

HARRISON COUNTY ORDINANCE 2004-11

An ordinance of the Harrison County Health Board creating an Ordinance Violations Section.

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 a Violations Section for the handling of citations.

Article 1. Establishment and Designation of Violations Bureau

Section 1. The Harrison County Health Board hereby establishes an Ordinance Violations Section under Indiana Code 33-6-3 et seq.

Section 2. The Health Department Registrar is designated as the violations clerk to act as the administrator of the section.

Section 3. The violations clerk or their designee may accept written appearance, waivers of trial, admissions of violations and payment of civil penalties of not more than one hundred (\$100) dollars in designated ordinance cases. The violations clerk shall account for and pay to the Corporation all sums collected as civil penalties for ordinance violations.

Article 2. Right to Trial and Waiver

Section 1. Persons charged with an ordinance violation of The Code are entitled to a trial before a court as provided by the law, unless the person waives the right to trial and enters an admission of the violation with the violations clerk or their designee.

Section 2. If a person charged with an ordinance violation wants to exercise the right to a trial, the person shall appear before the violations clerk or their designee, and deny the violation or enter a written denial with the clerk. The person's notice to stand trial shall be given by the date indicated on the citation, which shall not be less than seven days after the issuance of the citation. Upon receipt of the person's intent to stand trial, the official having the responsibility to prosecute ordinance violation cases for the Health Board shall be informed and commence a lawsuit.

Section 3. If a person charged with an ordinance violation elects to admit to the violation and waive their right to trial, the clerk or their designee shall assess and receive from the violator the amount prescribed by the schedule of civil penalties established under Article Three. If a person who receives a citation fails to pay the assessed fine by the date set forth in the citation or fails to give notice of their intention to stand trial, a civil lawsuit shall be commenced by the County Attorney.

Article 3. Civil Penalties; Schedule of Ordinance Provisions.

Section 1. Payment of civil penalties may be made by cash, certified or cashier's check, or money order only, made payable to the "Harrison County Health Department". Payment of civil penalties may be made in person or by mail.

Section 2. In determining the seriousness of the violation and the specific amount of the civil penalty to be sought for each violation, the Health Officer or his designee will consider, but is not limited to, the following:

- (a) The potential for harm or imminent threat to public health.
- (b) The extent of deviation from statutory or regulatory requirements.
- (c) The degree of willfulness or negligence.
- (d) History of noncompliance.
- (e) Whether the violations are repeat critical violations of current Indiana Food Code.
- (f) Whether the sanitary and operational requirements of a food establishment operation have been met.
- (g) Compliance with sanitation and other minimum standards.
- (h) Whether non-residential property is/has been properly maintained to prevent a public health threat.

The absence of direct harm will not result in assessment of a lower penalty for a violation.

Section 3. Schedule of ordinance violations subject to admission before the violations clerk and the amount of civil penalty to be assessed a violator who elects to admit a violation under this Article. The monetary penalty for violation of any of the above-listed sections shall be twenty-five (\$25) to one hundred dollars (\$100) for each day of each violation. Penalties shall be assessed according to Schedule of Civil Penalties for Violations in the current food code.

Article 4. Citations.

Section 1. A citation may be issued to the person responsible for an ordinance violation listed in Article 3.

Section 2. The citation shall contain:

- (a) Date of violation,
- (b) Name of responsible person,
- (c) Address of violation,
- (d) Ordinance citation,
- (e) Nature of violation,
- (f) Amount of fine assessed,
- (g) Manner and location to enter an admission and to pay fine and date fine is due, not less than seven days following issuance of the citation,
- (h) Notice that each day the violation continues to exist is a new violation,
- (i) Statement to violator of right to elect trial, and
- (j) Name, business address, and phone number of person issuing citation.

Section 3. Court proceedings against the person for an alleged ordinance violation will be initiated by the County Attorney if the person denies or fails to deny the violation or if the person fails to satisfy the civil penalty imposed by the violations clerk after having entered an admission of the violation. Court proceedings may be filed in the Harrison Circuit Court. The matter shall be scheduled for trial, and a summons and an Order to Appear shall be served upon the Defendant.

Section 4. The Health Board may, in addition, seek equitable relief in any court of competent jurisdiction.

Section 5. In proceedings before a court for ordinance violations, Health Department and/or its legal representative shall have the burden of proving the ordinance violation by a preponderance of the evidence.

Section 6. A person adjudged to have violated The Code shall be liable for court costs and fees. No costs shall be assessed against the Health Department for having brought the action.

This ordinance (2004-11) was passed and adopted by the Harrison County Board of Health this 1st day of September, 2004.

This ordinance (2004-11) was passed and adopted by the Commissioners of Harrison County, State of Indiana, on this 7th day of September, 2004.