

**FOOD ESTABLISHMENT ORDINANCE No. \_\_\_\_\_**

**AN ORDINANCE TO AMEND THE REGULATION AND  
ENFORCEMENT OF FOOD ESTABLISHMENTS**

WHEREAS, Ordinance Number 08-17-98-01 regulates the food establishments of Brown County, Indiana, including but not limited to, food establishments, temporary food establishments, non-profit food establishments, bed and breakfast establishments, and mobile food establishments;

WHEREAS, the State of Indiana has amended the Indiana Department of Health's suggested food code, now 410 Indiana Administrative Code ("IAC") 7-26, regarding retail food establishment sanitation requirements;

WHEREAS, regulations on food establishments must be updated from time to time;

WHEREAS, the Brown County Health Department has provided suggested updates to the regulations of food establishments; and

WHEREAS, it is the desire of the Board of Commissioners of Brown County, Indiana to amend Ordinance Number 08-17-98-01 in regard to regulation and enforcement of food establishments.

NOW THEREFORE, BE IT ORDAINED AND ENACTED BY THE BOARD OF COMMISSIONERS OF BROWN COUNTY, INDIANA, as follows:

**SECTION A: DEFINITIONS:** The following definitions shall apply in the interpretation and enforcement of this ordinance.

**1; Bed and Breakfast-** (as defined in 410 IAC 7-15.5) means an Operator occupied residence that;

1. Provides sleeping accommodations to the public for a fee;
2. Has no more than fourteen (14) guest rooms
3. Provides breakfast to its guests as part of the fee; and
4. Provides sleeping accommodations for no more than thirty (30) consecutive days to a particular guest

**2; Conflict of Interest-** is a situation in which the private financial interest of a Brown County Official, Official's Spouse, ex-spouse, siblings, in-laws, children and/or unemancipated child, may influence the Brown County Official's judgement in the performance of a public duty. Officials should follow the recommendations of the required County ethics training.

**3; Food Establishment-** as defined in IC 16-18-2-137 for the purposes of IC 16-42-5 (“Sanitary Requirements for Food Establishments”) IC 16-42-5.2 (“Food Handlers”) and IC 16-42-5.3 (“Home Based Vendors”)– means any building, room, basement, vehicle of transportation, cellar, open or enclosed area that is occupied or used for handling food. The term does not include:

- (A) A dwelling where food is prepared on the premises by the occupants, free of charge, for their consumption or the consumption by their guests
- (B) A gathering of individuals at a venue of an organization that is organized for educational purposes in a nonpublic educational setting or for religious purposes, if:
  - a. The individuals separately or jointly prepare, free of charge, and consume their own food or that of others attending the gathering; and
  - b. The gathering is for a purpose of the organization, which would include funerals, wedding receptions, christenings, bar or bat mitzvahs, baptisms, communions, and other events or celebrations sponsored by the organization.
- (C) A vehicle used to transport food solely for distribution to the needy, either free of charge or for a nominal donation
- (D) A private gathering of individuals who separately or jointly provide or prepare and consume their own food or that of others attending the gathering, regardless of whether the gathering is held on public or private property
- (E) Except for food prepared by a for-profit entity, a venue of the sale of food prepared for the organization:
  - a. That is organized for;
    - i. Religious purposes; or
    - ii. Educational purposes in a non-public educational setting;
  - b. That is exempt from taxation under Section 501 of the Internal Revenue Code; and
  - c. That offers the food for sale to the final consumer at an event held for the benefit of the organization; unless the food is being provided in a restaurant or a cafeteria with an extensive menu of prepared foods.
- (F) Except for food prepared for a for-profit entity, an Indiana non-profit organization that:
  - a. Is organized for civic, fraternal, veterans or charitable purposes;
  - b. Is exempt from taxation under Section 501 of the Internal Revenue Code; and

- c. Offers food for sale to the final consumer at an event held for the benefit of the organization; if the events conducted by the organization take place for not more than fifteen (15) days in a calendar year.

(G) An individual vendor that meets the requirements of IC 16-42-5.3 (Home Based Food Vendor).

This definition also includes *Retail Food Establishment* as defined in 410 IAC 7-26. bed and breakfasts, and all for-profit food-based businesses; to include restaurants, coffee shops, cafeterias, grills, tea-rooms, sandwich shops, wineries, candy shops, commissaries or any similar place in which food and drink are prepared for sale or for individual portion service on the premises or elsewhere; and any other eating or drinking establishment or operation where food is served or provided for sale for human consumption.

**4; Health Department;** means the local Brown County Health Department in Nashville, Indiana, or authorized representatives having jurisdiction over a Food Establishment.

**5; Health Officer;** The Health Officer for Brown County, Indiana or his or her duly authorized representative who may conduct inspections and make final decisions on enforcement actions.

**6; Health Board;** a panel of individuals appointed to oversee the actions of the Health Department and to serve in the capacity of a Hearing Officer in an appeals process.

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

**8; Imminent Health Hazard;** a significant threat or danger to health that is considered to exist when there is enough evidence to show that a product, a practice, a circumstance, or an event creates a situation that requires immediately correcting or ceasing operations to prevent injury or illness based on the:

(1) Number of potential injuries; and

(2) Nature, severity, and duration of the anticipated injury or illness

**9; Inspection Report;** means the document prepared by the Brown County Health Department following an inspection, a copy of which is provided to the Food Establishment either via paper or electronic copy. Said inspection report becomes public record after a 10 (ten) day interval.

**10; License-** A license granted by the Brown County Health Department to provide food for a term of one (1) calendar year. A license is granted from January 1- December 31 annually, with no pro-rating, and can be applied for renewal.

**11; Mobile Retail Food Establishment;** As per IC 16-42-5.1-2 "mobile retail food establishment" means a retail food establishment that is readily moveable. The term includes a retail food establishment that:

- (1) has wheels;
- (2) is on skids;
- (3) is mounted on a vehicle; or
- (4) is a marine vessel

**12; Operator;** means the person or company that has the primary oversight responsibility for the operation of the Food Establishment through ownership, lease or contractual agreement.

**13; Official;** means any Official working for the Health Department.

**14; Order;** A Brown 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 as derived from IC 4-21.5-1-9. The term includes a permit or license.

**15; Person;** the term "person" shall mean, but not be limited to, any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate or municipality, or a legal entity, government or governmental subdivision or agency, as defined in IC 16-18-2-274.

**16; Person in charge;** "Person in Charge" means the individual present at a Food Establishment who is responsible for the operation at the time of inspection.

**17; Private Water System ;** a privately owned system for the provision of potable water for human consumption such as a well.

**18; Public Water System;** Any licensed water public system operating in Brown County, such as Brown County Water Utility, inc.

**19; Pre-Operational inspection;** The preliminary inspection conducted of an operation that is either undergoing remodeling of the food preparation areas or has never operated as a Food Establishment. Said inspection is conducted according to the content of the Plan Review Questionnaire provided by the Indiana Department of Health.

**20; Risk Factors;** The term “risk factors” shall be determined by the combination of “Priority”, “Priority Foundation” and “Core” factors as determined by the 401 IAC 7-26 code and as related to the individual establishment practices and provisions for food service. The frequency of food inspections is determined by the risk factors.

**21; Sanitization; “Sanitation”** means the application of cumulative heat or chemicals on cleaned food contact surfaces that when evaluated for efficacy, is sufficient to yield a reduction of 5 logs, which is equal to a 99.999% reduction of representative disease microorganisms of public health importance. For the purposes of this chapter, “log” shall have the same definition as in the Indiana Administrative Food Code, Title 410.

**22; Temporary Food Establishment;** shall refer to a Food Establishment operating within Brown County for no more than fourteen (14) consecutive days in conjunction with a single event.

**23; Time temperature control for safety food (TCS);** means a food that requires time or temperature control to safely limit the:

- (A) growth of pathogenic microorganisms; or
- (B) formation of toxins.

## **SECTION B: PLAN REVIEW**

1. The Operator or other authorized representative of an existing or proposed Food Establishment shall submit to the Brown County Health Department properly prepared plans and specification for review and approval before;
  - A. The Construction of a Food Establishment
  - B. The conversion of an existing structure for use as a Food Establishment or;
  - C. The remodeling of a Food Establishment or change in food provided if it is determined to be necessary by the Brown County Health Department.
2. The plans and specifications of the Food Establishment shall include, the type of operation, type of food preparation (as specified in 410 IAC 7-26) and the menu.
3. The plans and specifications shall be deemed satisfactory and approved by the Brown County Health Department before a license can be issued.

## **SECTION C: MINIMUM REQUIREMENTS FOR FOOD ESTABLISHMENTS**

1. Minimum requirements- All Food Establishments shall comply with the minimum requirements as specified in 410 IAC 7-26 as amended from time to time.
2. Food Establishments within Nashville Town Limits will be required to install and maintain a grease trap in accordance with Nashville Town Ordinance 3-3-1961 Section 5.
3. Water Supply testing- All Food Establishments with a Private Water System must test the water supply annually, maintain the requirements from 410 IAC 7-26 and 327 IAC 8 and submit the results of said test to the Brown County Health Department. A Food Establishment using a Public Water System does not need to test the water supply.

## **SECTION D: LICENSES**

**General:** It is unlawful for any Person to operate a Food Establishment without obtaining a valid license from the Health Officer of Brown County. Licensing for Brown County is done through six (6) types of licenses;

1. Full Food License- this license grants the Operator the ability to extensively handle raw ingredients, perform cooking, cooling and re-heating or storage of both hot and cold hold TCS food, and be able to prepare food in advance. This is an annual license. Note; An establishment producing special process food such as cold smoked food, Sous vide, etc. as identified in 410 IAC 7-26 would require a full food license and possibly an Indiana Department of Health (“IDOH”) variance per process.
2. Limited Food License- this license grants the Operator the ability to produce non-TCS foods [e.g. cookies, breads, coffee drinks] or serve pre-packaged foods needing only temperature control for safe storage [e.g. eggs, cheese]. This is an annual license
3. Bed and Breakfast License- this license grants the Operator the option to provide a fully cooked breakfast to guests. No other meals or snacks are permitted. The establishment must comply with Rule 410 IAC 7-15.5, “Sanitation of Bed and Breakfast Establishments”. This is an annual license.
4. Temporary Food License- This temporary license grants the Operator a permit for five (5) days with a possible extension to a limit of fourteen (14) consecutive days at an additional fee per day. A temporary license may not be held for longer than fourteen (14) consecutive days by an individual.

5. Farmer's Market License- this license is for vendors that are not Mobile Food Truck Operators. It can be used at a Farmer's Market to sell dairy products, meat products, fish products or non-domestic poultry eggs [e.g. quail, duck) with specific restrictions. This is an annual license.
6. Mobile Food Truck License- this license allows Mobile Retail Food Establishments, as defined in this ordinance, to operate in Brown County. This is an annual license.

Only food establishments who comply with the applicable licensing requirements of Brown County and of the 410 IAC 7-26 (State Food Code) will be entitled to obtain and keep a License.

**License Application Content-** An application for a license issued by the Brown County Health Department shall have the following information provided to the Brown County Health Department on a form provided by the Brown County Health Department;

- 1) The name and address of the Establishment and Operator and/or owner to whom the license is granted
- 2) Phone and Emergency phone number
- 3) On-site Manager name and contact information
- 4) Building owner name and contact information
- 5) Food items to be sold
- 6) Suppliers
- 7) The physical address
- 8) The mailing address of the establishment
- 9) Owner or Operator name, address, phone
- 10) Email/Web address
- 11) Open and closing times
- 12) Original Signature of Operator and the date. Said signature can be electronic if there is an electronic provision for signature provided in some manner by the Brown County Health Department.
- 13) All applications shall contain a statement signed by the applicant that:
  - (a) Attests to the accuracy of the information provided on the application
  - (b) Affirms that the applicant shall:
    - i. Comply with this ordinance and
    - ii. Allow the Brown County Health Department access to the Food Establishment and/or records as specified in 410 IAC 7-15.5.

iii. Provide additional information as requested by the Brown County Health Department that relates to food production at the facility.

**Specific Content of License Applications-**

- (1) The Full Food Application, the Limited License, the Mobile Food Truck License and the Bed and Breakfast License application shall have the above required information from the Licensing application section. Additionally, if the Food Establishment is handling raw meat, poultry or seafood, a Certified Food Manager must be on staff and the application must have the following information;
  - a. The name of the certifying agency;
  - b. The Name of the Certified Person and;
  - c. The certificate number for the staff member who is a Certified Food Manager,
- (2) Farmer's Market License Applications shall also include the:
  - a. Permit number for Dairy Products (if applicable)
  - b. Permit number for Livestock Products (if applicable)
  - c. Name/address of licensed Food Establishment for fish sales including Certified Food Manager and Certificate number and company certifying (if applicable)

**Non-profits;** No license shall be required of non-profit operations, however such operations shall comply with other provisions of this ordinance and of 410 IAC 7-26, and may be subject to inspection if warranted.

Any food establishment can be exempt from licensing if the Food Establishment provides only prepackaged, non-TCS food from approved licensed suppliers. The Health Officer reserves the right to periodically inspect such establishments.

**Change of Ownership-** The Brown County Health Department requires any change in the Food Establishment ownership to result in the submission of a new application for a new license for the Food Establishment.

**Responsibilities of the Operator:** Upon acceptance of the license application the Brown County Health Department will issue a paper license with the Health Officer's signature to be displayed prominently in the Food Establishment. The Operator of said Food Establishment will also:

- (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 Department of Health.
- (2) Immediately discontinue affected operations if an Imminent Health Hazard occurs and will notify the Brown County Health Department of such.
- (3) Comply with the directives of the Brown County Health Department including any timeframes for corrective actions specified in the inspection reports, notices, orders, warnings and other directives issued by the Brown County Health Department in regard to the Food Establishment or in response to community emergencies.
- (4) Accept notices issued by the Brown County Health Department.
- (5) Be subject to the administrative, civil, injunctive, and criminal remedies authorized by law for failure to comply with this ordinance or a directive of the Brown County Health Department

#### **SECTION E: LICENSING FEES**

It shall be unlawful for a Food Establishment to operate without paying a licensing fee. A separate license shall be required for each Food Establishment. License fees shall be set in a separate Fee Schedule for Brown County. This Fee Schedule shall be set by the Department and will be made available on their website.

#### **SECTION F: LICENSING TERM**

The Licensing term for all licenses, except for Temporary Licenses, under this ordinance is one (1) year and begins on January 1 and ends December 31. There shall be no pro-rating. If an Operation is a seasonal operation, i.e. a Food Establishment that is not opening in January, then licensing fees shall be paid prior to beginning actual operation, with no restriction on a starting date.

If a license is not obtained within the month of January, for a Full Food License holding Food Establishment that is not a Seasonal operation, then a penalty of ten percent (10%) of the licensing fee shall be applied for each day the application is submitted after January 31<sup>st</sup>.

An organization that is exempt under IC 16-18-3-137 (non-profit) will not be subject to license fees.

## **SECTION G: INSPECTION**

**General;** The Brown County Health Department shall inspect Food Establishments on a “risk-based” system. These inspections shall be performed on the day the Department determines, and prior notice will not be provided to the Operator. All Food Establishments must comply with the Department during an inspection. This system is to be uniformly applied throughout the jurisdiction.

**Risk-Based Inspections:** “Risk” will be determined by the following:

- (1) Low risk- one (1) inspection completed annually:
  - (a) pre-packaged non-TCS foods only, some may need refrigeration for safety
  - (b) Non- TCS food such as candy
- (2) Medium risk- Two (2) inspections completed annually:
  - (a) Raw ingredients cooked to order,
  - (b) hot-holding of food products,
  - (c) cold-holding of food products,
- (3) High risk- Four (4) inspections completed annually. To include all of the medium risk processes in (2) plus:
  - a. reheating of previously prepared food; and
  - b. extensive food preparation.
- (4) A Food Establishment using any special processes in food production may need to obtain a variance from the Indiana Department of Health. These special processes would include:
  - a. curing meat,
  - b. using Reduced Oxygen Packaging, MAP, sous vide or vacuum packaging,
  - c. shellfish sold from a tank,
  - d. smoking food as a way to preserve it,
  - e. using additives or components such as vinegar to preserve or alter the food so it no longer needs time and temperature control for safety
  - f. producing fresh juice without a warning label,
  - g. custom processing animals for personal use,
  - h. sprouting seeds or beans
  - i. freeze drying food
  - j. fermenting food without a casing
  - k. preparing food by a method determined by the Brown County Health Department to be a special process needing a variance
  - l.

Please see 410 IAC 7-26 -218 for possible exemptions to obtaining a variance.

### **Temporary Food Establishment Inspections:**

**Number of inspections:** Inspections shall be performed as often as deemed necessary, but at least once per licensed timeframe. Additional inspections may be performed as needed, for example, due to complaints. Prior notice may not be provided before an inspection.

### **Violations in Temporary Food Establishments:**

A written order shall be issued listing the violations and presented to the Operator or in his absence, to the person-in-charge, fixing a date by which the violation must be corrected.

If the violation is not corrected within the timeframe granted, the temporary license will be revoked, and the Temporary Food Establishment must cease operations.

### **Timely Correction of Violations of Priority or Priority Foundation Items:**

Except as specified in the next paragraph, an Operator shall at the time of inspection implement corrective action for a violation of a “Priority” or “Priority Foundation” item of IAC 7-15.5, 410 IAC 7-26, or 410 IAC 7-22 . Violations marked as “Core” violations will be corrected within the timeframe indicated on the inspection report. Follow-up inspections are to be conducted on all Food Establishments with any Priority, Priority Foundation or Core violation.

Follow-up inspections shall be done within seventy-two (72) hours of the initial inspection if a noted Priority violation is not corrected at time of inspection.

### **Access allowed at Reasonable Times After Due Notice:**

After the Brown 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 Brown County Health Department to determine if the Food Establishment is in compliance with this ordinance by allowing access to the Food Establishment, allowing inspection and providing information and records specified in this ordinance. The Brown County Health Department is entitled to view information and records according to IC 16-42-1-13 and IC 16-42-5-23 during the establishment’s hours of operation and at other reasonable times.

Access is a condition of the acceptance and retention of a Food Establishment permit to operate. If access is denied, an Order issued by the appropriate authority allowing access may be obtained according to law.

**Inspection reports:**

At the conclusion of the inspection the Brown County Health Department shall provide a copy, either on paper or electronically, to the Operator as required under IC 6-20-8

**Refusal to Sign Acknowledgement:**

A refusal to sign the inspection form document will not affect the Operator's obligation to correct violations noted in the Inspection Report within the time frames specified.

**Time Temperature Control for Safety Food:**

The TCS food shall be held at over 135 degrees Fahrenheit or under 41 degrees Fahrenheit unless granted exemption by the Brown County Health Department as specified in Section 216(a) of 410 IAC 7-26. If the TCS cold held food is found to be over 41 degrees Fahrenheit, or TCS hot held food, found to be under 135 degrees Fahrenheit at any time, including during an inspection, this may result in a fine or suspension, as determined by the Department.

**SECTION H: COMPLIANCE AND ENFORCEMENT****Application Denial:**

If an application for a plan review and/or a pre-operational inspection or a License to operate a food establishment is denied, the Brown County Health Department shall provide the applicant with a notice that includes specific reasons for denial, the actions the applicant must take to qualify and advisement on the right of appeal and process as provided in law.

**License Revocation:**

The Brown County Health Department may suspend a license to operate a food establishment if it is determined through inspection, or examination of employee, food, records or other means as specified in this ordinance that an Imminent Health Hazard exists. Initial suspension is not to exceed thirty (30) days. The license may be suspended longer as determined by the Health Officer

**Ceasing Operation and Contacting the Brown County Health Department:**

An Operator of a Food Establishment shall immediately discontinue operations and notify the Brown 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 back-up, misuse of poisonous or toxic materials, onset of an apparent foodborne illness outbreak, gross unsanitary occurrence or condition or other circumstance that may endanger public health.

**Resuming Operations:**

If a Food Establishment has discontinued operations for the reasons stated above or otherwise according to law, the Operator must obtain approval from the Brown County Health Department before resuming operations.

**Outstanding Fees:**

Any outstanding fees and civil penalties owed to the Brown County Health Department shall be paid prior to the issuance of a permit.

**SECTION I: ENFORCEMENT OPTIONS**

**Civil Actions-** For any violation committed under this ordinance the Health Officer is authorized to commence a civil action for appropriate relief, including:

- A. A permanent or temporary injunction and/or;
- B. Civil penalties of not more than five hundred dollars (\$500) for the first offence; of not more than one thousand dollars (\$1,000) for the second offense and of not more than one thousand dollars (\$1,000) for each subsequent offense. Each day after the expiration of the time limit for abating insanitary conditions or completing improvements to abate such conditions, where compliance with such an order by the Health Officer has not been met, constitutes a distinct and separate offense. Any action under this ordinance may be brought by the County Prosecutor, by the County Attorney, or by another attorney of the choosing of the Health Board.

**Criminal Actions-** Any person who violates any of the provisions of the Indiana State Laws upon which this ordinance is based, can be criminally prosecuted for that violation. If, upon a follow-up inspection, the Health Officer finds that the provisions of the State Law for which a written notice of violation was issued remain in violation, the Health Officer may furnish evidence of the violation to the County Prosecutor to pursue criminal action. On conviction, the violator shall be punished for the first offense by a fine of not more than five hundred dollars (\$500) and for the second and for any additional offenses by a fine of not more than one thousand dollars (\$1000). Each day of operation in violation of the State Law or after the expiration of the time limit for abating insanitary conditions as ordered by the Health Officer shall constitute a distinct and separate offense.

**Liability Costs-** In addition to any fines set forth above, any person found to be in violation of any provision of this ordinance shall be assessed all costs and expenses of the investigation and shall, in addition, be liable for all reasonable attorney fees and costs incurred by the Brown County Health Department in enforcing this ordinance.

#### **SECTION J: REPEAL AND DATE OF EFFECT**

All ordinances and parts of ordinances in conflict with this ordinance are hereby repealed. This ordinance shall be in full force and effect on and after its adoption and publication as provided by law.

**SECTION K: 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.

Adopted this \_\_\_\_\_ day of \_\_\_\_\_

Board of Commissioners of Brown County, Indiana

Passed and adopted by the Commissioners of Brown County, State of Indiana, on this \_\_\_\_\_ day of 20 \_\_\_\_\_

Signed:

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County Board of Commissioner

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County Board of Commissioner

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County Board of Commissioner