

BOARD OF COMMISSIONERS OF THE COUNTY OF ALLEN

ORDINANCE DATED: February 24, 2023

ORDINANCE NUMBER: 02-24-23-07

WHEREAS, the Indiana Department of Health has, pursuant to *Indiana Code 8-9-10 and Indiana Code 16-19-3-4, adopted rules to regulate the sanitary operation of railroad camp cars; and

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

WHEREAS, there exists a very real and distinct possibility of the transmission of serious infectious diseases or injurious condition when railroad camp cars are not kept in a safe and sanitary conditions for those who must live in them;

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 9

RAILROAD CAMP CAR INSPECTION ORDINANCE

10-9-1 CHAPTER 1: DEFINITIONS

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

10-9-1-1 BOARD shall mean the Allen County Board of Health of Fort Wayne, Allen County, Indiana.

10-9-1-2 COMMUNICABLE DISEASE shall include those diseases which epidemiological evidence indicates can be transmitted through food preparation or service.

10-9-1-3 DEPARTMENT shall mean the Allen County Department of Health of Fort Wayne, Allen County, Indiana, and/or its employees.

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- 10-9-1-4 HEALTH COMMISSIONER shall mean the Health Officer of the Allen County Department of Health of Fort Wayne, Allen County, Indiana, and/or his/her authorized representatives.
- 10-9-1-5 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 the number of potential injuries or illnesses; and the nature, severity, and duration of the anticipated injury or illness.
- 10-9-1-6 MOBILE CAMP shall mean a temporary location where at least two (2) railroad maintenance of way employees are housed.
- 10-9-1-7 PERMIT shall mean a certificate and/or a permit number of a size and style previously approved by the Health Commissioner.
- 10-9-1-8 PERMITTEE shall include the person who is the owner of or responsible for the operation of a railroad mobile camp 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.
- 10-9-1-9 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.
- 10-9-1-10 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.
- 10-9-1-11 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 open form intended for human consumption off the premises is offered with or without charge.

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10-9-2 CHAPTER 2: PERMITS

10-9-2-1 PERMIT REQUIREMENTS: It shall be unlawful for any person to operate a Mobile Camp or to act, whether actually or ostensibly, as a Mobile Camp 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.

10-9-2-2 POSTING: All permits shall be posted in a conspicuous place while in operation in Allen County and must be kept at the Mobile Camp site itself.

10-9-2-3 SEPARATE PERMITS: A separate permit shall be required for each Mobile Camp and for each time a Mobile Camp arrives into Allen County.

10-9-2-4 APPLICATION: The application for a Mobile Camp permit shall be made to the Health Commissioner on forms provided by the Health Commissioner no later than two (2) days upon arrival of the Mobile Camp and its employees into Allen County. 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 and general location of the Mobile Camp. Said application shall include the signature of the permittee or his/her authorized representative.

10-9-2-5 PERMIT ISSUANCE: A permit shall be issued subsequent to application and inspection and upon a determination by the Health Commissioner or his/her representative(s) that the permittee has complied with all of the applicable provisions of this Ordinance and tendered the appropriate fee as hereinafter specified.

10-9-2-6 TERM

A. The permit for a Mobile Camp shall be the number of consecutive days the Mobile Camp is located in Allen County and becomes void once the Mobile Camp leaves Allen County. A new permit must be obtained upon each arrival into Allen County.

B. Said permits shall be obtained no later than two (2) days upon the Mobile Camp and its employees' arrival into Allen County. If the application for such Mobile Camp is not submitted within the required two-day arrival period as stated above, a late fee of \$250 (per each day of violation) will also be added to the overall permit fee.

10-9-2-7 PERMIT NOT TRANSFERABLE: No permit issued to any permittee under this Ordinance shall be transferable between locations within Allen County, between operators, or between Mobile Camp visits in Allen County. Upon change of location or leaving the county after the initial inspection for which the permit was granted or upon change of operator or owner, all existing permits become void.

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**10-9-3 CHAPTER 3: RAILROAD EMPLOYEE AND MOBILE CAMP
SANITARY REQUIREMENTS**

10-9-3-1 All Mobile Camps which are hereinafter utilized to house railroad maintenance of way employees shall conform in their construction and overall operation to the applicable requirements of IC 16-19-3 and ^410 IAC 6-14, as amended, as well as with this Ordinance. The Board hereby incorporates by reference all rules and regulations established by the Indiana State Department of Health regarding the operation of Mobile Camps as set forth in the Indiana Administrative Code and all such establishments shall abide by said rules and regulations.

10-9-3-2 The Health Commissioner may prohibit the further housing of railroad maintenance of way employees in any Mobile Camp in Allen County that fails to meet the requirements of this ordinance of the requirements of IC 16-19-3 and 41-IAC 6-14, as amended.

10-9-4 CHAPTER 4: APPLICATION AND PERMIT FEES

10-9-4-1 FEES: Prior to the issuance of any permit, each permittee shall first tender to the Treasurer of Allen County, Indiana, a fee or fees, which shall be deposited into the County Health Fund for each such operation in accordance with the classification as established in Allen County Code, Title 14 (Allen County Department of Health Fee Ordinance).

If, upon application, the total numbers of cars submitted and paid for is not correct as determined upon actual on-site inspection and the actual total number of cars is higher, the late fee of \$250 will automatically be assessed in addition to the difference between the fee paid and the fee owed based on the actual number of cars, and payment will be required within twenty-four (24) business hours. If unpaid, the Mobile Camp will be immediately closed upon the expiration of that 24-hour period.

10-9-5 CHAPTER 5: INSPECTIONS

10-9-5-1 FREQUENCY OF INSPECTION: The Allen County Department of Health will inspect Mobile Camps within two (2) business days upon permit application of the Mobile Camp Operator and as often thereafter as necessary to ensure compliance with all applicable regulations with regard to operations as set forth in 10-9-3.

10-9-6 CHAPTER 6: VIOLATIONS

10-9-6-1 PROCEDURE WHEN VIOLATIONS ARE NOTED:

- A. If, during the inspection of any Mobile Camp the Health Commissioner discovers the violation of any provision of Allen County Code, Title 10, Article 9 or of 410 IAC 6-14 he/she shall issue a written report listing such violations and the remedial action(s) to be taken. A copy of said report shall be delivered to the permittee by hand delivering the report to him/her on site, or mailing the notice

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by Certified Mail to the address listed by the permittee as his/her/its mailing address on the permit application.

- B. A copy of the written order shall be filed in the records of the Department after appropriate review by supervisory personnel.

10-9-6-2 PERMIT SUSPENSION/CLOSURE: The Health Commissioner may order the suspension of any permit issued for a Mobile Camp which order shall include the prohibition of any further residential occupancy or preparing/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 or blocking 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 or applicable Indiana Administrative Code.

10-9-6-3 OTHER PERMIT REVOCATION, SUSPENSION AND CLOSURE ORDERS

- A. No permit suspension or revocation shall be ordered by the Health Commissioner except after a hearing held pursuant to 10-9-6-4.
- 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 Mobile Camp 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.
 - 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 10-9-6-4.
 - 3. The Health Commissioner or his/her representative shall make a reinspection upon the request of the permittee during normal (Health Department) business hours. When the Health Commissioner determines that the necessary corrective action(s) have been taken, operation of the Mobile Camp may be resumed.

10-9-6-4 HEARING

- A. All hearings required under this section, 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 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.

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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 10-9-6-5.

10-9-6-5 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 of Health (hereinafter "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).

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

10-9-7 **CHAPTER 7: ENFORCEMENT**

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- 10-9-7-1 **ENFORCEMENT:** It shall be the duty of the Health Commissioner or his/her representative(s) to enforce the provisions of this Ordinance and all applicable state statutes in this regard. 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.
- 10-9-7-2 **VIOLATIONS:** Whenever the Health Commissioner determines that any Mobile Camp or Mobile Camp 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 Board who shall seek all appropriate legal remedies against the person(s) violating said provisions of this Ordinance.
- 10-9-7-3 **PENALTY:** Any person who willfully violates any of the provisions of this Ordinance shall be subject to a fine of up to five hundred dollars (\$500) per day of the violation's existence.
- 10-9-7-4 **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.
- 10-9-7-5 **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.
- 10-9-7-6 **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.

10-9-8 CHAPTER 8: MISCELLANEOUS

- 10-9-8-1 **REPEAL:** All ordinances or parts of ordinances in conflict herewith are hereby repealed.
- 10-9-8-2 **SEVERABILITY:** Invalidity of any section, clause, sentence or provision of this Ordinance shall not affect the validity of any other part of this Ordinance.

10-9-9 CHAPTER 9: EFFECTIVE DATE

10-9-9-1 Effective Date

This Ordinance shall become effective as of April 1, 2023.

Passed this 24 day of February, 2023.

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THE BOARD OF COMMISSIONERS OF
THE COUNTY OF ALLEN

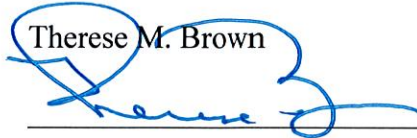
F. Nelson Peters



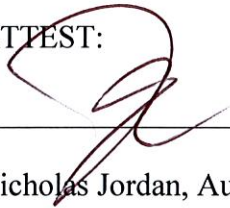
Richard Beck



Therese M. Brown



ATTEST:



Nicholas Jordan, Auditor

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