employees | $325.00 |

Permit fees for Temporary Food Establishments:

1) $20.00 per day, not to exceed $100.00, for a maximum of 14 days.

Flat rate Permit fees:

1) Bed & Breakfast Establishments: $150.00
2) Retail Food Establishments that are seasonal concessions operated less than six (6) months per year : $125

**Access Allowed at Reasonable Times After Due Notice:** After the Officer or an Official presents official credentials and provides notice of the purpose of and the intent to conduct an inspection, the Operator shall allow the Health Department to determine if the Bed and Breakfast Establishment, Retail 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. Inspections shall be conducted during the Bed and Breakfast Establishment, Retail Food Establishment, or Temporary 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)

## Section E: Violations

**Inspection Reports:** At the conclusion of the inspection, the Health Department shall provide a copy of the completed Inspection Report and the notice to correct violations to the Operator or to the Person in Charge, as required under IC 16-20-8-5.

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

**Public Information:** Except as specified in section 176 (Trade Secrets) of 410 IAC 7-24, the Health Department shall treat the Inspection Report as a public document and shall make it available for disclosure to a Person who requests it as provided in law. (See IC 16-20-8-6)

## Section F: Compliance and Enforcement

**Application Denial:** If an application for a plan review and/or Permit to operate a Bed and Breakfast Establishment, Retail Food Establishment, and/or Temporary Food Establishment is denied, the 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 Suspension:** The Health Department may suspend a Permit to operate a Bed and Breakfast Establishment, Retail Food Establishment and/or Temporary Food Establishment if it determines through any inspection, or examination of records, or other means as specified in this ordinance, that an Imminent Health Hazard exists.

**Ceasing Operation and Contacting the Health Department**: An Operator of a Bed and Breakfast Establishment, Retail Food Establishment and/or Temporary Food

Establishment shall immediately discontinue operations and notify the 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 food-borne 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 only a portion of a Bed and Breakfast Establishment, Retail Food Establishment and/or Temporary Food Establishment is affected the operator may continue operations in the unaffected portion, provided there is no imminent health hazard to such unaffected portion. Otherwise, the Operator must obtain approval from the Health Department before resuming operations.

**Outstanding Fees:** Any outstanding fees may be a condition upon which a Permit may not be issued or may be suspended.

**Enforcement Options:** When the Health Officer or an Official finds a critical violation at a retail food establishment it will be addressed at the time of the inspection; a follow-up inspection may also be conducted.

1. First Follow-up Inspection

A letter of warning may be issued when there are critical violations continuing upon the first follow-up inspection. If a letter of warning is issued, a second follow-up inspection will be conducted.

2. Second Follow-up Inspection

After a second follow-up inspection in which it is determined that critical violations are continuing, one or a combination of the following measures may be implemented at the discretion of the Environmental Health Supervisor:

a. letter of warning,
b. informal meeting held in the Health Department offices,
c. a meeting held at the establishment by the Health Officer, Environmental Health Supervisor or Chief Food Specialist, and/or
d. another follow-up inspection.

There shall be a fee payable before any Second Follow-up Inspection in the amount of 50% of the annual Permit, or in such amount as set from time to time by the Floyd County Health Board.

3. Third/Subsequent Follow-up Inspection

Upon a third inspection follow-up inspection, with continuing critical violations, or upon the continued unlawful operation during an event of imminent health hazard, an enforcement action may be instituted, and may include one or more of the following:

a. issuance of a notice of violation and order to abate,
b. follow-up inspections conducted as often as necessary to ensure compliance, and/or
c. if the action concerning public health is a criminal offense, request county prosecuting attorney to institute a proceeding in the courts for enforcement. (See IC 16-20-1-25(c)).

There shall be a fee payable upon before any Third Follow-up Inspection or subsequent inspection in the amount of 50% of the annual Permit, or in such amount as set from time to time by the Floyd County Health Board.

**Section G: Appeals Section**

(1) An Operator aggrieved by an Order is entitled to a review of the final Order before a Hearing Board by filing a written request therefore with the Health Officer *(Secretary of the Board of Health See IC 16-20-1-10).* The written request must be sent by certified mail or by hand delivery to the Health Officer at 1917 Bono Road, New Albany, Indiana 47150, during regular hours of operation, and must be received within fifteen (15) days after the date such Order is issued. The written request must set forth with specificity the factual and/or legal grounds for appeal, and only those matters set forth in the written request may be argued before the Hearing Board.

(2) Upon the Health Officer's receipt of such request, the Hearing Board shall hear the matter 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 Indiana rules of court. (A shorter period of time for hearing may be requested and granted in the sole discretion of the Chairman of the Floyd Board of Health, provided that such shorter time must permit compliance with IC 5-14-1.5.)

(3) The notice of the hearing date shall be served upon the Operator requesting the review by delivering such notice to the address of the Bed and Breakfast Establishment, Retail Food Establishment or Temporary Food Establishment listed on the Permit application or by facsimile or to such other address (if within Floyd County), as the Operator shall designate in the letter of request to the Health Officer. Such delivery may be made by leaving the notice at the required address or by regular US Mail.

(4) The Hearing Board shall establish the rules of procedure for the hearing and shall advise the Operator of the same prior to the start of the proceedings. Such rules shall provide that an Order may only be supported, in whole or in part, by a

majority decision of the Hearing Board.

(5) Within seven (7) days from the conclusion of the hearing, The Hearing Board shall make written findings of facts and conclusions concerning the final Order or determination and shall deliver the same to the Operator requesting the review by delivering the same to the address of the Bed and Breakfast Establishment, Retail Food Establishment or Temporary Food Establishment listed on the Permit application or by facsimile or by hand delivery to such other address (if within Floyd County), as the Operator shall designate in the letter of request to the Health Officer. Such delivery may be made by leaving the notice at the required address or by regular US Mail.

**Section H: Conflict of Interest**

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

**Section I: Partial Invalidity of Provisions**

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

**Section J: Repeal and Effective Date**

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

NOW, THEREFORE, BE IT HEREBY APPROVED THIS 5 DAY OF May, 2008.

JEFF GAHAN, PRESIDENT
COMMON COUNCIL, CITY OF NEW ALBANY

ATTEST: Marcey J. Wisman
MARCEY J. WISMAN, CITY CLERK

PRESENTED by me to the Mayor of the City of New Albany this 8 day of May, 2008.

MARCEY J. WISMAN, CITY CLERK

ACCEPTED AND APPROVED BY ME THIS 8 DAY OF May, 2008.

DOUGLAS B. ENGLAND, MAYOR
CITY OF NEW ALBANY, INDIANA

ATTEST:
MARCEY J. WISMAN, CITY CLERK