

FLOYD COUNTY ORDINANCE 2005-VIII

WHEREAS, the Board of Trustees of Floyd Memorial Hospital and Health Services (Floyd Memorial), a county hospital organized, established, constituted, and existing pursuant to the provisions of IC 16-22-1 *et seq.*, has tendered to the Board of Commissioners of the County of Floyd (Board) its unanimous resolution, dated the 21st day of December, 2004 (Resolution), which resolution is incorporated herein by reference and made a part of this Ordinance; and

WHEREAS, by the terms and provisions of said resolution, Floyd Memorial has petitioned the Board for its aid and assistance in addressing the potentially adverse affects that could result if a New Health Care Facility is developed in Floyd county, Indiana, to include, but not limited to, its ability to provide quality health care to all of the citizens of Floyd County, including low income persons, minorities, the disabled, and the elderly; and

WHEREAS, the Board of Commissioners of the County of Floyd, as the executive and legislative body of Floyd County, has broad police powers to preserve and protect the health, safety, welfare, and economic well-being of the residents of Floyd County, Indiana; has express authority to (1) provide medical care and other health and community services, and (2) establish, aid, maintain, and operate hospitals; and, by the provisions of IC 36-1-3, *et seq.*, has those implied powers necessary for the effective operation of government as to local affairs; and

WHEREAS, on the 15th day of February, 2005, in response to the petition of Floyd Memorial, the Board caused to be introduced a proposed ordinance, being Floyd County Ordinance 2005-VIII (Ordinance), the same limiting the number of new acute care hospital beds in Floyd county, Indiana under certain circumstances; and

WHEREAS, at this meeting a number of persons spoke in favor and in opposition to the adoption of the Ordinance; and

WHEREAS, having been approved by a majority of the Board at the meeting of its introduction, further consideration of the Ordinance was tabled until the 1st day of March, 2005, at which time persons spoke in favor of or in opposition to the Ordinance; and

WHEREAS, having considered carefully the comments the Board has received, the Board remains concerned that the addition of acute care hospital beds and the duplication of health care services that would result from the development of a New Health Care Facility in Floyd County would undermine the viability of Floyd Memorial, impede its ability to effectively deliver health care services, and ultimately adversely affect the availability of quality health care services to all of the citizens of Floyd County, including the poor, elderly, disabled, and/or the minority members of the community; and

WHEREAS, the Board believes that it is in the best interests of the citizens of Floyd County, and necessary to insure the proper and precise exercise of its express and implied powers, that the Board

appoint a task force ("Task Force") to undertake a review and analysis of the potential beneficial and adverse affects upon the health, safety, welfare, and economic well being of such citizens, which may reasonably be expected to result from the addition of a New Health Care Facility or Facilities in Floyd County, and to propose those measures within the powers of the Board which will best preserve the benefits and alleviate the potential adverse effects on Floyd Memorial; and

WHEREAS, the Board has determined that it is in the best interests of the citizens of Floyd County to preserve the status quo pending the findings of the Task Force.

NOW THEREFORE, BE IT ORDAINED:

ARTICLE I RECITALS

The recitals hereinbefore set forth are incorporated herein by reference and made a part of this Ordinance in the same manner and with the same effect as if copied in full hereinafter.

ARTICLE II DEFINITIONS

As used in this Ordinance:

(a) "Acute Care Hospital Beds" means those beds which are owned, leased, operated , or staffed by, or which otherwise remain under the direction and control of a Hospital, whether such beds are located within the "hospital facility" or otherwise, and which are devoted to hospital purposes and regularly reported to and by the Indiana State Board of Health as being the beds of such Hospital. This term specifically includes, but is not necessarily limited to, Intensive Care Unit Beds, Medical/Surgical Beds, Obstetrical Beds, and Pediatric Beds, but excludes Rehabilitation Beds, Normal Newborn Beds, or skilled nursing beds.

(b) "Ambulatory Outpatient Surgical Center" means a public or private institution, place, building, or agency, licensed under IC 16-21-2 and IC 16-18-2-14, that is established, equipped, and operated primarily for the purpose of performing surgical procedures and services to the general public.

(c) "Board" means the Board of Commissioners of the County of Floyd.

(d) "Construction" means site preparation or other physical construction activity necessary and required for the construction, expansion, modification or alteration of a hospital or its buildings, structures, or facilities, and first occurring after the effective date of this ordinance.

(e) "County" means Floyd County, Indiana

(f) "Diagnostic Imaging Facility" means a facility, physical location, motor vehicle, or vehicle where diagnostic imaging services are provided to an individual for the purpose of providing health care.

(g) "Hospital" means an institution, place, building or agency, licensed by the State of Indiana under and pursuant to IC 16-21-2, *et seq.*, that holds out to the general public that it is operated for hospital purposes, and furnishes Hospital services to the general public by providing care, accommodations, facilities and equipment, in connection with the services of a physician, to individuals who may need medical or surgical services. The term does not include the following:

- (1) Hospitals or institutions specifically intended to diagnose, care, and treat mentally ill individuals or those with developmental disabilities;
- (2) Offices of physicians where patients are not regularly kept as bed patients; and
- (3) Convalescent homes, boarding homes, or homes for the aging.

(h) "Health Care Facility" shall mean a hospital, Specialty Hospital, Ambulatory Outpatient Surgical Center, or Diagnostic Imaging Facility.

(i) "New Healthcare Facility" shall mean a hospital, Specialty Hospital, Ambulatory Outpatient Surgical Center, or Diagnostic Imaging Facility not owned or operated by or under the auspices of Floyd Memorial.

(j) "Specialty Hospital" means a hospital that is primarily or exclusively engaged in the care and treatment of one of the following categories: (i) patients with a cardiac condition; (ii) patients with an orthopedic condition; (iii) patients receiving a surgical procedure; or (iv) other specialized category of services.

(k) "Written Commitment" shall mean a written undertaking which is approved by the Board; recorded in the office of the Recorder of Floyd County, Indiana; binding on the maker and subsequent owners of the real estate which is the subject of same; and, which may be modified or terminated only upon approval of the Board. A written commitment may be enforced by the Board.

ARTICLE III TASK FORCE

As soon as practicable following the adoption of this Ordinance, a task force, to be composed of public officials, health care professionals, and interested citizens of Floyd County, shall be designated, appointed by the Board, and commissioned to immediately undertake a comprehensive study and analysis of (1) the Health Care Facilities presently constituted, operating, and providing

services to the citizens of Floyd County and the services they offer; (2) the challenges facing existing Health Care Facilities in providing quality health care to the citizens of Floyd County, including low income persons, minorities, the disabled, and the elderly, with particular attention to financial impact; (3) the financial impact on Floyd Memorial and the services it offers to Floyd County citizens if a New Health Care Facility was developed in Floyd County; (4) health care industry trends impacting Floyd County which may or may not suggest a demand for a New Health Care Facility or Facilities in Floyd County; and (5) such other matters as the task force shall deem necessary and appropriate to formulate its report and recommendations to the Board on the following queries:

(i) Whether the location of a new Health Care Facility or Facilities in Floyd County, Indiana, will adversely impinge upon the ability of Floyd Memorial to remain financial viable and maintain or improve the quality and quantity of its services;

(ii) Whether a New Health Care Facility or Facilities in Floyd County, Indiana, would improve the quality of health care services to all citizens of Floyd County, including low income persons, minorities, the disabled, and the elderly;

(iii) Whether and what measures may be required in an effort to assure the health, safety, welfare, and economic well-being of the citizens of Floyd County and to offset any potential adverse impact to Floyd Memorial from the addition of a New Health Care Facility or Facilities.

The report of the task force shall be delivered to the Board within three-hundred (300) days of its formation, and the Board shall endeavor to provide such support and assistance as may be reasonably necessary for the completion of its commission. The administration and staff of Floyd Memorial Hospital and Health Services are encouraged by this enactment to cooperate fully with the task force and provide such technical and administrative services as may be requested and which are consistent with this undertaking.

ARTICLE IV PROHIBITIONS

No person shall add, construct or convert new acute care hospital beds or add other health care services through the development of a New Health Care Facility in Floyd County, Indiana, for a period of one (1) year from the effective date of this Ordinance.

ARTICLE V PETITION FOR EXEMPTION

Any person desiring relief from the application of this ordinance may file with the Board a petition which must demonstrate that the development of the proposed New Health Care Facility in Floyd County, Indiana, will not substantially affect adversely Floyd Memorial's (1) financial viability and/or (2) its ability to provide quality health care services to all citizens of Floyd County, including low income persons, minorities, the disabled, and the elderly. If the Board finds, in its sole

discretion, that the petition, together with any other information made available to and/or considered by the board, confirms (1) *and* (2), above, the Board shall require, as a condition for exemption, a written commitment by the applicant: (a) that the character and definition of the New Health Care Facility, as proposed, as well as the nature and extent of the services to be provided, shall not be materially altered or changed without the prior written consent of the Board; (b) that consistent with the character and definition of the New Health Care Facility and the services to be provided, the applicant shall accept for treatment, directly and by referral, low income, minority, disabled, and elderly residents of Floyd County, Indiana; and (c) that the applicant acknowledges its continuing responsibility to assist the Board in securing the health, safety, welfare, and economic well-being of *all* citizens of Floyd County by assuring the availability and delivery of high-quality health care at a reasonable cost. Once a decision is rendered by the Board on a Petition for Exemption, the applicant may not submit another Petition for Exemption for at least one year from the date of the decision of the Board.

ARTICLE VI ENFORCEMENT

An action for mandatory or injunctive relief as against any person violating the terms and provisions of this Ordinance shall be brought in the name of Floyd County, Indiana, and to any judgment in favor of Floyd County there shall be added costs of the action, reasonable attorney fees, and expenses incurred in the enforcement of this Ordinance.

ARTICLE VII MISCELLANEOUS PROVISIONS

(1) Should any term or provision of this Ordinance be declared by a court of competent jurisdiction to be unconstitutional or invalid, such determination shall not affect the remainder of this Ordinance which shall remain in full force and effect.

(2) In the interpretation and application of this Ordinance, the masculine form shall mean and apply to the feminine, and the singular form shall mean and apply to the plural. The title hereof and those of all Articles of this Ordinance shall be disregarded.

(3) Any provision of any ordinance, rule, or regulation heretofore adopted by the Board of Commissioners of the County of Floyd which is inconsistent or in conflict with this Ordinance is hereby repealed.

(4) This Ordinance shall be in full force and effect on and after its passage and publication if required by law.

SO ORDAINED this 29th day of March, 2005.

BOARD OF COMMISSIONERS
OF THE COUNTY OF FLOYD

John C. Reese
MEMBER

Charles A. Frazier
MEMBER

MEMBER

ATTEST:

Teresa A. Plais
FLOYD COUNTY AUDITOR