

1     **213-42013**

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3     **ORDINANCE:           Revision of Chapter 11 of the General Code of Winnebago County**

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6     **TO THE WINNEBAGO COUNTY BOARD OF SUPERVISORS:**

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8             **WHEREAS**, Close to one year has expired since Winnebago County authorized the consolidation of the City  
9 of Oshkosh and City of Neenah Health Departments into the Winnebago County Public Health Department; and

10            **WHEREAS**, as part of the ongoing consolidation process, a subsequent review of Chapter 11 of the General  
11 Code of Winnebago County was performed by the Public Health Department to determine if there were omissions or  
12 changes that needed to be made to that Chapter; and

13            **WHEREAS**, after review of Chapter 11 by the Winnebago County Public Health Department Director and the  
14 Winnebago County Board of Health, a number of amendments and rescissions were recommended relating to the  
15 Ordinance so as to make it more efficient. These amendments include the following:

- 16        A. Rescinding Section 11.06(3) of the General Code of Winnebago County in that the appointment of a new  
17        Board of Health has already occurred;
- 18        B. Amending Section 11.07(2) of the General Code of Winnebago County so as to specifically indicate that  
19        Chapter 11 applies to all areas of Winnebago County except for the City of Menasha and the City of  
20        Appleton;
- 21        C. Rescinding Section 11.09(1)(a) of the General Code of Winnebago County in that the Winnebago County  
22        Board of Health does not actually prepare an annual budget, but that said budget is prepared by the  
23        Winnebago County Executive with the assistance of the Director of the Winnebago County Public Health  
24        Department;
- 25        D. Amending Section 11.11 of the General Code of Winnebago County so as to incorporate by reference  
26        various Statutes and Administrative Code Chapters within the Ordinance and so as to delete other parts of  
27        the Ordinance which are made unnecessary by the adoption of said Statutes and Regulations by Ordinance;
- 28        E. Establishing a manufactured home community licensing fee;
- 29        F. Adding Appendix B, the former City of Oshkosh Code relating to physical requirements for coin-operated  
30        moving picture houses as an Appendix for reference purposes regarding building code requirements that  
31        were grandfathered for such businesses; and
- 32        G. Renumbering of sections of this Chapter.

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34            **NOW, THEREFORE, BE IT ORDAINED** by the Winnebago County Board of Supervisors that it hereby  
35 amends Chapter 11 of the General Code of Winnebago County as follows:

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37        I.     Incorporate as part of this Ordinance "Appendix B: City of Oshkosh Section 15-19 High Risk Sexual Conduct  
38        Establishments."
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40        II.    Rescind Section 11.06(3) Disbandment of Present Board and Appointment of New Board of Health and  
41        renumber subsections as follows: 11.06(3) Terms, 11.06(4), Organization, and 11.06(5) Meetings.  
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III. Amend Section 11.07(2)(a) Levels of Service and Duties as follows:

(a) The Winnebago County Health Department shall provide, on a County-wide basis, those services required of a local health department pursuant to Chapter 251, Wis Stats ~~(4993)~~, except in those cities which have elected not to participate. **All subsequent sections of this chapter pertaining to the County Health Department shall apply to all of Winnebago County except for the City of Menasha and the City of Appleton.**

IV. Rescind Section 11.09(1)(a).

V. Amend Section 11.11 as follows:

**11.11 LICENSURE AND REGULATION OF ~~RETAIL FOOD ESTABLISHMENTS, TAVERNS, HOTELS, RESTAURANTS, TOURIST ROOMING HOUSES, AND OTHER ESTABLISHMENTS BY~~ WINNEBAGO COUNTY HEALTH DEPARTMENT**

**(1) AUTHORITY AND PURPOSE:**

(a) This ordinance is adopted pursuant to that authority provided by §§ 97.41, **101.935(3)**, 125.68(5), 251.04(3), **252.23(4), 252.24(4), and 252.245(9)**, 254.47, and 254.69(2), Wis Stats; and by **Wisconsin Administrative Code** Chapters ADM 65, ATCP ~~74 and 75 (Retail Food)~~, ~~HFS DHS 172 (Swimming Pools, Maintenance), DHS 173 (Tattoo and Body Piercing), DHS 175 (Camps, Recreational, and Educational), DHS 178 (Campgrounds), DHS 192 (Cities/Counties Agent for the DPH), DHS 195 (Hotels and Motels), DHS 196 (Restaurants), DHS 197 (Bed and Breakfasts), DHS 198 (Vending Machines), SPS 326 (Manufactured Home Communities), and SPS 390 (Design of Swimming Pools and Water Attractions), and ILHR 90, Wisconsin Administrative Code.~~ The purpose of this ordinance is to protect and improve the public health and to authorize the Winnebago County Health Department to become the designated agent of the State Department of Health and Family Services for the purpose of establishing permit fees; issuing permits; and making investigations or inspections of hotels, motels, tourist rooming houses, restaurants, bed and breakfast establishments, campgrounds and camping resorts, recreational and educational camps, **tattoo and body piercing establishments, manufactured home communities**, public swimming pools, and establishments possessing permanent Class B and Class C alcoholic beverage licenses with the exception of those licenses serving beverages solely, directly from cans or bottles and those licenses selling beverages at a retail level, and in making investigations and inspections of food vending machines, their operators and vending machine commissaries; and authorizing the Winnebago County Health Department to become the designated agent of the State Department of Agriculture, Trade, and Consumer Protection, for the purpose of establishing permit fees; issuing permits and making investigations or inspections of retail food establishments; and for the purpose of enacting local regulations governing these establishments which may be more strict than state law.

**(2) APPLICABILITY:**

(a) The provisions of this ordinance shall apply to the owner and operator of any retail food establishment, hotel, motel, tourist rooming house, restaurant, bed and breakfast establishment, campground and camping resort, recreational and educational camp, **tattoo and body piercing establishment, manufactured home communities**, public swimming pool, establishments possessing Class B or Class C alcoholic beverage licenses, vending machine commissary or vending machines ~~in all unincorporated areas of Winnebago County and the City of Omro and Village of Winneconne.~~

**(3) DEFINITIONS:**

(a) All definitions as set forth in Chapters 97, **101**, 125, 251, **252**, and 254, Wis Stats; and **Wisconsin Administrative Code** Chapters ADM 65, ATCP ~~74 and 75 (Retail Food)~~, ~~HFS DHS 172 (Swimming Pools, Maintenance), DHS 173 (Tattoo and Body Piercing), DHS 175 (Camps, Recreational, and Educational), DHS 178 (Campgrounds), DHS 192 (Cities/Counties Agent for the DPH), DHS 195 (Hotels and Motels), DHS 196 (Restaurants), DHS 197 (Bed and Breakfasts), DHS 198 (Vending Machines), SPS 326 (Manufactured Home Communities), and SPS 390 (Design of Swimming Pools and Water Attractions), and ILHR 90, Wisconsin Administrative Code.~~ are incorporated in this ordinance by reference and they shall be construed, read, and interpreted as fully set forth herein until amended and then shall apply as amended.

(b) **Annual Permit Fee/Inspection 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.

(c) **Duplicate Permit Fee**: A fee for the replacement of an original permit.

(d) **Exempt Facility Inspection Fee**: A fee for the inspection of churches, soup kitchens, and other State-exempt establishments as requested by the facility or required by the Department.

~~(d)~~ (e) **Health Department or Department**: The Winnebago County Health Department.

~~(e) **Late Application Fee**: A fee that is twice the amount of the current "Annual Permit Fee" and 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.~~

~~(f) **Limited Food Service**: The serving of food which is prepared and packaged off the premises with preparation on the premises limited to heating and serving with single service articles, i.e. hermetically wrapped sandwiches or frozen pizza.~~

(f) **Manufactured Home Community Fee**: The operator of a mobile home community shall pay an annual license fee to the Department. The annual fee will be half the cost of the biannual permit. Said Fee Schedule is set forth in "Appendix A" and may be amended by the Winnebago County Board of Supervisors upon the approval of the Winnebago County Executive.

~~(g) **Mobile Restaurant**: A restaurant operating from a movable vehicle, pushcart, or trailer or boat, which periodically or continuously changes location and wherein meals or lunches are prepared or served or sold to the general public, excepting those vehicles used in delivery of pre-ordered meals or lunches prepared in a licensed restaurant.~~

~~(h) **Operator**: The owner or person responsible to the owner for the operations of the hotel, motel, bed and breakfast establishment, food service establishment or beverage establishment, vending machine commissary and/or vending machine, campground, camping resort, recreational/educational camps, or public swimming pools.~~

~~(i) **Outdoor Grilling**: The cooking of food on an outdoor grill on the premises of a licensed food service facility. 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.~~

~~(j)~~ (g) **Penalty Fee**: A fee for failure to pay established or assessed fees in a timely manner.

(k) **Potentially Hazardous Food**:

~~1. A food that is natural or synthetic and that requires temperature control because it is in a form capable of supporting:~~

~~a. The rapid and progressive growth of infectious or toxigenic microorganisms;~~

~~b. The growth and toxin production of Clostridium botulinum; or~~

~~c. In raw shell eggs, the growth of Salmonella enteritidis.~~

~~2. An animal food (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 1. of this definition.~~

~~3. Potentially hazardous food does not include:~~

~~a. An air-cooled hard-boiled egg with shell intact;~~

~~b. A food with an a/w value of 0.85 or less;~~

~~c. A food with a pH level of 4.6 or below when measured at 24C (75F);~~

~~d. 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~~

~~e. 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* cannot occur, such as a food that has an a/w and a pH that are above the levels specified under Subparagraphs 3.b. and c. 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.~~

~~f. 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 1. of this definition.~~

~~(4) (h) Pre-Inspection Fee: A fee for consultative services offered within a six (6) - month period from the date of permit application to persons intending to operate a new hotel, tourist rooming house, bed and breakfast establishment, restaurant, vending machine commissary or retail food establishment, or to a person intending to be the new operator of an existing hotel, tourist rooming house, bed and breakfast establishment, restaurant, vending machine commissary or retail food establishment.~~

~~(m) (i) Re-Inspection Fee: A fee for the third (3rd) and subsequent inspections needed to address compliance issues with the statutes and administrative codes that govern their operation.~~

~~(n) Restaurant: Any building, room or place where meals are prepared, served or sold to transients or the general public, and all places used in connection with the building, room or place and includes any public or private school lunchroom for which food service is provided by contract. "Restaurant" does not include:~~

~~1. Taverns that serve free lunches consisting of popcorn, cheese, crackers, pretzels, cold sausage, cured fish or bread and butter;~~

~~2. Non-profit organizations, including, but not limited to, churches; religious, fraternal, youth, or patriotic organizations; service clubs and civic organizations; and other charitable organizations which occasionally prepare, serve, or sell meals to the general public, provided that they do not prepare, serve, or sell meals on more than three (3) calendar days during the calendar year. Said organizations, however, shall be required to obtain a temporary food permit pursuant to Section 11.11(5)(e) of the General Code of Winnebago County;~~

~~3. Any public or private school lunchroom for which food service is directly provided by the school;~~

~~4. Any food service provided solely for needy persons;~~

~~5. Bed and breakfast establishments; or~~

~~6. A private individual selling food from a movable or temporary stand at a public farm sale.~~

~~(o) Retail Food Establishment: Any of the following, but not including a restaurant or other establishment holding a permit to the extent that the activities of the establishment are covered by that permit:~~

~~1. A permanent or mobile food processing facility where food is processed primarily for direct retail sale to consumers at the facility,~~

~~2. A mobile facility from which potentially hazardous food is sold to customers at retail.~~

~~3. 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.~~

~~(p) **Temporary Restaurant or Temporary Retail Food Establishment:** A restaurant or temporary 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 (14) consecutive days or less.~~

(j) **Temporary Inspection Fee:** A fee that is charged to inspect a food stand with a license from another local Wisconsin jurisdiction or the State at a temporary or special event.

(k) **Temporary Operating Without a Permit/License Fee:** A fee assessed for a temporary establishment that is found to be operating without a required permit or license from the Department.

(l) **Temporary Restaurant Non-Profit Fee:** Fee for organizations that includes, but not limited to, churches; religious, fraternal, youth or patriotic organizations; service clubs and civic organizations; and other charitable organizations which prepare, serve, or sell meals to the general public for not more than fourteen (14) consecutive days. If the non-profit status of an organization is in question, a certification of non-profit status may be required to be presented at the time of application.

~~(q) **Vending Machine:** Any self-service device offered for public use which, upon insertion of a coin or token, or by other means, dispenses unit servings of food or beverage either in bulk or in package, without the necessity of replenishing the device between each vending operation. "Vending machine" does not include a device which dispenses only bottled, prepackaged or canned soft drinks, a one-cent vending device, a vending machine dispensing only candy, gum, nuts, nut meats, cookies or crackers, or a vending machine dispensing only prepackaged grade A pasteurized milk or milk products.~~

~~(r) **Vending Machine Commissary:** Any building, room, or place in the state at which foods, containers, transport equipment, or supplies for vending machines are kept, handled, prepared, or stored by a vending machine operator, except a place at which the operator is licensed to manufacture, distribute, or sell food products under Chapter 97, Wis. Stats.~~

#### (4) ENFORCEMENT:

(a) 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.

(b) **Should an establishment owner fail to comply with the provisions of this Ordinance absent good cause, the owner shall be liable to the Health Department for actual costs incurred by the Health Department to gain access pursuant to this Ordinance.**

#### (5) LICENSE AND PERMIT:

(a) No person shall operate ~~a retail food establishment, bed and breakfast establishment, hotel, motel, tourist rooming house, restaurant, campground and camping resort, recreational and educational camp, public swimming pool, or a Class B or Class C alcoholic beverage licensure establishment~~ any establishment under the regulations of this Code 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 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 permittee 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 permittees 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 premises 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.

(e) Non-profit organizations, including, but not limited to, churches; religious, fraternal, youth, or patriotic organizations; service clubs and civic organizations; and other charitable organizations that occasionally prepare, serve, or sell meals to the general public shall be required to obtain a temporary **restaurant non-profit food service** permit to do the same. Said permit fee shall be as indicated in Appendix A of this Chapter. ***If the non-profit status of an organization is in question, a certification of non-profit status may be required to be presented at the time of application.***

#### (6) APPLICATION:

(a) 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 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 receipt of a complete application.

#### (7) FEES:

(a) Fees for the issuance of permits, the making of investigations, inspections, providing education, training and technical assistance to all establishments covered pursuant to this ordinance, plus the costs required to be paid to the state for each permit issued, are herewith established pursuant to this ordinance and may be amended from time to time upon the approval of the Winnebago County Board of Supervisors and the Winnebago County Executive. In addition, separate pre-inspection fees are hereby established with regard to new establishments or existing establishments which have been transferred to a new operator. Said fee schedule is also set forth in Appendix "A" and may be amended from time to time by the Winnebago County Board of Supervisors upon the approval of the Winnebago County Executive.

#### ~~(8) PERMIT PUBLIC DISPLAY:~~

~~(a) Every establishment required to obtain a permit pursuant to this ordinance shall display said permit, at all times, in a conspicuous public place.~~

#### ~~(9)~~ (8) PERMIT SUSPENSION AND REVOCATION:

(a) Any permit issued by the Health Department pursuant to this ordinance may be temporarily suspended for a violation of any provision of this ordinance or rules adopted by reference by this ordinance, if the Department determines that an immediate danger to health exists. Such permits may be permanently revoked after repeated violations.

#### ~~(10)~~ (9) REGULATIONS, RULES, AND LAWS ADOPTED BY REFERENCE:

(a) The applicable laws, rules and regulations as set forth in Chapters 97, 125, 251, 254, Wis Stats, and ***Wisconsin Administrative Code*** Chapters ADM 65, ATCP ~~74 and~~ 75 (***Retail Food***), ~~HFS~~ DHS 172 (***Swimming Pools, Maintenance***), DHS 173 (***Tattoo and Body Piercing***), DHS 175 (***Camps, Recreational, and Educational***), DHS 178 (***Campgrounds***), DHS 192 (***Cities/Counties Agent for the DPH***), DHS 195 (***Hotels and Motels***), DHS 196 (***Restaurants***), DHS 197 (***Bed and Breakfasts***), DHS 198 (***Vending Machines***), SPS 326 (***Manufactured Home Communities***), and SPS 390 (***Design of Swimming Pools and Water Attractions***), ~~and ILHR 00, Wisconsin~~

~~Administrative Code~~, 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.

**~~(11)~~ (10) VIOLATION/PENALTIES:**

(a) Any person who violates or refuses to comply with any provisions of this ordinance shall be subject to a forfeiture of \$250.00 for each offense and/or revocation or amendment of their applicable permit. Each day a violation exists or continues shall be considered a separate offense. Where appropriate, injunctive relief may be sought by the Health Department against continuing violations. In the alternative, the Health Department may pursue enforcement of such section of these regulations as are prosecutable.

**~~(12)~~ (11) EFFECTIVE DATE:** This ordinance shall be effective as of June 1, 1998.

VI. Rescind Section 11.12 Regulation of Tattoo and Body Piercing Establishments.

VII. Amend Section 11.13(1) Authority as follows:

(1) **AUTHORITY:** This ordinance is created pursuant to that authority provided by § 66.124, Wis Stats, and Chapter ~~HFS~~ **DHS**, Section 173.04 and 174.11, Wisconsin Administrative Code.

VIII. Amend Section 11.13(2) Applicability as follows:

(2) **APPLICABILITY:** This ordinance shall apply to the appeal of any written orders of any Winnebago County Health Officer issued pursuant to Sections 11.11 ~~and 11.12 through 11.13~~ of this Code and to all matters wherein the Health Department has permit-issuing authority, pursuant to § 254.69, Wis Stats, except that this ordinance shall not apply in those cases where the appellant has a right to a state administrative appeal hearing.

IX. Rescind Section 11.14 Regulation of Manufactured Home Communities

X. Renumber Section 11.15 Pet Stores/Commercial Kennels to Section 11.12, and amend all references to "Director of Health" to read "Health Officer."

XI. Renumber Section 11.16 Rabies Vaccinations to Section 11.13.

XII. Renumber Section 11.17 Coin-Operated Moving Picture Houses to Section 11.14, and rescind subsections (7).

XIII. Renumber Section 11.18 Fair House to Section 11.15.

**BE IT FURTHER ORDAINED** by the Winnebago County Board of Supervisors that the amendments to this Ordinance shall be effective as of May 5, 2013.

Submitted by:

**BOARD OF HEALTH**

Committee Vote: **7-0**

Vote Required for Passage: **Majority of Those Present**

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Approved by the Winnebago County Executive this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

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Mark L Harris  
Winnebago County Executive