

TITLE 10 – PUBLIC HEALTH

ARTICLE 2

FORT WAYNE-ALLEN COUNTY DEPARTMENT OF HEALTH  
FOOD AND 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 Fort Wayne - Allen County Department of Health of Fort Wayne, 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.

10-2-1-5

DEPARTMENT shall mean the Fort Wayne - Allen County Department of Health of Fort Wayne, 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- 10-2-1-9           **(Repealed 1/10/01)**
- 10-2-1-10        FOOD EMPLOYEE shall mean an individual working with food, food equipment or utensils, or food-contact surfaces.
- 10-2-1-11        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.
- 10-2-1-12        **(Repealed 3/31/04)**
- 10-2-1-13        HEALTH COMMISSIONER shall mean the Health Officer of the Fort Wayne - Allen County Department of Health of Fort Wayne, Allen County, Indiana, and/or his/her authorized representatives.
- 10-2-1-14        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.
- 10-2-1-15        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.
- 10-2-1-16        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:  
(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.).

- 10-2-1-17 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.
- 10-2-1-18 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.
- 10-2-1-19 NON-CRITICAL VIOLATIONS shall mean violations designated as being non-critical in 410 IAC 7-24, and as amended hereafter.
- 10-2-1-20 OPERATE and/or its derivatives shall mean one that operates a business or operates as a business.
- 10-2-1-21 PERMIT shall mean a certificate and/or a permit number of a size and style previously approved by the Health Commissioner.
- 10-2-1-22 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.
- 10-2-1-23 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, stock purchase agreement, merger, consolidation, gift or other similar method, more than fifty percent (50%) of the control of a prior permittee's business.
- 10-2-1-24 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.
- 10-2-1-25 PERSON IN CHARGE means the individual present at a retail food establishment who is responsible for the operation at the time of inspection.

10-2-1-26

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).

10-2-1-27

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.
  - (10) A private home.

10-2-1-28

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.

- 10-2-1-29 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.
- 10-2-1-30 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.
- 10-2-1-31 **(Repealed 7-25-2008)**
- 10-2-1-32 **(Repealed 3/31/04)**
- 10-2-1-33 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.
- 10-2-1-34 TEMPORARY FARMER'S FOOD MARKET ESTABLISHMENT shall mean any Food Establishment in an enclosure, stall, or other facility, whether fixed or mobile, where only fresh fruits, vegetables, honey or cider intended for human consumption off the premises are offered for sale at retail or wholesale prices.
- 10-2-1-35 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 is are offered with or without charge.
- 10-2-1-36 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.
- 10-2-1-37 TEMPORARY FUND RAISING FOOD MARKET ESTABLISHMENT shall mean any Food Establishment operating at a fixed location for not more than one

(1) day per month where food intended for human consumption off the premises is offered for sale at retail or wholesale prices and a third party not-for-profit organization benefits financially as a result of that sale.

10-2-1-38 UTENSIL shall mean any implement used in the storage, preparation, service, consumption, display, transportation, or cleaning of food or drink products.

10-2-1-39 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.

10-2-1-40 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 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.

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 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, 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, Temporary Farmer's Food Market, Mobile Food Service Establishment, Mobile Food Market Establishment, Seasonal Mobile Ice Cream Market Establishment, Temporary Fund Raising Food Market, 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.



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 amended, 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. 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 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, and as amended hereafter.
- 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.
- 10-2-3-6      **(Repealed 3/31/04)**
- 10-2-3-7      GREASE TRAP: Unless exempted by the Allen County Building Department, all Food Establishments shall be required to install a grease interceptor in the waste line leading from sinks, drains and other fixtures or equipment where grease may be introduced into the drainage or sewage systems in quantities that can affect line stoppage or hinder sewage treatment. The grease interceptor must be installed in such a manner that meets all applicable requirements of the Building Department and shall be located in such areas as are easily accessible for cleaning.
- 10-2-3-8      CEILING SURFACES:
- A.      The ceiling surfaces in a bar area or waitress area in which the only open foods prepared are beverages and the only warewashing taking place is of glasses and small utensils will not be required to be non-absorbent. The surfaces, however, must be smooth and easily-cleanable. The cleaning and cutting of drink garnishes will be allowed in these areas.
  - B.      The ceiling surfaces in the employee restroom(s) of Annual Food Market Establishments that only sell pre-packaged, non-potentially hazardous foods will not be required to be non-absorbent. The surfaces, however, must be smooth and easily-cleanable.

APPLICATION AND PERMIT FEES

10-2-4-1 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 City-County Health Fund for each such operation in accordance with the classification as established in the following schedule of fees.

10-2-4-2 APPLICATION FEES:

- A. Each new Food Establishment shall be required to pay a fee of two hundred and seventy five dollars (\$275.00) for the review of plans and specifications and for the initial inspection of the Food Establishment. 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 of one hundred and fifty dollars (\$150.00) for the initial inspection of the Food Establishment. This fee is in addition to the permit fee as set out herein.
- C. The Plan Review and Inspection fee for any existing Food Establishment which undergoes construction for renovation, alteration or additions to the establishment and/or interior remodeling of any area of the existing licensed Food Establishment where food operations take place shall be one hundred forty dollars (\$140.00) for the plan review and specifications as well as any inspections associated with the change to the establishment . A full set of plans must be submitted to the Department prior to construction, renovation or alteration begins.

10-2-4-3 PERMIT FEES FOR RETAIL FOOD SERVICE ESTABLISHMENTS:

1. 1 through 5 employees	\$250.00
2. 6 through 9 employees	\$375.00
3. 10 through 40 employees	\$425.00
4. 41 employees and over	\$475.00

10-2-4-4 PERMIT FEES FOR RETAIL FOOD MARKET ESTABLISHMENTS: (square footage of floor area involved)

1. Under 3,000 square feet	\$ 225.00
2. 3,001 to 30,000 square	\$ 450.00
3. 30,001 to 40,000 square feet	\$ 625.00
4. 40,001 to 60,000 square feet	\$ 835.00
5. 60,001 square feet and over	\$1050.00

- 10-2-4-5 PERMIT FEES FOR MOBILE FOOD SERVICE AND MOBILE FOOD MARKET ESTABLISHMENTS with a gross weight of:
- |                       |          |
|-----------------------|----------|
| 1. Under 1,000 pounds | \$200.00 |
| 2. Over 1,000 pounds  | \$300.00 |
- 10-2-4-6 PERMIT FEES FOR VENDING MACHINE OPERATORS:
- |  |          |
|--|----------|
| 1. 1 to 10 Food or Beverage Vending Machines (per machine) | \$ 17.00 |
| 2. 11 to 25 Machines                                       | \$240.00 |
| 3. 26 to 50 Machines                                       | \$320.00 |
| 4. 51 to 100 Machines                                      | \$475.00 |
| 5. 101 to 200 Machines                                     | \$630.00 |
| 6. 201 to 300 Machines                                     | \$800.00 |
| 7. 301 or more Machines                                    | \$920.00 |
- 10-2-4-7 PERMIT FEES FOR TEMPORARY FOOD SERVICE AND TEMPORARY FOOD MARKET ESTABLISHMENTS:
- |  |         |
|--|---------|
| 1. For every 48 consecutive hours of operation | \$45.00 |
|--|---------|
- 10-2-4-8 PERMIT FEES FOR RETAIL FOOD SERVICE OFF-SITE ESTABLISHMENTS:
- |                              |          |
|------------------------------|----------|
| 1. For one year of operation | \$300.00 |
|------------------------------|----------|
- 10-2-4-9 **(Repealed 7/25/2008)**
- 10-2-4-10 PERMIT FEES FOR SEASONAL MOBILE ICE CREAM MARKET ESTABLISHMENTS:
- |  |          |
|--|----------|
| 1. Per Vehicle or Establishment / per year | \$175.00 |
|--|----------|
- 10-2-4-11 PERMIT FEES FOR TEMPORARY FUND RAISING FOOD MARKET ESTABLISHMENTS:
- |                                 |         |
|---------------------------------|---------|
| 1. Per Establishment / per year | \$85.00 |
|---------------------------------|---------|
- 10-2-4-12 PERMIT FEES FOR FARMERS' MARKET ESTABLISHMENT :
- |  |         |
|--|---------|
| 1. Per Establishment/location/per year | \$75.00 |
|--|---------|
- 10-2-4-13 PERMIT FEES FOR TEMPORARY FARMER'S FOOD MARKET ESTABLISHMENTS:
- |                                 |         |
|---------------------------------|---------|
| 1. Per Establishment / per year | \$75.00 |
|---------------------------------|---------|
- 10-2-4-14 PERMIT FEES FOR VENUE ESTABLISHMENTS:
- |                               |            |
|-------------------------------|------------|
| 1. For one year of operation: | \$1,000.00 |
|-------------------------------|------------|

10-2-4-15 The application fee and permit fee for any Food Establishment which is owned and/or operated by any school corporation shall be fifty-five dollars (\$55.00) notwithstanding 10-2-4-2 through 10-2-4-11.

10-2-4-16 The application fee and permit fee for any Food Establishment in which the only open food product being dispensed or served are beverages from a dispensing machine (and/or the only food products being sold are pre-packaged and non-potentially hazardous), shall be one hundred and ten dollars (\$110.00) notwithstanding 10-2-4-2 through 10-2-4-11.

10-2-4-17 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 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.

10-2-4-18 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.

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 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.

10-2-4-19 EXEMPTIONS:

A. Food Establishments or vending operators which comply with the terms and provisions of IC 16-18-2-137 and as amended hereafter, 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, shall meet all applicable requirements and undergo 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.
- 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, with the exception of Temporary Farmer's Food Market Establishments, Vending Operators, and Food and Beverage Vending Machines shall comply with the minimum sanitary requirements specified by the Indiana State Department of Health as provided in 410 IAC 7-24 and 410 IAC 7-22, and as amended hereafter.
- 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 following are the minimum sanitary requirements for Temporary Farmer's Food Markets Establishments:
- A. Every Temporary Farmer's Food Market Establishment shall be located in clean surroundings and shall be kept in a clean, sanitary condition.
  - B. All equipment and utensils used in storing, and displaying food products shall be properly washed, rinsed and sanitized.
  - C. Only fresh fruits, honey, cider and vegetables that are clean, wholesome, free from spoilage and adulteration shall be sold.
  - D. All fresh fruits, honey, cider and vegetables shall be stored or displayed at least thirty (30) inches above the floor/ground level and in such a manner as to protect the food from contamination by splash, foot traffic, dust, animals and other means.

- E. Garbage and refuse shall be kept in tightly covered, watertight containers until removed and shall be disposed of daily in a place and manner that does not create a public health hazard.
- F. All employees shall wear clean outer garments and shall keep their hands and fingernails clean at all times while engaged in the handling of food, utensils, or equipment. Employees shall not expectorate or use tobacco in any form within the establishment.
- G. The Health Commissioner may augment such requirements when he/she may deem it necessary to prevent a condition which may constitute a public health hazard.

10-2-5-4 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.

10-2-5-5 The permittee of any Food Establishment where food is sold for consumption on the premises shall designate a portion of the area where food is consumed as a “no smoking” area. Smoke or smoking means the carrying or holding of a lighted pipe, cigar, or cigarette of any kind or any other lighted smoking equipment or the lighting or emitting or exhaling of the smoke of a pipe, cigar, or cigarette of any kind. The prohibitions, requirements or duties of this section shall not apply to banquet rooms in use for private functions, cocktail lounges or bars, including cocktail lounges and bars within any food establishment.

10-2-6 CHAPTER 6

HEALTH AND DISEASE CONTROL

**(Repealed 1/10/01)**

10-2-7 CHAPTER 7

SALE, EXAMINATION, CONDEMNATION OF UNWHOLESOME, ADULTERATED OR MISBRABDED FOODS OR BEVERAGES

**(Repealed 1/10/01)**

10-2-8 CHAPTER 8

EDUCATION

10-2-8-1 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, and as amended hereafter. A copy of the 410 IAC 7-24, and as amended hereafter, shall be kept on the premises at all times. 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.
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 of two hundred dollars (\$200.00) 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.

10-2-9

## CHAPTER 9

### INSPECTIONS

10-2-9-1

**FREQUENCY OF INSPECTION:** As defined in 10-2-1-14, establishments will be inspected on the following frequency based on their assigned Menu Type or more frequently if determined necessary by the Health Commissioner:

<b><u>Menu Type</u></b>	<b><u>Inspection Frequency</u></b>
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. Temporary Farmer's Food Market Establishments, Temporary Fund-Raising Food Market Establishments, Seasonal Mobile Ice Cream Market Establishments shall be inspected at least once each permit period.

10-2-9-2

**INSPECTION FREQUENCY OF TEMPORARY FOOD SERVICE AND TEMPORARY FOOD MARKET ESTABLISHMENTS and 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. Each Retail Food Service Off-Site Establishment shall be inspected at least two (2) times each permit period.

10-2-9-3

**AUTHORITY TO INSPECT AND COPY RECORDS:** The permittee shall, upon the request of the Health Commissioner, permit access to all areas of every such



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.

10-2-10

## CHAPTER 10

### VIOLATIONS

10-2-10-1

#### 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 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 to the address listed by the permittee as his/her/its 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 or would like an additional copy, the permittee may request an additional copy of the report by contacting the Department and they may request delivery by any means stated above.
- B. A copy of the written 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 and as amended hereafter.

10-2-10-2

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 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.

10-2-10-3

#### OTHER PERMIT REVOCATION, SUSPENSION AND CLOSURE ORDERS

- A. Except as set forth in 10-2-10-3(A)(1) and (2), 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. The permittee may request in writing that he/she be afforded a hearing within twenty-four (24) hours as set forth in 10-2-10-4, or
- 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.
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 10-2-10-4.
  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 Fort Wayne-Allen County Department of Health location as no monies are accepted in the field.

10-2-10-4 HEARING

- A. All hearings required under this section, except those set forth in 10-2-10-3B(2), 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.
- 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 10-2-10-5.

10-2-10-5 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).
- F. The Board shall make written findings of facts and shall enter its final order or determination of the matter in writing.

10-2-11

## CHAPTER 11

### ENFORCEMENT

- 10-2-11-1 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.
- 10-2-11-2 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 Board who shall seek all appropriate legal remedies against the person(s) violating said provisions of this Ordinance.
- 10-2-11-3 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 and as amended hereafter.
- 10-2-11-4 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.
- 10-2-11-5 EXPENSE: Any person violating any of the provisions of this Ordinance shall be liable to the Fort Wayne - Allen County Department of Health for the expense, loss or damage occasioned by reason of such violation, including reasonable attorney's fees and costs.

10-2-11-6 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.

10-2-12

CHAPTER 12

MISCELLANEOUS

10-2-12-1 REPEAL: All ordinances or parts of ordinances in conflict herewith are hereby repealed.

10-2-12-2 SEVERABILITY: Invalidity of any section, clause, sentence or provision of this Ordinance shall not affect the validity of any other part of this Ordinance.

10-2-13

CHAPTER 13

EFFECTIVE DATE

10-2-13-1 Changes to this Ordinance shall become effective on 12/1/2013.  
**Amended February 29, 2008**  
**Amended: July 25, 2008**  
**Amended: November 13, 2008**  
**Amended: December 2, 2011**  
**Amended: November 1, 2013**