

The following Ordinance # _____ replaces Article 3, sections 3-13 through 3-28

Food Service Establishment Regulations Ordinance # ~~00-15~~ 00-16

Whereas, Indiana Code Sections 36-1-3-1 et seq. permit any county in the State of Indiana to exercise any power or to perform any function necessary to the public interest in the context of its county or internal affairs, which is not prohibited by the Constitution of the United States or of the State of Indiana, or denied or pre-empted by any other law, or is not expressly granted by any other law to another governmental entity;

Whereas, the Board of Commissioners of the County of LaPorte, Indiana is the County Legislative body and is by law authorized to adopt ordinances for the performance of functions in the County of LaPorte, Indiana;

Whereas, the LaPorte County Board of Health has conducted a public hearing concerning this Ordinance regulating food service establishments in LaPorte County, Indiana and has recommended the adoption of this Ordinance to the Board of Commissioners of the County of LaPorte, Indiana;

Whereas, the Board of Commissioners of the County of LaPorte, Indiana deem it to be reasonable, appropriate, and in the best interests for the public health, safety, and general welfare of the citizens of the County of LaPorte, Indiana to adopt an Ordinance regulating the inspection of food service establishments; requiring licenses and license fees of such food establishments; prohibiting the sale of adulterated, unwholesome, or misbranded food; providing for the enforcement of the Ordinance; fixing penalties for the violation of the Ordinance; and providing for the adoption by reference of Indiana State Department of Health Rules 410 IAC 7-20 et seq., and 410 IAC 7-15.5 et seq., all as amended from time to time and as promulgated by the Indiana State Department of Health;

NOW, THEREFORE, BE IT ORDAINED, **EXAMINED AND APPROVED BY THE BOARD OF COMMISSIONERS OF THE COUNTY OF LAPORTE, INDIANA.** 8/18/06
CONSIDERED, AND ESTABLISHED by the Board of Commissioners of the County of LaPorte, Indiana, as follows:

SECTION 1. TITLE. This Ordinance may be referred to as the "LaPorte County Food Service Ordinance."

ATTEST:

Marion DeMare
Clay Jumper
[Signature]
Auditor
LAPORTE COUNTY, INDIANA

SECTION 2. ADOPTION OF REGULATIONS BY REFERENCE.

The regulations of the Indiana State Department of Health located at 410 IAC 7-20 et seq. Entitled "Retail Food Establishment Sanitation Requirements," 410 IAC 7-15.5 et seq. entitled "Bed and Breakfast Establishments," as amended from time to time, and as promulgated by the Indiana State Department of Health, are hereby incorporated and adopted by reference.

SECTION 3. DEFINITIONS. For the purposes of this Ordinance, the terms below shall be defined as follows:

- A. "County" shall mean the County of LaPorte, State of Indiana
- B. "Health Department" shall mean the LaPorte County Health Department
- C. "Health Officer" shall mean the LaPorte County Health Officer and his or her duly authorized representative.
- D. "Retail Food Establishment" shall mean any restaurant, food market, deli, bakery, food stand, pushcart, commissary or other location, fixed or mobile, permanent or temporary, that prepares, stores, packages, serves, vends or otherwise provides food for human consumption.
- E. "Seasonal" shall mean operating less than 180 days in a calendar year.
- F. "Prepackaged" shall mean intended for sale or resale in the original container with no preparation.
- G. "Mobile" shall mean a retail food establishment that is not on a permanent foundation and is readily movable.
- H. "Temporary" as defined by the Indiana State Retail Food Establishment Sanitation Requirements under rule 410 IAC 7-20 and an establishment that meets all of the temporary guidelines set forth by LaPorte County.
- I. "Employee" shall mean any person hired whether full time or part time, manager, supervisor, family member, volunteer that works in the retail food establishment.
- J. "Extensive Remodeling" shall mean any alteration of a food service operation that results in the addition of equipment or potentially hazardous foods within any establishments operation.
- K. "Lunch Service Vehicle" shall mean a vehicle from which ready to eat food and drinks are dispensed that have been prepared and sealed or packaged in a licensed establishment.
- L. "Food Service License" shall mean authorization to operate a Retail Food Establishment.
- M. "Commissary" shall mean licensed facility used to receive, store and prepare food items that will be sold at another location.

SECTION 4. LICENSE REQUIREMENTS

No person shall operate a Retail Food Establishment in LaPorte County without a valid Food Service License issued by the LaPorte County Health Officer. Such permit shall be posted in a conspicuous place in or on such Retail Food Establishment. Only persons who fully comply with all applicable provisions of this Ordinance shall be entitled to receive a Food Service License. The Food Service License shall be for a term of one-year beginning January 1st and expiring December 31st of the same year and shall be renewed annually. A Temporary Food Service License shall be issued for the term of a single, continuous event, not to exceed 14 days. Any Food Service License issued by the Health Officer shall contain the name and address of the person to whom the License is granted, the address of the premises for which the License is issued, and other pertinent information as may be required by the Health Officer.

A separate License shall be required for each Retail Food Establishment operated or to be operated by any person. A License issued under this Ordinance is not transferable with respect to the licensee or the location. A License shall be issued to any person upon application only after inspection and approval of the Retail Food Establishment by the Health Officer, provided such establishment complies with all applicable provisions of this Ordinance. No License or Renewal shall be denied or revoked on arbitrary or capricious grounds.

SECTION 5. ISSUANCE OF LICENSE

- A. It shall be unlawful for any person to operate a Retail Food Establishment who does not possess a valid Food Service License for the operation of such establishment.
- B. The Food Service License shall be renewed annually and shall be valid for one year beginning January 1st of that year. The application shall include the name and address of the applicant, the location and type of Retail Food Establishment, the signature of the applicant, and any other information deemed necessary by the Health Officer.
- C. Before issuing a License to operate a Retail Food Establishment, the Health Officer shall inspect the proposed establishment to determine compliance with all applicable provisions of this Ordinance.
- D. All new operators, new construction or extensive remodels, after approval of all plans, at the time of opening inspection shall be placed on probationary status for a minimum of 30 days and shall be required to pay a probationary fee (see section 3.9, Fee Schedule). After the 30-day period has ended, the Health Officer shall conduct an inspection, and based on satisfactory results,

- the establishment shall be removed from probation and, upon receiving payment for the food service license, the food service license shall be issued.
- E. A separate License shall be required for each Retail Food Establishment operated or to be operated by any person.
 - F. A Temporary Food Service License shall be granted for no longer than 14 consecutive days in conjunction with a single event. Each Temporary Food Service Establishment must be able to meet basic minimum sanitation requirements to safely prepare and serve food. Inspection is done each 24 hours or as deemed necessary by the Health Officer. Any person operating a Temporary Retail Food Establishment shall comply with all Temporary Retail Food Establishment guidelines developed by the Health Department and approved by the LaPorte County Board of Health.
 - G. A new operator or owner of an existing Retail Food Establishment that has transferred ownership shall come into full compliance with all applicable provisions of this Ordinance prior to a Food Service License being issued.
 - H. Prior to the initial construction of a new Retail Food Establishment, or the major remodeling of an existing establishment, a complete set of construction plans, intended menu, proposed equipment and anticipated customer base shall be submitted to the Health Department for approval prior to the commencement of any remodeling or construction. Or that is required by the Indiana State Department of Health rule 410 IAC 7-20; Item 36; Section 431.
 - I. A Mobile Retail Food Service License shall be granted to a self contained, free standing unit with facilities adequate to safely prepare and serve food on an unlimited basis throughout the county. Inspection is conducted according to seasonal operation. A sanitation certification may be required based on the items prepared and sold. Any person operating a Mobile Retail Food Service Establishment shall comply with all Mobile Retail Food Service Establishment guidelines developed by the Health Department and approved by the LaPorte County Board of Health.

SECTION 6. LICENSE FEE AND PENALTIES

- A. A Food Service License fee shall be charged prior to the issuance of a License to operate a Retail Food Establishment. All such fees shall be charged in accordance with the Health Department Schedule of Fees (sec 3-9), as amended from time to time.
- B. All penalties charged as a result of failure to comply with applicable provisions of this Ordinance shall be levied and collected according to the Health Department Schedule of Fees.
- C. Temporary Retail Food Establishments shall not be charged a fee for failure to comply with applicable provisions of this Ordinance. Temporary Retail Food

Establishments that fail to fully comply with such requirements shall not be issued a Food Service License, and shall likewise be ordered to cease operations.

- D. Any person operating a Retail Food Establishment without a License, except for new ownership of an existing business that has been previously licensed by the LaPorte County Health Officer, without interruption of service, shall be assessed a fine in accordance with enforcement provisions specified in this Ordinance. The Health Officer may require an existing establishment to temporarily close until all applicable requirements have been met.

SECTION 7. EXEMPTIONS

An organization that is exempt from the Indiana Gross Income Tax under Indiana Code sections 6-2.1-3-20 through 6-2.1-3-22 shall be exempt from the requirements of this Ordinance. The Health Officer shall be provided, upon request, proof of an organization's tax exemption.

SECTION 8. INSPECTIONS

- A. **Inspection Frequency-** Retail Food Establishments shall be inspected according to the following risk-based schedule:

Risk Category A- Pre-packaged potentially hazardous foods only. Limited preparation of non-potentially hazardous foods. One inspection per year.

Risk Category B- Limited menu. Pre-packaged raw ingredients are cooked or prepared to order. Raw ingredients require minimal assembly. Most products are cooked/prepared immediately. Hot and cold holding of potentially hazardous foods is restricted to single meal service. Preparation processes requiring cooking, cooling and reheating are limited to 2 potentially hazardous foods. Two inspections per year.

Risk Category C- Extensive handling of raw ingredients. Preparation process includes the cooking, cooling, and reheating of potentially hazardous foods. A variety of processes require hot and cold holding of potentially hazardous food. Advanced preparation for next-day service is limited to 2 items. Retail food operations include deli and seafood departments. Establishments doing food processing at retail. Three inspections per year.

Risk Category D- Extensive handling of raw ingredients. Preparation processes include cooking, cooling, and reheating of potentially hazardous foods. A variety of processes require hot and cold holding of potentially hazardous foods. Food processes include advanced preparation for next-day service. Four inspections per year.

- (1) Temporary Retail Food Establishments preparing or serving potentially hazardous foods shall be inspected once per day for each day of an event.

- (2) Any Retail Food Establishment that, over the course of four consecutive inspections, has no critical violations and an amount of repeated non-critical violations, as determined by the Health Officer not considered to be excessive, on successive inspections, may petition the Health Officer for a reassignment of risk category.
- (3) The Health Officer may reassign the risk category of an establishment for more frequent inspection if that establishment's compliance history demonstrates a history of poor sanitation.

B. Report of Inspection- Whenever an inspection of a Retail Food Establishment is conducted; the findings shall be recorded on an inspection report form approved by the Health Officer and the Indiana State Department of Health. The inspection report form shall summarize findings on the basis of critical and non-critical violations, as approved by the Indiana State Department of Health. Each occurrence of a violation will be recorded as a separate infraction, and the total number of critical and non-critical violations will be indicated on the inspection report.

C. Correction of Violations- The completed inspection report shall specify a reasonable period of time for the correction of violations. Correction of all violations shall be accomplished within the period specified, in accordance with the following provisions:

- (1) If an imminent health hazard is determined by the Health Officer to exist, such as, but not limited to, an extended loss of water supply, an extended power outage, sewage back-up into the establishment, fire, pest infestation or natural disaster, the Retail Food Establishment shall immediately cease operations. Such operations shall not be resumed until authorized by the Health Officer.
- (2) All critical violations shall be corrected in the time specified by the Health Officer, but in any event, shall not exceed two (2) days following inspection. If an establishment is unable to correct a critical violation within the specified time period, or repeats a critical violation during consecutive inspections, the Health Officer may require the license holder to attend a Health Officer hearing for the consideration of a permit suspension or revocation.
- (3) All non-critical violations shall be corrected in the time period specified by the Health Officer. Repeat non-critical violations on three (3) or more consecutive inspections may result in a Health Officer hearing for consideration of the establishment being placed on probation, or a permit suspension.
- (4) The occurrence of a critical violation that cannot be immediately corrected and is interpreted by the health officer, to constitute a threat to public health, may result in the establishment being placed on immediate probationary status until the violation can be corrected and prevented from reoccurring or until deemed necessary by the health officer.
- (5) The Health Officer may inspect an establishment on probationary status at least once every five (5) working days, or as often as

necessary. During the probationary status, an occurrence of a critical violation shall result in a Health Officer hearing for the consideration of License suspension. An establishment shall have no critical violations on three consecutive probationary inspections in order to be removed from probationary status.

- (6) A Temporary Retail Food Establishment shall correct all critical violations immediately. If such establishment is unable to correct said violation immediately, operations shall cease until the correction is made.
- (7) Any Retail Food Establishment that does not meet the Sanitation Certification requirement, and if deemed necessary by the Health Officer, may be placed on probationary status.

SECTION 9. LICENSE SUSPENSION

The Health Officer may, upon inspection and/or written notice, suspend any license to operate a Retail Food Service Establishment for any of the following reasons:

- A. The operation, in the opinion of the Health Officer, constitutes an imminent health hazard, such as may be created by loss of power supply, sewage back up, loss of water supply, fire, flood, tornado, or other cause. Under this section, an establishment license may be immediately suspended prior to a Health Officer hearing, and the establishment ordered closed.
- B. Upon the outcome of a hearing, the Health Officer determines that continued operation of the Retail Food Service Establishment constitutes a risk to the public health.
- C. Interference with the Health Officer in the performance of his or her duties.
- D. Failure to correct a critical violation in the time period specified by the Health Officer, such that continued presence of said violation constitutes an imminent danger to the public health.
- E. The Retail Food Establishment has been placed on probationary status more than once in a calendar year.

Suspension of a License shall be of a period not to exceed thirty (30) days. Whenever a Food Service License is suspended, the holder of the License, or the person in charge, shall be notified in writing that the License to operate the Retail Food Service Establishment is, upon the serving of the notice, immediately suspended. The owner or operator shall be entitled, upon written request, to a hearing to contest a suspension within ten (10) days of a suspension order. If a written request to hold such a hearing is not received, the suspension shall remain in effect. Failure of a Retail Food Establishment to take all appropriate corrective

action as identified by the Health Officer, shall result either in a continuation of the suspension, or a License revocation.

SECTION 10. LICENSE REVOCATION

The Health Officer may, after providing opportunity for hearing, revoke a Food Service License for any of the following reasons:

- A. Repeated occurrences of critical violations of this Ordinance found in consecutive inspections.
- B. Interference with the Health Officer in the performance of his or her duties.
- C. As a result of a License suspension
- D. Failure to correct an imminent danger to the public health.

Prior to License revocation, the Health Officer shall notify the License holder or the person in charge, in writing, of the reasons for which such license is subject to revocation. The license to operate the Retail Food Service Establishment shall be revoked at the end of ten (10) days following service of such notice unless a written request is filed with the Health Officer within the ten-day period. If no request for hearing is filed within the ten-day period, the revocation of the Food Service License shall be final

SECTION 11. SANITATION CERTIFICATION

- A. All Retail Food Establishments, excluding Temporary establishments, which prepare or serve potentially hazardous foods, shall have at least one sanitation-certified manager/employee on premises during hours of food preparation and service; and, comply with the minimum requirements specified by the Indiana State Department of Health as provided in 410 IAC 7-20; 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 herein and made part thereof.
- B. Retail Food Establishments selling only pre-packaged goods and non-potentially hazardous foods, and Temporary Retail Food Establishments, are exempt from the provisions of Paragraph A above.
- C. A certified manager/employee is any person who has successfully completed one or more of the following courses or their equivalent; and, has provided a copy of the Certificate of Completion from such course to the County:
 - (1) SERVSAFE course through the National Restaurant Association (NRA)
 - (2) Applied Food Service Sanitation course through the NRA

- (3) Any course of study approved by the LaPorte County Health Department.

SECTION 12. EXAMINATION AND CONDEMNATION OF FOOD

It shall be unlawful for any person to sell or distribute through a Retail Food Establishment any food which is unwholesome, adulterated, misbranded, obtained from an unapproved source, or which is otherwise prohibited as provided in the Indiana Food, Drug, and Cosmetic Act, IC 16-1-28 et seq. through IC 16-1-31 et seq.

Food may be examined or sampled by the Health Officer for the purpose of determining compliance with this Ordinance. The Health Officer may prohibit the sale or distribution of any food, which he may believe, is in violation of any section of this Ordinance and which may pose a health hazard to the public, provided:

- A. A written notice is issued to the holder of the Food Service License or the person in charge;
- B. The notice specifies in detail the reasons for the order.

The Health Officer shall tag, label, or otherwise identify any food subject to such order. No food subject to such order shall be used, sold, moved from the establishment, or be destroyed without permission from the Health Officer.

The written notice of order shall state that a written request for hearing may be filed with the Health Officer within ten (10) days. Based on evidence presented at such hearing, the order may be vacated or the holder of the Food Service License directed by written order to denature or destroy such food. If the food is to be denatured or destroyed, such action shall be taken under supervision of the Health Officer.

SECTION 13. ACCESS

The Health Officer, upon proper identification, shall be permitted to enter any Retail Food Establishment at any reasonable time and shall be permitted access to all parts of the establishment for the purpose of making inspection to determine compliance with this Ordinance and rule 410 IAC 7-20; Item 35; Section 35 of the Retail Food Establishment Sanitation Requirements as established by the Indiana State Department of Health. The Health Officer shall be permitted to examine records maintained by the Retail Food Establishment relevant to the enforcement of this Ordinance.

SECTION 14. HEARINGS

The Health Officer shall conduct the hearings provided for in this Ordinance at a time and place designated by the Health Officer. The Health Officer shall make a final finding based upon the complete hearing record and shall sustain, modify, or rescind any notice or order considered in the hearing. The Health Officer shall furnish a written report of the hearing to the holder of the Food Service License within ten (10) days of the hearing. The licensee shall immediately comply with an order or decision of the Health Officer.

In the event that the holder of the Food Service License or his authorized representative fails to attend said hearing; he shall be deemed to have accepted the decision of the Health Officer.

In the event that the holder of the Food Service License fails to abide by the hearing decision or written order of the Health Officer, the Health Officer may furnish written evidence of the violation to the County Prosecutor or the Health Board attorney for appropriate action against the license holder for violations of provisions of this Ordinance.

SECTION 15. FINES AND ENFORCEMENT

If any person violates any provision of this Ordinance, that person shall be deemed to have committed an Ordinance violation and, upon conviction, may be fined not more than Five Hundred Dollars (\$500) for the first offense, and not more than One Thousand Dollars (\$1000) for the second and subsequent offense. Each violation of this Ordinance shall constitute a separate offense. Each day that an Ordinance violation continues, after the time period permitted for correction, if applicable, shall constitute a separate offense. In addition to other specific enforcement mechanisms contained within this Ordinance, the Health Officer may furnish written evidence of any violation of this Ordinance to the LaPorte County Prosecutor or the Health Board attorney for appropriate action against the License holder, including prosecution and enforcement action, for violation of provisions of this Ordinance.

SECTION 16. SERVICE OF NOTICE

A notice provided for in this Ordinance is properly served when it is delivered to the holder of the Food Service License or the person in charge, or when it is sent by registered or certified mail, return receipt requested, to the last known address of the holder of such Food Service License. A copy of such notice shall be filed in the records of the Health Department.

SECTION 17. AUTHORITY OF THE HEALTH OFFICER

It is hereby acknowledged, understood, and declared by the Board of Commissioners of LaPorte County, Indiana, that under this Ordinance the Health Officer is required to exercise and is vested with the authority to exercise his or her discretion and judgment in order to protect and preserve public health, safety and general welfare of the citizens of LaPorte County, Indiana in regulating Retail Food Establishments. The authority of the Health Officer to issue, deny, suspend, or revoke any license, approval, order, or similar authorization under this Ordinance is hereby declared to be discretionary.

SECTION 18. CONSTRUCTION

- A. To the extent that any provision of this Ordinance is ultimately determined by a court of competent jurisdiction to be pre-empted by any State or Federal law, this Ordinance shall automatically be deemed amended by eliminating the pre-empted provision and incorporating in its place the applicable provision of the pre-empting State or Federal law.
- B. Each provision of this Ordinance shall be construed as separate, that if any part of it shall be held invalid for any reason, the remainder shall continue in full force and effect.
- C. Compliance with the requirements of this Ordinance does not obviate or eliminate the necessity of complying with any other applicable Federal, State, or local laws and regulations effecting Retail Food Establishments.

Fees, Licenses, Permits and Franchises

Sec. 3.9 Schedule of Fees

A. Retail Food Establishment License

- (a) An annual license fee shall be levied upon each food establishment for the purpose of enforcing and paying the expenses of the inspection program.
- (b) Fees for Retail Food Establishments shall be based on the determined risk for that establishment. See Risk Categories Section 8-Inspections.

<u>Risk Category</u>	<u>Fee</u>
A	\$50
B	\$75
C	\$100
D	\$150

(c) Other Fees

Fees for other types of Retail Food Service operations will be assessed as follows:

1. Seasonal establishments shall pay one-half the determined fee.
2. Mobile \$100
3. Lunch Service Vehicle \$50/vehicle
4. Temporary \$20/day
(not to exceed \$80 for any one event)
5. Probationary Fee \$50
(for new businesses, new ownership or extensive remodeling)

(d) Penalties

Penalties will be assessed as follows, with payment due upon annual permit renewal:

1. Any establishment that is placed on probation for failure to meet minimum sanitation requirements shall be assessed a penalty of \$50 per occurrence.
2. Any establishment that requires an extension of probationary status due to continued failure to meet minimum sanitation requirements shall be assessed a penalty of \$50 per occurrence.
3. Any establishment that operates without a permit, or fails to apply for a permit after 15 days of a change in ownership of an existing operation with no service interruption, shall be assessed a penalty of \$25/day, payable as part of the initial permit fee.
4. Any establishment that conducts extensive remodeling without submitting plans to the Health Department prior to construction, shall be assessed a penalty of \$50.
5. Any establishment that fails to remit payment for an annual license by the due date shall be assessed a penalty of 50% of the permit fee for each day payment is not received.

(e) Exceptions

1. A Retail Food Establishment commencing operations after June 30 shall be assessed one-half the fee for the respective category.
2. No license fee shall be required for establishments operated by an organization that is exempt from the Indiana gross income tax under Indiana Code, 6-2.1-3-20 through 6-2.1-3-22 and that offers food for sale to the final consumer at an event held for the benefit of the organization provided:
 - a. Members of the organization prepare the food that will be sold;
 - b. Events conducted by the organization take place for no more than thirty days per calendar year;
 - c. The name of each person who has prepared a food item is attached to the container in which the food item has been placed.
3. Schools, churches and governmental units or agencies shall be exempt from a license fee.