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MIAMI COUNTY ORDINANCE 7-18-05

An ordinance pertaining to retail food establishments, temporary retail food establishments and bed and breakfast establishments, requiring permits and permit fees for retail food establishments and bed and breakfast establishments, prohibiting the sale of adulterated, unwholesome, or misbranded food, regulating the inspection of such establishments, providing for the fixing of penalties for violations of said ordinance, and the providing for incorporation by reference the following Indiana State Department of Health Rules: A410 IAC 7-24, et seq., as amended, Sanitation of Vending of Foods and Beverages.®

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

Section A: Definitions

Adulterated: Adulterated has the meaning stated in Indiana code 16-42-1 through 4. (410 IAC 7..24-4)

Employee: means the person-in-charge, having supervisory or management duties, person on the payroll, family member, volunteer, person performing work under contractual agreement, or other person working in a retail food establishment. (410 IAC 7-24-29)

Health Department: means the Miami County Health Department.

Health Officer: means the medical doctor serving as the executive officer of the Miami County Health Department or any authorized representative.

Law: means applicable, state, and federal statutes, regulations, and local ordinances. (410 IAC (7-24-51).

Narrative report: The section on the Food Service Inspection Report Form where the authorized representative records in written form the violations and/or other pertinent information that are observed during the inspection of a retail food establishment.

Owner or Authorized Agent: shall be any person operating a retail food establishment.

Permit: means the document issued by the Health Department which authorizes a person to operate a retail food establishment or bed and breakfast establishment.

Person: means an association, a corporation, individual, partnership, other legal entity, government, or governmental subdivision or agency. 410 IAC 7-24-58.

Temporary Food Establishment: The term Atemporary food establishment@ means a retail food establishment that operates for a period of not more than fourteen (14) consecutive days in conjunction with a single event or celebration. 410 IAC 7-24-98

Wholesome: shall mean in sound condition, clean, free from adulteration, and otherwise suitable for use as human food.

Written Order: A written letter of abatement generated by the regulatory authority and signed by the Regulatory Authority, that is served to the operator of a retail food establishment or bed and breakfast that has been found in violation of the provisions of this ordinance, and lists those violations and mandates a specific time by which the abatement must occur.

Section B: Permits

Permit: It shall be unlawful for any person to operate a retail food establishment or bed and breakfast establishment in Miami County who does not possess a valid permit from the Health Department. Such permit shall be posted in a conspicuous place in plain view of the public.

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

A permit for a retail food establishment or bed and breakfast establishment shall be for a term of one (1) year beginning January 1 and expiring December 31, of the same year and shall

be renewed annually. A permit for a new or change of ownership purchased on or after July 1 will have the permit fee reduced by fifty (50%) percent. The permit for a temporary retail food establishment shall be for the term of one continuous operation with duration of fourteen (14) days or less. Any permit issued by the Health Department shall contain the name and address of the person to whom the permit is issued, the address of the premises for which same is issued, and such other pertinent data as may be required by the Health Department.

A separate permit shall be required for each retail food establishment or bed and breakfast establishment operated or to be operated by any person. A permit issued under this ordinance is not transferable from one owner to another or from one location to another.

The owner of any retail food establishment or bed and breakfast opening for business without first obtaining a valid permit shall immediately cease all operations until a permit has been obtained. The owner of any retail food establishment opening for business without first obtaining a valid permit may be subject to penalties in Section I of this ordinance

A permit may be issued to any person upon completion of steps A-D.

A. An application and plans as specified in 410 IAC 7-24 is reviewed and approved by the Health Department for new and remodeled retail food establishments and bed and breakfast establishments.

B. A pre-opening inspection is completed by the Health Department for new or substantially remodeled retail food establishments or bed and breakfast establishments.

C. The retail food establishment is in substantial compliance with all applicable requirements of 410 IAC 7-24

D. Appropriate fees are paid.

Section C: Permit Fee

1. See attachment 1: Fee schedule for current rates. Note that a late fee will be assessed on any annual food permit not renewed within thirty (30) days following expiration date. Closure of retail food establishment will be initiated for any retail food establishment or bed and breakfast that has not been renewed within thirty-one (31) days following the expiration date.

2. Permit and Fee Exception: No permit fee shall be paid by an organization that is exempt from taxation under Section 501 of the Internal Revenue Service code.

3. Food Establishment Defined: for purposes of IC 16-42-5, IC 16-42-5.2 and this ordinance, food establishment means any building, room, basement, vehicle of transportation, cellar, or open or enclosed area occupied or used for handling food.

The term does not include the following:

1. A dwelling where food is prepared on the premises by the occupants, free of charge, for their consumption by their guests.

2. A gathering of individuals at a venue of an organization that is organized for educational purposes in a nonpublic educational setting or for religious purposes, if:

A. The individuals separately or jointly provide or prepare, free of charge, and consume their own food or that of others attending the gathering; and

B. The gathering is for a purpose of the organization.

Gatherings for the purpose of the organization include funerals, wedding receptions, christenings, bar or bat mitzvahs, baptisms, communions, and other events and celebrations sponsored by the organization.

3. A vehicle used to transport food solely for distribution to the needy, either free of charge or for a nominal donation.

4. A private gathering of individuals who separately or jointly provide or prepare and consume their own food or that of others attending the gathering, regardless of whether the gathering is held on public or private property.

5. Except for food prepared by a for-profit entity, a venue of the sale of food prepared for the organization:

A. That is organized for:

I. Religious purposes; or

ii. Educational purposes in a nonpublic educational setting;

B. That is exempt from taxation under Section 501 of the Internal Revenue Code;

And

C. That offers the food for sale to the final consumer at an event held for the benefit of the organization; unless the food is being provided in a restaurant or a cafeteria with an extensive menu of prepared foods.

6. Except for food prepared by a for-profit entity, an Indiana nonprofit organization that:

A. Is organized for civic, fraternal, veterans, or charitable purposes;

B. Is exempt from taxation under Section 501 of the Internal Revenue Code; and

C. Offers food for sale to the final consumer at an event held for the benefit of the organization; if the events conducted by the organization take place for not more than fifteen (15) days a calendar year.

Section D: Minimum Requirements for Food Operations

All retail food establishments shall comply with the minimum requirements specified by the Indiana State Department of Health in Rules 410 IAC 7-24 and all addenda. Two (2) copies

of which are on file in the office of the Clerk of Miami County, Peru, Indiana, for public inspection.

Section E: Sale, Examination, and Condemnation of Unwholesome, Adulterated and Misbranded Food

It shall be unlawful for any person to sell through a food operation any food which is unwholesome, adulterated, or misbranded as provided in 410 IAC 7-24-4, 410 IAC 7-24-54. Samples of food may be taken and examined by the authorized representative as often as may be necessary to determine freedom from contamination, adulteration, or misbranding. The authorized representative may, on written notice to the owner or operator, impound and forbid the sale of any food which is, 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 authorized representative. The authorized representative may also cause to be removed or destroyed any dairy 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 F: Inspection of Food Operations

1. Frequency of Inspection: Each retail food establishment and bed and breakfast for which a permit is required under the provisions of this ordinance shall be inspected at a frequency based on menu type and past compliance.

2. Procedure when Violations are noted: If, during the inspection of any retail food establishment the authorized representative discovers the violation of any of the requirements in

Section D, of this ordinance, he/she shall list on the narrative report section of the inspection form such violations, and serve a copy of the report to the operator or the person in charge and fix a time within which the operator or person in charge of the retail food establishment or bed and breakfast shall abate and remedy such violations. A copy of the narrative report shall be kept on record at the Health Department.

3. Final Inspection: If, upon a subsequent inspection of a retail food establishment or bed and breakfast the Regulatory Authority finds that a retail food establishment, or bed and breakfast is violating any provisions of this ordinance which were found in violation during the pervious inspection, and concerning which a written order was issued the Regulatory Authority may issue a fine for each violation of this ordinance.

4. Suspension of Permit: Any permit issued under this ordinance may be temporarily suspended by the Regulatory Authority without notice or hearing for a period of not to exceed thirty (30) days, for any of the following reasons provided 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 usual place of business by delivery or by registered or Certified Mail:

- a. Imminent health hazard or other conditions in which the Regulatory Authority=s opinion endanger the public=s health.
- b. Interference with the authorized representative in the performance of his/her duties.
- c. As a result of the willful and/or continuous violation of any provisions of this Ordinance.

5. Reinstatement of Permit: Any person whose permit has been suspended may, at any

time, make application to the Regulatory Authority for the reinstatement of his/her permit. The applicant shall submit written documentation with explanation why the permit should be reinstated and provide specific measures to be followed which will prevent the circumstances of suspension from recurring.

6. Revocation of Permit: The Miami County Health Board, 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 the proceedings filed in the office of the Health Department.

Upon failure of any person maintaining or operating a retail food establishment and bed and breakfast, 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 retail food establishment or bed and breakfast and to forbid the further sale or serving of food therein.

Section G: Authority to Inspect and to Copy Records

The person in charge of a retail food establishment shall, upon request of the Regulatory Authority, allow the Regulatory Authority access to all parts of the retail food establishment and bed and breakfast and shall permit the Regulatory Authority 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 to the applicable requirements of the Indiana State Department of Health and by the Indiana Department of Fire and Building Services. Properly prepared plans and specifications shall be submitted for approval to the Health Department at least thirty (30) days prior to initiating construction. A stop work order may be issued if plans have not been submitted for approval to the Health Department at least 30 days prior to the

initiation to construction.

Section I: Penalties

The Regulatory Authority may issue a fine for each violation of this ordinance not in excess of \$2,500.00. In addition, to any civil penalty that may be imposed under Indiana Law, any person who violates any provisions of this ordinance may be assessed a civil penalty in compliance with Indiana Administrative Code 410 IAC 7-23-1 entitled A Schedule of Civil Penalties@ a copy attached hereto and made apart hereof marked Exhibit AA@. All fines shall be paid to the Miami County Clerks Office with all funds received being placed in a non-reverting fund. If permit applicants failed to submit application seven (7) days prior to the applicable event shall result in a twenty-five \$25.00 late fee being assessed.

Section J: Appeal

- a.** Any person aggrieved by any final order of the Health Department shall be entitled to a review of the final order before the Board by filing a written request therefore with the Secretary of the Board within fifteen (15) days after such final order is issued.
- b.** Upon the Health Department=s receipt of such request, the Board shall hear the matter de novo in an open hearing after at least ten (10) days written notice of the time, place and nature thereof. (The Health Department and appellant may agree to a shorter period of time, if requested by either party.) The notice shall be issued by the Secretary of the Board to the Health Department and the person filing the request.
- c.** The notice of hearing shall be served upon the appellant by leaving or mailing by Certified Mail the notice to the address listed on the permit application as the appellant=s mailing address or such other address as the appellant shall designate in writing to the Secretary of the Board.
- d.** At such hearing, the same rules of procedure shall apply as in the case of the hearing before the Health Department; provided, that upon written request by the appellant or the

Health Department, the Board shall cause the proceedings before it to be recorded by a reporter employed for such purpose, and the same, together with all papers and documents filed therein.

Section K: 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 should not be affected thereby.

Section L: Date of Effect

This ordinance shall be in full force and effect after its adoption and as provided by law.

Attachment 1: Annual Fee Schedule

Retail Food Establishments and Bed and Breakfast \$60.00. Late fee (assessed on any permit not renewed within thirty (30) days following expiration date): \$25.00

Temporary Retail Food Establishment: \$10.00 per day not to exceed \$30.00 per event beginning 1-1-06. Temporary permit submit seven (7) days prior to event or pay \$25.00 late fee.

PASSED AND ADOPTED BY THE BOARD OF COMMISSIONERS OF MIAMI COUNTY,
STATE OF INDIANA ON THIS _____ DAY OF _____ 2005.

CRAIG BOYER

GREGORY DEEDS

GARY HAWLEY

Brenda Weaver, Auditor

ATTEST: