

ORDINANCE

Ordinance No. O11-2017-98

AMENDING ORDINANCE 002-2006-58 AGENT FOR PUBLIC HEALTH PROTECTION PURPOSES

THE BOARD OF SUPERVISORS OF THE COUNTY OF ASHLAND COUNTY DOES HEREBY ORDAIN AS FOLLOWS:

- 1) **AUTHORITY.** This ordinance is adopted pursuant to that authority provided by Wisconsin State Statute Chapters 66.0417, 68, 97.30, 97.41, 97.615, 125.68(5), 250.01(4), 251.02, 252.02, 252.03, 254.47, and 463; and by Wisconsin State Administrative Chapter: ATCP 72, 73, 74, 75, 76, 78, 79; DHS 173; COMM 90 and 95; the WI Food Code, Chapter 11; and SPS 221.
- 2) **PURPOSE.** The purpose of this ordinance is to protect and improve the public health and to authorize the Ashland County Health and Human Services to become the designated agent of the Wisconsin Department of Agriculture, Trade and Consumer Protection for the purpose of establishing permit fees; issuing permits; and making investigations or inspections of hotels, motels, tourist rooming houses, recreational and educational camps, restaurants, bed and breakfast establishments, campgrounds and camping resorts, public swimming pools, and in making investigations and inspections of food vending machines, their operators and vending machine commissaries, and of retail food establishments; and for the purpose of enacting local regulations governing these establishments. Also, the Ashland County Health & Human Services will become the designated agent of the Wisconsin Department of Safety and Professional Services for the purpose of establishing permit fees; issuing permits; and making investigations or inspections of tattooing establishments, body art establishments, and combined tattooing and body art establishments; and for the purpose of enacting local regulations governing these establishments.
- 3) **APPLICABILITY.** The provisions of this ordinance shall apply to the owner and operator of any retail food establishment, hotel, motel, tourist rooming house, body piercing and tattooing establishments, restaurants, bed and breakfast establishment, campground and camping resort, recreational and educational camp, public swimming pools, vending machine commissary or vending machine in all areas of Ashland County.
- 4) **ENFORCEMENT.** The provisions of this ordinance shall be administered by or under the direction of the Health Officer of the Health Department, who in person or by duly authorized representatives shall have the right to enter, at reasonable hours, upon premises affected by this regulation to inspect the premises, secure samples or specimens, examine and copy relevant documents and records or obtain photographic or other evidence needed to enforce this ordinance and issue citations or file a summons and complaint with the District Attorney. The County of Ashland is an agent for the WI Department of Agriculture, Trade and Consumer Protection and the Wisconsin Department of Safety and Professional Services under the provisions as set forth in Wisconsin Statutes Chapter 97.30, Subchs. III and IV of Ch 97, and Ch 463, and the applicable provisions of the WI Administrative Code, with the powers as described in Wisconsin Statutes 250.01(4).
- 5) **SEVERABILITY.** Each section, paragraph, sentence, clause, word and provision of this ordinance is severable, and if any provisions shall be held unconstitutional or invalid for any reason, such decision shall not affect the remainder of the ordinance nor any part thereof other than that affected by such a decision.
- 6) **DEFINITIONS.**
 - (a) "Department" means the County Health Department.

- (b) "Health Officer" means the Health Department Director or his/her authorized agent.
- (c) "Person" means an individual, partnership, association, firm, company, corporation, organization, municipality, county, town, or state agency, whether tenant, owner, lessee or licensee, or the agent, heir, or assignee of any of these.
- (d) "License" means the granting of permission in a written/certificate form from the appropriate authority to carry on an activity. In this chapter, it is synonymous with permit.

7) LICENSE AND PERMIT.

- (a) No person shall operate a retail food establishment, bed and breakfast establishment, hotel, motel, tourist rooming house, body piercing and tattooing establishments, restaurant, campground and camping resort, recreational and educational camp, or a public swimming pool without first obtaining a non-prorated permit from the Health Department. Such permits shall expire on June 30 of each year following their issuance except that non-retail food permits initially issued during the period beginning on April 1 and ending June 30 shall expire June 30 of the following year. The issuance of a permit may be conditioned upon the Permit licensee correcting a violation of this ordinance within a specified period of time. If the condition is not met within the specified period of time, the permit shall be voided. The permit shall not be transferable to a location other than the one for which it was issued, nor shall a permit be transferred from one operator to another subject to the express exception of: (1) As to location, temporary permits may be transferred; (2) As to operator, a permit of a non-retail food establishment operator may be transferred to an individual who is an immediate family member of the operator if the operator is transferring operation of the establishment or vending machine to that immediate family member. A parent, child, step-child, grandchild, sibling or step-sibling shall be considered an immediate family member for purposes of this ordinance.
- (b) Operators or Permit licensees of temporary restaurants whom the Health Department has found to be uncooperative or habitual violators of this Ordinance may be denied a permit to operate. Temporary permits may be transferred to a premise other than that for which it was issued, provided that the approval of the new premises is secured from the Health Department prior to operating at the new premises.
- (c) With the exception of those establishments defined herein as "temporary", no permits shall be granted to any person under this Ordinance without a pre-inspection by the Health Department of the premises for which the permit shall be granted.
- (d) No permit shall be issued until all application fees have been paid.

8) LICENSE APPLICATION. Application for permit shall be made in writing to the Health Department on forms developed and provided by the Health Department, stating the name and address of the proposed applicant and operator, and the address and location of the proposed establishment, together with any such other information as may be required. The Health Department shall either approve the application or deny the permit within thirty (30) days after the receipt of a complete application.

9) LICENSE ISSUANCE. The Health Officer shall issue a license to the applicant only after compliance with the requirements of this chapter and upon payment to the health department of all required fees. The department's decision to grant or withhold a license shall not exceed 30 calendar days. The decision to withhold shall accompany written inspection or documentation of justification or cause. No license may be issued until all applicable fees have been paid.

- 10) FEES.** Fees for permits required by this chapter shall be as provided through the fee schedule approved by the Ashland County Health & Human Services Board.
- 11) PERMIT PUBLIC DISPLAY.** All licensees shall post their license in plain public view on the premise for which the permit is issued. It shall be posted for the duration that the permit is in force.
- 12) INSPECTION BY HEALTH DEPARTMENT.** Authorized employees of the Health Department, upon presenting proper identification, shall have the authority and duty to enter any licensed premises during regular business hours to inspect the same, with respect to a business open at least forty (40) hours per week. In the absence of regular business hours, inspections shall be made at any reasonable hour. In the event of an emergency, an inspection may be made at any time.
- 13) DENIAL, SUSPENSION OR REVOCATION OF LICENSE.** The Health Officer, or designee, may deny any license application or suspend or revoke any license issued under this chapter for non-compliance with this code or any other state or county law. The following procedure shall be followed in the denial, suspension or revocation of any license issued under this chapter:
- (a) A decision by the Health Officer to deny, suspend or revoke a license shall be in writing and shall state, with specificity, the reasons for the Health Officer's decision and shall state any and all applicable statutes, ordinances, rules, regulation or orders which may have been violated. The Health Officer shall send to the licensee copy of the written decision by mail or by personal service. Said notice shall inform the licensee or applicant of the right to have this decision reviewed and the procedure for such review.
 - (b) A licensee or applicant aggrieved by a decision of the Health Officer to deny, suspend or revoke a license must send a written Request and Reconsideration to the Health Officer within 10 working days of receipt of the notice of the Health Officer's decision. The Request for Review and Reconsideration shall state the grounds upon which the person aggrieved contends that the decision should be reversed or modified.
 - (c) Within 10 working days of receipt of the Request for Review and Reconsideration, the Health Officer shall review its initial determination. The Health Officer may affirm, reverse or modify the initial determination. The Health Officer shall mail or deliver to the licensee or applicant a copy of the Officer's decision on review, and shall state the reasons for such decision. The decision shall advise the licensee or applicant of the right to appeal the decision, the time within which appeal shall be taken and the office or person with whom Notice of Appeal shall be filed.
 - (d) A licensee or applicant who wishes to appeal a decision made by the Health Officer on review must file a notice of appeal within 10 days of receipt of the Health Officer's Decision on review. The Notice of Appeal shall be filed or mailed to the Health Officer. The Health Officer shall immediately file said Notice with the Executive Committee of the Ashland County Health & Human Services Board.
 - (e) A licensee or applicant shall be provided a hearing on appeal within 30 days of receipt of the Notice of Appeal. The Health Officer shall serve the licensee or applicant with notice of hearing by mail or personal service at least 5 days before the hearing.
 - (f) The hearing shall be conducted before the Executive Committee of the Ashland County Health & Human Services Board and shall be conducted in accordance with the procedures outlined in Section ss. Chapter 68.11 (2) and (3).
 - (g) Within 15 days of the hearing, the Executive Committee of the Ashland County Health & Human Services Board shall mail or deliver to the applicant its written determination stating the reasons therefor.

(h) **OPERATING WITHOUT A LICENSE.** Any person who shall operate without a license as required above shall be subject to a fine. Ongoing violations of operating without a license may be subject to forfeitures for each day in which the person continues to operate without a license. Fees will be determined by the Ashland County Health & Human Services Board.

14) RESTAURANTS/MEAL FOOD SERVICE.

(a) **REQUIREMENTS.**

- i. Except as provided in (b), no person, party, firm or corporation shall operate a Restaurant, Temporary Restaurant or Mobile Restaurant, as defined in Wisconsin Administrative Code ATCP 75, without first obtaining a license therefore from the Health Department, or contrary to the terms and conditions of this ordinance or Wisconsin Administrative Code ATCP 75, which is incorporated herein by reference and made part of this ordinance as if fully set forth herein.
- ii. No license is required for the following:
 1. Churches, religious, fraternal, youth or patriotic organizations such as VFW, American Legion, or other like organizations, service clubs or civic organizations which occasionally prepare, serve, or sell meals to the general public. The term occasional means fewer than 4 days during any 12-month period.
 2. Taverns that serve free lunches of popcorn, cheese, crackers, pretzels, cold sausage, cured fish or bread and butter.
 3. Any public or private school lunchroom for which food service is directly provided by the school. The department may charge a fee for inspection services to school lunchrooms required to be inspected under federal law.
 4. A private individual selling food from a moveable or temporary stand at a public farm sale.
 5. A concession stand at a locally sponsored sporting event, such as a little league game.

15) ADMINISTRATION AND ENFORCEMENT. In addition to the statutory and administrative code references and powers as indicated in Section A, the Health Officer/designee may issue temporary orders when the department has reasonable cause to believe that any examined food constitutes, or that any construction, sanitary condition, operation or method of operation of the premises or equipment used on the premises creates an immediate danger to public health or safety.

16) EFFECTIVE DATE. This Ordinance shall take effect following its passage and publication.

Dated at the City of Ashland, Wisconsin, this 14th day of November, 2017.

Signed:

Pat Brown

Ann Eise

Kathy S. Schutte

Bill Hoyer

Walter A

Doug Habasa

George Maki

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Carl Ryberg

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