

ORDINANCE NO.: 101022B

**AN ORDINANCE OF THE COMMON COUNCIL FOR THE CITY OF FISHERS,
HAMILTON COUNTY, INDIANA, AMENDING CHAPTER 170 OF THE CITY OF
FISHERS CODE OF ORDINANCES (RETAIL FOOD ESTABLISHMENTS)**

WHEREAS, ensuring the health and safety of residents is the highest priority of the City of Fishers, Hamilton County, Indiana (“City”);

WHEREAS, on or around June 15, 2020, the Common Council (“Council”) adopted Ordinance No.: 061520A, which created the City of Fishers Health Department Code (the “Health Code”) to further promote the health, safety, and welfare of the City;

WHEREAS, Chapter 170 of the Health Code, the “Food Establishments Regulations of the City of Fishers,” was adopted to provide minimum standards for the prevention and suppression of disease and health risks associated with the preparation and distribution of food through food service operations within the City, and to otherwise promote the mission of the food protection program to protect the health of all persons in the City;

WHEREAS, the City, by and through the Fishers Health Department, now desires to amend the Health Code in order to implement a Sanitation Grading System (as that term is defined in the Health Code) applicable to all Food Establishments;

WHEREAS, on or around August 9, 2022, the City of Fishers Board of Health, meeting in duly noticed public meeting recommended the adoption of the Sanitation Grading System; and

WHEREAS, the Council now desires to amend the Health Code as further defined herein.

NOW, THEREFORE, BE IT ORDAINED, by the Common Council for the City of Fishers, Hamilton County, Indiana, meeting in regular session as follows:

Section 1. Chapter 170 (Retail Food Establishments), of the City of Fishers Code of Ordinances shall be amended as follows:

§ **170.05 DEFINITIONS** shall be amended to add the following definitions:

V. “Sanitation Grade” shall mean the grade given to a Food Establishment by the Department during its annual inspection based upon the Sanitation Grading System.

W. “Sanitation Grading System” shall mean the grading system in which the Department conducts its annual inspection (and any reinspection) of Food Establishments based on 410 IAC 7-24, as amended. The Sanitation Grading System has been posted on the Department’s website and is incorporated by reference herein.

§ 170.07 POSTING shall be amended as follows:

With respect to the inaugural inspections, all permits shall be posted by or before ~~June 30~~September 1, 2023. All Permits shall be posted in a conspicuous place in view of the public in each Food Establishment. With respect to Mobile Food Service Establishments, the name, address and telephone number of the Permittee shall be conspicuously displayed on each licensed mobile unit not less than two inches in height. In addition, a copy of the Permit must be located in each mobile unit at all times for purposes of identification.

All Sanitation Grades, as determined in accordance with §170.27, shall be posted on a placard provided by the Department on (i) either ~~(ia)~~ the Food Establishment's front window, ~~(ib)~~ door, or (ic) within five (5) feet of the front door or other direct entrance from the street; ~~and, or (iv)~~ if applicable, on the drive-through window; ~~on a placard provided by the Department~~. Sanitation Grades shall be posted 4-6 feet above ground level. If a Food Establishment does not have a direct entrance from the street, the Department shall identify an acceptable place to post the Sanitation Grade. Upon receipt from the Department, a Food Establishment shall be fined \$100 for every day it fails to post its Sanitation Grade.

§ 170.27 SANITARY REQUIREMENTS shall be amended as follows:

A. All Food Establishments, retail food markets, farmers markets, bed and breakfasts, vending operators, and food and beverage Vending Machines shall comply with at least 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 those regulations may be amended or superseded hereafter.

B. Sanitation Grading System. The Sanitation Grading System is based on the 2004 Indiana Retail Establishment Sanitation Requirements and 410 IAC 7-24, and as those regulations may be amended from time to time. The Sanitation Grading System shall be utilized by the Department to conduct its annual inspection, and any re-inspections, of all Food Establishments. Every Food Establishment shall begin the annual inspection with 100 points. Points will be deducted by the Department with point values based upon the health risk the violation poses to the public. Priority violations are violations that contribute to the elimination, prevention, or reduction to an acceptable level, hazards associated with foodborne illness injury and there is no other violation that more directly controls the hazard. Priority violations are 5 points per violation. Foundation violations are violations that support, facilitate, or enable one or more priority violations. Foundation violations are 3 points per violation. Core violations are violations that usually relate to general sanitation, operational controls, sanitation standard operating procedures, facilities or structures, equipment design or general maintenance. Core violations are 2 points per violation. The Sanitation Grading System has been posted on the Department's website and is incorporated by reference herein.

C. Initial Annual Inspection. The Department shall provide each Food Establishment with the following Sanitation Grades: (i) “Grade A” (801 to 100 points), (ii) “Grade B” (~~6071-79-80~~ points), or (iii) “Grade C” (~~below 6061-70~~ points). Food Establishments shall be temporarily closed for receiving a Sanitation Grade of 6059 points or less or for an imminent health hazard. The Food Establishment may reopen after all priority violations have been corrected and any imminent health hazard has been eliminated.

Each Food Establishment will be issued a grade based on their annual inspection. Most Food Establishments should expect to be reinspected shortly after their annual inspection to assure that any violations have been addressed. Re-inspections are prioritized based on the health risks posed by the violations cited during the annual inspection. There is no additional fee to the initial annual inspection and initial re-inspection.

D. Mandatory Re-Inspections. Food Establishments that receive a Sanitation Grade of “Grade B” during the initial annual inspection will receive at least one (1) mandatory re-inspection during the same year to assure ongoing compliance. Food Establishments that receive a Sanitation Grade of “Grade C” during the initial annual inspection ~~will receive at least~~may have up to three (3) mandatory re-inspections during the same year to assure ongoing compliance.

Food Establishments shall be charged 50% of the Food Establishment’s annual permit fee for each subsequent violation-based inspection. Food Establishments shall be charged 100% of the Food Establishment’s annual permit fee for each full re-inspection (~~may be necessitated~~as dictated by Grade).

E. Operator Requested Re-Inspection. Food Establishments may choose to request a full reinspection one (1) time per calendar year for the opportunity to improve their Sanitary Grade by one level (i.e., from a “Grade C” to a “Grade B”). Operator requested re-inspections shall be submitted to the Department through its permit management system. Food Establishments shall be charged at a rate of 150% of the Food Establishment’s annual permit fee for any operator requested re-inspection.

F. Challenges to Sanitation Grade. Operators may challenge specific points in the annual inspection report for reconsideration. Any challenge shall be submitted through the Department’s permit management system within five (5) days of receiving the annual inspection report. Untimely submissions will not be considered by the Department. All challenges must be supported by evidence. The Department will attempt to review any challenge within thirty (30) days of receiving a timely submission. After its review, the Department shall notify the Operator of its decision to either (i) uphold the specific point determination made during its annual inspection, or (ii) modify the specific point determination based upon the Department’s further review of the timely submitted challenge.

G. Final Appeal. If an Operator, after timely completing the challenge process provided in Section E, continues to feel aggrieved by the Department's final decision, the Operator may submit an appeal to the Fishers Health Board (the "Board"). Any appeal shall be submitted through the Department's permit management system within five (5) days of receiving the Department's final decision, as provided in Section E. Untimely submissions will not be considered by the Board. The submission must state the specific reasons for the appeal. An appeal that is timely submitted, and in compliance with §170.27, shall be placed on the agenda of the Board's next regularly scheduled meeting, or within thirty (30) days, whichever is sooner. At the Board hearing, the Operator and Department will have the opportunity to present evidence to the Board, and the Board will have the opportunity to ask any questions in furtherance of the issue. After conducting a hearing, the Board shall either (i) uphold, (ii) modify, or (iii) rescind the Department's final decision. The Board's decision shall be a final and conclusive order on the matter.

Section 2. All other provisions of the City's ordinances not in conflict with or specifically changed by this amendment shall remain in full force and effect.

Section 3. This Ordinance shall be of full force and effect from and upon its adoption and publication and in accordance with Indiana law.

SO ORDAINED, by the Common Council for the City of Fishers, Hamilton County, Indiana this ____ day of _____, 2022.

**COMMON COUNCIL OF THE CITY OF FISHERS,
HAMILTON COUNTY, INDIANA**

YAY

NAY

ABSTAIN

	Todd Zimmerman, President		
	John Weingardt, Vice President		
	C. Pete Peterson, Member		
	Cecilia C. Coble, Member		
	Brad DeReamer, Member		
	Selina Stoller, Member		
	Jocelyn Vare, Member		
	Crystal Neumann, Member		
	David Giffel, Member		

I hereby certify that the foregoing Ordinance/ Resolution was delivered to City of Fishers Mayor Scott Fadness on the ____ day of _____ 2022, at _____ p.m.

ATTEST: _____

Jennifer L. Kehl, Fishers City Clerk

MAYOR'S APPROVAL



Scott A. Fadness, Mayor

DATE

MAYOR'S VETO

Scott A. Fadness, Mayor

DATE

This instrument prepared by: Christopher P. Greisl, City Attorney, City of Fishers, Hamilton County, Indiana, One Municipal Drive, Fishers, Indiana, 46038

"I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law." Christopher P. Greisl