

ORDINANCE O-7-12
AN ORDINANCE AMENDING TITLE 7, CHAPTER 6 OF CODE OF ORDINANCES –
RESTAURANT AND RETAIL FOOD ESTABLISHMENT LICENSING

INTRODUCED BY ALDERMAN KLEIN

The Common Council of the City of Menasha does hereby ordain as follows:

SECTION 1: Amend Title 7, Chapter 6 of the Code of Ordinances of the City of Menasha, Wisconsin as follows:

TITLE 7 – LICENSING AND REGULATION

CHAPTER 6

~~Restaurant and Retail Food Establishment Licensing Food Safety and Recreational Licensing~~

SEC. 7-6-1

LICENSING OF RESTAURANTS AND RETAIL FOOD ESTABLISHMENTS, RESTAURANTS, RECREATIONAL AND FOOD ESTABLISHMENT LICENSING AND REGISTRATION

- (a) **PERMITS OR LICENSES REQUIRED.** Upon the authority and scope of Chapters 97, 101 and 254 of the Wisconsin State Statutes, this regulation adopts by reference Chapters ~~HFS-DHS~~ 172, 175, 178, 195, 196, 197 and 198, ATCP 75 and Comm 26, Wisconsin Food Code (Wisconsin Administrative Code Annex) ~~–Wisconsin Food Code and the FDA Food Code 2009 edition, and the most current edition of the FDA Food Code and Appendices.~~
- (b) **PUBLIC EATING AND DRINKING ESTABLISHMENT, FOOD ESTABLISHMENTS AND RECREATIONAL ESTABLISHMENTS**
- (1) No person shall conduct a business of or operate a ~~public eating and drinking food or recreational~~ establishment ~~or retail food establishment~~ without obtaining a license therefor from the Health Department.
- (2) ~~"Public eating and drinking establishment" shall mean any premises as defined by Wisconsin Administrative Code, Section HFS 196.03, and shall also mean any restaurant, coffee shop, cafeteria, caterer, luncheonette, tavern, sandwich stand and all other catering and drinking establishments as well as kitchens and other places where food or drink is prepared, served or sold to the public for human consumption.~~ Food Establishment shall mean an operation that stores, prepares, serves, vends, sells or otherwise provides food for human consumption. Food establishment includes restaurants, mobile restaurants, temporary restaurants, taverns, vending and retail food establishments as defined in s. 254 Stats.
- (3) ~~"Retail food establishment" shall mean a permanent or mobile food processing facility where food processing is conducted primarily for direct retail sale to consumers at the facility, a mobile facility from which potentially hazardous food is sold to consumers at retail or 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. "Retail food establishment" does not include a restaurant or other establishment holding a permit under s. 50.51, to the extent that the activities of the establishment are covered by that permit.~~ Recreational Establishment includes all swimming pools and basins covered by

Wisconsin Administrative Code DHS 172, Tattoo and body piercing establishments as cited by Wisconsin Administrative Code DHS 173, Hotels and Motels as cited by Wisconsin Administrative Code DHS 195, Bed and Breakfast establishments as cited by Wisconsin Administrative Code DHS 197, Recreational and Educational Camps as cited by Wisconsin Administrative Code DHS 175, and Campgrounds as cited under Wisconsin Administrative Code DHS 178.

(c) **APPLICATION FOR ~~PERMIT~~LICENSES**

- (1) Applications for a ~~permit~~ license shall be made upon such forms supplied and prescribed by the Health Department.
- (2) Prior to approval of an application for a ~~permit~~ license, the Health Department shall inspect the ~~facility or retail~~ food establishment or ~~eating and drinking establishment~~ Recreational establishment to determine compliance with ~~the requirements of~~ this regulation.
- (3) The fee for ~~permit~~ License required by this regulation shall be payable before the issuance of a ~~permit~~ License and annually before July 1 of each year. An additional penalty fee shall be required whenever the annual renewal fee is not paid prior to July 1 of each year.
- (4) A pre-inspection fee shall be collected at the time of application from an operator of a new public facility or recreational establishment ~~and eating and drinking or food~~ establishment or a new operator of an existing public facility or recreational establishment and ~~eating and drinking food~~ establishment. ~~This pre-inspection fee shall also apply to retail food establishments.~~

(d) **PERMIT REGISTRATION AND LICENSE ISSUANCE AND REQUIREMENTS.**

- (1) Permit License Issuance
 - a. No person shall operate a food ~~an eating and drinking~~ establishment, ~~or a~~ public facility or recreational establishment covered in this regulation within the City of Menasha who does not have a valid ~~permit~~ license issued by the Health Department, unless otherwise exempted in this regulation.
 - b. A license issued by the Wisconsin Department of Health Services, Wisconsin Department of Agriculture, Trade and Consumer Protection or one of their agents for a Mobile Restaurant or Mobile Retail Food establishment shall be honored and considered in compliance with 7-6-1(d)(1)(a). However, no person shall operate a Mobile Restaurant or Mobile Retail Food establishment within the City of Menasha who is not registered with the Health Department on such form supplied and prescribed by the Health Department.
 - c. Only a person who complies with the requirements of this regulation shall be entitled to receive or retain such a ~~permit~~ license.
 - ~~ed.~~ Permits-Licenses are not non-transferable unless between members of the immediate family of the current license holder.
 - ~~de.~~ A valid ~~permit~~ license shall be posted in plain public view in every ~~public facility and/or public~~ food and recreational establishment as required in this Ordinance.
- (2) Permit License Requirements. The Menasha Common Council shall establish all ~~pre-inspection fees and permit fees for all public~~ related to licensing facilities and/or establishments covered by this ordinance. Facilities and establishments requiring permits covered in this regulation are listed below:
 - ~~a. Public indoor and outdoor swimming pools each are subject to an annual permit fee (HFS 172).~~
 - ~~b. restaurants are subject to an annual permit fee (HFS 196).~~
 - ~~c. Mobile home parks are subject to an annual permit fee [ADM 65, 85.5(3)].~~
 - ~~d. Eating and drinking establishments are subject to an annual fee.~~
 - ~~e. Hotels, motels and tourist rooming houses are subject to an annual permit fee (HFS 195).~~
 - ~~f. Bed and breakfast establishments are subject to an annual permit fee (HFS 197)~~

- ~~g. Vending machine operations shall be licensed and fees shall be issued, assessed and collected by the State of Wisconsin under the Wisconsin Administrative Code (HFS 198).~~
- ~~h. Mobile restaurants are subject to an annual permit fee.~~
- ~~i. Retail food establishments are subject to an annual permit fee unless specifically exempted by s. 97.30(1)(c) Wis. Stats.~~
- ~~j. Temporary non-profit, non-licensed food stands are subject to an annual fee (up to three events per year).~~
- ~~k. Recreational and educational camps are subject to an annual permit fee established by the Director of Public Health and approved by the Common Council (HFS 175).~~
- ~~l. Campgrounds are subject to an annual permit fee established by the Director of Public Health and approved by the Common Council (HFS 178).~~

(e3) INSPECTIONS.

~~(1a)~~ Inspection Frequency. An inspection of public facilities and establishments and ~~eating and drinking food~~ establishments shall be performed at least once per year. All ~~eating and drinking food~~ establishments shall be assigned a risk category based on the FDA Food Code 2009 Annex 5 – Table 1. Additional inspections over and above the one annual inspection shall be based on the risk category for each establishment. All category ~~2, 3~~ and ~~3-4~~ establishments shall receive at least two inspections per year.

~~(2b)~~ Report of Inspections. Whenever an inspection of a facility or establishment is made, the findings shall be recorded on an inspection report form. The inspection report form shall summarize the requirements of this regulation. A copy of the completed inspection report form shall be furnished to the holder of the ~~permit~~ License, or his/her agent in charge of the facility or establishment, at the conclusion of the inspection.

~~(3c)~~ Correction of Violations. The completed inspection report form shall specify a reasonable period of time for the correction of the violations found. ~~Inspector shall make every reasonable attempt to have risk factor violations corrected during the inspection.~~ Correction of the violations shall be accomplished within the period specified.

~~(4d)~~ Access. Representatives of the Department, after proper identification, shall be permitted to enter any facility or establishment at any reasonable time for the purpose of determining compliance with this regulation.

~~(5e)~~ Hours of Inspection. Inspections shall be made during the regular operating hours of the establishment and primarily during the regular office hours of the Health Department (8:00 AM – 4:00 PM Monday – Friday), unless circumstances necessitate conducting an inspection at a time other than normal Health Department operating hours. In the case of temporary ~~permit~~ licenses, an inspection will be made coinciding with the hours of operation, i.e., the Sanitarian will be available for an evening or weekend inspection to determine compliance with the regulations.

~~(f4)~~ **PERMIT LICENSE DENIAL.** ~~Permit~~ License issued under this Section may be denied by the Health Officer upon annual application for renewal for continued violations of this Code of the applicable provisions of ~~Wisconsin Administrative Codes or Wisconsin Statutes. Permits may also be denied until~~ payment of re-inspection fees issued in the prior license year ~~are received~~.

~~(g5)~~ **REINSTATEMENT OF PERMIT LICENSE.** The ~~permittee~~ licensee of any establishment addressed in this Section whose ~~permit~~ license has been suspended may, at any time, make application for the reinstatement of the ~~permit~~ license within three (3) business days of the receipt of a written application accompanied by a written statement signed by the applicant

to the effect that all violations have been corrected. The Health Officer, or his/her designee, shall make a re-inspection to determine whether all violations have been corrected and if the findings of the inspection indicate compliance, the ~~permit~~ license may be reinstated.

- (~~h~~6) **PERMIT LICENSE REVOCATION.** ~~Permit~~Licenses issued under this Section may be revoked after an opportunity for hearing by the Health Officer. The Health Officer may determine that ~~permit~~ license revocation is necessary if a ~~permit~~ license is suspended twice in any two (2) year period or if the health violations are of a nature as to have caused serious injury or illness to persons.
- (~~i~~7) **APPEAL.** Whenever a ~~permit~~ license is suspended or revoked, the person to which the ~~permit~~ license was issued shall be afforded the opportunity of a hearing before the Common Council within fifteen (15) days of the receipt of a written request for such hearing, unless both parties agree to a later date. Opportunity for a hearing before the Common Council will be provided if the written request is submitted by the person issued the ~~permit~~ license and received by the Department within ten (10) days of the suspension or revocation.
- (~~j~~8) **PERMIT REQUIREMENTS AND FEES.** The application for ~~permit~~ license or the request for renewal of ~~permit~~ license or registration covered in this Section shall be accompanied with an appropriate fee to be established ~~annually~~ by the Common Council. A list of fees shall be maintained by the City Clerk and the Health Department.
 - (~~1~~a) Any establishment required by this section to pay any fee may, in addition to any other penalties, also be required to pay a ~~permit~~ fee equal to twice the amount of the normal fee if the failure is due to a late payment, insufficient funds or account closed checks, or for any other reason the City has not received the proper payment.
 - (~~2~~b) Any establishment required by this section to pay any fee may, in addition to any other penalties, also be required to pay a ~~permit~~ fee equal to twice the amount of the normal fee if such establishment opens for business without paying the required fee. The Public Health Director, or designee, may also order such establishment to close until the fee is paid.

SECTION 2: This amending Ordinance shall take effect upon passage and publication as provided by law.

Passed and approved this day of , 2012.

Donald Merkes, Mayor

ATTEST: _____
Deborah A. Galeazzi, City Clerk