

**BOARD OF COMMISSIONERS OF THE COUNTY OF ALLEN**  
**ORDINANCE DATED:** February 24, 2023  
**ORDINANCE NUMBER:** 02-24-23-03

WHEREAS, the Indiana Department of Health has, pursuant to \*Indiana Code 16-42-5, 16-42-5.2, and 16-10-3-4, adopted rules to regulate the sanitary operation of food establishments, and

WHEREAS, local health departments have been delegated as the enforcement authority for the rules stated above for retail food service, and

WHEREAS, there exists a very real and distinct possibility of the transmission of serious infectious diseases when sanitary food safety processes are not followed.

NOW, THEREFORE, BE IT ordained that the Board of Commissioners of the County of Allen hereby amends Allen County Code, as outlined below.

**ALLEN COUNTY CODE TITLE 10**  
**DEPARTMENT OF HEALTH**

**ARTICLE 2**  
**FOOD & BEVERAGE ORDINANCE**

**10-2-1 CHAPTER 1: DEFINITIONS**

Unless the context specifically indicates otherwise, the following definitions shall apply in the interpretation and enforcement of this Ordinance.

10-2-1-1 BOARD shall mean the Allen County Department of Health of Allen County, Indiana.

10-2-1-2 COMMISSARY shall mean any food establishment, including, but not limited to, any place in which food, beverages, food or beverage ingredients, food service containers or supplies are kept, handled, prepared or stored for the purpose of directly supplying food or beverage vending machines or other food establishments.

10-2-1-3 CRITICAL VIOLATION shall mean a violation, if in noncompliance, that is more likely than other violations to significantly contribute to food contamination, illness, or an environmental health hazard.

10-2-1-4 COMMUNICABLE DISEASE shall include those diseases which epidemiological evidence indicates can be transmitted through food preparation or service.

*\*Any reference in this Ordinance to a provision of the Indiana Code (IC) or the Indiana Administrative Code (IAC) shall be understood as a reference to the code provision as it exists presently, and as it may be amended in the future.*

- 10-2-1-5        DEPARTMENT shall mean the Allen County Department of Health of Allen County, Indiana, and/or its employees.
- 10-2-1-6        FARMERS' MARKET means a common facility where two or more farmers or growers gather on a regular basis to sell a variety of fruits, vegetables, and other farm products directly to consumers.
- 10-2-1-7        FARMERS' MARKET ESTABLISHMENT shall mean any food establishment in any enclosure, stall or other facility, whether fixed or mobile, operating at a Farmers' Market at one site or location for a period of time not in excess of fourteen (14) consecutive days, where the only food offered with or without charge is prepackaged potentially hazardous food or potentially hazardous food samples.
- 10-2-1-8        FOOD shall mean all articles used for food, drink, confectionery, or condiment whether simple, mixed, or compound, and all substances or ingredients used in the preparation of the aforementioned articles.
- 10-2-1-9        FOOD EMPLOYEE shall mean an individual working with food, food equipment or utensils, or food-contact surfaces.
- 10-2-1-10       FOOD OR BEVERAGE VENDING MACHINE shall mean any self-service device offered for public use which, upon insertion of paper money, coins or tokens, or by other similar means, dispenses unit servings of food or beverage products, either in bulk or in package.
- 10-2-1-11       HEALTH COMMISSIONER shall mean the Health Officer of the Allen County Department of Health of Allen County, Indiana, and/or his/her authorized representatives.
- 10-2-1-12       IMMINENT HEALTH HAZARD shall mean a significant threat or danger to health that is considered to exist when there is evidence sufficient to show that a product, practice, circumstance, or event creates a situation that requires immediate correction or cessation of operation to prevent injury or illness based on:
- A.        the number of potential injuries or illnesses; and
  - B.        the nature, severity, and duration of the anticipated injury or illness.
- 10-2-1-13       MACHINE LOCATION shall include, but not be limited to, any room, enclosure, space or area where one or more food or beverage vending machines are installed or operated.
- 10-2-1-14       MENU TYPE shall mean a designation of risk that is based on the types of foods and the extent to which the foods are handled within each establishment. Inspection frequency shall be based on these designations of risk. The Menu Types shall be designated as follows:

**Type 1:** Establishments handling or offering only:

*\*Any reference in this Ordinance to a provision of the Indiana Code (IC) or the Indiana Administrative Code (IAC) shall be understood as a reference to the code provision as it exists presently, and as it may be amended in the future.*

- (a) pre-packaged potentially hazardous foods; and/or
- (b) limited preparation of open, non-potentially hazardous foods.

**Type 2:** Establishments handling or offering any of the following:

- (a) a limited menu with preparation of only 1 or 2 potentially hazardous foods;
- (b) products containing pre-packaged raw ingredients that are cooked or prepared to order and require minimal assembly; or
- (c) no advance preparation of foods for next day service.

This menu type may include retail market food operations without deli or seafood departments.

**Type 3:** Establishments handling or offering any of the following:

- (a) more than 2 potentially hazardous food products requiring cooking, cooling, and/or reheating; or
- (b) food products that are prepared in advance for next day service.

This menu type may include retail market food operations with deli and seafood departments and establishments that serve a highly susceptible population.

**Type 4:** Establishments handling or offering food products that require the extensive handling of raw ingredients and actual food processing is occurring at the retail level (such as smoking, curing, reduced oxygen packaging, etc.).

10-2-1-15 **MOBILE FOOD MARKET ESTABLISHMENT** shall mean any Food Establishment without a fixed location, capable of being readily moved intact from location to location, where food, intended for human consumption outside of the facility, is stored, sold or offered in pre-packaged form, fresh or frozen.

10-2-1-16 **MOBILE FOOD SERVICE ESTABLISHMENT** shall mean any Food Establishment, without a fixed location, capable of being readily moved intact from location to location, where food, intended for human consumption outside the facility is stored, sold or offered in open form, fresh or frozen.

10-2-1-17 **NON-CRITICAL VIOLATIONS** shall mean violations designated as being non-critical in \*410 IAC 7-24.

10-2-1-18 **OPERATE** and/or its derivatives shall mean one that operates a business or operates as a business.

10-2-1-19 **PERMIT** shall mean a certificate and/or a permit number of a size and style previously approved by the Health Commissioner.

10-2-1-20 **PERMITTEE** shall include the person who is the owner of or responsible for the operation of a food establishment which shall include his/her/its authorized representative and who shall be responsible for the acceptance of all notices at the address listed on the application for any permit issued hereunder.

10-2-1-21 **NEW PERMITTEE** shall be deemed to be any person, other than an immediate family member (specifically a spouse, parent, child or sibling; or a spouse of a parent, child or sibling), who acquires, through an asset purchase agreement,

*\*Any reference in this Ordinance to a provision of the Indiana Code (IC) or the Indiana Administrative Code (IAC) shall be understood as a reference to the code provision as it exists presently, and as it may be amended in the future.*

stock purchase agreement, merger, consolidation, gift or other similar method, more than fifty percent (50%) of the control of a prior permittee's business.

10-2-1-22 PERSON shall include, but not be limited to, an individual, corporation, firm, partnership, proprietorship, association, business organization, municipality or any other group acting as a unit, as well as an individual, trust or estate, or the agent or legal representative thereof.

10-2-1-23 PERSON IN CHARGE means the individual present at a retail food establishment who is responsible for the operation at the time of inspection.

10-2-1-24 POTENTIALLY HAZARDOUS FOOD shall mean:

(A) a food that is natural or synthetic and requires temperature control because it is in a form capable of supporting the following:

(1) the rapid and progressive growth of infectious or toxigenic micro-organisms;

(2) the growth and toxin production of Clostridium botulinum; or

(3) in raw shell eggs, the growth of Salmonella enteritidis.

(B) The term "potentially hazardous" includes but is not limited to the following:

(1) a food of animal origin that is raw or heat-treated;

(2) a food of plant origin that is heat-treated or consists of raw seed sprouts;

(3) cut melons; and

(4) garlic-in-oil mixtures that are not modified in a way that results in mixtures that do not support growth as specified under subsection (A).

(C) The term "potentially hazardous" does not include any of the following:

(1) An air-cooled hard-boiled egg with shell intact.

(2) A food with an aw value of eighty-five hundredths (0.85) or less.

(3) A food with a pH level of four and six-tenths (4.6) or below when measured at seventy-five (75) degrees Fahrenheit.

(4) A food, in an unopened hermetically sealed container, that is commercially processed to achieve and maintain commercial sterility under conditions of non-refrigerated storage and distribution.

(5) A food for which laboratory evidence demonstrates that the rapid and progressive growth of infectious or toxigenic micro-organisms or the growth of Salmonella enteritidis in eggs or Clostridium botulinum cannot occur, such as food that:

a) has an aw and a pH that are above the levels specified under subdivisions (2) and (3); and

(b) may contain a preservative, other barrier to the growth of micro-organisms, or a combination of barriers that inhibit the growth of micro-organisms.

(1) A food that may contain an infectious or toxigenic micro-organism or chemical or physical contaminant at a level

sufficient to cause illness, but that does not support the growth of micro-organisms as specified under subsection (A).

10-2-1-25

RETAIL FOOD ESTABLISHMENT shall mean an operation that:

- (A) stores, prepares, packages, serves, vends, or otherwise provides food for human consumption, such as:
  - (1) a restaurant;
  - (2) a satellite or catered feeding location;
  - (3) a catering operation if the operation provides food directly to a consumer or to a conveyance used to transport people;
  - (4) a market;
  - (5) a grocery store;
  - (6) a convenience store;
  - (7) a vending location;
  - (8) a conveyance used to transport people;
  - (9) an institution;
  - (10) a food bank;
  - (11) a commissary;
  - (12) a cottage industry; and
  - (13) relinquishes possession of food to a consumer directly or indirectly through a delivery service, such as home delivery of grocery orders or restaurant takeout orders, or delivery service that is provided by common carriers.
- (B) The term “retail food establishment” includes but is not limited to the following:
  - (1) An element of the operation, such as a transportation vehicle or a central preparation facility that supplies a vending location or satellite feeding location unless the vending or feeding location is permitted by the regulatory authority.
  - (2) An operation that is conducted in a mobile, stationary, temporary, or permanent facility or location, where consumption is on or off the premises, and regardless of whether there is a charge for the food.
- (C) The term “retail food establishment” does not include the following:
  - (1) An establishment that offers only prepackaged foods that are not potentially hazardous.
  - (2) A produce stand that only offers whole, uncut fresh fruits and vegetables.
  - (3) A food processing plant operated under IC 16-42-5.
  - (4) A private home where food is prepared by a member of an organization that is operating under IC 16-42-5-4.
  - (5) An area where food that is prepared as specified in subdivision (4) is sold or offered for human consumption.
  - (6) A bed and breakfast establishment as defined and regulated under IC 16-41-31 and 410 IAC 7-15.5.
  - (7) A private home that receives catered or home-delivered food.
  - (8) A private home which provides childcare and is not subject to IC 12-13-5.
  - (9) A private home which provides residential care and is not subject to IC 12-15 and/or IC 23-2-4.

*\*Any reference in this Ordinance to a provision of the Indiana Code (IC) or the Indiana Administrative Code (IAC) shall be understood as a reference to the code provision as it exists presently, and as it may be amended in the future.*

(10) A private home.

- 10-2-1-26      RETAIL FOOD MARKET ESTABLISHMENT shall mean any Food Establishment, including, but not limited to, a grocery, convenience store, salvage store, discount store, meat market, poultry market, fish market, fresh fruit and vegetable market, delicatessen, confectionery, candy kitchen, nut store, retail bakery store, or any Food Establishment, whether fixed or movable, where food, intended for human consumption off the premises, is manufactured, produced, stored, prepared, handled, sold or offered with or without charge. Provided, however, that the provisions of this Ordinance shall not include meat or poultry slaughterhouses.
- 10-2-1-27      RETAIL FOOD SERVICE ESTABLISHMENT shall mean any Food Establishment, including, but not limited to, a restaurant, coffee shop, cafeteria, short-order cafe, luncheonette, tavern, sandwich stand, soda fountain, commissary, drive-in restaurant, drink establishment, snack bar, food counter, dining room, food catering facility, industrial feeding establishment, private, public, or non-profit organization or institution routinely serving food, and any other eating or drinking establishment, where food or drink products are prepared, served or provided for human consumption with or without charge. The term does not include private homes where food is prepared or served for individual family consumption. Outdoor cooking and/or smoking of meat products will be allowed on the premises of a licensed retail food service establishment if all minimum food safety and other applicable Building, Fire and Planning/Zoning guidelines are met. All food preparation steps other than cooking and/or smoking of the meat products and the actual sale of the food products must take place inside the retail food service establishment.
- 10-2-1-28      RETAIL FOOD SERVICE OFF-SITE ESTABLISHMENT shall mean any licensed Retail Food Service Establishment that routinely operates Temporary Food Service Establishments off of their licensed premises.
- 10-2-1-29      SEASONAL MOBILE ICE CREAM MARKET ESTABLISHMENT shall mean any Food Establishment, without a fixed location, capable of being readily moved intact from location to location, where the only potentially hazardous foods sold are pre-packaged ice cream products.
- 10-2-1-30      TEMPORARY FOOD MARKET ESTABLISHMENT shall mean any Food Establishment in any enclosure, stall or other facility, whether fixed or mobile, operating at one site or location for a period of time not in excess of fourteen (14) consecutive days, in conjunction with a single event or celebration where only pre-packaged food products intended for human consumption off the premises are offered with or without charge.
- 10-2-1-31      TEMPORARY FOOD SERVICE ESTABLISHMENT shall mean any Food Establishment in any enclosure, stall or other facility, whether fixed or mobile, operating at one site or location for a period of time not in excess of fourteen (14) consecutive days, in conjunction with a single event or celebration, where food in

*\*Any reference in this Ordinance to a provision of the Indiana Code (IC) or the Indiana Administrative Code (IAC) shall be understood as a reference to the code provision as it exists presently, and as it may be amended in the future.*

open form intended for human consumption off the premises is offered with or without charge. .

10-2-1-32 UTENSIL shall mean any implement used in the storage, preparation, service, consumption, display, transportation, or cleaning of food or drink products.

10-2-1-33 VENDING OPERATOR shall include, but not be limited to, any person who by contract, agreement, or ownership, takes responsibility for furnishing, installing, servicing, operating, or maintaining one or more food or beverage vending machines which dispense potentially hazardous food or beverage products.

10-2-1-34 VENUE ESTABLISHMENT shall mean any venue-type facility, such as an arena, coliseum, stadium, or concert hall, wherein one entity operates over twenty (20) concessions, stands, or food units (whether fixed or mobile) inside the facility. A permit must be issued for each individual building or facility regardless of whether two buildings or facilities are located on the same property and/or owned by the same entity.

## **10-2-2 CHAPTER 2: PERMITS**

10-2-2-1 PERMIT REQUIREMENTS: It shall be unlawful for any person to sell or give away (with or without charge or by being given a donation) any food or to operate a Food Establishment or to act, whether actually or ostensibly, as a Food Establishment operator in Allen County, Indiana, who does not possess a valid permit for each such operation from the Health Commissioner, unless otherwise exempted from the provisions of this Ordinance. No Food Establishment may open for operations in any capacity (food preparation, sales, or similar activities) until they have received approval to do so during the Department's final opening inspection where it is determined that all requirements herein have been met.

10-2-2-2 POSTING: All permits shall be posted in a conspicuous place in view of the public in each Food Establishment. With respect to Mobile Food Establishments, the name, address and telephone number of the permittee shall be conspicuously displayed on each licensed mobile unit not less than two (2) inches in height. In addition, a copy of the permit must be located in each mobile unit at all times for purposes of identification.

10-2-2-3 SEPARATE PERMITS: A separate permit shall be required for each food establishment. This requirement as to separate permits, however, shall not apply to those arrangements where a bar and restaurant are being operated under a management agreement as long as the applicant on the Food Establishment permit is the same person as the holder of the Alcoholic Beverage Commission (ABC) permit.

10-2-2-4 APPLICATION (Food Establishment, non-vending): The application for a Food Establishment permit shall be made to the Health Commissioner on forms provided by the Health Commissioner. Such forms shall show, among other information which may be required by the Health Commissioner, the legal name, address, and telephone number of the permittee, the name under which said permittee intends to operate, the address of the establishment, the name of the Person in Charge, and the number of food establishment personnel employed at

*\*Any reference in this Ordinance to a provision of the Indiana Code (IC) or the Indiana Administrative Code (IAC) shall be understood as a reference to the code provision as it exists presently, and as it may be amended in the future.*

the establishment (which shall include the permittee's manager, or other supervisory personnel). Said application shall include the signature of the permittee or his/her authorized representative.

10-2-2-5 APPLICATION (Vending Machine): The application for a Food or Beverage Vending Machine operator permit shall be made to the Health Commissioner on forms provided by the Health Commissioner. Such forms shall show, among other information which may be required by the Health Commissioner, the legal name, address, and telephone number of the permittee, the name under which said permittee intends to operate, the address of the establishment, and the number of vending machines intended to be operated. In addition, said application shall specify the location of any commissary or commissaries, the number and type of food or beverage vending machines, the locations maintained by the permittee where supplies are kept or where vending machines are repaired or renovated, and the type and form of the food or beverages to be dispensed from the vending machines. Said application shall include the signature of the permittee or his/her authorized representative.

10-2-2-6 PERMIT ISSUANCE: A permit shall be issued subsequent to application and final inspection and upon a determination by the Health Commissioner that the permittee has complied with all of the applicable provisions of this Ordinance, and tendered the appropriate fee as hereinafter specified.

10-2-2-7 TERM.

A. The permit for a Food Establishment, Retail Food Service Establishment, Retail Food Service Off-Site Establishment, Retail Food Market Establishment, , Mobile Food Service Establishment, Mobile Food Market Establishment, Seasonal Mobile Ice Cream Market Establishment, , Vending Operator, Venue Establishment, Commissary, Farmers' Market or Food Processing Establishment shall be for a term of one (1) year beginning upon the date of issue.

1. Said permits shall be renewed annually on or before the fifteenth (15th) day of the anniversary month. However, if the 15th of the anniversary month falls on a weekend or government-recognized holiday, the permittee will be given until the following business day to renew the permit without late fees being assessed.

B. The permit for a Temporary Food Service Establishment or a Temporary Food Market Establishment shall be for a term not to exceed fourteen (14) consecutive days.

10-2-2-8 PERMIT NOT TRANSFERABLE: No permit issued to any permittee under this Ordinance shall be transferable between locations or between operators. Upon change of location, operator or owner, all existing permits become void. Any new permittee taking over a continuously operating Food Establishment shall be entitled to a nonrenewable probationary permit.

*\*Any reference in this Ordinance to a provision of the Indiana Code (IC) or the Indiana Administrative Code (IAC) shall be understood as a reference to the code provision as it exists presently, and as it may be amended in the future.*



A. The probationary permit will be issued at the time the new permittee makes application for an annual Food Establishment permit and pays all application and permit fees.

B. The probationary permit will be valid for a period of ninety (90 days) which shall commence on the date of application (or date of actual ownership change, whichever is earlier), and shall not be subject to any extensions.

C. The new permittee must obtain its annual permit within the 90-day probationary period or its permit will be revoked (resulting in the closure of the establishment). In addition, the annual permit will only be issued after the permittee has complied with all of the applicable code requirements.

D. The annual permit issued prior to the expiration of the 90-day probationary period shall have as its anniversary date, the original date of application (or date of actual ownership change, whichever is earlier) for the probationary permit.

10-2-2-9 LAPSE OF PERMIT: Each permit issued hereunder shall automatically lapse and be void and of no further force or effect unless the permittee actually begins operations under said permit within a time period which is equal to twenty-five percent (25%) of the life of the permit issued.

**10-2-3 CHAPTER 3: CONSTRUCTION, RENOVATION, AND ALTERATION OF FOOD ESTABLISHMENTS AND VENDING MACHINES**

10-2-3-1 All Food Establishments which are hereinafter constructed or renovated shall conform in their construction to the applicable requirements of 410 IAC 7-24 as well as with this Ordinance and all applicable Building, Zoning and Fire codes.

10-2-3-2 PLANS: No construction, renovation or alteration shall begin without the construction, renovation or alteration plans being first submitted to and approved by the Health Commissioner.

A. Failure to obtain the Health Commissioner's approval, shall be the basis for the issuance of an immediate stop work order by the Health Commissioner.

B. Failure to submit plans prior to constructing a new Food Establishment shall result in a fine of fifty dollars (\$50.00).

C. If an existing licensed Food Establishment fails to submit plans prior to any structural additions and/or interior remodeling affecting any area of the food establishment where food operations take place, it shall be subject to a fine of fifty dollars (\$50.00).

1. 1. If an existing licensed Food Establishment receives a fine under 10-2-3-2(C), and again violates section 10-2-3-2(C), the fine shall increase in fifty dollar (\$50.00) increments for each occurrence not to exceed five hundred dollars (\$500.00) in total.

All fines listed above must be paid prior to the issuance of any new Food Establishment permit. In the event that an existing licensed food establishment is

*\*Any reference in this Ordinance to a provision of the Indiana Code (IC) or the Indiana Administrative Code (IAC) shall be understood as a reference to the code provision as it exists presently, and as it may be amended in the future.*

fined under this section and fails to pay the fine within 90 days of notification, its Food Establishment permit shall be immediately suspended.

10-2-3-3 EQUIPMENT: All equipment installed in a Food Establishment for use in the cleansing and bactericidal treatment of utensils, or in the preparation, storing, handling, cleaning, sanitizing, serving, or displaying of any food or beverage products, shall be of a type conforming with all applicable requirements with regard to proper holding temperatures, design, construction, location, and materials, as required in 410 IAC 7-24.

10-2-3-4 The Health Commissioner may prohibit the further use of any equipment that fails to meet the requirements of 10-2-3-3.

10-2-3-5 All Food Establishments must fully comply at all times with all local and state Building, Zoning and Fire codes. Failure of any permittee to fully comply with any applicable Building, Zoning, and Fire code shall be the basis for the suspension, immediate closure or revocation of any permit issued hereunder.

#### **10-2-4 CHAPTER 4: APPLICATION AND PERMIT FEES**

10-2-4-1 PERMIT FEES: Prior to the issuance of any permit, each permittee shall first tender to the Treasurer of Allen County, Indiana, a permit fee or fees, which shall be deposited into the Allen County Health Fund for each such operation in accordance with the classification as established in Allen County Code, Title 10, Article 14 (Allen County Department of Health Fee Ordinance) and for the services as delineated below.

10-2-4-2 APPLICATION, CONSTRUCTION/RENOVATION FEES, AND PLAN SUBMITTAL PROCESS AND FEES (all specific fee amounts are delineated in Allen County Code, Title 10, Article 14 (Allen County Department of Health Fee Ordinance)):

- A. Each new Food Establishment or any existing Food Establishment which will undergo any new construction, renovation or alteration shall be required to pay a fee for the review of plans and specifications and for the initial inspection(s) of the Food Establishment to ensure the facility will be constructed in accordance with 410 IAC 7-24. This fee is in addition to the permit fee.
- B. Each new Permittee of a Food Establishment which is in existence and has been operating on a continual basis up to the time that the new permittee takes over the ownership or possession of said Food Establishment, shall be required to pay a fee for the initial inspection of the Food Establishment. This fee is in addition to the permit fee.
- C. A full set of plans must be submitted to the Department prior to any construction, renovation or alteration begins in a proposed or existing Food Establishment. No construction, alternation or renovation may begin in a proposed or existing Food Establishment until the Department has completed the Plan Review process and communicated approval to the Food Establishment.

10-2-4-3 Should any permittee fail to obtain the permit prior to the opening of the Food Establishment for business, or should any permittee fail to renew his/her permit on or before the anniversary date of said permit, then said annual fee shall be

*\*Any reference in this Ordinance to a provision of the Indiana Code (IC) or the Indiana Administrative Code (IAC) shall be understood as a reference to the code provision as it exists presently, and as it may be amended in the future.*

125% of the annual fee set forth above for that particular Food Establishment. Nothing in this section shall prevent the Health Commissioner from exercising any other of his/her rights and/or duties regarding suspension, closure, or revocation of the permit with regard to any Food Establishment.

10-2-4-4 A. Should any permittee fail to obtain a Temporary Food Service Establishment or Temporary Food Market Establishment permit twenty-four (24) business hours prior to the scheduled date of operation, a penalty of fifty dollars (\$50.00) shall be assessed to the total fee amount of the permit for the first violation. Each additional such violation by the same permittee will carry a penalty that is escalated by an additional \$25 each time of this occurrence.

B. Should any permittee of a Temporary Food Service Establishment or Temporary Food Market Establishment fail to arrive at their designated location of operation within one hour (1 hour) of their self-designated time of operation, a penalty of twenty-five dollars (\$25.00) shall be assessed to the permittee payable within seven (7) days of the date of proposed operation. No future permits will be granted to the permittee until all outstanding penalty fees are paid in full.

10-2-4-5 Should any permittee/potential permittee begin operations (open for food service, sales or preparation) in a temporary, mobile, off-site or annual location/Food Establishment prior to the Department's final opening inspection where operational approval is granted, a penalty of \$50.00 shall be assessed to the permittee/potential permittee. Each additional such violation by the same potential permittee/permittee will carry a penalty that is escalated by an additional \$50 each time.

10-2-4-5 EXEMPTIONS:

A. Food Establishments or vending operators which comply with the terms and provisions of IC 16-18-2-137 shall be exempt from the provisions of this Ordinance. Church-sponsored soup kitchens, church-operated food pantries, not-for-profit feeding sites for children, or senior citizen feeding sites which are required to obtain a permit due to not meeting the exemptions provided for in IC 16-18-2-137, shall meet all applicable requirements and undergo all required inspections, but shall be exempt from the fee provisions of this Ordinance.

B. Food Establishments which sell or offer for sale directly to the consumer only the following items shall be exempt from the provisions of this Ordinance:

1. Pre-packaged confections (such as hard candy, candy bars, or chocolates);
2. Pre-packaged, non-potentially hazardous foods as follows:
  - a. Chewing gum;
  - b. Nuts, potato chips, pretzels, crackers, cookies, doughnuts, muffins, fruit snacks, and snack cakes;
  - c. Coffee (either in open or pre-packaged form);
  - d. Popcorn (either in open or pre-packaged form); or
  - e. Juice or soft drink beverages.

*\*Any reference in this Ordinance to a provision of the Indiana Code (IC) or the Indiana Administrative Code (IAC) shall be understood as a reference to the code provision as it exists presently, and as it may be amended in the future.*

- C. Vending machines which dispense only non-potentially hazardous food or drink products in pre-packaged or pre-bottled form, shall be exempt from the provisions of this Ordinance.

**10-2-5 CHAPTER 5: MINIMUM SANITARY AND CERTIFICATION REQUIREMENTS FOR FOOD ESTABLISHMENTS, VENDING OPERATORS, FOOD AND BEVERAGE VENDING MACHINES, AND BED & BREAKFAST ESTABLISHMENTS**

- 10-2-5-1 All Food Establishments shall comply with the minimum sanitary requirements specified by the Indiana Department of Health (IDOH) as provided in 410 IAC 7-24 and 410 IAC 7-22.
- 10-2-5-2 Annual Retail Food Service and Market Establishments shall be required to tap into a publicly supplied water system when said system is located within three hundred (300) feet of the boundary lines of the real estate upon which said Food Establishment is located, when said system is adequate to handle an additional tap-in, and when the permittee has direct access to said system or can obtain access to said system by means of easements or other necessary grants of authority. In the case where the permittee does not have direct access to said system, the permittee shall be required to make a diligent and reasonable effort to obtain the necessary easements and/or other grants of authority to obtain access to the system.
- 10-2-5-3 The Board hereby incorporates by reference all rules and regulations established by the Indiana State Department of Health regarding the operation of Bed and Breakfast Establishments as set forth in the Indiana Administrative Code and all such establishments shall abide by said rules and regulations as they now exist and as are amended hereafter.

**10-2-6 CHAPTER 6: EDUCATION**

- 10-2-6-1 **FOOD SAFETY EDUCATION:** Every person who is employed, or is about to be employed in a Food Establishment, shall be familiar with the requirements of 410 IAC 7-24. A copy of the 410 IAC 7-24 shall be kept on the premises at all times (or easily accessible at all times electronically). All food establishment personnel employed by a Food Establishment may be required to attend a food safety education program given by the Department for any of the following reasons:
1. If the establishment is subjected to immediate closure by the Health Commissioner and the education program is deemed necessary by the Health Commissioner.
  2. If the establishment is cited with three (3) or more critical violations on two (2) out of three (3) consecutive regular inspections, whether or not the critical violations are the same on each inspection.

*\*Any reference in this Ordinance to a provision of the Indiana Code (IC) or the Indiana Administrative Code (IAC) shall be understood as a reference to the code provision as it exists presently, and as it may be amended in the future.*

3. If the Health Commissioner determines the necessity of a Food Safety Education program as a result of a hearing dealing with violations of this Ordinance.

The Department shall charge a flat fee as delineated in Allen County Code, Title 10, Article 14 to each Food Establishment for conducting the food handler education program regardless of whether or not attendance is voluntary or involuntary in nature by order of the Health Commissioner.

## 10-2-7 CHAPTER 7: INSPECTIONS

- 10-2-7-1 FREQUENCY OF INSPECTION: Food Establishments will be inspected on the following frequency based on their assigned Menu Type or more/less frequently as determined by the Health Commissioner:

<u>Menu Type</u>	<u>Inspection Frequency</u>
1	at least 1 time per year
2 & 3	at least 2 times per year
4	at least 3 times per year

However, all annual food establishments (with the exception of Retail Food Service Off-Site Establishments), operating (6) months per year or less, shall be inspected at least one (1) time per calendar year. Seasonal Mobile Ice Cream Market Establishments shall be inspected at least once each permit period.

- 10-2-7-2 INSPECTION FREQUENCY OF TEMPORARY FOOD SERVICE, TEMPORARY FOOD MARKET ESTABLISHMENTS, AND RETAIL FOOD SERVICE OFF-SITE ESTABLISHMENTS: Each Temporary Food Service and Temporary Food Market Establishment for which a permit is required under the provisions of this Ordinance shall be inspected at least once in each forty-eight (48) hour period of operation. Each Retail Food Service Off-Site Establishment shall be inspected at least two (2) times each permit period.
- 10-2-7-3 AUTHORITY TO INSPECT AND COPY RECORDS: The permittee shall, upon the request of the Health Commissioner, permit access to all areas of every Food Establishment and shall permit inspection of, access to, and the copying of any and all records relating to establishment ownership, as well as any and all records relating to food and beverage purchases, sources, storage, pest control, and overall sanitation of any said Food Establishment.

## 10-2-8 CHAPTER 8: VIOLATIONS

- 10-2-8-1 PROCEDURE WHEN VIOLATIONS ARE NOTED:

- A. If, during the inspection of any Food Establishment the Health Commissioner discovers the violation of any provision of Allen County Code, Title 10, Article 2, he/she shall issue a written report/order listing such violations and the remediation action(s) to be taken. A copy of said report/order shall be delivered to the permittee by hand delivery on-site, or by mailing the notice to the address listed by the permittee as the

*\*Any reference in this Ordinance to a provision of the Indiana Code (IC) or the Indiana Administrative Code (IAC) shall be understood as a reference to the code provision as it exists presently, and as it may be amended in the future.*

Establishment's mailing address on the permit application, or by electronic means, such as facsimile or electronic mail. If at any point following the inspection the permittee feels they have not received the report/order or would like an additional copy, the permittee may request an additional copy of the report/order by contacting the Department and they may request delivery by any means stated above.

- B. A copy of the written report/order shall be filed in the records of the Department after appropriate review by supervisory personnel.
- C. The Supervisor of the Food Division shall have the final approval authority on all food establishment inspection reports and related documents and reserves the right to make changes as deemed necessary in accordance with 410 IAC 7-24.

10-2-8-2 PERMIT SUSPENSION/CLOSURE: The Health Commissioner may order the suspension of any permit issued for a Food Establishment which order shall include the prohibition of any further sale or serving of food or beverages for the following reasons:

- A. Interference with the Health Commissioner, or his/her authorized representatives, in the performance of his/her duties. Interference shall be defined as the process of obstructing, hampering, blocking or threatening the Health Commissioner in the performance of his/her duties.
- B. As a result of the willful and/or continuous violation of any provision of this Ordinance.

10-2-8-3 OTHER PERMIT REVOCATION, SUSPENSION AND CLOSURE ORDERS

- A. Except as set forth in 10-2-3-2 or 10-2-8-3(A)(1), no suspension or revocation shall be ordered by the Health Commissioner except after a hearing held pursuant to 10-2-10-4.
  - 1. If the permit is for a Temporary Food Establishment, said suspension/closure may be ordered immediately if the Health Commissioner determines that a circumstance exists that jeopardizes public health requiring immediate closure. The permittee may request in writing that he/she be afforded a hearing within twenty-four (24) hours as set forth in 10-2-8-4.
- B. Notwithstanding any other provisions of this Ordinance, whenever the Health Commissioner, or his/her authorized representatives find unsanitary or other conditions, involving the operation of any Food Establishment or Food or Beverage Vending Machine operation which, in his/her reasonable belief, constitutes an imminent health hazard, he/she shall, without notice or hearing, issue and serve a written order upon the permittee requiring the immediate closure of its operations, shall cite the existence of said unsanitary condition(s) and shall specify the corrective action(s) to be taken.

*\*Any reference in this Ordinance to a provision of the Indiana Code (IC) or the Indiana Administrative Code (IAC) shall be understood as a reference to the code provision as it exists presently, and as it may be amended in the future.*

1. Such order shall be effective immediately.
2. Upon written request to the Health Commissioner, the permittee shall be afforded a hearing on the next business day as set forth in 10-2-8-4.
3. The Health Commissioner or his/her representative shall make a re-inspection upon the request of the permittee once all items requiring correction have been made. When the Health Commissioner determines that the necessary corrective action(s) have been taken, operation of the Food Establishment may be resumed. All re-inspections conducted at the request of the permittee after a written order for immediate closure has been issued by the Health Commissioner or his/her authorized representative will be conducted as soon as possible. The first re-inspection visit will require no inspection fee. If, however, upon re-inspection, the Health Commissioner or his/her authorized representative finds that the permittee has failed to complete all necessary corrective action(s) as stated when they requested the re-inspection in order to resume operations, the permittee shall be assessed a repetitive re-inspection visit fine as described below for all subsequent re-inspections conducted by the Department upon request of the permittee:
  - a. The Department shall assess a fine of fifty dollars (\$50.00) for all subsequent re-inspections conducted at the request of the permittee during normal (Health Department) business hours.
  - b. The Department shall assess a fine of one hundred dollars (\$100.00) for all subsequent re-inspections conducted at the request of the permittee outside of normal (Health Department) business hours.
  - c. Each subsequent request for re-inspection conducted after the primary re-inspection will be considered a separate inspection and shall be subject to a fine for repetitive re-inspection visits as outlined above.
  - d. Any fine assessed as outlined above must be paid in full on or before the close of the next business day and must be paid at the Allen County Department of Health location as no monies are accepted in the field.

10-2-8-4      HEARING

- A. All hearings required under this section, except those set forth in 10-2-8-3(A)(1), shall be held only upon at least ten (10) days written notice to the permittee of time, place and nature thereof. The notice of hearing

*\*Any reference in this Ordinance to a provision of the Indiana Code (IC) or the Indiana Administrative Code (IAC) shall be understood as a reference to the code provision as it exists presently, and as it may be amended in the future.*

shall be served upon the permittee by leaving or mailing by Certified Mail the notice to the address listed on the permit application as the permittee's mailing address or such other address as the permittee shall designate in writing to the Health Commissioner.

- B. At any hearing required under this Ordinance, every person who is a party to such proceedings shall have the right to submit evidence, to cross-examine witnesses and to be represented by legal counsel. All such hearings shall be conducted in an informal manner, but irrelevant, immaterial or unduly repetitive evidence may be excluded.
- C. Upon the conclusion of such hearing, the Health Commissioner shall enter a final order, subject to the right of appeal in accordance with 10-2-8-5.

10-2-8-5

APPEAL

- A. Any permittee aggrieved by any final order of the Health Commissioner 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 Commissioner'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 Commissioner and permittee 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 Commissioner and the permittee filing the request.
- C. The notice of hearing shall be served upon the permittee by leaving or mailing by Certified Mail the notice to the address listed on the permit application as the permittee's mailing address or such other address as the permittee 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 Commissioner; provided, that upon written request by the permittee or the Health Commissioner, 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, shall, at the request of either party be reproduced by said Board in the form of a transcript, a copy of which shall be available to any party.
- E. The expense of such proceedings shall be charged to the permittee who applied for the review, except that copies of transcripts shall be at the expense of the party requesting the same. At the time the transcript is requested, the Board may require the permittee to pay a deposit in an amount determined by the Board to be necessary to secure such expense(s).

*\*Any reference in this Ordinance to a provision of the Indiana Code (IC) or the Indiana Administrative Code (IAC) shall be understood as a reference to the code provision as it exists presently, and as it may be amended in the future.*



- F. The Board shall make written findings of facts and shall enter its final order or determination of the matter in writing.

## **10-2-9 CHAPTER 9: ENFORCEMENT**

- 10-2-9-1 **ENFORCEMENT:** It shall be the duty of the Health Commissioner to enforce the provisions of this Ordinance. Any permit issued in conflict with the provisions of this Ordinance shall be null and void. A violation of an order issued by the Health Commissioner or Board shall be considered to be a violation of this Ordinance.
- 10-2-9-2 **VIOLATIONS:** Whenever the Health Commissioner determines that any Food Establishment, Vending Operator, food establishment personnel or any other person, is in willful violation of any of the provisions of this Ordinance, the Health Commissioner shall furnish evidence of said willful violation to the Prosecuting Attorney of Allen County, Indiana or the attorney for the Department or Board who shall seek all appropriate legal remedies against the person(s) violating said provisions of this Ordinance.
- 10-2-9-3 **PENALTY:** Any person who willfully violates any of the provisions of this Ordinance shall be subject to a fine as set forth in 410 IAC 7-23, or as otherwise delineated in this ordinance. When willful and/or violations of this ordinance are documented for which a fine is delineated in 410 IAC 7-23, such fines can be issued immediately or as part of a judgment from a hearing set forth in 10-2-8-4.
- 10-2-9-4 **INJUNCTION:** The Health Commissioner may bring an action for an injunction in the Circuit or Superior Court of Allen County, Indiana, to restrain any person from violating the provisions of this Ordinance, to cause such violation(s) to be prevented, abated or removed.
- 10-2-9-5 **EXPENSE:** Any person violating any of the provisions of this Ordinance shall be liable to the Allen County Department of Health for the expense, loss or damage occasioned by reason of such violation, including reasonable attorney's fees and costs.
- 10-2-9-6 **CUMULATIVE:** The remedies provided in this section shall be cumulative, and not exclusive, and shall be in addition to any other remedy provided by law.

## **10-2-10 CHAPTER 10: MISCELLANEOUS**

- 10-2-10-1 **REPEAL:** All ordinances or parts of ordinances in conflict herewith are hereby repealed.
- 10-2-10-2 **SEVERABILITY:** Invalidity of any section, clause, sentence or provision of this Ordinance shall not affect the validity of any other part of this Ordinance.

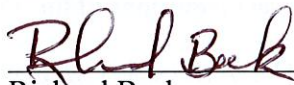
*\*Any reference in this Ordinance to a provision of the Indiana Code (IC) or the Indiana Administrative Code (IAC) shall be understood as a reference to the code provision as it exists presently, and as it may be amended in the future.*

**10-2-11 CHAPTER 11: EFFECTIVE DATE**

10-2-11-1 This ordinance shall be effect on April 11, 2023.  
Passed this 24 day of February, 2023.

THE BOARD OF COMMISSIONERS  
OF THE COUNTY OF ALLEN, INDIANA

  
\_\_\_\_\_  
F. Nelson Peters

\_\_\_\_\_  
Therese M. Brown  
  
\_\_\_\_\_  
Richard Beck

ATTEST:  
  
\_\_\_\_\_  
Nicholas Jordan, Allen County Auditor