

Food Establishment and/or Bed and Breakfast Establishment Ordinance

Ordinance No. 07-01 Blackford County, Indiana

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

This ordinance includes definitions; requires construction and/or alteration plans; requires a Permit and payment of Permit fees for the operation of a Food Establishment and/or Bed and Breakfast Establishment; prohibits sale of adulterated unwholesome or misbranded food; regulates inspection of such establishments; provides for violations of said ordinance; and incorporates by reference Indiana Code(s) 16-42-1, IC 16-42-2, IC 16-42-5, IC 16-42-5.2, Indiana State Department of Health Rule(s) 410 Indiana Administrative Code (IAC) 7-15.5, 410 IAC 7-24, 410 IAC 7-21-47, 410 IAC 7-22 and 410 IAC 7-23.

The Blackford County Health Department is hereby authorized to perform all actions necessary for the administration and enforcement of this ordinance.

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

Section A: Definitions

Bed and Breakfast Establishment means an Operator-occupied residence that:

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

Blackford County Health Department means the local health department in Blackford County or its authorized representative having jurisdiction over a Food Establishment and/or Bed and Breakfast Establishment.

Blackford County Official means any official of Blackford County, Indiana.

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

Food Establishment means any building, room, basement, vehicle of transportation, cellar, or open or enclosed area occupied or used for handling food. This definition also includes a Retail Food Establishment; however, it does not include a Bed and Breakfast Establishment.

Hazard Analysis Critical Control Point (HAACP) Plan 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 Blackford County or his 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 the Blackford County Health Board.

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

Inspection Report means the document prepared by the Blackford County Health Department that is completed as a result of the inspection and provided to the Operator.

Operator means the person who has a primary oversight responsibility for the 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 Blackford 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 Blackford County Health Department that authorizes a Person to operate a Food Establishment and/or Bed and Breakfast Establishment.

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

Section B: Permits

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

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.

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

A Permit issued under this ordinance is not transferable.

A Food Establishment and/or Bed and Breakfast Establishment permitted by the Blackford County Health Department shall be considered registered as required in IC 16-42-1-6.

Permit Period: A Permit for a Food Establishment and/or Bed and Breakfast 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 or Operator annually.

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 Health Officer.

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

Plans Requirements: The owner or other authorized agent of an existing or proposed Food Establishment and/or Bed and Breakfast Establishment shall submit to the Blackford County Health Department properly prepared plans and specifications for review and approval before construction, conversion, or remodeling. A pre-operational inspection shall be conducted to determine that the Food Establishment and/or Bed and Breakfast 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 Blackford County Health Department may issue a Permit to a new owner of an existing Food Establishment and/or Bed and Breakfast Establishment after proper application, fees paid and an inspection shows that the establishment is in compliance with this ordinance.

Responsibilities of the Operator: The Operator shall 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.

Section C: Permit Fees

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

The Permit 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 or Operator annually. Temporary fees are paid for the term of the event, not to exceed thirty (30) working days per year.

Permit fees for the issuance of a Permit under this ordinance to a Retail Food Establishment and/or Bed and Breakfast Establishment shall be set by the Blackford County Health Department, as provided by the Statutes of the State of Indiana.

Exemption from Fees: An organization that is exempt from the Indiana Gross Income Tax under IC 6-2.1-3-20 through 6-2.1-3-22 and offers food for sale to the final consumer at an event held for the benefit of the organization is exempt from the payment of fees. Proof of an organization's tax exemption shall be provided upon request.

Late Fees: A late fee for failure to pay the Permit fee prior to the operation of the Food Establishment and/or Bed and Breakfast Establishment or the late fee for failure to renew a Permit after the expiration of the Permit to operate a Food Establishment and/or Bed and Breakfast Establishment shall be set by the Blackford County Health Board.

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

Section D: Certified Food Handler Requirements

A Person operating a Food Establishment and/or Bed and Breakfast Establishment in Blackford County shall comply with applicable certified food handler requirements prescribed by IC 16-42-5.2 and 410 IAC 7-22, as may be amended from time to time. The Blackford County Health Department may enforce such certified food handler requirements, including assessment of monetary penalties, as permitted by applicable law.

Section E: Inspection

General: The Blackford County Health Department shall inspect a Food Establishment and/or Bed and Breakfast Establishment once every six months. Food Establishments and/or Bed and Breakfast Establishments may be assigned a modified inspection frequency based on a risk-based inspection schedule uniformly applied within the jurisdiction.

Risk Based Inspections: The Blackford County Health Department may assign more or less frequent inspections based upon its assessment of a Food Establishment and/or Bed and Breakfast Establishment's past performance for compliance with this ordinance, violations, complaints, potentially hazardous foods served, number of people, susceptible population served and type of operation.

Temporary Food Establishment: The Blackford County Health Department shall inspect temporary Food Establishments at least once during its Permit period.

Access Allowed at Reasonable Times After Due Notice: After the Blackford County Health Department presents official credentials and provides notice of and the intent to conduct an inspection, the Operator shall allow access to the establishment, allow inspection, and provide information and records specified in this ordinance, during reasonable times of operation. 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 Blackford County Health Department shall provide a copy of the completed Inspection Report and the notice to correct violations to the Operator or Person-in-charge. Operators shall post for patron's review the most current inspection report.

Timely Correction of Critical Violations: Except as specified, 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. The Blackford 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.

Refusal to Sign Acknowledgement: Refusal to sign an acknowledgement of receipt will not affect the Operator's obligation to correct the violations noted in the Inspection Report within the time frames specified. Refusal to sign the Inspection Report shall be noted in the Inspection Report. The Operator is not necessarily in agreement with the findings of the Blackford County Health Department inspection by acknowledgment of receipt.

Public Information: Except as specified in section 176 (Trade Secrets) of 410 IAC 7-24, the Blackford County Health Department shall treat the Inspection Report as a public document and make it available for disclosure as provided by law.

Section F: Compliance and Enforcement

Application Denial: If an application for a plan review and or Permit to operate a Bed and Breakfast establishment, Retail Food Establishment, and/or Temporary Food Establishment is denied, the Blackford County Health Department shall provide the applicant with a notice that includes the specific reasons and rule citations for the denial, and the actions, if any, the applicant must take. The applicant shall be advised of the right of appeal, process, and time frames for appeal that are provided by law.

Permit Suspension: The Blackford County Health Officer or designated agent may suspend a Permit to operate a Food Establishment and/or Bed and Breakfast Establishment if it determines through inspection, or examination of employee(s), food, records, or other means as specified in this ordinance that an Imminent Health Hazard exists.

Contacting the Blackford County Health Department: An Operator of a Food Establishment and/or Bed and Breakfast Establishment shall immediately discontinue operations and notify the

Blackford County Health Department if an Imminent Health Hazard may exist because of an emergency such as fire, flood, extended interruption of electrical power or water service, sewage backup, 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. An Operator need not discontinue operations in an area of an establishment that is unaffected by the Imminent Health Hazard. The Operator must obtain approval from the Blackford County Health Department before resuming operations.

Enforcement Options: The Blackford 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 Blackford County Health Department’s appointed attorney.

Penalties: Any Person violating this ordinance, as determined by the Health Officer, may be punished for the first offense by a fine of not more than One Hundred Dollars (\$100.00); for the second offense by a fine of not more than Two Hundred Dollars (\$200.00); and for the third and each subsequent offense by a fine of not more than Three Hundred Dollars (\$300.00). Each day after expiration of any time limit for compliance with this ordinance as ordered by the Health Officer shall constitute a distinct and separate offense.

Authority: The Health Officer or authorized representative may contact the local sheriff or local police to assist in implementing any or all provisions of this ordinance.

Section G: Appeals

Any Persons aggrieved by Orders issued under the enforcement options and/or penalties of Section F above shall be entitled to a review of the final Order before a Hearing Officer by filing a written request therefore with the Health Officer. The written request must be mailed or hand delivered to the Health Officer and must be received within fifteen (15) days after such final Order is issued.

Upon the Health Officer’s receipt of such request, the Hearing Officer shall hear the matter in an open hearing after at least five (5) days’ written notice of the time, place, and nature thereof. A shorter time may be granted, if requested by either party and agreed upon.

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.

The Hearing Officer establishes the rules of procedure and advises the parties prior to the start of the proceedings. The Hearing Officer shall make written findings of fact and shall enter its final Order or determination of the matter in writing. The administrative Order completes the administrative appeals procedure.

Section H: Conflict of Interest

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

Section I: 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 J: Repeal and Effective Date

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

Passed and adopted by the Commissioners of the County of Blackford, State of Indiana, on this 5th day of March, 2007.

**BOARD OF COMMISSIONERS OF
THE COUNTY OF BLACKFORD,
STATE OF INDIANA**

Signed

Fred Walker, President

Signed

Robert O'Rourke

Signed

Harry L. Pearson

ATTEST:

Signed

Kathy Bantz, Blackford County Auditor