

RETAIL FOOD ESTABLISHMENT AND/OR BED AND BREAKFAST
ESTABLISHMENT ORDINANCE
ORDINANCE NO. 4-1-8

WHEREAS, the Morgan County Food Establishment Ordinance, Ordinance No. 4-1-5, as amended, was originally passed on November 15, 2004;

WHEREAS, the Indiana Code and Indiana Administrative Code provisions regulating retail food establishments have been amended and modified from time to time;

WHEREAS, the repeal and replacement of the Morgan County Retail Food Ordinance with the Morgan County Retail Food Establishment and/or Bed and Breakfast Establishment Ordinance is necessary to ensure that Morgan County retail food establishments are compliant with current Indiana law, rules and regulations; and,

WHEREAS, the Morgan County Board of Health has approved the Morgan County Retail Food Establishment and/or Bed and Breakfast Establishment Ordinance.

NOW THEREFORE, be it ORDAINED by the Board of Commissioners of Morgan County, Indiana, that the Morgan County Food Establishment Ordinance, Ordinance No. 4-1-5, as amended, originally passed on November 15, 2004, shall be repealed and replaced by the Morgan County Retail Food Establishment and/or Bed and Breakfast Establishment Ordinance, as attached hereto.

BE IT FURTHER ORDAINED that this Ordinance shall be effective on January 1, 2014.

So Passed and Adopted by the Board of Commissioners of Morgan County, State of Indiana, on this 4 day of November, 2013.

Board of Commissioners of Morgan County, Indiana:
Norman Voyles

Norman Voyles, Commissioner

Brian Goss

Brian Goss, Commissioner

Brian Goss, Commissioner

Don Adams

Don Adams, Commissioner

Don Adams, Commissioner

ATTEST:

Brenda Adams

Brenda Adams, Morgan County Auditor

Brenda Adams, Morgan County Auditor

**THE MORGAN COUNTY RETAIL FOOD ESTABLISHMENT
AND/OR BED AND BREAKFAST ESTABLISHMENT ORDINANCE**

In Morgan County, Indiana

WHEREAS, 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 review, permits, inspections, and employee restrictions.

WHEREAS, this ordinance defines Bed and Breakfast Establishment, Conflict of Interest, Morgan County Health Department, Health Department Official, Hazard Analysis Critical Control Point, Health Officer, Hearing Officer, Imminent Health Hazard, Inspection Report, Operator, Order, Permit, Person, Retail Food Establishment; and Temporary Food Establishment; requires construction and/or alteration plans; requires a Permit and payment of Permit fees for the operation of Bed and Breakfast Establishment, Retail Food Establishment, and/or Temporary Food Establishment; prohibits sale of adulterated, unwholesome, or misbranded food; regulates inspection of such establishments; provides for compliance and the enforcement of this ordinance; provides penalties for violations of said ordinance; and incorporates by reference Indiana Code (IC) 16-42-1, IC 16-42-2, IC 16-42-5, Indiana State Department of Health Rule(s) 410 Indiana Administrative Code (IAC) 7-15.5, 410 IAC 7-24 (effective Nov '04, and incorporating any changes to Retail Food Establishment Sanitation Requirements), 410 IAC 7-21-47, 410 IAC 7-22 (effective May '03) and 410 IAC 7-23 (effective September '03).

WHEREAS, the Morgan County Health Department is hereby authorized to issue Bed and Breakfast Establishment, Retail Food Establishment, and/or Temporary Food Establishment permits, collect Permit fees and penalties, perform inspections, hold hearings, order or otherwise compel correction of violations of this ordinance, and is otherwise authorized to perform all actions necessary for the administration and enforcement of this ordinance.

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

Section A: Definitions

Bed and Breakfast Establishment (as defined in 410 IAC 5-15.5) 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 interest of Morgan County Official, Morgan County Official's spouse, ex-spouse, siblings, in-laws, children and/or un-emancipated child, may influence the Morgan County Official's judgment in the performance of a public duty.

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

Morgan County Official means any Official of Morgan 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 Health Officer having jurisdiction in Morgan County/City or his/her duly authorized representative.

Hearing Officer means an individual or panel of individuals acting in the capacity of a Hearing Officer in proceedings. The Hearing Officer is not the Health Officer or any other employee of the Morgan County Health Department. (Examples of Hearing Officer could be the Morgan County Health Board, a subcommittee of Morgan 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 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 Morgan 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 Morgan 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 Morgan County Health Department that authorizes a Person to operate a Bed and Breakfast Establishment, Retail Food Establishment, and/or Temporary Food Establishment.

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

Retail Food Establishment (as derived from 410 IAC 7-24) means

(1) an operation that:

(A) stores, prepares, packages, serves, vends, or otherwise provides food for human consumption, such as:

- (a) a restaurant;
- (b) satellite or catered feeding location;
- (c) a catering operation if the operation provides food directly to a consumer or to a conveyance used to transport people;
- (d) a market;
- (e) a grocery store;
- (f) a convenience store;
- (g) a vending location;
- (h) a conveyance used to transport people;
- (i) an institution; or
- (j) a food bank; and
- (k) 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 delivery service that is provided by common carriers.

(2) The term includes the following:

(A) An element of the operation, such as a transportation vehicle or a central preparation facility that supplies a vending location or satellite feeding location unless the vending or feeding location is permitted by the regulatory authority.

(B) 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.

Temporary Food Establishment (as defined in 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:

(1) It is unlawful for a Person to operate any Bed and Breakfast Establishment, Retail Food Establishment, and/or Temporary Food Establishment in Morgan County/City, without first obtaining a valid Permit from the Health Officer. The valid Permit must be posted in a conspicuous location in the Bed and Breakfast Establishment, Retail Food Establishment, and/or Temporary Food Establishment.

(2) 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.

(3) A separate Permit 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.

(4) A Permit issued under this ordinance is not transferable.

(5) A Bed and Breakfast Establishment and/or Retail Food Establishment Permitted by Morgan County Health Department shall be considered registered as required in IC 16-42-1-6.

Permit Period:

(1) A Permit for a Bed and Breakfast Establishment and/or Retail Food Establishment shall be issued for a term beginning January 1, and/or before commencement of operation, and expiring December 31, of the same year and shall be applied for by the Person and/or Operator annually.

(2) A Permit for a Temporary Food Establishment shall be for the term of one 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 Morgan County 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 Morgan County Health Department a written application for a Permit on a form provided by the Morgan County Health Department.

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) A statement specifying whether the Bed and Breakfast Establishment, Retail Food Establishment and/or Temporary Food Establishment.

(A) If not permanent, is mobile and/or temporary, and

(B) The operation includes one (1) or more of the following:

(1) Prepares, offers for sale, or serves potentially hazardous food:

(a) Only to order upon a consumer's request;

(b) In advance in quantities based on projected consumer demand and discards food that is not sold or served at an approved frequency; or

(c) Using time, rather than temperature, as the public health control as specified under 410 IAC 7-24.

(d) Prepares acidified foods as defined in 410 IAC 7-21-3.

(2) Prepares potentially hazardous food in advance using a food preparation method that involves two or more steps which may include combining potentially hazardous ingredients; cooking; cooling; reheating; hot or cold holding; freezing; or thawing;

(3) Prepares food as specified under item (3)(B)(2) of this section for delivery to and consumption at a location off the premises of the Bed and Breakfast Establishment and/or Retail 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 pre-packaged 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, Retail Food Establishment and/or Temporary Food Establishment.

(5) The name, title, address, and telephone number of the Person who functions as the immediate supervisor of the Person specified under subdivision (4) of this section such as the zone, district, or regional supervisor;

- (6) The names, titles, and addresses of:
 - (A) The Persons comprising the legal ownership as specified under subdivision (2) of this section including the owners and operators, and
 - (B) The local resident agent if one is required based on the type of legal ownership;
- (7) A statement signed by the applicant that:
 - (A) Attests to the accuracy of the information provided in the application, and
 - (B) Affirms that the applicant will:
 - (1) Comply with this ordinance, and
 - (2) Allow the Morgan County 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.
- (8) Other information required by the Morgan 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, 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 the application is submitted.

Plan Requirements:

- (1) The owner or other authorized agent of an existing or proposed Bed and Breakfast Establishment and/or Retail Food Establishment shall submit to the Morgan County Health Department properly prepared plans and specifications for review and approval before:
 - (A) The construction of a Bed and Breakfast Establishment and/or Retail Food Establishment;
 - (B) The conversion of an existing structure for use as a Bed and Breakfast Establishment and/or Retail Food Establishment; or
 - (C) 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 Morgan County Health Department determines that plans and specifications are necessary to ensure compliance with this section.

(2) The plans and specifications for a Bed and Breakfast 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.

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

(4) A pre-operational inspection shows 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 Morgan County 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 Morgan 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 Morgan County Health Department if an Imminent Health Hazard may exist;

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

(4) Comply with directives of the Morgan County Health Department including time frames for corrective actions specified in Inspection Reports, notices, orders, warnings, and other directives issued by the Morgan County 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 Morgan 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 directive of the Morgan County Health Department.

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

Section C: Permit Fees

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

(2) 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 shall be applied for by the Person and/or Operator annually.

(3) Permit fees for the issuance of a permit under this Ordinance to a Bed and Breakfast Establishment, Retail Food Establishment and/or Temporary Food Establishment shall be set by the Morgan County Health Department and the Board of Commissioners of Morgan County.

(4) A receipt for the payment of such fee shall be provided by the Morgan County Health Department.

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

Exemption/ Waiver from Permit Fees: The Department may waive the payment of permit fees for a not-for-profit organization. In order to be eligible, the not-for-profit organization must apply for the waiver in writing and the organization must not receive payment, remuneration, or receive anything of value in exchange for the preparation or distribution of foodstuffs, cooked or uncooked. An example of an eligible entity would be a food pantry or soup kitchen.

Late Fees: A late fee for failure to pay the permit fee prior to the operation of the Bed and Breakfast Establishment and/or Retail 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 Retail Food Establishment shall be assessed as set by the Morgan County Health Board.

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

Section D: Inspection

General: The Morgan County Health Department shall inspect a Bed and Breakfast Establishment and/or Retail Food Establishment as established by the written **Risk-Based Inspection Policy for Food Establishments**.

Temporary Food Establishment: The Morgan 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 Temporary Food Establishment that prepares, sells or serves unpackaged, nonpotentially 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.

Access Allowed at Reasonable Times After Due Notice: After the Morgan 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 Morgan County 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. The Morgan 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 Retail Food Establishment's hours of operation and other reasonable times.

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

(2) If access is denied, an Order issued by the appropriate authority allowing access may be obtained according to law, including injunction.

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

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.

(1) Considering the nature of the potential hazard involved and the complexity of the corrective action needed, the Morgan 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.

(2) 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 Morgan County Health Department shall verify correction of the violation, document the information on an Inspection Report, and enter the report in the Morgan County Health Department's records.

Refusal to Sign Acknowledgment: 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.

(1) A refusal to sign an acknowledgment of receipt is noted in the Inspection Report and conveyed to the Morgan County Health Department historical record for the Bed and Breakfast Establishment, Retail Food Establishment and/or Temporary Food Establishment.

(2) The Operator is not necessarily in agreement with the findings of the Morgan County Health Department inspection by acknowledgment of receipt.

Public Information: Except as specified in section 176 (Trade Secrets) of 410 IAC 7-24, the Morgan 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.

Section E: 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 Morgan 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 Suspension: The Morgan County 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 inspection, examination of employee, food, records, or other means as specified in this ordinance, that an Imminent Health Hazard exists.

Ceasing Operation and Contacting the Morgan County 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 Morgan 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, Retail Food Establishment and/or Temporary Food Establishment has discontinued operations for the reasons stated above or otherwise according to law, the Operator must obtain approval from the Morgan County Health Department before resuming operations.

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

Enforcement:

(1) The Morgan County Health Department is hereby authorized to establish a process and promulgate rules for the issuing of tickets based on violation of Indiana Code, as set forth in IC 16-42-5-28. The Morgan County Health Department shall establish a schedule of penalties adopted by the Indiana State Department of Health pursuant to IC 16-42-5-28. In any event, the fine for violation shall not exceed the sum of \$1,000 for each violation, per day.

(2) The Morgan County Health Officer may issue an "Order To Abate" based on a condition that may transmit, generate, or promote disease. Failure on the part of the Operator to comply with the Order could result in the enforcement of the Order in the court of jurisdiction by the initiation of an action by the county attorney or county prosecuting attorney. Enforcement of Order before a court may include a request for any available legal or equitable remedy, including injunction, revocation of a Permit, fines and payment of the Department's attorney's fees and costs.

(3) If the action concerning public health is an ordinance violation, the Morgan County Health Officer may request the county attorney or county prosecuting attorney to institute a proceeding in the courts for the enforcement of the ordinance violation.

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

Section F: Appeals Section

(1) Any Person(s) aggrieved by Orders issued under Section E (1) or (2) above shall be entitled to a review of the final Order before a Hearing Officer by filing a written request therefore with the Board of Health. The written request must be mailed or hand delivered to Board of Health, 180 South Main Street, Suite 252, Martinsville, Indiana 46151, and must be received within fifteen (15) days after such final Order is issued.

(2) Upon the Board of Health's receipt of such request, the Board of Health or its designee (hereinafter "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 Morgan County Health Department.

(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 Board of Health.

(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 Order or determination of this matter in writing.

(6) The Final Order completes the Administrative Appeals procedure.

Section G: Conflict of Interest

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

Section H: Unconstitutionality Clause

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

Section I: Repeal and Effective Date

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