

MODEL RETAIL FOOD ESTABLISHMENT  
ORDINANCE FOR LOCAL HEALTH DEPARTMENTS

RETAIL FOOD ESTABLISHMENT ORDINANCE NO. 91-II

An ordinance pertaining to food service establishments, mobile food service establishments, push carts, temporary food service establishments, retail food stores, commissaries, vending machines, and other items; requiring permits, licenses, and license fees for the operation of retail food establishments, prohibiting the sale of adulterated, unwholesome, or misbranded food, regulating the inspection of such establishments, providing for the enforcement of this ordinance, providing for the fixing of penalties for violations of said ordinance, and providing for incorporation by reference the following Indiana State Board of Health Rules: 410 IAC 7-15.1, Food Service Sanitation Rules; 410 IAC 7-16.1, Retail Food Store Sanitation Requirements; and 410 IAC 7-17, Sanitation of Vending of Foods and Beverages.

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

SECTION A: PERMITS

Permits - - It shall be unlawful for any person to operate a retail food establishment, temporary food establishment, mobile food establishment or push cart in FLOYD County, who does not possess a valid permit from the health officer. Such permit shall be posted in a conspicuous place in such retail food establishment.

Only persons who comply with the applicable requirements as specified by Indiana State Board of Health laws and rules shall be entitled to receive and retain such a permit.

A permit for a retail food establishment shall be for a term of one year beginning January 1, and expiring December 31, of the same year and shall be renewed annually. The permit for a temporary retail food establishment shall be for the term of one continuous operation. Any permit issued by

the health officer shall contain the name and address of the person to whom the permit is granted, the form of ownership of the establishment, the address of the premises for which same is issued, and such other pertinent data as may be required by the health officer.

A separate permit shall be required for each retail food establishment operated or to be operated by any person. A permit issued under this ordinance is not transferable.

A permit shall be issued to any person on application after inspection and approval by the health officer or an authorized representative; provided, that the retail food establishment complies with applicable requirements.

#### SECTION B: LICENSE AND LICENSE FEE

1. License and License Fee - It shall be unlawful for any person to operate a retail food establishment in Floyd County, who does not possess a valid license for the operation of such establishment. The license shall be for a term of one year beginning January 1, and expiring December 31, of the same year and shall be renewed annually.

Such license shall be provided by the County Health Department if a valid permit from the health officer is presented together with \$35.00, or with \$55.00, if the application for license is made on or after January 1.

Any person who desires to operate a temporary food establishment in the County of Floyd, shall, after securing a permit from the health officer, obtain from the County Health Department, a license for a temporary food establishment. Such license shall be provided by the County Health Department, if a valid permit from the health officer, is presented together with \$35.00, for any one continuous operation.

A separate license shall be required for each retail food establishment or temporary food establishment operated or to be operated by any person. A license issued under this ordinance is not transferable.

2. License and Fee Exception - No license shall be required and no license fee shall be paid for retail food establishments, operated by religious, educational, or charitable organizations. However, such establishments shall comply with the other provisions of this ordinance.

3. Exemption From Compliance -- An organization that is exempt from the Indiana gross income tax under IC 6-2.1-3-20 through IC 6-2.1-3-22 and that offers food for sale to the final consumer at an event held for the benefit of the organization is exempt from complying with the requirements of the ordinance that may be imposed upon the sale of food at that event if:

- 1) members of the organization prepare the food that will be sold;
- 2) events conducted by the organization under this section take place for no more than thirty (30) days in any calendar year.

SECTION C. MINIMUM REQUIREMENTS FOR RETAIL FOOD ESTABLISHMENTS

All retail food establishments and vending machines shall comply with the minimum requirements specified by the Indiana State Board of Health in Rules 410 IAC 7-15.1, 410 IAC 7-16.1, and 410 IAC 7-17. Two copies of which are on file in the office of the Clerk of Floyd County, Indiana, for public inspection.

SECTION D. SALE, EXAMINATION, AND CONDEMNATION OF UNWHOLESOME, ADULTERATED OR MISBRANDED FOOD

It shall be unlawful for any person to sell through a retail food establishment, mobile food establishment temporary food establishment or vending machine, any food which is unwholesome, adulterated or misbranded as provided in the Indiana Food, Drug, and Cosmetic Act, IC 16-1-28 through IC 16-1-31.

Samples of food may be taken and examined by the Health Officer as often as may be necessary to determine freedom from contamination, adulteration, or misbranding. The Health Officer may, on written notice to the owner or operator, impound and forbid the sale of any food which is unwholesome, adulterated, or misbranded, or which he has probable cause to believe is unfit for human consumption,

unwholesome, adulterated or misbranded; provided that in the case of misbranding which can be corrected by proper labeling, such food may be released to the operator for correct labeling under the supervision of the health officer. The health officer may also cause to be removed or destroyed any dairy product, meat, meat product, seafood, poultry, poultry product, confectionery, bakery product, vegetable, fruit or other perishable articles which in his opinion are unsound, or contain any filthy, decomposed, or putrid substance, or that may be poisonous or deleterious to health or otherwise unsafe.

#### SECTION E. INSPECTION OF RETAIL FOOD ESTABLISHMENTS

1. Frequency of Inspection -- At least once each six months the health officer shall inspect each retail food operation for which a permit is required under the provisions of this ordinance.

2. Procedure When Violations Are Noted -- If during the inspection of any retail food operation the health officer discovers the violation of any of the requirements in Section C., of this ordinance, he shall issue a written order listing such violations to the proprietor or, in his absence, to the person in charge, and fixing a time within which the proprietor of the retail food establishment shall abate and remedy such violations. A copy of the written order shall be filed with the records of the health department.

3. Final Inspection-Prosecution or Hearing for Violators -- If upon a second and final inspection the health officer finds that a retail food operation, person, or employee is violating any of the provisions of this ordinance which were in violation on the previous inspection, and concerning which a written order was issued, the health officer shall furnish evidence of the violation to the prosecutor having jurisdiction in the county in which the violation occurs, and he shall prosecute all persons violating the provisions of this ordinance; or the health officer may promptly issue a written order to the permittee of the retail food operation to appear at a certain time, no later than ten days from the date of final inspection, and at a place in the county fixed in the order to show cause why the permit issued under the provision of Section A., should not be revoked.

4. Revocation of Permit -- The health officer upon a hearing, if the permittee should fail to show cause, may revoke the permit and promptly give written notice of the action to the permittee. The health officer shall maintain a permanent record of his proceedings filed in the office of the health department.

5. Suspension of Permit -- Any permit issued under this ordinance may be temporarily suspended by the health officer without notice or hearing for a period of not to exceed 30 days, for any of the following reasons:

- a. Insanitary or other conditions which in the health officer's opinion endanger the public's health;
- b. Interference with the health officer or any of his authorized representatives in the performance or their duties; provided, however, that upon written application from the permittee, served upon the health officer within 15 days after the suspension, the health officer shall conduct a hearing upon the matter after giving at least 5 days' written notice of the time, place, and purpose thereof to the suspended permittee; provided, further, that any suspension order shall be issued by the health officer in writing and served upon the permittee by leaving a copy at his usual place of business or by delivery of Registered or Certified Mail.

6. Reinstatement of Permit -- Any person whose permit has been suspended may at any time make application to the health officer for the reinstatement of his permit.

#### SECTION F INSPECTION OF TEMPORARY FOOD ESTABLISHMENTS

1. Frequency of Inspection -- At least once in each 24-hour period the health officer shall inspect each temporary food establishment for which a permit is required under the provision of this ordinance.

2. Procedure to Follow when any Violation is Noted -- If during the inspection of any temporary food establishment the health officer discovers the violation of any of the requirements of this ordinance, he may order the immediate correction of the violation.

3. Revocation of Permit and Penalties for Continued Operation -- Upon failure of any person maintaining or operating a temporary food establishment to comply with any order of the health officer, it shall be the duty of the health officer summarily to revoke the permit of the person and establishment and to forbid the further sale or serving of food therein.

SECTION G. AUTHORITY TO INSPECT AND TO COPY RECORDS

The retail food establishment operator shall, upon the request of the health officer, permit the health officer or his authorized representative access to all parts of the food establishment and shall permit the health officer or his authorized representative to collect evidence and/or exhibits and to copy any or all records relative to the enforcement of this ordinance.

SECTION H. APPROVAL OF PLANS

All retail food establishments which are hereafter constructed or altered shall conform with the applicable requirements of the Indiana State Board of Health and by the Indiana Department of Fire and Building Services. Properly prepared plans and specifications shall be submitted to and approved by the health officer, or in the absence of a local plan review program by the Division of Retail and Manufactured Foods, Indiana State Board of Health, as may be required before starting any construction work.

SECTION I. PENALTIES

In addition, to any civil penalty that may be imposed under Indiana law, any person who violates any provisions of the ordinance shall be deemed guilty of a class B misdemeanor. A person who commits a class B misdemeanor (IC 35-50-3-3), shall be imprisoned for a fixed term of not more than one hundred eighty (180) days; in addition, he may be fined not more than one thousand dollars (\$1,000).

SECTION J. UNCONSTITUTIONALLY CLAUSE

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 K. REPEAL AND DATE OF EFFECT

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

2. Passed and adopted by the Commissioners of Floyd County, State of Indiana, on this 19<sup>TH</sup> day of FEBRUARY, 1991.

Charles L Zipp

Lawry R Dennis

Edmund Fenable

FLOYD COUNTY COMMISSIONERS

ATTEST:

Beth Sharp

Auditor, Floyd County, Indiana