

CHAPTER 44

FOOD PROTECTION

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44.01 Authority. This ordinance is adopted pursuant to that authority provided by Wis. Stat. ch. 68, and Wis. Stat. §§ 66.0417, 97.41, 125.68(5), 251.04(3), and Wis. Admin. Code ch. ATCP 74 and 75 and Comm. 61 through 65.

44.02 Purpose. This ordinance is adopted to protect the public health, safety and welfare of all persons present in Sauk County and to authorize the Sauk County Health Department to become the designated agent of the State of Wisconsin Department of Agriculture, Trade and Consumer Protection for the purpose of establishing permit fees, issuing permits, collecting samples, and making investigations of retail food establishments and for the purpose of enacting local regulations governing these establishments.

44.03 Applicability. The provisions of this ordinance shall apply to the owner and operator of any retail food establishment in both the incorporated or unincorporated areas of Sauk County, unless a city or village enters into a separate agreement pursuant to Wis. Stat. § 97.41 with the State of Wisconsin Department of Agriculture, Trade and Consumer Protection to become a designated agent for the purposes designated herein.

44.04 Definitions. All definitions as set forth in Wis. Stat., chs. 68, 97, 125, and 251, Wis. Stat. § 66.0417, Wis. Admin. Code ch. ATCP 74 and 75, and Comm. 61 through 65 are incorporated in this ordinance by reference and shall be construed, read and interpreted as if fully set forth herein until amended and then shall apply

as amended. In addition, the following terms and phases have meanings ascribed to them in this section:

(1) ANNUAL PERMIT FEE. A fee for on-site inspection of the entire facility and one follow-up inspection to determine that establishments identified in the ordinance are compliant with the statutes and administrative codes that govern their operation.

(2) BOARD OF HEALTH. The Sauk County Board of Health.

(3) DUPLICATE PERMIT FEE. A fee for the replacement of an original permit.

(4) HEALTH DEPARTMENT. The Sauk County Health Department.

(5) HEALTH OFFICER. The Sauk County Director of Health or a designated representative of the Health Officer authorized to inspect facilities and conduct licensing and enforcement activities on behalf of the Health Department.

(6) INSPECTION FEE. The fee to conduct an inspection without the intent of licensing an establishment.

(7) LATE APPLICATION FEE. A fee that is charged for failure to comply with the application time frame specified in the applicable statute and administrative code for completion and submission of the required application for permit to the Health Department.

(8) LIMITED FOOD SERVICE. The serving of only individually wrapped, hermetically sealed, single-food servings by a licensed processor with preparation on the premises limited to heating and serving with single-service articles, i.e. hermetically wrapped sandwiches or frozen pizza.

(9) OPERATOR. The owner, operator, or person responsible to the owner for the operations of the retail food operation.

(10) OUTDOOR GRILLING. The cooking of food on an outdoor grill on the premises of a retail food establishment. The purpose for outdoor cooking shall not increase the production capability of the restaurant kitchen by circumventing codes applicable to indoor cooking facilities. Hot holding shall be limited to what can be held on the cooking unit.

(11) PENALTY FEE. A fee for failure to pay established or assessed fees in a timely manner.

(12) POTENTIALLY HAZARDOUS FOOD.

(a) A food that is natural or synthetic and that requires temperature control because it is in a form capable of supporting:

1. The rapid and progressive growth of infectious or toxigenic microorganisms;
2. The growth and toxin production of Clostridium Botulinum; or
3. In raw shell eggs, the growth of Salmonella Enteritidis.

(b) Potentially hazardous food includes an animal food (a food of animal origin) that is raw or heat-treated; a food of plant origin that is heat-treated or consists of raw seed sprouts; cut melons, and garlic and oil mixtures that are not acidified or otherwise modified at a food processing plant in a way that results in mixtures that do not support growth as specified under Subparagraph (a) of this definition.

(c) Potentially hazardous food does not include:

1. An air-cooled hard-boiled egg with shell intact;
2. A food with an a/w value of 0.85 or less;
3. A food with a ph level of 4.6 or below when measured at 24C (75F);
4. A food in an unopened hermetically sealed container that is commercially processed to achieve and maintain commercial sterility under conditions of non-refrigerated storage and distribution; and

5. A food for which laboratory evidence demonstrates that the rapid and progressive growth of infectious or toxigenic microorganisms or growth of S. Enteritidis in eggs or C. Botulinum

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cannot occur, such as a food that has an a/w and a PH that are above the levels specified under Subparagraphs (c)(2) and (3) of this definition and that may contain a preservative, other barrier to growth of microorganisms, or a combination of barriers that inhibit the growth of microorganisms.

6. A food that may contain an infectious or toxigenic microorganism or chemical or physical contaminant at a level sufficient to cause illness, but that does not support the growth of microorganisms as specified under Subparagraph (a) of this definition.

(13) PRE-INSPECTION FEE. The fee associated with the required inspection necessary to determine compliance at the time of a change-in-operator or new business.

(14) RE-INSPECTION FEE. A fee structure for the subsequent inspections needed to address compliance issues with the statutes and administrative codes that govern a respective establishment. Re-inspections are conducted due to one or more of the following: Uncorrected critical violations, more than ten total violations, repeat violations from previous inspections, and when a complaint investigation identifies unsatisfactory conditions. The fee for a re-inspection will be a set fee, determined by the Board of Health.

(15) RETAIL FOOD ESTABLISHMENT. Retail food establishment shall mean any of the following, but does not include a restaurant or other establishment holding a permit to the extent that the activities of the establishment are covered by that permit:

(a) A permanent or mobile food processing facility where food is processed primarily for direct retail sale to consumers at the facility.

(b) A mobile facility from which potentially hazardous food is sold to customers at retail.

(c) A permanent facility from which food is sold to consumers at retail, whether or not that facility sells potentially hazardous food or is engaged in food processing

(16) TEMPORARY RETAIL FOOD ESTABLISHMENT. A retail food establishment that operates at a fixed location in conjunction with a single event such as a fair, carnival, circus, public exhibition, anniversary sale, or occasional sales

promotion for a period of no more than fourteen consecutive days or less. Mobile Establishments of this type which conduct business in Sauk County that are licensed outside of Sauk County are subject to the provisions of this chapter, and will be inspected and charged a fee to cover the cost of inspection. The fee charged shall not exceed the actual, direct costs incurred by the Health Department in conducting the inspection.

44.05 Administration. The provisions of this ordinance shall be administered by or under the direction of the Health Officer, who 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.

44.06 License and Permit. (1) No person shall operate a retail food establishment without first obtaining a non-prorated permit from the Health Department. Such permits shall expire on June 30 of each year following their issuance. 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 unless expressly authorized by this ordinance, state statute, or administrative code. As to location, temporary permits may be transferred.

(2) Operators or permit licensees of temporary retail food establishment whom the Health Department has found to be uncooperative by evidence of failing to allow inspections, failure to remedy violations or other specific and documented violations, or operator or permit licensees who are habitual violators of this Ordinance, may be denied a permit to operate.

(3) Temporary permits may be transferred to a premises other than that for which it was issued. The permit licensee must notify the Health Department prior to the transfer, and the transfer is subject to the approval of the new premises by the Health Department prior to operating at the new premises.

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(4) 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.

(5) No permit shall be issued until all application fees have been paid.

44.07 Application. (1) Application for permits shall be made in writing to the Health Department, on forms developed and provided by the Health Department, stating the name and the 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 or deny the application within thirty (30) days after receipt of a complete application.

44.08 Fees. Fees for permits required by this chapter shall be authorized through a fee schedule approved annually by the Board of Health.

44.09 Permit and Public Display. Every establishment required to obtain a permit pursuant to this ordinance shall prominently display said permit at all times in a conspicuous, public place.

44.10 Temporary Orders. Whenever, as a result of an examination, the Health Officer has reasonable cause to believe that an immediate danger to health exists on a premises covered by this ordinance, the Health Officer may issue a temporary order in accordance with Wis. Stat. § 66.0417 (2).

44.11 Denial, Suspension or Revocation of License. The Health Officer may deny any license application or suspend or revoke any license issued under this chapter for noncompliance with this code and regulations, rules and laws adopted by reference under this chapter. The following procedure shall be followed in the denial, suspension, or revocation of any license issued under this chapter:

(1) A decision by the Health Officer or designee, 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 applicable statutes, ordinances, rules, regulation, or orders which may have been violated. The Health Officer shall send a copy of the written decision to the licensee 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.

(2) Any licensee or applicant aggrieved by a decision of the Health Officer to deny, suspend, or revoke a license may have the decision reviewed and reconsidered by a written request mailed or delivered to the Health Officer within thirty (30) working days of receipt of the notice of the Health Officer's or designee's decision. The written request for review and reconsideration shall state the grounds upon which the person aggrieved contends that the decision should be reversed or modified.

(3) Within fifteen (15) 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 an administrative appeal, the time within which appeal shall be taken and the office or person with whom the appeal shall be filed.

(4) A licensee or applicant who wishes to appeal a decision made by the Health Officer on review must file a notice of appeal within thirty (30) days of delivery of the notice of the Health Officer's Decision on review. The Administrative appeal shall be filed or mailed to the Health Officer. The Health Officer shall immediately file said notice of appeal with the Board of Health.

(5) A licensee or applicant shall be provided a hearing on appeal within fifteen (15) days of receipt of the request for an Administrative Appeal. The Health Officer shall serve the licensee or applicant with notice of hearing by mail or personal service at least ten (10) days before the hearing.

(6) The hearing shall be conducted before the Board of Health and shall be conducted in

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accordance with the procedures outlined in Wis. Stat. §§ 68.11 (2) and (3).

(7) Within twenty (20) days of the hearing, the Board of Health shall mail or deliver to the appellant its written determination stating the reasons therefore.

(8) A decision by the Health Officer upon a request for review and reconsideration, which is not appealed to the Board of Health, or a decision by the Board of Health on an appeal of a decision by the Health Officer of a request for review and reconsideration shall be a final determination under Wis. Stat. § 68.12 (2).

(9) Any party to a proceeding resulting in a final determination may seek review thereof by certiorari within thirty (30) days of receipt of the final determination per Wis. Stat. § 68.13.

44.12 Regulations, Rules and Laws Adopted by Reference.

The applicable laws, rules, and regulations as set forth in Wis. Stat. chs. 68, 97, 125, 251, Wis. Stat. § 66.0417, Wis. Admin. Code ch. ATCP 74 and 75 and Comm. 61 through 65 are incorporated in this regulation by reference and they shall be construed, read, and interpreted as fully set forth herein until amended and then shall apply as amended. The expressed provisions of this Ordinance shall control where more restrictive.

44.13 Administrative Regulations.

The authority to implement policies consistent with this chapter is vested with the Board of Health. Policies will be promulgated as follows:

(1) The Health Director shall prepare draft policies and present those policies at least twenty (20) days prior to adoption at a meeting of the Board of Health. Public comment on the draft policies shall be accepted.

(2) The Health Director shall consider the comments submitted and report to the Board of Health regarding any comments received and report whether the comments were incorporated into the draft policy, and provide an explanation why they were or were not incorporated. The Board of Health may consider the policy for adoption at their next meeting following the expiration of the twenty (20) day period.

44.14 Violation and Penalties.

(1) Any person who violates and refuses to comply with any provisions of this ordinance shall be subject to a citation and respective forfeiture as established in Sauk Co. Code ch. 20 for each offense. The Health Officer or authorized representative may issue citations using the standard citation form used by Sauk County. Citations may be served in person or sent by Certified Mail. The Health Officer may also or alternatively revoke or amend any applicable permit. Each day a violation exists or continues shall be considered a new and separate offense.

(2) The Sauk County Corporation Counsel may seek enforcement of violations of this ordinance in Sauk County Circuit Court or any other court of competent jurisdiction. A court may enforce this ordinance through injunctive relief.

(3) Any person or entity violating this chapter, or any rule promulgated hereunder or incorporated by reference, shall forfeit not less than \$25 nor more than \$200.

44.15 Effective Date. This Ordinance shall take effect following its passage on a date mutually designated by Sauk County and the State of Wisconsin Department of Agriculture, Trade and Consumer Protection which shall not be later than July 1, 2007.

As adopted by the Sauk County Board of Supervisors on April 17, 2007 - Ordinance No. 51 - 07.