

Chapter 82.
Food and Food Establishments.¹

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¹ For state law as to food establishments, see Indiana Code chapter 16-42-5. As to health and sanitation generally, see ch. 64 of this code.

Article I. In General

Sec. 82.01. Definitions.

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

- (a) *Beverage* means all articles used as any drink such as milk, coffee, pop, juices, etc., whether simple, mixed or compound, and all substances or ingredients used in the preparation thereof.
- (b) *Employee* means any operator or other person employed by the operator who handles any food to be dispensed through vending machines, or who comes in contact with product contact surfaces of containers, equipment utensils or packaging materials used in connection with vending machine operations, or who otherwise services or maintains one or more such machines.
- (c) *Food* means all articles used for food, drink, confectionery or condiment, whether simple, mixed or compound, and all substances or ingredients used in the preparation thereof.
- (d) *Food market* means retail grocery, meat market, poultry market, fish market, fresh fruit and vegetable market, delicatessen, confectionery, candy kitchen, nut store, retail bakery store or any other establishment, whether fixed or movable, where food intended for human consumption off the premises is manufactured, produced, stored, prepared, processed, handled, transported, sold or offered for sale at retail.
- (e) *Health officer* means the health authority having jurisdiction in the city, or an authorized representative.
- (f) *Itinerant Restaurant* means a restaurant operating for a temporary period, in connection with a fair, carnival circus, public exhibition or other similar gathering.
- (g) *Machine location* means the room, enclosure, space or area where one or more vending machines are installed or operated.
- (h) *Operator* means any person who, by contract, agreement, or ownership, is responsible for furnishing, installing, servicing, operating or maintaining one or more vending machines.
- (i) *Product contact surface* means any surface of a vending machine, appurtenance or container which comes into direct contact with any food.
- (j) *Restaurant* means restaurant, coffee shop, cafeteria, short-order cafe, tavern, sandwich stand, soda fountain, drive-in restaurant, drive-in theater restaurant, in-plant food service, commissary, snack bar, food catering or food establishment whether fixed or movable, where food for human consumption is prepared or served in such manner that it is ready for

consumption. The term *restaurant* shall not include a food establishment that is known as a retail food market where food is not prepared and served for consumption on the premises.

(k) *Utensil* means any kitchenware, tableware, glassware, cutlery, containers or other equipment of any kind or nature with which food comes in contact during storage, preparation or serving.

(l) *Vending machine* means any self-service device offered for public use which, upon insertion of a coin or token, or by other similar means, dispenses unit servings of food or beverage, either in bulk or in package, without the necessity of replenishing this device between each vending operation. (Ord. No. 40-85, §§ 1, 2.)

Sec. 82.02. Sanitation requirements for restaurants and food markets.

All restaurants and itinerant restaurants shall comply with the minimum sanitation requirements specified by the state board of health as now provided in its Regulation 410 IAC 7-15.1 or as the same may be hereafter changed or amended.

All food markets shall comply with the minimum sanitation requirements specified by the state board of health as now provided in its regulation 410 IAC 7-16.1 or as the same may be hereinafter changed or amended.

Such regulations and any changes and amendments thereto which may be hereafter adopted or promulgated are by reference incorporated herein and made a part hereof, two copies of which are on file in the office of the city clerk-treasurer for public inspection. (Ord. 40-85. § 3.)

Sec. 82.03. Unwholesome, adulterated or misbranded food.²

It shall be unlawful for any person to sell through a restaurant, itinerant restaurant or food market 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 unwholesomeness, 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 the health officer has probable cause to believe to be unwholesome, adulterated or misbranded. The health officer may cause to be removed or destroyed any food which, in the health officer's opinion, is 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.

² For state law as to adulterated, misbranded, etc., foods, see Indiana Code chapter 16-42-2.

Sec. 82.04. Disease control generally.

No person who is affected with any disease in a communicable form or is a carrier of such disease shall work in any restaurant or food market, and no restaurant or food market shall employ any such person or any person suspected of being affected with any disease in a communicable form or of being a carrier of such disease. If the restaurant or food market manager suspects that any employee has contracted any disease in a communicable form or has become a carrier of such disease, the manager shall notify the health officer immediately.

Sec. 82.05. Procedure when infection of employee suspected.

When suspicion arises as to the possibility of transmission of infection from any restaurant or food market employee, the health officer is authorized to require any or all of the following measures:

(a) The immediate exclusion of the employee from all restaurants or food markets.

(b) The immediate closing of the restaurant or food market concerned until no further danger of disease outbreak exists in the opinion of the health officer.

(c) Adequate medical examination of the employee and of any associates with such laboratory examinations as may be indicated.

Sec. 82.06. Approval of construction plans.

All restaurants or food markets which are hereafter constructed or altered shall conform in their construction to applicable requirements of this chapter. Properly prepared plans and specifications shall be submitted to and approved by the health officer before starting any construction work.

Article II. Permits and Licenses.

Sec. 82.20. Permit--Required; term; contents; nontransferable; issuance.

It shall be unlawful for any person to operate a restaurant, itinerant restaurant or food market in the city who does not possess a valid permit from the health officer. Such permit shall be posted in a conspicuous place in such restaurant, itinerant restaurant or food market. Only persons who comply with the applicable requirements of this chapter shall be entitled to receive and retain such a permit. The permit for a restaurant or food store 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 an itinerant restaurant 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 restaurant, itinerant restaurant or food store operated or to be operated by any person. A permit issued under this chapter is not transferable.

A permit shall be issued to any person on application after inspection and approval by the health officer; provided, that the restaurant, itinerant restaurant or food store complies with all the applicable provisions of this chapter.

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

Sec. 82.21. Same--revocation.

The health officer upon a hearing for violation of this chapter, if the permittee should fail to show cause, shall revoke the permit and promptly give written notice of such action to the permittee. The health officer shall maintain a permanent record of proceedings filed in the office of the health department.

Sec. 82.22. Same--suspension.

Any permit issued under this article may be temporarily suspended by the health officer without notice or hearing for a period of not to exceed thirty days, for any of the following reasons:

- (a) Insanity or other conditions which in the health officer's opinion endangers the public's health.
- (b) Interference with the health officer or any authorized representatives in the performance of their duties.

Upon written application from the permittee, served upon the health officer within fifteen days after such suspension, the health officer shall conduct a hearing upon the matter after giving at least five days' written notice of the time, place and purpose thereof to the suspended permittee; provided, that any such suspension order shall be issued by the health officer in writing and served upon the permittee by leaving a copy at permittee's usual place of business or by delivery of registered or certified mail to such address.

Sec. 82.23. Same--reinstatement.

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

Sec. 82.24. License--required; fees; nontransferable, term; issuance.

It shall be unlawful for any person to operate a restaurant, itinerant restaurant or food market in the city who does not possess a valid license for the operation of such establishment. The 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.

Such license shall be issued by the city clerk-treasurer upon presenting a valid permit from the health officer. and upon payment of fees according to the following schedule:

All food service establishments:

New food service or retail fee
\$50.00

Restaurant:

Annual food service fee based on number of employees (including,, mobile or temporary food service):

11 through 5 employees.....
\$50.00

6 through 9 employees.....
\$100.00

10 or more employees \$150.00

Retail food market:

Annual fee based on number of employees:

11 through 5 employees.....
\$50.00

6 through 9 employees. \$100.00

10 or more employees
\$150.00

If the application for license is made on or after July 1st, the applicant shall pay one-half the above fees.

Any person who desires to operate an itinerant restaurant in the city shall, after securing a permit from the health officer, obtain from the city controller, a license for an itinerant restaurant. Such license shall be issued by the city clerk-treasurer upon presenting a valid permit from the health officer, and upon payment of five dollars for each day of operation not to exceed twenty-five dollars for any one continuous operation.

A separate license shall be required for each restaurant, itinerant restaurant or food store operated or to be operated by any person. A license issued under this section is not transferable. (Ord. 40-85, § 4.)

Sec. 82.25. Same--exemptions.

Mobile food markets owned by a person operating a food market which is licensed under the provisions of this article, and possessing a valid permit from the health officer to operate such a food market,. shall be exempt from the provisions of § 82.24. The provisions of such section shall not apply to sales made by religious, educational or charitable organizations.

Article III. Inspections.

Sec. 82.40. Frequency.

At least once each three months the health officer shall inspect each restaurant and food market for which a permit is required under the provisions of this chapter.

Sec. 82.41. Procedure when violations noted.

If during the inspection of any restaurant or food market the health officer discovers the violation of any of the sanitation requirements in this chapter, the health officer shall issue a written order listing such violations to the proprietor or, in the proprietor's absence, to the person in charge, and fixing a time within which the proprietor of the restaurant or food market shall abate and remedy such violations. A copy of the written order shall be filed with the records of the health department.

Sec. 82.42. Right of entry of inspector.

The person operating the restaurant or food market shall, upon the request of the health officer, permit such health officer or authorized representative access to all parts of such restaurant or food market and shall permit the removal, for testing, of any food believed to be contaminated or dangerous to health, and to copy any records bearing on the purchase or source of such food.

Sec. 82.43. Prosecution or hearing for violators.

If upon a second and final inspection the health officer finds that such restaurant, food market, person or employee is violating any of the provisions of this chapter for which a written order was issued, the health officer shall furnish evidence of the violation to the city attorney for prosecution; or the health officer may promptly issue a written order to the permittee of such restaurant or food market to appear before the city board of health at a certain time, no later than ten days from the date of final inspection, and at a place in the city fixed in the order to show cause why the permit issued under the provisions of this chapter should not be revoked.

Sec. 82.60. Frequency.

At least once in each twenty-four hour period, the health officer shall inspect each itinerant restaurant for which a permit is required under the provisions of this chapter.

Sec. 82.61. Procedure to follow when any sanitation violation noted.

If during the inspection of any itinerant restaurant the health officer discovers the violation of any of the sanitation requirements in this chapter, the health officer shall order the immediate correction of the violation.

Sec. 82.62. Authority to inspect and to copy records.

The person operating the itinerant restaurant shall, upon the request of the health officer, permit such health officer or authorized representative access to all parts of the itinerant restaurant and shall permit the removal, for testing, and to copy any record bearing on the purchase or source of food.

Sec. 82.63. Revocation of permit; penalties for continued operation.

Upon failure of any person maintaining or operating an itinerant restaurant 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 itinerant restaurant, the permit of which has been revoked, shall be subject to the penalties provided in this code.

Article IV. Food and Beverage Vending Machines.

Sec. 82.80. Permit.

(a) It shall be unlawful for any person to engage in the operation of one or more vending machines in the city who does not possess a valid operator's permit from the health officer. Only persons who comply with the applicable provisions of this article shall be entitled to receive and retain such a permit. Such a permit shall be for a term of one year beginning January 1st and expiring December 31st of the same year and shall be renewed annually.

(b) Any person desiring to operate one or more vending machines in the city shall make in writing an application for a permit from the health officer on forms provided by the health officer. Such applicant shall provide the following information:

(1) The applicant's full name, residence and post office address, and whether such applicant is an individual, firm or corporation. If a partnership exists, the names of the partners, together with their addresses, shall be included.

(2) The location of the commissary, and of other establishments operated by the applicant where supplies are kept and where vending machines are repaired or renovated.

(3) The type and form of the food to be dispensed through vending machines and the number of each such type vending machine in the applicant's possession.

(4) The signature of the applicant.

(c) Upon receipt of a satisfactorily completed application and after compliance by the operator with the applicable provisions of this article, the health officer shall issue a numbered operator's permit to the applicant. Such permit shall not be transferable. No permit or renewal thereof shall be denied or revoked on arbitrary or capricious grounds.

(d) The operator's permit number, of a size and style approved by the health officer, shall be conspicuously displayed on each vending machine operated by such

operator. The health officer may further require the permit to bear the number of the machine.

(e) In order to secure and retain an operator's permit, the operator shall maintain within the jurisdiction of the health officer, a list of all vending machines operated, including the types and their location and of all commissaries or other establishments from which machines are serviced. This information shall be made available to the health officer upon request for inspection.

(f) in order to retain an operator's permit, the operator shall notify the health officer within five days of any change in operations involving new types of vending machines, or conversion of existing machines to dispense products other than those for which the permit was issued. (Ord. No. 40-85, § 5 (part).)

Sec. 82.81. License.

(a) It shall be unlawful for any person to engage in the operation of one or more vending machines in the city who does not possess a valid license for the operation of such machines. The 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.

(b) Such license shall be provided by the city clerk-treasurer, if there is presented a valid permit from the health officer together with the necessary fees as provided in the fee schedule set forth in this section, or for one-half of such amount if application is made after July 1st.

(c) A person applying for a license shall pay an annual fee as prescribed in one of the following classes:

(1) Class 1. This class shall include an operator of one to not more than ten machines, and the annual license fee shall be fifty dollars.

(2) Class 2. This class shall include an operator of eleven or more machines, and the fee shall be fifty dollars for the first ten machines plus two dollars per machine for each machine more than ten. (Ord. No. 40-85. § 5 (part).)

Sec. 82.82. Minimum sanitation requirements.

All vending machines shall comply with the minimum sanitation requirements specified by the state Board of Health as now provided in its 410 IAC 7-17 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 city clerk-treasurer for public inspection. (Ord. No. 40-85, § 5 (part).)

Sec. 82.83. Disease control.

No employee with any disease in a communicable form, or who is a carrier of such disease, shall work in any vending machine operations in any capacity which brings the employee into contact with the production, handling, storage or transportation of food, beverage, ingredient or equipment used in vending machine operations: and no operator shall employ in any capacity any such person, or any person suspected of having any disease in a communicable form, or of being a carrier of such disease. Any employee who has a discharging or infected wound, sore or lesion on hands, arms or any exposed portion of the body shall be excluded from those operations which will bring the employee into contact with foods, beverages, utensils or equipment used in vending machine operations. Any operator among whose employees there occurs a communicable disease or who suspects that any employee has contracted any disease in a communicable form, or has become a carrier of such disease, shall notify the health officer immediately. (Ord. No. 40-85, § 5 (part).)

Sec. 82.84. Sale, examination and condemnation of adulterated or misbranded food or beverage.

(a) It shall be unlawful for any person to sell through a vending machine any food or beverage which is adulterated or misbranded.

(b) Samples of food or beverages 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 operator, impound and forbid the sale of any food which is unwholesome, adulterated or misbranded, or which the health officer has probable cause to believe is unfit for human consumption, unwholesome, adulterated or misbranded; provided, that 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, meat product, seafood, poultry, poultry product, confectionery, bakery product, vegetable, fruit or other perishable articles which in the health officer's opinion are unsound, or contain any filthy, decomposed or putrid substance, or that may be poisonous or deleterious to health or otherwise unsafe. (Ord. No. 40-85, § 5 (part).)

Sec. 82.85. Inspections.

(a) Frequency. At least once each three months, the health officer shall inspect the servicing, maintenance and operation of vending machines dispensing readily perishable food, for which a permit is required under the provisions of this article. Vending machines dispensing other than readily perishable food may be inspected by the health officer as often as deemed necessary to insure compliance with the provisions of this article.

(b) Procedure When Violations Noted. If during the inspection of any servicing, maintenance and operation of a vending machine the health officer discovers the

violation of any of the sanitation requirements in this article, the health officer shall issue a written order listing such violations to the operator or, in the operator's absence, to the person in charge and fixing a time within which the operator of the vending machine 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 one or more vending machines shall, upon the request of the health officer, permit such health officer or authorized representative access to all parts of such vending operation and locations of all vending machines owned or serviced by the operator, and shall permit the health officer or authorized representative to collect evidence or exhibits and to copy any or all records relative to the enforcement of this article. The confidentiality of such records shall be maintained by the health officer.

(d) Prosecution or Hearing for Violators. If upon a second and final inspection the health officer finds that such a vending machine, operator, person or employee is violating any of the provisions of this article 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 city attorney for prosecution; or the health officer may promptly issue a written order to the permittee of such vending operation to appear at a certain time, no later than ten days from the date of inspection, and a place in the city fixed in the order to show cause why the permit issued under the provisions of this article should not be revoked.

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

Notwithstanding any other provisions of this article, whenever the health officer finds insanity or other conditions involving the operation of any vending machine which, in the health officer's opinion, endangers the public health, the health officer may, without notice or hearing, issue a written order to the operator citing the existence of such condition and specify such corrective action to be taken and, if deemed necessary, require immediate discontinuance of operation. Such order shall be effective immediately and shall apply only to the vending machine or product involved. Any operator to whom such order is issued shall comply therewith, but upon petition to the health officer shall be afforded a hearing as soon as possible. When necessary corrective action has been taken and on the request of the operator, the health officer shall make a reinspection to determine whether operations may be resumed.

(f) Suspension of Permit. Any permit issued under this article may be temporarily suspended by the health officer without notice or hearing for a period of not to exceed thirty days, for any of the following reasons:

(1) Insanity or other conditions which in the health officer's opinion endangers the public's health.

(2) Interference with the health officer or any authorized representatives in the performance of their duties; provided, that upon written application from the permittee, served upon the health officer within fifteen days after such suspension, the health officer shall conduct a hearing upon the matter after giving at least five days' written notice of the time, place and purpose thereof to the suspended permittee;

provide

(g) Reinstatement of Permit. Any person or operator whose permit has been suspended may at any time make application to the health officer for the reinstatement of the permit. (Ord. No. 40-85, § 5 (part).)

Sec. 82.86. Commissaries outside jurisdiction of health officer.

(a) Foods from commissaries and other sources outside the jurisdiction of the health officer may be sold within the city, if such commissaries or other sources of supply conform to the provisions of the applicable food service establishment or food market provisions of this chapter, or to the provisions of the applicable state board of health regulation.

(b) To determine the extent of compliance with such provisions, the health officer may accept reports from the responsible authority in the jurisdiction where the commissaries are located. (Ord. No. 40-85, § 5 (part).)

Sec. 82.87. Vending machines on city property.

The board of public works and safety of the city shall be granted authority to act in matters of location, use, maintenance and commission of vending machines located on city property. (Ord. No. 4-9 1.)