

1                   **FOOD ESTABLISHMENT AND BED AND BREAKFAST ESTABLISHMENT**  
2   **ORDINANCE**  
3   **ORDINANCE NO. 2009 BCCO-08**

4  
5   In Howard County, Indiana

6  
7                   The purpose of this ordinance is to safeguard public health and assure that food provided to  
8 consumers is safe, unadulterated, and honestly presented. It establishes definitions; sets  
9 standards for management and personnel; food operations, equipment and facilities; and provides  
10 for Food Establishment and/or Bed and Breakfast Establishment plan reviews, permits,  
11 inspections, and employee restrictions.

12  
13                   This ordinance defines Bed and Breakfast Establishment, Conflict of Interest, Food  
14 Establishment, Hazard Analysis Critical Control Point, Health Officer, Hearing Officer, Howard  
15 County Health Department, Howard County Official, Imminent Health Hazard, Inspection  
16 Report, Menu Type, Operator, Order, Permit, Person, requires construction and/or alteration  
17 plans; requires a Permit and payment of Permit fees for the operation of Bed and Breakfast  
18 Establishment, Food Establishment, prohibits sale of adulterated, unwholesome, or misbranded  
19 food; regulates inspection of such establishments; provides for compliance and the enforcement  
20 of this ordinance; provides penalties for violations of said ordinance; and incorporates by  
21 reference Indiana Code(s) (IC) 16-42-1, IC 16-42-2, IC 16-42-5, Indiana State Department of  
22 Health Rule(s) 410 Indiana Administrative Code (IAC) 7-15.5, 410 IAC 7-24, 410 IAC 7-21-47,  
23 410 IAC 7-22 and 410 IAC 7-23.

24  
25                   The Howard County Health Department is hereby authorized to issue Bed And Breakfast  
26 Establishment, Food Establishment permits, collect Plan Review fees, Permit fees and penalties,  
27 perform inspections, hold hearings, Order or otherwise compel correction of violations of this  
28 ordinance, and is otherwise authorized to perform all actions necessary for the administration and  
29 enforcement of this ordinance.

30  
31                   Be it ordained by the Board of Commissioners of Howard County, State of Indiana, that:

32  
33   **Section A: Definitions**

34  
35                   **Bed and Breakfast Establishment** (as defined in 410 IAC 5-15.5) is an Operator occupied  
36 residence that:

- 37  
38                   (1)       provides sleeping accommodations to the public for a fee;  
39  
40                   (2)       has no more than fourteen (14) guest rooms;  
41  
42                   (3)       provides breakfast to its guests as part of the fee; and  
43  
44                   (4)       provides sleeping accommodations for no more than thirty (30) consecutive days to  
45 a particular guest.

46  
47                   **Board of Health** means a local board of health as defined in IC 16-18-2-210 and referred to in  
48 IC 16-20.  
49

50 **Conflict of Interest** (derived from 68 IAC 9-1-1(b)(2)) means a situation in which the private  
51 financial interest of a Howard County Official, Howard County Official's spouse, ex-spouse,  
52 siblings, in-laws, children and/or un-emancipated child, may influence the Howard County  
53 Official's judgment in the performance of a public duty.

54 **Food Establishment** (as defined in IC 16-18-2-137)

55 Sec. 137. (a) "Food establishment", for purposes of IC 16-42-5 and IC 16-42-5.2, means any  
56 building, room, basement, vehicle of transportation, cellar, or open or enclosed area occupied or  
57 used for handling food.

58 (b) The term does not include the following:

59 (1) A dwelling where food is prepared on the premises by the occupants, free of charge, for  
60 their consumption or for consumption by their guests.

61 (2) A gathering of individuals at a venue of an organization that is organized for educational  
62 purposes in a nonpublic educational setting or for religious purposes, if:

63 (A) the individuals separately or jointly provide or prepare, free of charge, and consume  
64 their own food or that of others attending the gathering; and

65 (B) the gathering is for a purpose of the organization. Gatherings for the purpose of the  
66 organization include funerals, wedding receptions, christenings, bar or bat mitzvahs, baptisms,  
67 communions, and other events or celebrations sponsored by the organization.

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

70 (4) A private gathering of individuals who separately or jointly provide or prepare and  
71 consume their own food or that of others attending the gathering, regardless of whether the  
72 gathering is held on public or private property.

73 (5) Except for food prepared by a for-profit entity, a venue of the sale of food prepared for  
74 the organization:

75 (A) that is organized for:

76 (i) religious purposes; or

77 (ii) educational purposes in a nonpublic educational setting;

78 (B) that is exempt from taxation under Section 501 of the Internal Revenue Code; and

79 (C) that offers the food for sale to the final consumer at an event held for the benefit of  
80 the organization;

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

83 (6) Except for food prepared by a for-profit entity, an Indiana nonprofit organization that:

84 (A) is organized for civic, fraternal, veterans, or charitable purposes;

85 (B) is exempt from taxation under Section 501 of the Internal Revenue Code; and

86 (C) offers food for sale to the final consumer at an event held for the benefit of the  
87 organization;

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

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

92  
93 **Hazard Analysis Critical Control Point (HACCP) Plan** (as defined in 410 IAC 7-24) is a  
94 written document that delineates the formal procedures for following the Hazard Analysis  
95 Critical Control Point principles developed by the National Advisory Committee on  
96 Microbiological Criteria for Foods.

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

100  
101 **Hearing Board** shall be comprised of three (3) individuals, the current Health Officer or his or  
102 her designee, and two (2) current Howard County Board of Health Board members appointed by  
103 the Board's president to serve.

104  
105 **Howard County Health Department** means the local health department in Howard County or  
106 authorized representative having jurisdiction over a Bed and Breakfast Establishment, and/or  
107 Food Establishment.

108  
109 **Howard County Official** means any Official of Howard County, Indiana.

110  
111 **Imminent Health Hazard** means a significant threat or danger to health that is considered to  
112 exist when there is evidence sufficient to show that a product, practice, circumstance, or event  
113 creates a situation that requires immediate correction or cessation of operation to prevent injury  
114 or illness based on the number of potential injuries and illnesses and the nature, severity and  
115 duration of the anticipated injury or illness [e.g., sewage backing up in a food preparation area or  
116 contamination of food products with toxic materials].

117  
118 **Inspection** means a visit by the regulatory authority to determine compliance with food laws.

119  
120 **Inspection Report** means the document prepared by the Howard County Health Department that  
121 is completed as the result of the inspection and provided to the Operator.

122  
123 **Menu Type** means assignment of risk for an establishment based on type of food served, the  
124 preparation steps required, the volume of food, the population served, and previous compliance  
125 history.

126  
127 **Operator** means the person who has a primary oversight responsibility for operation of the  
128 establishment through ownership, or lease or contractual agreement, and who is responsible for  
129 the storage, preparation, display, transportation or serving of food to the public.

130  
131 **Order** (derived from IC 4-21.5-1-9) means a Howard County Health Department action of  
132 particular applicability that determines the legal rights, duties, privileges, immunities, or other  
133 legal interests of one (1) or more specific Persons. The term includes a permit.

134  
135 **Permit** means the document issued by the Howard County Health Department that authorizes a  
136 Person to operate a Bed and Breakfast Establishment, and/or Food Establishment.

137  
138 **Person** means an association; a corporation; an individual; partnership; or other legal entity,  
139 government, or governmental subdivision or agency.

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145 **Section B: Permits**

146  
147 **General:** It is unlawful for a Person to operate any Bed and Breakfast Establishment and/or  
148 Food Establishment in Howard County, without first obtaining a valid Permit from the Health  
149 Officer. The valid Permit must be posted in a conspicuous location in the Bed and Breakfast  
150 Establishment and/or Food Establishment.

151  
152 A separate Permit shall be required for each Bed and Breakfast Establishment and/or Food  
153 Establishment operated or to be operated by any Person.

154  
155 A Permit issued under this ordinance is not transferable.

156 A Bed and Breakfast Establishment and/or Food Establishment Permitted by Howard County Health  
157 Department shall be considered registered as required in IC 16-42-1-6.

158 **Permit Type:**

159 **A Standard Bed and Breakfast Establishment Permit** and/or **Retail Food Establishment**  
160 **Permit** shall be issued for a term beginning February 1, and/or before commencement of  
161 operation, and expiring January 31, of the following year, for a single permanent location, or  
162 transport and/or delivery service for pre-packaged food when there is no food handling, and shall  
163 be applied for by the Person and/or Operator annually.

164  
165 **A Seasonal Retail Food Establishment Permit** shall be for a term of one continuous operation  
166 of more than fourteen (14) days and not to exceed six (6) months. A seasonal or mobile retail  
167 food establishment may be operated at various locations within the county provided the operator  
168 submits a schedule of events disclosing the dates and locations where food will be served.

169  
170 **A Public School Concession Stand Permit** shall be issued to a school corporation before  
171 commencement of operation and shall expire July 31, and shall not exceed twelve (12)  
172 consecutive months. A public school concession stand may be operated in conjunction with  
173 school-sponsored events within various approved permanent structures on the school grounds,  
174 provided the operator submits a schedule of events disclosing the dates and locations where the  
175 food will be served. If the operator is an organization that is exempt from taxation under Section  
176 501 of the Internal Revenue Code, documentation should be provided to the Health Department.

177  
178 **A Probationary Retail Food Establishment Permit** or a **Probationary Bed and Breakfast**  
179 **Permit** may be issued to an operator whose inspection reports show a history of non-compliance  
180 or, upon expiration of a Provisional Permit, or when the operator is not in substantial compliance  
181 with 410 IAC 7-24, 410 IAC 7-22, and this Ordinance. Probationary Permits are issued for a  
182 period of up to thirty (30) days, and may be renewed once for up to thirty (30) additional days. A  
183 Probationary Permit also may be issued to establishment operators who fail to notify the Health  
184 Department of an intent to operate, a change of ownership, or who fail to submit construction  
185 plans for new or extensively remodeled establishments.

186  
187 **A Provisional Retail Food Establishment Permit** or **Provisional Bed and Breakfast Permit**  
188 may be issued for a retail food establishment or bed and breakfast for the following reasons:

- 189 a. New Business.
- 190 b. Change of operator.
- 191 c. Extensive remodeling or change of menu type.

192 A Provisional Permit may be issued for up to sixty (60) days and may not be renewed.

193 **A Temporary Retail Food Establishment** Permit shall be for a period of no more than fourteen  
194 (14) consecutive days in conjunction with a single event or celebration in one location. A Permit  
195 for a temporary Food Establishment shall be for the term of one continuous operation.  
196

197 **Permit Content:** Any Permit issued by the Health Officer shall contain  
198

- 199 (1) the name of the Establishment for whom the Permit is granted;  
200
- 201 (2) the location of the establishment or name of the event for which the Permit is issued;  
202
- 203 (3) the name of the establishment operator;  
204
- 205 (4) the permit type:  
206
- 207 (5) the issuance and expiration date(s); and  
208
- 209 (6) other such pertinent data as may be required by the Howard County Health Officer.  
210

211 **Application:** A Person desiring to operate a Bed and Breakfast Establishment and/or Food  
212 Establishment shall submit to the Howard County Health Department a written application for a  
213 Permit on a form provided by the Howard County Health Department.  
214

215 **Qualification:** To qualify for a Permit, an applicant must:  
216

- 217 (1) Be an owner and/or Operator of the Bed and Breakfast Establishment and/or Food  
218 Establishment;  
219
- 220 (2) Comply with the requirements of this ordinance and applicable law;  
221
- 222 (3) Agree to allow access to the Bed and Breakfast Establishment and/or Food Establishment  
223 and provide required information; and  
224
- 225 (4) Pay the applicable Plan Review Fees and/or Permit fees at the time the application is  
226 submitted.  
227

228 **Plans Requirements:** The owner or other authorized agent of an existing or proposed Bed and  
229 Breakfast Establishment and/or Food Establishment shall submit to the Howard County Health  
230 Department properly prepared plans and specifications for review and approval before:

- 231 (1) the construction of a Bed and Breakfast Establishment and/or Food Establishment;  
232
- 233 (2) the conversion of an existing structure for use as a Bed and Breakfast  
234 Establishment and/or Food Establishment; or  
235
- 236 (3) the remodeling of a Bed and Breakfast Establishment and/or Food  
237 Establishment or a change of type of Bed and Breakfast Establishment  
238 and/or Food Establishment or food operation if the Howard County  
239 Health Department determines that plans and specifications are  
240 necessary to ensure compliance with this section.

- 241 (a) The plans and specifications for a Bed and Breakfast Establishment and/or  
242 Food Establishment shall include the type of operation, type of food preparation (as  
243 specified in Appendix A of the published version of 410 IAC 7-24), the required plan  
244 review fee, and the menu.  
245  
246 (b) The plans and specifications shall be deemed satisfactory and approved by the Howard  
247 County Health Department before a Permit can be issued.  
248  
249 (c) A pre-operational inspection shows that the Bed and Breakfast Establishment and/or  
250 Food Establishment is built or remodeled in accordance with the approved plans and  
251 specifications and that the establishment is in compliance with this ordinance, 410 IAC 7-  
252 24 and/or 410 IAC 7-15.5.

253  
254 **Change of Ownership:** The Howard County Health Department may renew a Permit for an  
255 existing Bed and Breakfast Establishment, and/or Food Establishment, or may issue a  
256 Provisional or Standard Permit to a new owner of an existing and operating Bed and Breakfast  
257 Establishment and/or Food Establishment after a properly completed application is submitted,  
258 reviewed, and approved, and the fees are paid.

259  
260 **Responsibilities of the Operator:** Upon acceptance of the Permit issued by the Howard County  
261 Health Department, the Operator, in order to retain the Permit, shall:

- 262  
263 (1) Comply with the provisions of this ordinance and all laws and rules adopted by reference  
264 herein and the conditions of any variances granted by the Indiana State Department of  
265 Health;  
266  
267 (2) Immediately discontinue affected operations and notify the Howard County Health  
268 Department if an Imminent Health Hazard may exist;  
269  
270 (3) Allow representatives of the Howard County Health Department access to the  
271 Bed and Breakfast Establishment and/or Food Establishment at all reasonable times;  
272  
273 | (4) Timely comply with directives of the Howard County Health Department;  
274  
275 (5) Accept notices issued and served by the Howard County Health Department; and  
276  
277 (6) Be subject to the administrative, civil, and injunctive remedies authorized  
278 in law for failure to comply with this ordinance or a directive of the Howard County  
279 Health Department.  
280  
281 (7) Post the Permit in a location in the Bed and Breakfast Establishment and/or Food  
282 Establishment that is conspicuous to consumers.  
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290 **Section C: Permit Fees**

291  
292 It shall be unlawful for any Person to operate a Bed and Breakfast Establishment and/or Food  
293 Establishment in Howard County, who has not paid the Permit fee and/or any fines required to  
294 be paid for the operation of such establishment.

295  
296 The fee shall be paid for a term beginning February 1, and/or before commencement of operation  
297 and expiring January 31, of the following year, and shall be paid by the Person and/or Operator  
298 annually.

299  
300 **Fees:**

301 Permit fees for the issuance of a Permit under this Ordinance to a Bed and Breakfast  
302 Establishment and/or a Food Establishment, or fees for Plan Review, shall be set by the Howard  
303 County Health Department Fee Collection Ordinance, as provided by the Statutes of the State of  
304 Indiana. (See IC 16-20-1-27)

305  
306 A receipt for the payment of such fee shall be provided by the Howard County Health  
307 Department.

308  
309 The payment of such fees shall be required for each Bed and Breakfast Establishment and/or  
310 Food Establishment operated or to be operated by any Person.

311  
312 **Exemption from Permit Fees:** An organization that is an element of Howard County  
313 Government is exempt from the payment of fees.

314  
315 **Late Fees:** The late fee for failure to renew a permit after the expiration of the permit to operate  
316 Bed and Breakfast Establishment and/or Food Establishment shall be assessed as set by the  
317 current Howard County Health Department Fee Collection Ordinance.

318  
319 Fees paid under this ordinance are not transferable or refundable.

320  
321 **Section D: Inspection**

322  
323 **General:** The Howard County Health Department may inspect a Bed and Breakfast  
324 Establishment and/or Food Establishment at least once every 6 months.

325  
326 The Howard County Health Department may modify the interval between inspections beyond 6  
327 months if:

- 328 (1) The Bed and Breakfast Establishment and/or Food Establishment is fully operating under  
329 an approved and validated Hazard Analysis Critical Control Point (HACCP) plan(s);  
330  
331 (2) The Bed and Breakfast Establishment and/or Food Establishment is assigned a less  
332 frequent inspection frequency based on a written risk-based inspection schedule that is  
333 being uniformly applied throughout the jurisdiction.  
334  
335 (3) The Howard County Health Department may contact the Operator to determine that the  
336 nature of the food operation has not changed.  
337

338 **Temporary Food Establishment:** The Howard County Health Department shall periodically  
339 inspect throughout its Permit period a temporary Food Establishment that prepares, sells, or  
340 serves unpackaged potentially hazardous food and may inspect a temporary Food Establishment  
341 that prepares, sells, or serves unpackaged non-potentially hazardous food.

342  
343 **Performance and Risk Based Inspections:** Within the parameters specified in the above  
344 Inspection Subsection(s) of this Ordinance, the Howard County Health Department shall  
345 prioritize, and conduct more frequent inspections based upon its assessment of a Bed and  
346 Breakfast Establishment and/or Food Establishment's history of compliance with this ordinance  
347 and the Bed and Breakfast Establishment and/or Food Establishment's potential as a vector of  
348 foodborne illness.

349  
350 **Access Allowed at Reasonable Times After Due Notice:** After the Howard County Health  
351 Department presents official credentials and provides notice of the purpose of and the intent to  
352 conduct an inspection, investigation, collect food or water samples or take photographs, the  
353 Operator shall allow the Howard County Health Department to determine if the Bed and  
354 Breakfast Establishment and/or Food Establishment, is in compliance with this ordinance by  
355 allowing access to the establishment, allowing inspection, and providing information and records  
356 specified in this ordinance. The Howard County Health Department is entitled to the  
357 information and records according to IC 16-42-1-13 and IC 16-42-5-23, during the Bed and  
358 Breakfast Establishment and/or Food Establishment's hours of operation and other reasonable  
359 times.

360  
361 Access is a condition of the acceptance and retention of a food establishment Permit to operate.

362  
363 If access is denied, an Order issued by the appropriate authority allowing access may be obtained  
364 according to law. (See IC 16-20-1-26)

365  
366 **Inspection Reports:** At the conclusion of the inspection, the Howard County Health  
367 Department shall provide a copy of the completed Inspection Report and the notice to correct  
368 violations to the Operator or to the person-in-charge, as required under IC 16-20-8-5.

369  
370 **Timely Correction of Critical Violations:** Except as specified in the next paragraph, an  
371 Operator shall, at the time of inspection, correct a critical violation of 410 IAC 7-15.5,  
372 410 IAC 7-24 and/or 410 IAC 7-22 and implement corrective actions for a HACCP plan  
373 provision that is not in compliance with its critical limit.

374  
375 Considering the nature of the potential hazard involved and the complexity of the corrective  
376 action needed, the Howard County Health Department may agree to or specify a longer time  
377 frame after the inspection, for the Operator to correct critical code violations or HACCP plan  
378 deviations.

379  
380 After receiving notification that the Operator has corrected a critical violation or HACCP plan  
381 deviation, or at the end of the specified period of time, the Howard County Health Department  
382 shall verify correction of the violation, document the information on an Inspection Report, and  
383 enter the report in the Howard County Health Department's records.

384

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

388  
389 A refusal to sign an acknowledgment of receipt is noted in the Inspection Report and conveyed  
390 to the Howard County Health Department historical record for the Bed and Breakfast  
391 Establishment and/or Food Establishment.

392  
393 The Operator is not necessarily in agreement with the findings of the Howard County Health  
394 Department inspection by acknowledgement of receipt.

395  
396 **Section E: Compliance and Enforcement**

397  
398 **Fines and Penalties:** The penalty for operating a food establishment without a valid permit, as  
399 defined in this ordinance, shall not exceed \$2,500.

400  
401 Title 410 IAC 7-23, Schedule of Civil Penalties, will be used to determine the dollar amounts of  
402 civil penalties sought for violations of the food establishment rules, and IC 16-42-5. For  
403 violations listed under the schedule, the regulatory authority may seek civil penalties as part of  
404 an enforcement action. A range of civil penalties is established to allow flexibility for the  
405 regulatory authority and the courts. Any fines or penalties collected shall be deposited into the  
406 health fund.

407  
408 Title 410 IAC 7-22, Certification of Food Handler Requirements, Section 19 schedule of  
409 monetary penalties, will be used for violation of 410 IAC 7-22, unless adjusted by administrative  
410 order.

411  
412 **Outstanding Fees:** All fines and penalties owed by any food establishment or bed and breakfast  
413 establishment shall be paid in full prior to the issuance of a valid permit or the renewal of a  
414 current permit.

415  
416 **Application Denial:** If an application for a plan review and/or Permit to operate a Bed and  
417 Breakfast Establishment and/or Food Establishment is denied, the Howard County Health  
418 Department shall provide the applicant with a notice that includes:

- 419  
420 (1) The specific reasons and rule citations for the application and/or Permit denial;  
421  
422 (2) The actions, if any, that the applicant must take to qualify for the application and/or  
423 Permit; and  
424  
425 (3) Advisement of the applicant's right of appeal and the process and time frames for appeal  
426 that are provided in law.

427 **Permit Revocation:** The Howard County Health Department may revoke a Permit to operate a  
428 Bed and Breakfast Establishment and/or Food Establishment for a time period not to exceed 90  
429 calendar days. If the Permit has been revoked in the past and a clear demonstration of non-  
430 compliance is demonstrated by the Permit Holder then the Permit may be revoked for a longer  
431 period of time as determined by the Health Officer.

432 **Permit Suspension:** The Howard County Health Department may suspend a Permit to operate a  
433 Bed and Breakfast Establishment and/or Food Establishment if it determines through inspection,  
434 or examination of employee, food, records, or other means as specified in this ordinance, that an  
435 Imminent Health Hazard exists or that there is no Certified Food Handler as required by 410 IAC  
436 7-22, and shall not exceed 30 calendar days.

437 The Regulatory Authority may at any time summarily suspend a person’s permit:

438 a. by providing written notice to the permit holder or person-in-charge, without prior  
439 warning, notice of a hearing, or a hearing, if it is determined that an imminent health  
440 hazard exists; or

441 b. for interference with the regulatory authority in the performance of its duties.

442 The suspension shall remain in effect until the Regulatory Authority confirms that the conditions  
443 cited in the notice of suspension no longer exist.

444 A permit holder may request a hearing to address concerns about the regulatory authority’s  
445 compliance actions, except that a hearing request does not stay the regulatory authority’s  
446 restriction or exclusion order, a hold order, or the imposition of a summary suspension.  
447

448 **Ceasing Operation and Contacting the Howard County Health Department:** An Operator  
449 of a Bed and Breakfast Establishment and/or Food Establishment shall immediately discontinue  
450 operations and notify the Howard County Health Department if an Imminent Health Hazard may  
451 exist because of an emergency such as a fire, flood, extended interruption of electrical or water  
452 service, sewage backup, misuse of poisonous or toxic materials, onset of an apparent foodborne  
453 illness outbreak, gross unsanitary occurrence or condition, or other circumstance that may  
454 endanger public health.  
455

456 An Operator need not discontinue operations in an area of an establishment that is unaffected by  
457 the Imminent Health Hazard.  
458

459 **Resuming Operation:** If a Bed and Breakfast Establishment and/or Food Establishment has  
460 discontinued operations for the reasons stated above or otherwise according to law, the Operator  
461 must obtain approval from the Howard County Health Department before resuming operations.  
462

463 **Enforcement Options:** *(See IC 16-42-5-28(g))*

464 The following are options available to Howard County Health Department:

465  
466 (1) Conduct administrative proceeding for suspension and/or revocation of the Bed and  
467 Breakfast Establishment and/or Food Establishment Permit in front of the Health Officer.  
468

469 (2) The Howard County Health Officer may issue an “Order To Abate” based on a  
470 condition that may transmit, generate, or promote disease. Failure on the part of the  
471 Operator to comply with the Order could result in the enforcement of the Order in the  
472 court of jurisdiction by the initiation of an action by the county attorney or county  
473 prosecuting attorney.  
474  
475  
476

477 (3) If the action concerning public health is an ordinance violation, request the County  
478 Attorney, the Assistant County Attorney or their designee to institute a proceeding in the  
479 courts for the enforcement of the ordinance violation. (See IC 34-28-5-1)  
480

481 **Hearing Procedure:**

482  
483 Any owner, of a Bed and Breakfast and/or Food Establishment upon which a violation is alleged  
484 to exist who disputes the existence of a violation, or disputes the nature of the abatement action  
485 ordered in the abatement notice, may, within (10) ten calendar days of service of the abatement  
486 notice, serve upon the director of the Board of Health a written request for a hearing. The  
487 written request does not need to be in any particular form, but shall clearly indicate that a hearing  
488 is requested, and shall set out the nature of the individual's disagreement with the content of the  
489 abatement notice.

490  
491 Upon receipt of the written request for a hearing, the Director shall schedule the matter with the  
492 Hearing Board. The hearing board shall be comprised of the Health Officer or his/her designee  
493 and two appointed members of the Howard County Board of Health's Board of Directors. This  
494 Hearing Board shall function as hearing body to adjudicate the matter.

495  
496 The Howard County Health Department by its director or designee shall give written notice to  
497 the party requesting the hearing of the date and time of the hearing. Such notice shall be given  
498 no less than (5) five calendar days prior to the date set for hearing. A shorter period of time may  
499 be granted, if requested by either party and agreed upon.

500  
501  
502 At the hearing, which may be adjourned from time to time, it shall be the Howard County Health  
503 Officer's burden to go forward with evidence sufficient to demonstrate that a violation exists,  
504 and that the actions required are reasonably calculated to abate the violation within a reasonable  
505 period of time. The party requesting the hearing shall have the right to dispute the existence of  
506 the violation, the reasonableness of the remedy, or the reasonableness of the time allowed to  
507 remedial action. The party requesting the hearing may propose alternative remedies or time  
508 periods for remedial action, or alternate remediation plans.

509  
510 All such hearings shall be open to the public pursuant to Indiana statutes on open meetings.

511  
512 Upon conclusion of the presentation of evidence and oral argument, if any, the Howard County  
513 Board of Health's Board of Directors shall deliberate and render a decision either confirming,  
514 amending or rescinding the disputed content of the abatement notice.

515  
516 All time parameters set out in the abatement notice for completion of compliance actions shall be  
517 tolled, pending the outcome of the Hearing Board's decision. In cases where the actions of the  
518 health officer are upheld, or are upheld as modified by the Hearing Board, it shall be the  
519 responsibility of the Hearing Board, in its decision, to establish time periods for completion of  
520 compliance activities held in abeyance during the hearing process.

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**Section F: Appeal:**

Pursuant to Indiana Code 36-1-6-9(e), a person who received a penalty under this resolution may appeal the order imposing the penalty to a court of record in Howard County, Indiana no later than sixty (60) days after the day on which the order is entered.

**Section G: 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 H: 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.

Passed and adopted by the Commissioners of Howard County, State of Indiana, on this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

Signed:

\_\_\_\_\_  
David Trine, President

\_\_\_\_\_  
William Thompson, Vice President

\_\_\_\_\_  
Tyler Moore, Member

Howard County Board of Commissioners  
Howard County, Indiana

Attest:

\_\_\_\_\_  
Ann Wells, Auditor  
Howard County

575 **FOOD ESTABLISHMENT AND BED AND BREAKFAST ESTABLISHMENT**  
576 **ORDINANCE**  
577 **ORDINANCE NO. 2009 BCCO-08**  
578 **Addendum A.**  
579  
580

581 The Food Establishment and Bed and Breakfast Establishment Ordinance establishes definitions;  
582 sets standards for management and personnel; food operations, and equipment and facilities; and  
583 provides for Food Establishment and/or Bed and Breakfast Establishment plan reviews, permits,  
584 inspections, and employee restrictions.  
585

586 This ordinance defines Bed and Breakfast Establishment, Conflict of Interest, Food  
587 Establishment, Hazard Analysis Critical Control Point, Health Officer, Hearing Officer, Howard  
588 County Health Department, Howard County Official, Imminent Health Hazard, Inspection  
589 Report, Menu Type, Operator, Order, Permit, Person, requires construction and/or alteration  
590 plans; requires a Permit and payment of Permit fees for the operation of Bed and Breakfast  
591 Establishment, Food Establishment; prohibits sale of adulterated, unwholesome, or misbranded  
592 food; regulates inspection of such establishments; provides for compliance and the enforcement  
593 of this ordinance; provides penalties for violations of this ordinance; and incorporates by  
594 reference Indiana Code(s) (IC) 16-42-1, IC 16-42-2, IC 16-42-5, Indiana State Department of  
595 Health Rule(s) 410 Indiana Administrative Code (IAC) 7-15.5, 410 IAC 7-24, 410 IAC 7-21-47,  
596 410 IAC 7-22 and 410 IAC 7-23.  
597

598 IC 16-20-8-6 Public Information. Except as specified in section 194 (Trade Secrets) of 410 IAC 7-24, the Howard  
599 County Health Department shall treat the Inspection Report as a public document and shall make it available for  
600 disclosure to a Person as provided in law.  
601

602 The complete text of the following may be found at [http://www.in.gov/legislative/ic\\_ia/](http://www.in.gov/legislative/ic_ia/)  
603

604 IC 16-42-1 Indiana Food, Drug, and Cosmetic Act  
605 IC 16-42-1-18 Embargo or detention of adulterated or misbranded food.  
606 IC 16-42-2 Adulteration or Misbranding of Foods  
607 IC 16-42-5 Food: Sanitary Requirement for Food Establishments  
608 IC 16-42-5-5.2 Variance from rules  
609 IC 35-44-2 Perjury, False Reporting or Informing of Consumer Product Tampering  
610 IC 35-45-8 Consumer Product Tampering - Felony  
611 410 IAC 7-15.5 Indiana Bed & Breakfast Establishments  
612 410 IAC 7-21 Indiana Wholesale Food Establishment Sanitation Requirements  
613 410 IAC 7-22 Certification of Food Handler Requirements  
614 410 IAC 7-23 Schedule of Civil Penalties  
615 410 IAC 7-24 Indiana Retail Food Establishment Sanitation Requirements  
616

617 68 IAC 9-1-1(b)(2) Conflict of Interest means a situation in which the private financial interest of a Howard County  
618 Official, Howard County Official's spouse, ex-spouse, siblings, in-laws, children and/or un-emancipated child, may  
619 influence the Howard County Official's judgment in the performance of a public duty. The Howard County  
620 Employee Handbook, Ordinance No BCC – 2004-45, 6.6 Business Ethics/Conflict of Interest, should be followed.  
621

622  
623  
624 **Content of the Application for a Retail Food Establishment Permit:** The application shall include:

- 625 (1) The name, mailing address, telephone number, and original signature of the Person and/or Operator  
626 applying for the Permit and the name, mailing address,  
627 and location of the Bed and Breakfast Establishment and/or Food Establishment.  
628 (2) Information specifying whether the Bed and Breakfast Establishment and/or Food Establishment is owned  
629 by an association, corporation, individual, partnership, or other legal entity;

- 630 (3) A statement specifying whether the Bed and Breakfast Establishment and/or Food Establishment:
- 631 (A) If not permanent, is mobile and/or temporary, and
- 632 (B) The operation includes one (1) or more of the following:
- 633 (1) Prepares, offers for sale, or serves potentially hazardous food:
- 634 (a) Only to order upon a consumer's request;
- 635 (b) In advance in quantities based on projected consumer
- 636 demand and discards food that is not sold or served at an approved
- 637 frequency; or
- 638 (c) Using time, rather than temperature, as the public health
- 639 control as specified under 410 IAC 7-24.
- 640 (d) Prepares acidified foods as defined in 410 IAC 7-21-3.
- 641 (2) Prepares potentially hazardous food in advance using a food
- 642 preparation method that involves two or more steps which may
- 643 include combining potentially hazardous ingredients; cooking;
- 644 cooling; reheating; hot or cold holding; freezing; or thawing;
- 645 (3) Prepares food as specified under item (3)(B)(2) of this section for
- 646 delivery to and consumption at a location off the premises of the
- 647 Bed and Breakfast Establishment and/or Food Establishment where it is prepared;
- 648 (4) Prepares food as specified under item (3)(B)(2) of this section for
- 649 service to a highly susceptible population, as defined in
- 650 410 IAC 7-24;
- 651 (5) Prepares only food that is not potentially hazardous; or
- 652 (6) Does not prepare, but offers for sale only prepackaged food that is
- 653 not potentially hazardous.
- 654 (4) The name, title, address, and telephone number of the Operator directly responsible for the Bed and
- 655 Breakfast Establishment and/or Food Establishment.
- 656 (5) The name, title, address, and telephone number of the Person who functions as
- 657 the immediate supervisor of the Person specified under subdivision (4) of this
- 658 section such as the zone, district, or regional supervisor;
- 659 (6) The names, titles, and addresses of:
- 660
- 661
- 662
- 663 (A) The Persons comprising the legal ownership as specified under subdivision (2) of
- 664 this section including the owners and Operators, and
- 665 (B) The local resident agent if one is required based on the type of legal
- 666 ownership;
- 667 ~~(7)~~A statement signed by the applicant that:
- 668 (A) Attests to the accuracy of the information provided in the application, and
- 669 (B) Affirms that the applicant will:
- 670 (1) Comply with this ordinance, and
- 671 (2) Allow the Howard County Health Department access to the
- 672 Bed and Breakfast Establishment and/or Food Establishment and records as specified
- 673 in 410 IAC 7-15.5 and 410 IAC 7-24.
- 674 (8) Other information required by the Howard County Health Department.
- 675
- 676 **Plan Review: The Retail Food Establishment Operator should use the Plan Review Application and**
- 677 **Questionnaire provided by the Howard County Health Department/Indiana State Department of Health. The**
- 678 **link to those documents can be found at <http://co.howard.in.us/health/enviro/foodprotect.htm> .**
- 679
- 680
- 681 **PURPOSE:** This Policy establishes how to conduct the Retail Food Protection Division Plan Review Program.
- 682 **SCOPE:** A Plan Review is required by Title 410 IAC 7-24-Sec 110 and Ordinance 2005 BCC-22, Section
- 683 B for an existing or proposed retail food establishment before:
- 684 (1) the construction of a retail food establishment;

- 685 (2) the conversion of an existing structure for use as a retail food establishment;  
686 (3) the remodeling of a retail food establishment or a change of type of retail food  
687 establishment or food operation if the regulatory authority determines that plans and  
688 specifications are necessary to ensure compliance with this rule.

689 **Authority:** Title 410 IAC 7-24; Howard County Ordinance 2005 BCC-22.

690 **BACKGROUND:** This document will define terms, explain when a Plan Review is needed and clarify  
691 Menu Types.

692 **APPLICABILITY:** Plan Review applies to all new construction, conversion of existing structure,  
693 remodeling or change of menu type, both annual and seasonal permits. This procedure does not apply to  
694 existing and operating establishments where there is a change of ownership only or to establishments  
695 where existing equipment or furnishings are replaced with similar type.

696 **DEFINITIONS:**

697 Food Preparation Process – means classification of the process of food preparation based on the number  
698 of times the food passes through the temperature danger zone between 41°F and 135°F.

699 Process 1: No Cook Step

700 Process 2: Same Day Service

701 Process 3: Complex Food Preparation

702 NPHF – Non-Potentially Hazardous Food.

703 PHF – Potentially Hazardous Food, or temperature/time control for food safety foods (TCS).

704

705

706 Process Approach – means dividing the many food flows in an establishment into broad categories based  
707 on activities or stages in the flow of food through the establishment, then analyzing the hazards, and  
708 placing managerial controls on each group.

709 Type of Retail food establishment – is determined by the menu type, as defined in current local ordinance,  
710 or the type of food preparation process. Menu Type means :

711 Type 1 – pre-packaged PHF; limited preparation of NPHF.

712 Type 2 – Cook & serve; one trip through the danger zone.

713 Type 3 – Extensive handling & preparation; deli & seafood; more than one trip through the  
714 danger zone. Hot & cold holding; limited advanced preparation.

715 Type 4 – Extensive handling & preparation for next day service; serve highly susceptible  
716 population.

717 Type 5 – Food processing at retail level; smoking & curing; reduced oxygen packaging.

718 **When is Plan Review Required?**

719 Plan Review is required when

720 (1) A new building is constructed.

721 (2) A change of use of an existing building for use as a food establishment.

722 (3) When going to a higher food preparation process classification, installation of different equipment,  
723 remodeling (moving walls, plumbing fixtures, equipment), or a change in Menu Type.

724 **Note:** replacing flooring, wall covering, or ceiling is considered maintenance of facilities and does not  
725 require plan review. Equipment replaced with similar equipment does not require plan review.

726 Plan Review is required for **Seasonal Retail Food Establishments** for the first season of operation in  
727 Howard County, or when major structural or menu changes are made.

728 For **Temporary Retail Food Establishments**, Plan Review will consist of menu review, water source  
729 and wastewater management, food sources, food storage and food process and menu type at the time of  
730 application for a permit.

731 **Fees:**

732 A fee of **\$60.00** is set for Plan Review for Food Establishments. There is no fee for plan review for  
733 Temporary Retail Food Establishments. Fees are due at the time the plan is submitted at the Health  
734 Department and are not refundable.

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