

Pike County Ordinance
for
Food Establishments and Bed and Breakfast Establishments
Ordinance #2014-04

An ordinance pertaining to restaurants, retail food stores, temporary food establishments, mobile^{any} food establishments, Farmers' Markets, and other operations defined either as food establishments *or* as bed and breakfast establishments by the State of Indiana; requires permits and fees of such establishments; prohibits the sale of adulterated, unwholesome, or misbranded foods; regulates inspection of such establishments; provides for enforcement of this ordinance; provides penalties for violations of said ordinance; and incorporates by reference the following Indiana State Department of Health Rules: Title 410 IAC 7-24 (Retail Food Establishments) and Title 410 IAC 7-15.5 (Bed and Breakfast Establishments).

DEFINITIONS:

For purposes of this Ordinance, "food establishment" is defined as any building, room, basement, vehicle of transportation, cellar, or open or enclosed area occupied or used for handling food. (Sec. 1, IC 16-18-2-137 and Sec. 79, 410 IAC 7-24-79)

The term "bed and breakfast establishment" is defined as a residence that provides sleeping accommodations to the public for a fee, has no more than fourteen (14) guest rooms, provides breakfast to its guests as part of the fee, and provides sleeping accommodations for no more than thirty (30) consecutive days to a particular guest. (Sec. 2, IAC 7-15.5)

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

Section A. Submission and Approval of the Plan Review for Construction, Alteration, or Transfer of Ownership of a Food Establishment, Mobile Food Establishment, or Bed and Breakfast Establishment; Variance Policy; Completion of the Pre-Operational Inspection; and Fee for Late Submission of the Plan Review

1. Before a Retail Food Establishment, Mobile Food Establishment, or Bed and Breakfast Establishment or portion thereof, is constructed, altered, or remodeled, or before an existing structure is converted into the use of such an establishment, or upon transfer of an existing operation, the owner, operator, or designated agent shall submit a Plan Review with specifications for the establishment to Pike County Health Department for review and approval.
 - (a) The Plan Review (State Form 50004) shall identify and summarize the plans or projects and shall indicate the owner, operator, or designated agent; the proposed layout, arrangement, mechanical plans, and construction materials of work areas; the type and model of proposed fixed equipment and facilities; the intended menu to be served; the anticipated volume of food to be stored, prepared, sold, or served; and the practices employed to ensure compliance with the State of Indiana's Standard Sanitary Operating Procedures (SSOPs). No Retail Food Establishment, Mobile Food Establishment, or Bed and Breakfast Establishment shall be constructed, remodeled, converted, or transferred to new ownership without a Plan Review approved by Pike County Health Department.
 - (b) The completed Plan Review shall be submitted no later than 30 days prior to the start of operation. A new or altered establishment is required to notify the regulatory authority (local Health Department or Indiana State Department of Health) of intent to operate at least thirty (30) days prior to applying for a permit (IAC 410-7-24, Sec.107). In addition, any plans required by other State or County entities shall be submitted to and approved by the proper regulatory authorities before a permit will be issued by Pike County Health Department.

- (c) If the Plan Review meets the requirements of Title 410 IAC 7-24 (for a Retail Food Establishment or Mobile Food Establishment) or of Title 410 IAC 7-15.5 (for a Bed and Breakfast Establishment), Pike County Health Department shall approve the plans and specifications.
2. Requests for any variance from the Plan Review shall be submitted according to Indiana State Department of Health's "Policy for Processing Variance Requests". (IC 16-19-3-4.3 and IC 16-42-5-5.2) The requirements in Title 410 IAC 7-24 or Title 410 IAC 7-15.5 may not be waived, modified, or deviated from, unless the assistant commissioner of the Indiana State Department of Health Food Protection Program has issued a variance to the applicant.
 3. After the Plan Review has been submitted to Pike County Health Department, the Health Department shall inspect the establishment prior to the start of operation, to determine compliance with the Plan Review and with the requirements of this Ordinance.
 - (a) All violations discovered at the initial inspection shall be corrected by the date of the reinspection.
 - (b) Any violations cited during the reinspection shall be corrected before an establishment is allowed to begin operations.
 - (1) No establishment shall be allowed to begin operations until **all critical** violations have been corrected to the satisfaction of the Health Department.
 - (2) At the discretion of the Health Department, the establishment may be allowed to begin operations, pending submission of work orders indicating the date all remaining **noncritical** violations will be corrected to the satisfaction of the Health Department.
 - (3) Failure to correct any **noncritical** violations cited during the reinspection and detailed in work orders shall be subject to revocation of an establishment's permit, as provided in Section F of this Ordinance, and/or penalties, as provided in Section H of this Ordinance.
 4. A Plan Review submitted later than thirty (30) days before the planned start of operations shall be subject to a late fee in the amount of Fifty Dollars (\$50.00).

Section B. Permit: Requirements, Procedure for Issuance, Fees, and Exemptions

1. It shall be unlawful for any person to operate a Retail Food Establishment, Mobile Food Establishment, Farmers' Market, Temporary Food Establishment, or Bed and Breakfast Establishment in Pike County without a valid permit from Pike County Health Department. A separate permit shall be required for each Retail Food Establishment, Mobile Food Establishment, Farmers' Market, Temporary Food Establishment, or Bed and Breakfast Establishment operated by any person. When separate areas for food service and preparation are located in one building and are operated by one owner, the establishment shall be considered as one establishment, and only one permit shall be required.
2. Only persons who comply with the applicable requirements of this Ordinance shall be entitled to receive and retain such a permit. A permit shall be issued to any person upon application, and only after inspection of the Retail Food Establishment, Mobile Food Establishment, Farmers' Market, Temporary Food Establishment, or Bed and Breakfast Establishment and upon approval by Pike County Health Department. No permit, or renewal thereof, shall be denied or revoked on arbitrary or capricious grounds.
3. With the exception of Temporary Food Establishments, a permit for a Retail Food Establishment, Mobile Food Establishment, Farmers' Market, or Bed and Breakfast Establishment shall be for a term of one (1) year, beginning January 1 and expiring December 31 of the same year, and shall be renewed annually. The fee for such an establishment shall be Fifty Dollars (\$50.00), with a renewal fee for each subsequent year payable by December 31. Failure to pay the renewal fee for a permit by December 31 shall result in the assessment of a delinquent fee of Fifty Dollars (\$50.00), in addition to the annual

permit fee. The fee for a new Retail Food Establishment, Mobile Food Establishment, Farmers' Market, or Bed and Breakfast Establishment shall be prorated as follows: (a) A person obtaining a permit prior to July 1 shall pay the full amount of a regular annual permit fee (\$50.00); (b) A person obtaining a permit after July 1 shall pay half the regular permit fee (\$25.00).

4. The permit for a Temporary Food Establishment shall be for a term beginning the first day of operation and shall expire no more than 14 days later. The fee for a temporary food permit shall be \$15 per day, with a maximum fee of \$30 per event or location. An application for a temporary permit shall be submitted to Pike County Health Department no later than 10 days prior to the first day of operation. Applications for temporary food establishments submitted within 10 days of the first day of operation shall be subject to a \$20.00 late fee.
5. Any permit issued by Pike County Health Department shall contain the name of the person(s) to whom the permit is granted, the address of the premises for which the permit is issued, and any such pertinent data as may be required by the Health Department. The permit shall be posted in a conspicuous place in the Retail Food Establishment, Mobile Food Establishment, Farmers' Market, Temporary Food Establishment, or Bed and Breakfast Establishment.
6. A permit is not transferable to another business or person. In the event of a change in ownership by conveyance, sale contract, lease, or other means, the current permit shall become void and a new permit shall be required. A permit shall not be issued to an establishment under new ownership until it is in full compliance with all applicable State and local laws.
7. An organization that is recognized as "Tax Exempt" under IRS Section 501 and offers food for sale to the final consumer, at an event held for the benefit of the organization, is exempt from the requirements of this ordinance if:
 - (a) A copy of the organization's tax exempt certification is provided to Pike County Health Department.
 - (b) Food is prepared by the members of the organization, is prepackaged for sale, or is prepared by a retail food establishment that possesses a valid permit;
 - (c) Events conducted by the non-profit organization are not held more than 15 days in any calendar year; and
 - (d) A list of foods to be served, along with sources where foods were obtained, is submitted with a completed Notification of Non-Profit Food Sales.
8. This section does not prohibit a non-profit organization from applying for a permit, if the organization wishes to operate more than 15 days within a calendar year.
9. This section does not apply to an individual operating a roadside stand, if the operation meets the requirements of HEA 1309; or to an individual operating as a Home Based Vendor (HBV), if the operation complies with IC 16-42-5-29.
10. This ordinance shall not apply to any unit of government.

Section C. Sanitation Requirements

1. All Retail Food Establishments, Mobile Food Establishments, Farmers' Markets, Temporary Food Establishments, and Bed and Breakfast Establishments shall comply with the sanitation requirements specified by the Indiana State Department of Health, as provided in Title 410 IAC 7-24 (Retail Food Establishments) and Title 410 IAC 7-15.5 (Bed & Breakfast Establishments), or as those Rules are changed or amended.
2. These Rules and any changes or amendments are incorporated by reference and made part of this section.

3. Two (2) copies of this Ordinance will be kept on file for public inspection: one (1) at Pike County Health Department and one (1) in the Pike County Auditor's Office.

Section D. Examination and Condemnation of Unwholesome, Adulterated, or Misbranded Food

1. It shall be unlawful for any person, business, or non-profit organization to sell any food that is unwholesome, adulterated, or misbranded.
2. Samples of food may be obtained and examined by the Pike County Food Sanitarian as often as necessary, to determine food is free from contamination, adulteration, or misbranding. The Health Department may, upon written notice to the owner or operator, impound and forbid the sale of any food that is unwholesome, adulterated, or misbranded, or if the Health Department has probable cause to believe the food is unfit for human consumption, unwholesome, adulterated, or misbranded. However, if misbranding can be corrected by proper labeling, such food may be released to the operator for sale, under the supervision of the Health Department. The Health Department may also order to be disposed or destroyed any dairy product, meat, meat product, seafood, poultry, poultry product, confectionary, bakery product, vegetable, fruit, or other perishable article that is in its opinion unsound, contains any filthy, decomposed, or putrid substance, or that may be poisonous or deleterious to health, or that is otherwise unsafe for human consumption.

Section E. Disease Control

1. No employee, while infected with a disease in a communicable form that can be transmitted by foods, or who is a carrier of organisms that cause such a disease, or while afflicted with a boil, an infected wound, or an acute respiratory infection, shall work in any capacity in a Retail Food Establishment, Mobile Food Establishment, Farmers' Market, Temporary Food Establishment, or Bed and Breakfast Establishment in which there is a likelihood of such a person to contaminate food or food-contact surfaces with pathogenic organisms, or to transmit disease to other persons. If the person in charge of any such establishment has reason to believe that an employee has contracted any disease that can be transmitted by food, he/she shall notify Pike County Health Department immediately.
2. When Pike County Health Department has reason to believe a possibility of transmission of infection exists from any employee of a Retail Food Establishment, Mobile Food Establishment, Farmers' Market, Temporary Food Establishment, or Bed and Breakfast Establishment, the Health Department is authorized to require any or all of the following measures:
 - (a) The immediate exclusion of the employee from the establishment;
 - (b) The immediate closing of the establishment, until in the opinion of the Health Department no further danger of disease outbreak exists; and/or
 - (c) Adequate medical examination of the employee and of the employee's associates, by any laboratory examinations as may be indicated.

Section F. Inspection, Correction of Violations, and Revocation of Permit

1. Each Retail Food Establishment, Mobile Food Establishment, Farmers' Market, Temporary Food Establishment, or Bed and Breakfast Establishment is subject to unannounced inspections at a frequency determined appropriate by the Health Department, in order to ensure compliance with the current ISDH sanitation requirements for a Retail Food Establishment (Title 410 IAC 7-24) or a Bed and Breakfast Establishment (Title 410 IAC 7-15.5).
2. A person operating a Retail Food Establishment, Mobile Food Establishment, Farmers' Market, Temporary Food Establishment, or Bed and Breakfast Establishment shall, upon the request of the Health Department, allow the Food Sanitarian or another designated representative of the Health

Department access to all parts of the operation, and shall allow the Health Department to collect evidence and exhibits and/or copy any or all records relative to the enforcement of this Ordinance.

3. If during the inspection of any Retail Food Establishment, Mobile Food Establishment, Farmers' Market, Temporary Food Establishment, or Bed and Breakfast Establishment, a violation of any of the requirements in the provisions of this Ordinance is discovered, the Health Department shall issue a written order listing each violation to the owner or person in charge, and shall specify a date by which the owner or person in charge shall abate and remedy each violation. A copy of this written order shall be provided to the owner or person in charge, and kept on file in the Health Department.
 - (a) Refusal to sign the inspection report shall not affect the operator's obligation to correct violations within the specified timeframes.
 - (b) Signing an inspection report or acknowledging its receipt does not imply that the operator necessarily agrees with the findings of the inspection.
4. If upon a second and final inspection the Health Department finds that a Retail Food Establishment, Mobile Food Establishment, Farmers' Market, Temporary Food Establishment, or Bed and Breakfast Establishment employee, or other person associated with the operation is cited for a violation of any of the provisions of this Ordinance that were cited in the last inspection:
 - (a) The Health Department may promptly issue a written order to the owner or person in charge of the establishment to appear for an administrative hearing at a specified time and place, no later than ten (10) days after the second and final inspection, to show just cause why the permit issued under provisions of this Ordinance should not be revoked; or
 - (b) The Health Department shall furnish evidence of the violation(s) to the Pike County Attorney, who shall prosecute all persons violating the provisions of this Ordinance.
5. If at the administrative hearing the owner or person in charge should fail to show just cause as to why the permit should not be suspended or revoked, the Health Department shall suspend or revoke the permit of the establishment and shall promptly give written notice of such action to the owner or person in charge. The Health Department shall maintain a permanent record of these proceedings, which shall be kept on file in the Health Department.
6. The Health Department shall placard a Retail Food Establishment, Mobile Food Establishment, Farmers' Market, Temporary Food Establishment, or Bed and Breakfast Establishment that has had its permit suspended or revoked, with an official notice to the effect that the establishment is closed by order of the Health Department. It shall be illegal to remove, damage, or deface such notice at any time before the Health Department allows the establishment to resume operation.
7. All critical violations shall be corrected within the period of time specified in the written order provided by the Health Department, but in any event, not to exceed ten (10) days following an inspection. Within fifteen (15) days after the inspection the owner or person in charge of the Retail Food Establishment, Mobile Food Establishment, Farmers' Market, Temporary Food Establishment, or Bed and Breakfast Establishment may be required to submit a written report to the Health Department, stating Purchase Orders or work contracts indicating the date work will be completed to the satisfaction of the Health Department, which at the discretion of the Health Department may be accepted as interim corrective action.

Section G. Temporary Suspension of License

1. Any permit issued under this Ordinance may be temporarily suspended by the Health Department without notice or hearing for a period not to exceed thirty (30) days, for any of the following reasons:
 - (a) An imminent health hazard such as lack of refrigeration, sewage backup into the establishment, loss of hot water supply, major rodent or insect infestation, or an extended power outage. The

establishment shall immediately cease food operations and shall not resume operations until authorized by the Health Department.

- (b) Unsanitary or other conditions that in the Health Department's opinion endangers public health.
 - (c) Interference with the Health Department in the performance of its duties; and/or
 - (d) Undue harassment of the Health Department Inspector(s) in the performance of their duties.
2. Upon written application from the owner or person in charge, served upon the Health Department within fifteen (15) days after such suspension, the Health Department shall conduct a hearing upon the matter, after giving at least five (5) days written notice of the time, place, and purpose thereof to the suspended owner or person in charge.
- (a) Any such suspension order shall be issued by the Health Department in writing, and served upon the owner or person in charge by leaving a copy at the usual place of business, or by delivery of registered or certified mail to such address.
 - (b) Any establishment whose permit has been suspended may at any time make application to the Health Department for reinstatement of the permit.

Section H. Penalties for Violations

1. The ability to seek civil penalties was designed to assist with the enforcement of recalcitrant violators of food law, and to provide further protection against the spread of foodborne disease. Violations that have a higher public health significance are assigned a broader range of potential civil penalties, with a maximum penalty of \$1000 for each day of violation.
2. Pike County Health Department may assess civil penalties in local enforcement actions against violators of food law, as provided in IC 16-19-3-4 and IC 16-42-5-28.
3. Penalties for repeated violations of Title 410 IAC 7-24 shall be assessed per Schedule of Civil Penalties as Amended (410 IAC 7-23).

Section I. Enforcement

This Ordinance shall be enforced by the Health Department, with the assistance of the Pike County Attorney or his/her appointed deputies, and in appropriate cases, by the Pike County Prosecuting Attorney.

Section J. Conflict of Interest

No Pike County official shall conduct himself or herself in a manner that is or could be perceived as a Conflict of Interest.

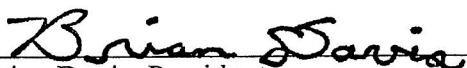
Section K: Severability

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

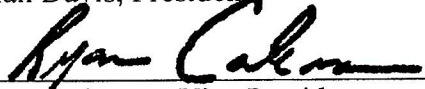
Section L. Repeal and Effective Date

All previous ordinances and parts of ordinances in conflict with this Ordinance are hereby repealed. This Ordinance shall be in full force and effect immediately upon its adoption and publication, as provided by law.

Passed and adopted by the Commissioners of Pike County, State of Indiana, on the 15th day of
December, 2014.



Brian Davis, President

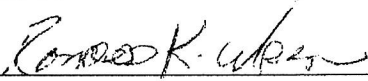


Ryan Coleman, Vice President



Jeff Nelson, Member

ATTEST:



Ronald K. Wilson, Pike County Auditor