

CHAPTER 39 – FOOD SAFETY AND RECREATIONAL LICENSING PROGRAM

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39.01 Authority.

This Chapter is adopted pursuant to that authority provided by §§ 66.0417, 68, Subchapter I of Chapter 97, 97.12, 97.41, Subchapters III, IV and V of Chapter 97, 125.68(5), 251.04(3), 252.02, 252.03, 254.47, and , Wis. Stats.; and by Wisconsin State Administrative Chapters ATCP 72, 73, 74, 75, 76, 78 and 79 and SPS 221, 390 and 326, and that authority is adopted and incorporated into this Chapter as though fully set forth herein, and as may be amended and/or renumbered periodically. The expressed provisions of this Chapter shall control where more restrictive as permitted by law.

39.02 Purpose.

The purpose of this Chapter is to protect and improve the public health and to authorize the Tri-County Environmental Health Consortium (The Consortium) which consists of Waushara, Green Lake and Marquette County Health Departments to become the designated agent of the State Department of Agriculture, Trade and Consumer Protection for the purpose of establishing license fees; issuing licenses; and making investigations or inspections of hotels, motels, tourist rooming houses, body piercing and tattooing establishments, restaurants, retail food establishments bed and breakfast establishments, campgrounds and camping resorts, recreational and educational camps, and public swimming pools and in making investigations and inspections of food vending machines, their operators and vending machine commissaries; and for the purpose of enacting local regulations governing these establishments. In addition, The Consortium may also secure samples or specimens of food and any product or substance that may affect food, examine and copy relevant documents and records and obtain photographic and other evidence needed to enforce this Chapter. The Consortium shall examine any samples secured and conduct other inspections and examinations needed to determine whether there is a violation.

39.03 Applicability.

The provisions of this Chapter shall apply to the owner and operator of any retail food establishment, hotel, motel, tourist rooming house, body piercing and tattooing establishments, restaurant, bed and breakfast establishment, campground and camping resort, recreational and educational camp, public swimming pool, vending machine commissary or vending machine in all areas of jurisdiction of The Tri-County Environmental Health Consortium.

39.04 Definitions.

All definitions as set forth in §§ 66.0417, 68, 97, 125, 251, 252 and 254, Wis. Stats.; and Wisconsin State Administrative Code Chapters, ATCP 72, 73, 74, 75, 76, 78 and 79 and SPS 221, 390 and 326, as amended and/or renumbered periodically are incorporated in this Chapter by reference and they shall be construed, read and interpreted as fully set forth herein until amended and then shall apply as amended. In addition the following terms and phrases have meanings ascribed to them in this Section:

A. Annual License Fee. A fee for on-site inspection of the entire facility, and one (1) follow-up inspection to determine that establishments identified in the Chapter are compliant with the statutes and administrative codes that govern their operation.

B. Duplicate License Fee. A fee for the replacement of an original license.

C. Health Department. The Marquette County Health Department.

D. Master Fee Schedule. The schedule of all fees associated with this Chapter and posted in the Health Department.

E. 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 license to the Health Department.

F. 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.

G. Mobile Restaurant. A restaurant operating from a movable vehicle, pushcart, 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, operator 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. No Fee Permit. Fee exempt permission to operate a temporary food stand for fewer than four (4) days in a calendar year.

K. Late Fee. A fee for failure to pay established or assessed fees in a timely manner. This refers to any fee not postmarked by June 30th.

L. 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. **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 (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 eighty-five hundredths (0.85) or less;
 - c. A food with a pH level of four and six tenths (4.6) or below when measured at twenty-four degrees Celsius (24C) (seventy-five degrees Fahrenheit (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;
 - 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 can not 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; and

- 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.

M. 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.

N. 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 (10) total violations, repeat violations from previous inspections, major non-critical violations and when a complaint investigation identifies unsatisfactory conditions. The fee for a re-inspection will be a set fee and posted in the Health Department on the Master Fee Schedule.

O. 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 include 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. Churches, religious, fraternal, youth or patriotic organizations, service clubs and civic organizations which occasionally prepare, serve or sell meals to the general public;
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;
6. A private individual selling food from a movable or temporary stand at a public farm sale;
7. A concession stand at a locally sponsored sporting event, such as a little league game; or
8. A potluck event.

P. Retail Food Establishment. Any of the following, but does not include a restaurant or other establishment holding a license to the extent that the activities of the establishment are covered by that license:

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.

Q. Special Organization. Churches, religious, fraternal, youths' or patriotic organizations, service clubs and civic organizations which occasionally prepare, serve or sell meals to transients or the general public, for up to twelve (12) days in a calendar year. Specific dates and locations of meals shall be provided to the Health Department in advance.

R. Temporary Restaurant or Temporary Retail Food Establishment. A restaurant or 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 twenty (20) non-consecutive days. Specific dates and locations of meals shall be provided to the Health Department in advance. Mobile establishments of this type which conduct business in the jurisdiction of The Tri-County Environmental Health Consortium, that are licensed outside of the area of jurisdiction, will be inspected and charged a nominal fee to cover the cost of inspection.

S. Tri-County Environmental Health Consortium. Waushara, Green Lake and Marquette Counties' consortium established to enforce environmental health laws and to enforce this Chapter.

T. 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 (\$.01) 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.

U. 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 Ch. 97, Stats.

V. Braiding. The cutting of strips of skin of a person, which strips are then to be intertwined with one another and placed onto such person so as to cause or allow the incised and interwoven strips of skin to heal in such intertwined condition.

W. Branding. Inducing a pattern of scar tissue by use of a heated material (usually metal) to the skin, making a serious burn, which eventually becomes a scar.

X. Scarification. Altering skin texture by cutting the skin and controlling the body's healing process in order to produce wounds, which results in permanently raised wheals or bumps known as keloids.

Y. Three Dimensional "3D" Body Art or Beading or Implantation. The form of body art consisting of or requiring the placement, injection or insertion of an object, device or other thing made of matters such as steel, titanium, rubber, latex, plastic, glass or other materials, beneath the surface of the skin of a person. This term does not include body piercing or services performed by a qualified (MD, Board Certified) physician.

39.05 Enforcement.

The provisions of this Chapter 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 Chapter and issue citations or file a summons and complaint with Marquette County Corporation Counsel or any attorney serving the Consortium..

39.06 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 establishment, restaurant, retail food establishment, campground and camping resort, recreational and educational camp, or public swimming pool without first obtaining a non-prorated license from the Health Department.

1. Except as in subparagraph (a), licenses shall expire on June 30 of each year following their issuance.
 - a. Licenses initially issued for a bed and breakfast establishment, hotel, motel, tourist rooming house, body piercing and tattooing establishment, restaurant, retail food establishment, campground and camping resort, recreational and educational camp, and public swimming pool during the period beginning on April 1 and ending June 30 shall expire June 30 of the following year.
 - b. Licenses issued to retail establishments covered under the master fee schedule are issued for one (1) year from July 1 through June 30.

- c. No fee permits issued to special organizations operating for fewer than four (4) days in a calendar year.
- d. Licenses issued to special organizations or temporary food establishments shall be valid for the calendar year.
- 2. Special organizations shall be issued a license for operating between four (4) and twelve (12) days in a calendar year.
- 3. The issuance of a license may be conditioned upon the licensee correcting a violation of this Chapter within a specified period of time. If the condition is not met within the specified period of time, the license shall be voided.
- 4. The license shall not be transferable to a location other than the one for which it was issued, nor shall a license be transferred from one operator to another subject to the express exception of:
 - a. As to location, temporary or special organization licenses may be transferred;
 - b. As to operator, a license 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, spouse, child, step-child, grandchild, sibling or step-sibling shall be considered an immediate family member for purposes of this Chapter.

B. Operators or licensees of temporary restaurants whom the Health Department has found to be uncooperative or habitual violators of this Chapter may be denied a license to operate. Temporary licenses may be transferred to 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 licenses shall be granted to any person under this Chapter without a pre-inspection by the Tri-County Environmental Health Consortium of the premises for which the license shall be granted.

D. No license shall be issued until all application fees have been paid.

E. No license shall be issued for any form of branding, braiding, scarification or "3D" Body Art.

39.07 Application.

Application for licenses shall be made in writing to the Waushara County Health Department, as fiscal agent for the Consortium, 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 license within thirty (30) days after receipt of a complete application.

39.08 Fees.

Fees for licenses required by this Chapter shall be as provided through the Master Fee Schedule and shall include, but not be limited to, an Annual License Fee, a Duplicate License fee, a Late Application Fee, a Late Fee, a Pre-inspection Fee and a Re-Inspection Fee.

39.09 Permit Public Display.

Every establishment required to obtain a license pursuant to this Chapter shall display said license, at all times, in a conspicuous public place.

39.10 Temporary Orders.

Whenever, as a result of an examination, the Health Officer or designee has reasonable cause to believe that an immediate danger to health exists or that branding, braiding, scarification or "3D" Body Art are occurring on the premises covered by this ordinance, the Health Officer or designee, may issue a temporary order in accordance with § 66.0417 (2), Wis. Stats.

A. An employee or agent of a local health department designated by the department of health and family services under § 254.69(2), Wis. Stats., or the department of agriculture, trade and consumer protection under § 97.41, Wis. Stats., may enter, at reasonable hours, any premises for which the local Health Department issues a permit under §§ 97.41 or 254.69(2), Wis. Stats., to inspect the premises, secure samples or specimens, examine and copy relevant documents and records or obtain photographic or other evidence needed to enforce subch. VII of Chapter 254, or Chapter 97 or § 254.47, Wis. Stats., relating to those premises. If samples of food are taken, the local Health Department shall pay or offer to pay the market value of those samples. The local Health Department, department of health and family services or department of agriculture, trade and consumer protection shall examine the samples and specimens secured and shall conduct other inspections and examinations needed to determine whether there is a violation of subch. VII of Chapter 254, or Chapter 97 or § 254.47, Wis. Stats., rules adopted by the departments under those statutes, ordinances adopted by the County or regulations adopted by the local board of health under §§ 97.41 (7) or 97.615, Wis. Stats.

B. Whenever, as a result of an examination, the County 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 health, the administrator of the County agency responsible for the County's agent functions under §§ 97.41 or 97.615, Wis. Stats., may issue a temporary order and cause it to be delivered to the permittee, or to the owner or custodian of the food, or to both. The order may prohibit the sale or movement of the

food for any purpose, prohibit the continued operation or method of operation of specific equipment, require the premises to cease any other operation or method of operation which creates the immediate danger to health, or set forth any combination of these requirements. The administrator may order the cessation of all operations authorized by the permit only if a more limited order does not remove the immediate danger to health. Except as provided in Paragraph (C), no temporary order is effective for longer than fourteen (14) days from the time of its delivery, but a temporary order may be reissued for one (1) additional fourteen (14)-day period, if necessary to complete the analysis or examination of samples, specimens or other evidence.

C. No food described in a temporary order issued and delivered under Paragraph (B) may be sold or moved and no operation or method of operation prohibited by the temporary order may be resumed without the approval of the County, until the order has terminated or the time period specified in Paragraph (B) has run out, whichever occurs first. If the County, upon completed analysis and examination, determines that the food, construction, sanitary condition, operation or method of operation of the premises or equipment does not constitute an immediate danger to health, the permittee, owner or custodian of the food or premises shall be promptly notified in writing and the temporary order shall terminate upon his or her receipt of the written notice.

D. If the analysis or examination shows that the food, construction, sanitary condition, operation or method of operation of the premises or equipment constitutes an immediate danger to health, the permittee, owner or custodian shall be notified within the effective period of the temporary order issued under Paragraph (B). Upon receipt of the notice, the temporary order remains in effect until a final decision is issued, and no food described in the temporary order may be sold or moved and no operation or method of operation prohibited by the order may be resumed without the approval of the County.

39.11 Denial, Suspension or Revocation of License.

The Health Officer, or designee, of the County of jurisdiction may deny any license application or suspend or revoke any license issued under this Chapter for non-compliance with this Chapter and regulations, rules and laws adopted by reference. The review procedure set forth in Chapter 68 of the Wisconsin Statutes shall be followed in the denial suspension or revocation of any license issued under this Chapter, except where any of the following applies:

A. 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 or designee's decision and shall state any applicable statutes, ordinances, rules, regulation or orders which may have been violated. The Health Officer or designee shall send to the licensee a 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. Any licensee or applicant aggrieved by a decision of the Health Officer or designee, 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.

C. 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.

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 thirty (30) days of 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 County Board of Health.

E. 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.

F. The hearing shall be conducted before the County Board of Health and shall be conducted in accordance with the procedures outlined in §§ 68.11 (2) and (3), Wis. Stats.

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

H. A decision by the Health Officer upon a request for review and reconsideration, which is not appealed to the County Board of Health, or a decision by the Marquette County 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 § 68.12(2), Wis. Stats.

I. 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 pursuant to § 68.13, Wis. Stats.

39.12 Violation-Penalties.

A. All violations of this Chapter shall be subject to a forfeiture of not less than fifty dollars (\$50.00) and not more than five hundred dollars (\$500.00) per offense, together with applicable surcharges and penalty assessment and the taxable costs of prosecution, and the court may also grant injunctive relief. Failure to comply with an order of correction issued under this Chapter shall constitute a violation of this Chapter and each day of continued violation shall constitute a separate offense. Failure to pay any penalties imposed by the court in accordance with this Chapter may result in imprisonment in the County Jail.

B. In the alternative, the Health Department may pursue enforcement of such Section of these regulations as are prosecutable through long form summons and complaint with Marquette County Corporation Counsel or any attorney serving the Consortium.