

**RETAIL FOOD ESTABLISHMENTS
and
BED AND BREAKFAST ESTABLISHMENTS**

ORDINANCE NO. 080502

Fulton County, State of Indiana

An Ordinance pertaining to and regulating Retail Food Establishments to safeguard the public health and to assure that food provided to consumers is safe, unadulterated, and honestly presented; to provide for regulation and inspection of such establishments; to provide for the enforcement of this Ordinance; to provide fixed penalties for violations of this Ordinance, Title 410 IAC 7-24, and Title 410 IAC 7-15.5; and to provide for incorporation by reference Indiana State Department of Health Rule 410 IAC 7-24 and 410 IAC 7-15.5.

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

Section 1. TITLE. This ordinance and all Ordinances supplements or amendatory hereto shall be known as the Retail Food Establishment and Bed and Breakfast Establishment Ordinance of Fulton County, and may be cited as such and will be referred to herein as “this ordinance”.

Section 2. PURPOSE. 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 retail food establishment plan reviews, permits, inspections and employee restrictions.

Section 3. AUTHORITY. The Regulatory authority is hereby authorized to issue Retail Food Establishment, Temporary Food Establishment, and Bed and Breakfast Establishment Permits, perform inspections, order or otherwise compel correction of violations of this ordinance, and is otherwise authorized to perform all actions necessary for the administration and enforcement of this Ordinance.

Section 4. ADOPTION BY REFERENCE. Title 410IAC 7-24, *Retail Food Establishment Sanitation Requirements* and 410 IAC 7-15.51 *Bed and Breakfast Establishments* are incorporated by reference in this Ordinance, as may be amended from time to time, as the same published in the Indiana Register of the Indiana Administrative Code with effective dates as fixed therein. Copies of the 410 IAC 7-24 et. seq. and 410 IAC 7-15.5 are available and on file at the Fulton County Health Department and the County Auditor.

Section 5. PERMITS. It shall be unlawful for anyone to operate a Retail Food Establishment, Retail Food Establishment with catering, Temporary Food Establishment, Mobile Retail Food Establishment, or Bed and Breakfast Establishment in Fulton County that does not possess a valid permit by the regulatory authority. Such permit shall be posted in the establishment in a place conspicuous to the public.

A. No permit is required for an organization that meets the following requirements:

- (1) An organization that is exempt from the Indiana gross income tax under IC 6-2.1-3-20 through IC6-2.1-3022 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 IC 16-42-5 that may be imposed upon the sale of food at that event if:
 - (a) members of the organization prepare the food that will be sold;
 - (b) events conducted by the organization under this section take place for no more than (30) days in any calendar year ; and

- (c) the name of each member who has prepared a food item is attached to the container in which the food item has been placed. *(IC 16-42-5-4a)*
 - (2) This section does not prohibit an exempted organization from waiving the exemption and applying for a license under this chapter. *(IC-42 5-4b)*
 - (3) To verify the exemption from compliance with IC 16-42-5, an organization shall submit proof of exempt status to the regulatory authority by providing the Not –For – Profit Tax Exemption Certificate number on the permit application form and also by providing a photocopy of the certificate issued by the Indiana Department of Revenue.
 - (4) To verify that an exempt organization does not exceed the exempt thirty- day maximum annual operating period allowed, the exempt organization shall submit a completed temporary food establishment application as notification to the regulatory authority each time the organization intends to serve food at an event. If they are a seasonal establishment they must provide dates of operation and claim the exemption described herein.
- B. An applicant may apply for a permit by submitting a completed form to the regulatory authority After meeting the following:
 - (1) A person may not operate a retail establishment without first having registered with the department (IC 16-42-1-6. and *410 IAC 7-20-107a*)
 - (2) A retail food establishment registered with a local health department or other regulatory authority shall be considered registered with the department under IC16-42-1-6.*(410 IAC 7-24-107 b)*
 - (3) To allow verification that the retail food establishment is constructed, equipped, and otherwise meets requirements of 410 IAC 7-24 and this Ordinance, the regulatory authority shall be notified of an intent to operate at least thirty (30) days prior to registering. *(410 IAC 7-24-107c)*
- C. The operator or other authorized agent of an existing or proposed retail food establishment shall submit to the regulatory authority properly prepared plans and specifications for review and approval before:
 - (1) the construction of a retail food establishment
 - (2) the conversion of an existing structure for use as a retail food establishment; or
 - (3) the remodeling of a retail food establishment or a change of type of retail food establishment or food operation if the regulatory authority determines that plans and specifications are necessary. *(410 IAC 7-24-110)*
- D. Only persons who comply with the applicable requirements specified by Indiana State Department of Health laws and rules and this Ordinance shall be entitled to receive and retain such a permit.
- E. A permit for a retail food establishment shall for a term of one (1) year, beginning on January 1st and expiring on December 31st of the same year and shall be renewed annually. A permit issued at any time during a calendar year shall expire on December 31st of that year.
- F. A permit for a temporary food establishment shall be for a period of no more than fourteen (14) consecutive days in conjunction with a single event or celebration.
- G. Any permit issued by the regulatory authority shall contain:
 - (1) the name of the establishment;
 - (2) the name of the person(s) to whom the permit is granted;
 - (3) the address of the premises or name of event for which the permit is issued;
 - (4) whether catering is done at locations other than the permanent address of the establishment;
 - (5) the inclusive dates the permit is valid, if other than for a calendar year;
 - (6) and other such pertinent information as may be required by the regulatory authority.
- H. A separate permit shall be required for each retail food establishment operated at a separate location, except for catering and mobile operations where the food may be prepared at the permitted site and transported to another location for service by the retail food establishment

employees. A permit indication that the retail food establishment does catering is required before any catering may be permitted at another location.

- I. A permit issued to an operator of a retail food establishment under this Ordinance shall not be sold, assigned, loaned or transferred.
- J. A permit shall be issued to any operator upon receipt of a completed application after the establishment has been inspected by the regulatory authority and has been found to be in compliance with all applicable laws, rules, and this Ordinance.

Section 6. MINIMUM REQUIREMENTS. All retail food establishments and bed and breakfast establishments shall comply with at least the minimum requirements specified by 410 IAC 7-24 *Retail Food Establishments Sanitation Requirements* or 410 IAC 7-15.5 *Bed and Breakfast Establishments*.

Section 7. SALE, EXAMINATION AND CONDEMNATION OF UNWHOLESOME, ADULTERATED OR MISBRANDED FOOD. It shall be unlawful for any person to sell through a retail food establishment, temporary food establishment, mobile retail food establishment, vending machine, or bed and establishment any food that is unwholesome, adulterated, or misbranded as provided in the Indiana Food, Drug and Cosmetic Act (*IC 16-42-1 Through 4 and 410 IAC 7-5*).

- A. Samples of food may be taken and examined by the regulatory authority, as often as may be necessary to determine freedom from contamination, and adulteration or misbranding.
- B. Any dairy product, meat, meat product, seafood, poultry, confectionery, bakery product, vegetable, fruit, or other perishable article:
 - 1. that is unsound
 - 2. that contains any filth, decomposed, putrid substance; or
 - 3. that may be poisonous or deleterious to health or otherwise unsafe; constitutes a nuisance.
- C. Whenever the state health commissioners or the commissioner's authorized agent finds:
 - 1. in any room, building, vehicle of transportation, or other structure; or
 - 2. on any premises;perishable food or food product which constitutes a nuisance under this section, the state health commissioner or the commissioner's authorized agent shall condemn or destroy the food or food product or in any other manner make the food or food product unsellable as human food. (*IC 16-42-2-6*)

Section 8. INSPECTION OF RETAIL ESTABLISHMENTS. Each retail food establishment may be inspected at a frequency the regulatory authority considers necessary.

- A. If, during the inspection of any retail food establishments, the regulatory authority discovers the violation of any of the requirements of this Ordinance, it shall issue a written narrative report listing such violations and a time for correction to the operator or person-in-charge, fixing a time within which the operator shall abate and remedy such violations. A copy of the written report shall be filed with the records of the regulatory authority.
- B. If, upon a second inspection, the regulatory authority finds that a retail food establishment, person, or employee is violating any of the provisions of the Ordinance that are repeated from previous inspections, as noted on the inspection report, the regulatory authority may promptly issue a written Order to the permittee of the retail food establishment to appear at a certain time, and at a place in the county fixed in the Order to show cause why the permit issued under the provision of Section 5 should not be revoked and penalties assessed according to Section 10 of this Ordinance.
- C. The regulatory authority 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 regulatory authority shall maintain a permanent record of his/her proceedings filed in the office of the local health department having jurisdiction.
- D. Any permit issued under this ordinance may be summarily suspended by the regulatory authority without notice or hearing for a period not to exceed thirty (30) days, for any of the following reasons:
 - (1) Unsanitary or other conditions which, in the opinion of the regulatory authority,

- endanger the public's health;
- (2) Interference with the regulatory authority or any authorized representative in the performance of duties.

Provided, however that upon written application from the permittee, served upon the regulatory authority within 15 days after the suspension, the regulatory authority 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 regulatory authority in writing and served upon the permittee by leaving a copy at his/her place of business or by delivery of Registered or Certified Mail.

- E. Any person whose permit has been suspended may at any time submit an application to the regulatory authority for the reinstatement of the permit.

Section 9. INSPECTION OF TEMPORARY FOOD ESTABLISHMENTS. In each 24-hour period of operation the regulatory authority may inspect each food establishment for which a permit is required under the provisions of this Ordinance.

- A. If during the inspection of any temporary food establishment the regulatory authority discovers the violation of any of the requirements of this Ordinance, **it** may order the immediate correction of the violation.
- B. Upon failure of any person maintaining or operating a temporary food establishment to comply with any order of the regulatory authority, it shall be the duty of the regulatory authority summarily to revoke the permit of the person and establishment and to forbid the further sale or serving of food therein.

Section 10. PENALTIES In addition to any other penalties that might be assessed, the regulatory authority may commence an action to levy penalties against a person who fails to comply with 410 IAC 7-24, 410 IAC 7-15.5, IC 16-42-5, this Ordinance, or who interferes or obstructs the regulatory authority or its designated agent in the performance of duties, pursuant to 410 IAC 7-24, 410 IAC 7-15.5, IC 16-42-5, or this Ordinance. Any penalties collected shall be deposited into the Health Fund.

- A. A penalty in an amount in the appropriate range specified in subsection C may be sought for each day for each violation. The absence of direct harm will not result in assessment of a lower penalty for a violation.
- B. Unless adjusted by administrative procedure, all penalties shall be in accordance with the following schedules Civil Penalties (*410 IAC 7-23-1*) and
- C. SCHEDULE OF PENALTIES

<u>VIOLATION</u>	<u>PENALTY</u>
Operating a retail food establishment or mobile food retail establishment without a permit	\$500
Operating a Bed and Breakfast establishment without a permit	\$500
Operating a temporary food establishment without a permit	\$500
Failure to obtain a valid permit upon transfer of ownership of an existing establishment with no changes	\$100

Section 11. GIFTS AND GRATUITIES. Neither the Health Officer nor his/her authorized representatives shall request or accept any gratuities or gifts from the person, operator, employee, person-in-charge or permittee.

Section 12. SEVERABILITY. 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 and shall remain in full force and effect.

Section 13. EFFECTIVE DATE. This Ordinance shall apply to all of Fulton County, Indiana, as of the date from and after its adoption and approval by the Commissioners as stated herein and any publication as required by law.

BOARD OF COMMISSIONERS

By _____
Richard Powell, President

By _____
Art Showley

By _____
Roger Rose

Attest:

Denise Bonnell
Fulton County Auditor

EXAMINED AND APPROVED ON THIS _____ DAY OF _____, 2002.

FULTON COUNTY BOARD OF HEALTH

BY _____
CRAIG BUGNO, HEALTH OFFICER

BY _____
MICHAEL BOLDRY, PRESIDENT

BY _____
JOHN MCKEE

BY _____
ROBERT POFFENBARGER

BY _____
MICHAEL BRUBAKER

BY _____
JULIUS S. SITIJAR

BY _____
JUDY PETERSON

BY _____

CHERYL HIZER

BY _____
GREG HELLER