

DRAFT 7/02/03

Ordinance No.

A Resolution Enacting A Pike County Food Sanitation Program Ordinance

WHEREAS, the Pike County Health Department was established in accordance with Illinois State statute, 55 ILCS 5/5 as amended; and,

WHEREAS, local health departments are subject to the provisions of 77 Illinois Administrative Code, Part 615; and,

WHEREAS, said Administrative Code requires local health departments to conduct a food sanitation program in accordance with local ordinance that incorporates by reference or includes provisions at least as stringent as the Illinois Department of Public Health Food Sanitation and Retail Food Store Sanitation Codes; and,

WHEREAS, the Pike County Board desires to enact ordinances, in accordance with State statutes that regulate the activities of its local health department; and,

WHEREAS, it is the desire of the Pike County Board to protect the citizens of Pike County from transmitting or contracting foodborne disease;

NOW THEREFORE, BE IT RESOLVED by the Pike County Board that the following ordinance defining, licensing, and regulating food establishments, retail food stores, and temporary food establishments within the county townships served by the Pike County Health Department, whether or not said establishments are located within the corporate limits of any municipality, be hereby adopted. Said ordinance shall be deemed in full force and effect immediately upon passage.

Section I: General Provisions

Sect. I.01 Adoption by Reference – In addition to those provisions set forth herein, this Ordinance hereby adopts by reference the current edition and subsequent revisions of the following:

- a) “Illinois Department of Public Health Food Service Sanitation Code,” 77 Ill. Adm. Code 750
- b) “Illinois Department of Public Health Retail Food Store Sanitation Code,” 77 Ill. Adm. Code 760
- c) “Bed and Breakfast Act,” 50 ILCS 820/1 et seq.

Three copies of each shall be on file with the office of the Pike County Clerk.

Sect.I.02 Definitions – Words and phrases shall be taken in their plain, or ordinary and usual sense, except where used in a technical sense or where context or the intent of the County Board indicates or requires a different meaning.

Adulterated shall mean the condition of any food:

- a) if it bears or contains any poisonous or deleterious substance in a quantity which may render it injurious to health; or
- b) if it bears or contains any added poisonous or deleterious substance for which no safe tolerance has been established by regulation or in excess of such tolerance of one has been established; or
- c) if it consists in whole or in part of any filthy, putrid or decomposed substance or it is otherwise unfit for human consumption; or
- d) if it has been processed, prepared, packed, or held under unsanitary conditions whereby it may have been contaminated with filth or whereby it may have been rendered injurious to health; or
- e) if it is in whole or in part the product of a diseased animal or animal which has died otherwise than by slaughter; or
- f) if its containers are composed in whole or in part of any poisonous or deleterious substance which may render the contents injurious to health, (410 ILCS 620/10)

Bed and Breakfast Establishment shall mean an operator-occupied residence providing accommodations for a charge to the public with no more than five (5) guest rooms for rent, in operation for more than ten (10) nights in a twelve month period; meals may be provided to the guests only as allowed by the Bed and Breakfast Act (50 ILCS 820) ; this term shall not include motels, hotels, boarding homes, or food service establishments (50 ILCS 820/2.a.).

Food shall mean any raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or sale in whole or in part for human consumption, (77 Ill. Adm. Code 750 & &760).

Food Service Establishment shall mean any place where food is prepared and intended for, though not limited to, individual portion service, and includes the site at which individual portions are provided. The term includes any such place regardless of whether consumption is on or off the premises and regardless of whether there is a charge for the food. The term also includes delicatessen type operations that prepare foods intended for individual portion service. The term does not include lodging facilities serving only a continental breakfast, (a continental breakfast is one limited to only coffee, tea and/or juice and commercially prepared sweet baked goods), Bed and Breakfast Establishments that are licensed by the county or the municipality in which they are located, private homes or a closed family function where food is prepared or

served for individual family consumption, retail food stores or the location of food vending machines (77 Ill. Adm. Code 750 & 760).

Health Department shall mean the Pike County Health Department.

Health Officer shall mean the Administrator of the Pike County Health Department or his or her authorized representative.

License Holder shall mean any person or his agent who makes application to license a food service establishment, retail food store, or temporary food establishment pursuant to this ordinance.

Misbranded shall mean the presence of any written, printed, or graphic matter upon or accompanying food or containers of food which is false or misleading.

Not-for-profit Organization shall mean those organizations recognized as such pursuant to the laws of the State of Illinois. This definition does not include organizations in possession of an annual liquor license (not a special event license) or an Illinois sales tax number for commercial purposes (not tax exempt numbers).

Potentially Hazardous Food shall mean any food that consists in whole or in part of milk or milk products, eggs, meat, poultry, fish, shellfish, edible crustacea, or other ingredients, including synthetic ingredients, in a form capable of supporting rapid and progressive growth of infectious or toxigenic microorganisms. The term does not include foods which have a pH level of 4.6 or below or a water activity value of 0.85 or less (77 Ill. Adm. Code 750).

Person shall mean an individual, firm, partnership, co-partnership, company, corporation, trustee, lessee, receiver, association, municipality, or any political subdivision or department thereof, or any other entity, or its agent.

Retail Food Store means any establishment or section of an establishment where food and food products are offered to the consumer and intended for, though not limited to, off-premises consumption. The term includes delicatessens that offer prepared food in bulk quantities only. The term does not include establishments which handle only prepackaged spirits; roadside markets that offer only fresh fruits and fresh vegetables for sale, food service establishments; or food and beverage vending machines, (77 Ill. Adm. Code 750 & 760).

Temporary Food Establishment shall mean a food service establishment that operates at a fixed location for a period of time of more than three consecutive days but less than fifteen consecutive days in conjunction with a single event or celebration. (77 Ill. Adm. Code 750).

Section II: License Requirements

Sect. II. 01 License Required– It shall be unlawful for any person to operate a food service establishment, retail food store, or temporary food establishment, within that County of Pike, State of Illinois, who does not possess a valid license issued by the Pike County Health Department. Only a person who complies with the requirements of this Ordinance shall be entitled to receive and retain such a license. Licenses shall not be transferable from one person to another nor shall said license be transferable to any location, building, or place other than that which it was originally issued. A valid license shall be posted in every food establishment so as to be clearly visible to all customers. A valid license is one that is not suspended, revoked, or expired.

The following establishments shall be exempt from the provisions of this Ordinance:

- a) Establishments which have only non-perishable and/or non-potentially hazardous food and whose principle order of business is not to sell food for human consumption.
- b) Facilities licensed and inspected by the Illinois Department of Corrections.
- c) Facilities licensed by the Illinois Department of Public Health as provided for in 210 ILCS 35 the Community Living Facilities Licensing Act and 210 ILCS 45 the Nursing Home Care Act.

Sect. II. 02 License Issuance – Any person desiring to operate a food service establishment, retail food store, or temporary food establishment must comply with existing Pike County Zoning provisions, where applicable, and shall make written application for a license on forms provided by the Health Department. Any applicant who is not a resident of Pike County must designate a managing agent or registered agent who is a resident, and upon whom service may be made.

Sect. II. 03 License Length – The license for food service establishments and retail food stores shall be issued annually by the health department, beginning on the first day of the month following the effective date of this ordinance. Licenses issued after this date, but within the next twelve months period, shall have the ir license fee pro-rated.

Sect. II. 04 License Renewal - Annual renewal of licenses shall be required for continued operation of the establishment. Any person desiring to renew a license shall make written application on forms provided by the Health Department.

All registration fees for the annual renewal of licenses are due fifteen (15) days prior to the license expiration date. Persons failing to submit the appropriate fee and renewal application by the above stated renewal due date shall be assessed a late payment penalty fee of \$50.00 in addition to the appropriate license fee. Failure to submit the total fee and application by the above- described renewal date may result in a lapse of the license.

Sect. II. 05 License Updates – The license holder has an affirmative and continuing requirement to update the original and all renewal applications. As a result, the license holder must inform the Health Officer of any changes in the information listed in these applications within thirty (30) days.

Failure to comply with the requirements of this section, or knowingly furnishing false information on the original or renewal applications shall be grounds for immediate suspension or revocation of any license issued pursuant to this Ordinance.

Sect. II. 06 License Suspension – Licenses for food service establishments, retail food stores or temporary food establishments may be suspended by the Health Officer upon notice to the license holder of same. Reasons for suspending the license include, but are not limited to, the following:

- a) failure to comply with the provisions of this Ordinance;
- b) failure to comply with the provisions of this Ordinance after notification by the Health Officer;
- c) failure to comply with the provisions of this Ordinance within the time established by the Health Officer;
- d) interference with the Health Officer in the performance of his duties, including, but not limited to, failure to allow the Health Officer access to the license holders' building or records;
- e) failure to update the original and renewal applications, as required by this Ordinance; or,
- f) knowingly furnishing false information on the original or renewal applications

Upon making a determination that a suspension is appropriate, the Health Officer shall advise the license holder, or his managing or registered agent, in writing, of the intended suspension. The notice shall be delivered in person by the Health Officer or sent via certified mail. The license holder may make a written request for a hearing with the Health Officer before imposition of the period of suspension according to the procedures set out in the Hearing Procedure section.

Licenses for food service establishments, retail food stores or temporary food establishments may be suspended by the Health Officer without notice to the license holder when, in the judgement of the Health Officer, a condition exists that will result in an imminent health hazard to the public.

Upon making a determination that a suspension without notice is appropriate, the Health Officer shall immediately, without warning or notice, advise the license holder, or his managing or registered agent, of said condition and all food service operations shall be immediately discontinued.

Before resuming operations following a suspension of service imposed by the health officer because imminent health hazards were identified, the facility must successfully pass a re-

inspection by the health officer to assure the identified imminent health hazards have been eliminated.

Sect. II. 07 License Revocation – Licenses for food service establishments, retail food stores or temporary food establishments may be revoked by the Health Officer upon notice to the license holder of same. Reasons for suspending the license include, but are not limited to, the following:

- a) serious violations of the provisions of this Ordinance;
- b) repeatedly failing to comply with the provisions of this ordinance;
- c) interference with the Health Officer in the performance of his duties, including, but not limited to, failure to allow the Health Officer access to the license holder's building or records;
- d) failure to update the original and renewal applications, as required by this Ordinance;
- e) knowingly furnishing false information on the original or renewal applications;
- f) failure to apply for reinspection within 30 days of the end of a suspension period imposed for violations of the provisions of this Ordinance; and,
- g) when the continuous operation of the business has lapsed for a period of more than 90 days.

Upon making a determination that a revocation is appropriate, the Health Officer shall advise the license holder, or his managing or registered agent, in writing of the intended revocation. The notice shall be delivered in person by the Health Officer or sent via certified mail. The license holder may make a written request for hearing with the Health Officer before imposition of the revocation according to the procedures set out in the Hearing Procedure section.

Sect. II. 08 License Classifications – The Pike County Health Department shall annually conduct a category assessment for every food service establishment and retail food store operating in Pike County, pursuant to the Local Health Protection Grant Rules established by the Illinois Department of Public Health.

Sect II. 09 License Fees – Annual license fees may be assessed each licensed establishment and collected by the Health Department and deposited into the Health Department fund. Fees shall be based on a schedule determined by the Pike County Board of Health. License fees shall be non-refundable once a license has been issued by the Health Department.

Sect. II. 10 No Valid License - When a food service establishment or a retail food store is in operation with no valid license, a fine of \$250.00 shall be assessed and the facility closed until a valid license is obtained.

Sect. II. 11 Embargo and Condemnation - Food may be examined or sampled by the Health Officer to determine freedom from adulteration or misbranding. The Health Officer may condemn or embargo (detain) equipment or food when he has probable cause to believe that any food or piece of equipment may be unwholesome or unfit for use. Such conditions include but are not limited to:

- a) food that has been adulterated
- b) food that has been misbranded
- c) any potentially hazardous food found to be in the optimal temperature range for the growth of pathogenic foodborne bacteria as defined in the Illinois Food Service Sanitation Code
- d) where equipment used in the preparation of food products is found to be in a state of disrepair, unsafe, unsanitary, or unsuitable for use in the preparation, display or service of food,
- e) in the event that food is contaminated as a result of fire, flood, sewage backup, power outage, or similar events

Condemned or embargoed food, food containers, or equipment may be suitably stored by the license holder unless said storage would pose a risk to the public health. If a risk exists, immediate destruction shall be ordered by the Health Officer, or voluntary destruction may be accomplished by the license holder. If the license holder refuses to destroy the condemned food, food containers, or equipment, same shall be held under embargo until they have been proved satisfactory for human consumption by a certified laboratory at the expense of the license holder.

No person shall remove or alter a condemnation or embargo order, notice, or tag placed on food, food containers or equipment by the Health Officer. Said food, food containers or equipment shall not be relabeled, replaced, reprocessed, repackaged, altered, disposed of, destroyed, or placed back in service without the permission of the Health Officer, except on order by a Court of competent jurisdiction. The license holder may make a written request for a hearing with the Health Officer before imposition of condemnation according to the procedures set out in the Hearing Procedure section.

Sect. II. 12 Employee Health – When the Health Department has reasonable cause to suspect the possibility of disease transmission by an employee of any establishment regulated by this Ordinance, the Health Officer shall investigate the suspected employee and take appropriate action pursuant to this Ordinance and State Statutes.

Sect. II. 13 Construction and Remodeling – Whenever any establishment regulated by the provisions of this Ordinance is constructed or remodeled, or whenever an existing structure is converted to use as an establishment to be regulated by this Ordinance, plans and specifications for such construction, remodeling, or conversion shall be submitted to the Health Officer for review and approval before construction, remodeling, or conversion may begin. At a minimum, any remodeling which requires the establishment owner to obtain a building permit due to the extent or cost of the work to be performed shall be required to also submit plans for said remodeling to the health department for review and approval prior to construction.

The plans and specifications shall indicate the proposed layout, arrangement, mechanical plans and construction materials of work areas, and the type and model of proposed fixed equipment and facilities. The Health Officer shall inspect the proposed establishment prior to the

beginning or resumption of operations to determine compliance with the approved plans and specification and the requirements of this Ordinance.

Section III: ADMINISTRATION AND ENFORCEMENT

Sect. III. 01 Inspection Schedule – The Health Department shall conduct routine onsite inspections for each food service establishment, retail food store, and temporary food establishment operating in Pike County in accordance with the guidelines established by the Illinois Department of Public Health, 77 Ill. ADM. Code Ch. 1, Sec. 615.as

Sect. III. 02 Inspection Report- Whenever an inspection of an establishment is made, the findings shall be recorded on a standardized inspection report form pursuant to 77 Ill. Adm. Code 750 and 760. One copy of the completed inspection report form will be furnished to the license holder or his agent at the time of inspection. If violations of this Ordinance exist, the inspection report shall serve as official notice to the license holder that the establishment is in violation of the provisions of this Ordinance. The completed inspection report form shall specify the violations found by the Health Officer, and shall establish a reasonable time period within which said violations must be corrected.

Sect. III.03 Right of Entry – The Health Officer, after proper identification, shall have access at any reasonable time to any establishment regulated by this Ordinance. Reasonable time for the purpose of this section shall mean at all times the establishment is open to the public. The Health Officer shall be permitted to examine all areas and records of the establishment, which are reasonably necessary to his inspection or investigation. Denial of access as herein provided shall be deemed as interference with the Health Officer in the performance of his duties, including but not limited to denial of access to the license holder’s building or records.

Sect. III.04 Hearings before the Health Officer - Any person affected by any order or notice issued by the Health Department in connection with the enforcement of any section of this Ordinance, may file in the office of the Health Department written request for a hearing before the Health Officer. Unless stated elsewhere in this Ordinance, the Health Officer shall hold the hearing at a time and place designated by him within fourteen (14) days from the date in which the written request was filed.

The petitioner for the hearing shall be notified of the time and place of hearing not less than five (5) days prior to the date on which the hearing is to be held.

If, as a result of the hearing, the Health Officer finds that strict compliance with the order or notice would cause undue hardship on the petitioner, and that the public health would be adequately protected and substantial justice done by varying or withdrawing the order of notice, the Health Officer may modify or withdraw the order of notice as a condition for such action , may where deemed necessary, make requirements which are additional to those prescribed in this Ordinance for the purpose of properly protecting the public health.

The Health Officer shall render a decision within ten (10) days after the date of the hearing, which shall be reduced to writing and placed on file in the office of the authorized

representative as a matter of public record. Any person aggrieved by the decision of the Health Officer may seek relief therefrom through a hearing before the Pike County Board of Health.

Sect. III.05 Hearing before the Pike County Code Hearing Unit – Any person aggrieved by the decision of the Health Officer as a result of a hearing held in accordance with this Section may file a written request to the Pike County Code Hearing Unit for a hearing at a time and place designated by the Pike County Code Hearing Officer within thirty (30) days of the date on which the written request was filed. The petitioner for the hearing shall be notified of the time and place of the hearing not less than five (5) days prior to the date on which the hearing is to be held.

If as a result of facts elicited as a result of the hearing, the Pike County Code Hearing Officer finds that strict compliance with the decision of the Health Officer would cause undue hardship on the petitioner, and that the public health would be adequately protected and substantial justice done by granting a variance from the decision of the Health Officer, the Pike County Code Hearing Unit may grant a variance and as a condition for such variance, may, where it deems necessary, make requirements which are additional to those prescribed by this Ordinance.

The Pike County Code Hearing Officer shall render a decision within thirty (30) days after the date of the hearing which shall be reduced to writing and placed on file in the office of the Health Officer and a copy thereof shall be served on the petitioner personally or be delivered to the petitioner by certified mail. A certified transcript of the record shall be provided at the expense of the person requesting the hearing. All witnesses called shall be required to testify under oath. An appeal from a decision of the Pike County Code Hearing Officer may be made to the circuit Court of Pike County, pursuant to the Illinois Administrative Review Act, 735 ILCS 5/3-101 et seq., as amended.

Sect. III. 06 Penalties – Any license holder who violates the provisions of this Ordinance or any of the regulations promulgated hereunder, shall be subject to prosecution for an offense for each and every day on which the violation continues and each day that the offense continues shall constitute a separate offense. The license holder shall be subject to a fine of not more than \$1000.00 for each offense. Further, the Health Officer, with the approval of the Board of Health, may seek injunctive relief and fines for non-compliance with the provisions of this Ordinance. The Pike County State’s Attorney serves as legal counsel and prosecuting officer for the Board of Health and Health Department and the Pike County Code Hearing Officer serves as hearing officer for violations of county ordinances.

Sect.III.07 Severability – If any provision of this Ordinance is declared unconstitutional or invalid by a Court of competent Jurisdiction, that decision shall not affect the validity of the remainder of the Ordinance.

PASSED AND ADOPTED by the Pike County Board this__ day of _____, 2003.

**Scott Syrcle
Pike County Board**

Attest: _____
Donald Apps, County Clerk

Respectfully submitted,

Pike County Board of Health

Approved As To Form:

**Frank McCartney, States Attorney
Pike County**