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WABASH COUNTY GENERAL ORDINANCE NO. 1-64

FOOD SERVICE ESTABLISHMENT ORDINANCE

An ordinance defining food-service establishment, mobile food-service establishment, temporary food-service establishment, food, employee, utensil, health officer, and other items; requiring permits, licenses, license fees for the operation of food-service establishments, mobile food-service establishments, and temporary food-service establishments; prohibiting the sale of adulterated, unwholesome, or misbranded food; regulating the inspection of food-service establishments, mobile food-service establishments, and temporary food-service establishments; providing for the enforcement of this ordinance; and fixing penalties.

BE IT ORDAINED by the Board of County Commissioners of Wabash County, Indiana, that:

SECTION I. DEFINITIONS. The following definitions shall apply in the interpretation and enforcement of this ordinance:

ROBERT F. GONDERMAN, WABASH, INDIANA

A. Adulterated and Misbranded -- The terms "adulterated and misbranded" shall have the meanings as provided in Article 5, Chapter 157, Acts of 1949, known as the Indiana Food, Drug and Cosmetic Act.

B. Closed -- The term "closed" shall mean fitted together snugly leaving no openings large enough to permit the entrance of vermin.

C. Corrosion-Resistant Material -- The term "corrosion-resistant material" shall mean a material which maintains its original surface characteristics under prolonged influence of the food, cleaning compounds, and sanitizing solutions which may contact it.

D. Easily Cleanable -- The term "easily cleanable" shall mean readily accessible and of such material and finish, and so fabricated that residue may be completely removed by normal cleaning methods.

E. Employee -- The term "employee" shall mean any person working in a food-service establishment who transports food or food containers, who engages in food preparation or service, or who comes in contact with any food, food utensils or equipment.

F. Equipment -- The term "equipment" shall mean all stoves, ranges, hoods, tables, counters, food or utensil carts, refrigerators, sinks, dishwashing machines, steam tables, and similar items other than utensils, used in the operation of a food-service establishment.

G. Food -- The term "food" shall mean any raw, cooked, or processed edible substances, beverage or ingredient used or intended for use or for sale in whole or in part for human consumption.

H. Food-Contact Surfaces -- The term "food-contact surfaces" shall mean those surfaces of equipment and utensils with which food normally comes in contact, and those surfaces with which food may come in contact and drain back into food or onto surfaces normally in contact with food.

I. Food-Processing Establishment -- The term "food-processing establishment" shall mean a commercial establishment in which food is processed or otherwise prepared, packaged, or manufactured for human consumption.

J. Food-Service Establishment -- The term "food-service establishment" shall mean any food-service establishment; restaurant; coffee shop; cafeteria; short-order cafe; luncheonette; grill; tea room; sandwich shop; soda fountain; tavern; bar; cocktail lounge; night club; industrial feeding establishment; private, public, or nonprofit organization or institution; a catering kitchen; a commissary or similar place in which food or drink is prepared for sale or for service on the premises or elsewhere; and any other eating or drinking establishment or operation where food is served or provided for human consumption with or without charge. The term "food-service establishment", however, shall not include a food establishment licensed by the State Board of Health or one that is known as a food market or vending machine.

K. Health Officer -- The term "health officer" shall mean the Wabash County Health Officer or his duly authorized representative.

L. Kitchenware -- The term "kitchenware" shall mean all multi-use utensils other than tableware used in the storage, preparation, conveying or serving of food.

M. Mobile Food-Service Establishment -- The term "mobile food-service establishment" shall mean any food-service establishment capable of being readily moved from location to location, one without a fixed location.

N. Perishable Food -- The term "perishable food" shall mean any food of such type or in such condition as may spoil.

O. Person -- The term "person" shall mean, but not limited to, any individual, partnership, co-partnership, firm, company, corporation, association, joint-stock company, trust, estate, or municipality, or his or its legal representative or agent.

P. Potentially Hazardous Food -- The term "potentially hazardous food" shall mean any food which consists in whole or in part of milk or milk products, eggs, meat, poultry, fish, shellfish, or other food capable of supporting growth of infectious or toxigenic micro-organisms.

Q. Safe Temperatures -- The term "safe temperatures", as applied to potentially hazardous food, shall mean food temperatures of 45°F. or below, and 140°F. or above.

R. Sanitize -- The term "sanitize" shall mean effective bactericidal treatment of clean surfaces of equipment and utensils by a process which has been approved by the health officer as being effective in destroying micro-organisms, including pathogens.

S. Sealed -- The term "sealed" shall mean free of cracks or other openings which permit the entry or passage of moisture.

T. Single-Service Articles -- The term "single service articles" shall mean cups, containers, lids, or closures, plates, knives, forks, spoons, stirrers, paddles, straws, place mats, napkins, doilies, wrapping materials, and all similar articles which are constructed wholly or in part from paper, paperboard, molded pulp, foil, wood, plastic, synthetic, or other readily destructible materials, and which are intended by the manufacturers and generally recognized by the public as for one usage only, then to be discarded.

U. Tableware -- The term "tableware" shall mean all multi-use eating and drinking utensils, including flatware (knives, forks, and spoons).

V. Temporary Food-Service Establishment -- The term "temporary food-service establishment" shall mean any food-service establishment which operates for a temporary period of time, not to exceed two (2) weeks, in connection with a fair, carnival, circus, public exhibition, or similar transitory gathering.

W. Utensil -- The term "utensil" shall mean any tableware and kitchenware used in the storage, preparation, conveying or serving of food.

X. Wabash County -- The term "Wabash County" shall mean those rural and urban areas which are under the jurisdiction of the Wabash County Health Officer and shall not apply to incorporated cities or towns, except as provided for under authority of Chapter 80, Indiana Acts of 1953.

Y. Wholesome -- The term "wholesome" shall mean in sound condition, clean, free from adulteration, and otherwise suitable for use as human food.

SECTION II. PERMITS

A. Permits -- It shall be unlawful for any person to operate a food-service establishment, mobile food-service establishment or temporary food-service establishment in Wabash County, who does not possess a valid permit from the health officer. Such permit shall be posted in a conspicuous place in such food-service establishment, mobile food-service establishment or temporary food-service establishment. Only persons who comply with the applicable requirements of this ordinance shall be entitled to receive and retain such a permit. The permit for a food-service establishment and a mobile food-service establishment shall be for a term of one year beginning January 1st and expiring December 31st of the same year and shall be renewed annually. The permit for a temporary food-service establishment shall be for the term of one continuous operation. Any permit issued by the health officer shall contain the name and address of the person to whom the permit is granted, the address of the premises for which the same

is issued, and such other pertinent data as may be required by the health officer.

A separate permit shall be required for each food-service establishment, mobile food-service establishment or temporary food-service establishment operated or to be operated by any person. A permit issued under this ordinance is not transferable.

A permit shall be issued to any person on application after inspection and approval by the health officer; provided, that the food-service establishment, mobile food-service establishment or temporary food-service establishment complies with all the applicable provisions of this ordinance.

No permit or renewal thereof shall be denied or revoked on arbitrary or capricious grounds.

SECTION III. MINIMUM REQUIREMENTS FOR FOOD SERVICE ESTABLISHMENTS.

All food-service establishments, mobile food-service establishments, and temporary food-service establishments shall comply with the minimum requirements specified by the Indiana State Board of Health as now provided in its Regulation HFD 17 or as the same may be hereafter changed or amended. Such regulation and any changes and amendments thereto which may be hereafter adopted or promulgated are by reference incorporated herein and made part hereof, two copies of which are on file in the office of the Clerk of Wabash County, Wabash, Indiana, for public inspection.

SECTION IV. SALE, EXAMINATION, AND CONDEMNATION OF UNWHOLESOME, ADULTERATED OR MISBRANDED FOOD.

It shall be unlawful for any person to sell through a food-service establishment, mobile food-service establishment or temporary food-service establishment any food which is unwholesome, adulterated or misbranded.

Samples of food may be taken and examined by the health officer as often as may be necessary to determine freedom from contamination, adulteration, or misbranding. The health officer may, on written notice to the owner or operator, impound and forbid the sale of any food which is unwholesome, adulterated, or misbranded, or which he has probably cause to believe is unfit for human consumption, unwholesome, adulterated or misbranded; provided, that in the case of misbranding which can be corrected by proper labeling, such food may be released to the operator for correct labeling under the supervision of the health officer. The health officer may also cause to be removed or destroyed any dairy product, meat product, seafood, poultry, poultry product, confectionery, bakery product, vegetable, fruit or other perishable articles which in his opinion are unsound, or contain any filthy, decomposed, or putrid substance, or that may be poisonous or deleterious to health or otherwise unsafe.

SECTION V. INSPECTION OF FOOD SERVICE ESTABLISHMENTS

A. Frequency of Inspection -- At least once each three months the health officer shall inspect each food-service establishment

and mobil food-service establishment for which a permit is required under the provisions of this ordinance.

B. Procedure When Violations Noted -- If during the inspection of any food-service establishment or mobile food-service establishment and the health officer discovers the violation of any of the requirements in Section III of this ordinance, he shall issue a written order listing such violations to the proprietor or, in his absence, to the person in charge, and fixing a time within which the said proprietor of said food-service establishment or mobile food-service establishment shall abate and remedy such violations. A copy of the written order shall be filed with the records of the health department.

C. Authority to Inspect and to Copy Records -- The person operating the food-service establishment of mobile food-service establishment shall, upon the request of the health officer, permit such health officer or his authorized representative access to all parts of such food-service establishment or mobile food-service establishment and shall permit the health officer or his authorized representative to collect evidence and/or exhibits and to copy any or all records relative to the enforcement of this ordinance.

D. Final Inspection-Prosecution or Hearing for Violators -- If upon second and final inspection the health officer finds that such food-service establishment or mobile food-service establishment, person, or employee is violating any of the provisions of this ordinance which were in violation on the previous inspection, and concerning which a written order was issued, the health officer shall furnish evidence of the violation to the prosecutor having jurisdiction in the county in which the violation occurs, and he shall prosecute all persons violating said provisions of this ordinance; or the health officer may promptly issue a written order to the permittee of such food-service establishment to appear at a certain time, no later than ten days from the date of final inspection, and at a place in said county fixed in said order to show cause why the permit issued under the provision of Section IIA should not be revoked.

E. Revocation of Permit -- The health officer upon such hearing, if the permittee should fail to show cause, shall revoke said permit and promptly give written notice of such action to the permittee. The health officer shall maintain a permanent record of his proceedings filed in the office of the health department.

F. Suspension of Permit -- Any permit issued under this ordinance may be temporarily suspended by the health officer without notice or hearing for a period of not to exceed 30 days, for any of the following reasons:

1. Insanitary or other conditions which in the health officer's opinion endangers the public's health;
2. Interference with the health officer or any of his authorized representatives in the performance of their duties;

provided, however, that upon written application from the permittee, served upon the health officer within 15 days after such suspension, the health officer shall conduct a hearing upon the matter

after giving at least 5 days' written notice of the time, place, and purpose thereof to the suspended permittee; provided, further, that any such suspension order shall be issued by the health officer in writing and served upon the permittee by leaving a copy at his usual place of business or by delivery of Registered or Certified Mail to such address.

G. Reinstatement of Permit -- Any person whose permit has been suspended may at any time make application to the health officer for the reinstatement of his permit.

H. Review -- Any order made by the County health officer shall be reviewable by the Wabash County Board of Health, provided, however, that the order of the County Health Officer shall be given full force and effect pending final decision by the Board. Any individual feeling aggrieved by an order or decision of the county health officer may, in writing, request an appeal and review of the health officer's decision and said review will be granted as a matter of right. The Board of Health is empowered to hear the matter and a quorum of said Board will be sufficient to render a binding decision therein. The hearing will be informal, however, minutes thereof shall be kept and the Board of Health may, from time to time, adopt such other procedural rules as it deems advisable.

SECTION VI. INSPECTION OF TEMPORARY FOOD SERVICE ESTABLISHMENTS.

A. Frequency of Inspection -- At least once in each twenty-four hour period the health officer shall inspect each temporary food-service establishment for which a permit is required under the provision of this ordinance.

B. Procedure to Follow When Any Violation Noted -- If, during the inspection of any temporary food-service establishment, the health officer discovers the violation of any of the requirements in Section III of this ordinance, he shall order the immediate correction of the violation.

C. Authority to Inspect and to Copy Records -- The person operating the temporary food-service establishment shall, upon the request of the health officer, permit such health officer or his authorized representative access to all parts of the temporary food-service establishment and shall permit collecting evidence and/or exhibits and copying any or all records relative to the enforcement of this ordinance.

D. Revocation of Permit and Penalties for Continued Operation -- Upon failure of any person maintaining or operating a temporary food-service establishment to comply with any order of the health officer, it shall be the duty of the health officer summarily to revoke the permit of such person and establishment and to forbid the further sale or serving of food therein. Any person continuing to sell or serve food in such temporary food-service establishment, the permit of which has been revoked, shall be subject to the penalties provided in Section VIII of this ordinance.

SECTION VII. APPROVAL OF PLANS

All food-service establishments and mobile food-service establishments which are hereafter constructed or altered shall conform with the applicable requirements set forth in Section III of

this ordinance. Properly prepared plans and specifications shall be submitted to and approved by the health officer as may be required before starting any construction work.

SECTION VIII. PENALTIES

Any person who violates any of the provisions of this ordinance shall be deemed guilty of a misdemeanor. On conviction, the violator shall be punished for the first offense by a fine of not more than five hundred dollars (\$500.); for the second offense by a fine of not more than one thousand dollars (\$1,000.); and for a third and each subsequent offense by a fine of not more than one thousand dollars (\$1,000.) to which may be added imprisonment for any determinate period not exceeding ninety (90) days. Each day of operation of a food-service establishment, mobile food-service establishment or temporary food-service establishment in violation of Section II of this ordinance or after the expiration of the time limit for abating insanitary conditions and completing improvements to abate such conditions as ordered by the health officer shall constitute a distinct and separate offense.

SECTION IX. UNCONSTITUTIONALITY CLAUSE

Should any section, paragraph, sentence, clause, or phrase of this ordinance be declared unconstitutional, or invalid for any reason, the remainder of said ordinance shall not be affected thereby.

SECTION X. REPEAL AND DATE OF EFFECT

A. All ordinances and parts of ordinances in conflict with this ordinance are hereby repealed, and this ordinance shall be in full force and effect after its adoption and its publication as provided by law.

B. Passed and adopted by the Commissioners of Wabash County, State of Indiana, on this 11 day of May, 1964.

Wilbur Curless
Wilbur Curless

Thomas Earl
Thomas Earl

Eldon Landis
Eldon Landis

COUNTY COMMISSIONERS

ATTEST:

James A. Bricker
James Bricker, Auditor

ROBERT F. GONDERMAN, WABASH, INDIANA