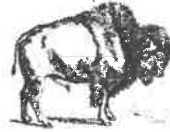


# Buffalo County Ordinance



Drafted By:

County Department:

Presented Month/Year:

Fiscal Impact: YES / NO

Involved Committees:

AC Approved: YES / NO

ORDINANCE # 19-12-01

## A ORDINANCE TO REVISE THE BUFFALO COUNTY RULES AND PERMIT REQUIREMENTS RELATING TO ENVIRONMENTAL HEALTH AND SANITATION ORDINANCE

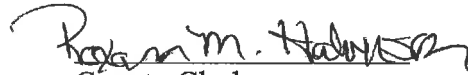
WHEREAS, the need to update this ordinance was identified by Public Health due to changes in the state agency oversight of the agent of the state program, changes in the scope of the state agency oversight to no longer include tattoo licensing, and other language updates needed to align ordinance with state regulations; and

WHEREAS, the Health and Human Services and Veterans Committee held a public hearing on July 2, 2019 for the purpose of gathering testimony regarding these proposed amendments to the Buffalo County Rules and Permit Requirements Relating to Environment Health and Sanitation; and

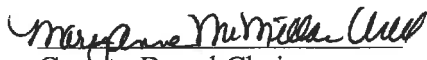
WHEREAS, notice of this hearing was published in the "2019 Buffalo County Official County Newspaper" in accordance with 6s.66.0103 and 59.69 (5) Wisconsin Statutes and no input was received during the July 2<sup>nd</sup>, 2019 hearing.

NOW, THEREFORE BE IT RESOLVED that the Buffalo County Board of Supervisors hereby adopts the amendments to the Buffalo County Environmental Health and Sanitation Ordinance

Adopted at a duly called and noticed meeting of the Buffalo County Board of Supervisors on the 16<sup>th</sup> day of December 2019.

  
County Clerk

ATTEST:

  
County Board Chairperson

DHHS Committee

  
John B. Kriesel, chair

*Nettie Rosenow*

Nettie Rosenow

*Harry Schreiner*

Harry Schreiner

*Linda Smith*

Linda Smith

*absent*

Richard Mueller

*Wendy Kleinschmidt*

Wendy Kleinschmidt

*absent*

Joette Gillett

**ORDINANCE NO.**

**BUFFALO COUNTY RULES AND PERMIT REQUIREMENTS RELATING TO ENVIRONMENTAL HEALTH & SANITATION**

The County Board of Supervisors of Buffalo County does ordain as follows:

The Buffalo County Rules and Permit Requirements Relating to Environmental Health and Sanitation Ordinance is hereby re-created as follows:

**SECTION (1) AUTHORITY AND PURPOSE**

This ordinance is adopted pursuant to that authority provided by Section 251.04(3), Wisconsin Statutes, to protect and improve public health. Chapter 97.41, Wisconsin Statutes, authorizes the Buffalo County Department of Health and Human Services (BCDHHS), Public Health Unit to be the designated agent of the Department of Agriculture, Trade and Consumer Protection (DATCP) for the purpose of establishing permit fees; issuing permits; and making investigations of inspections of food establishments, lodging establishments (hotel, motel, tourist rooming house, bed and breakfast), public swimming pools, water attractions, campgrounds, and recreational/ educational camps and enforcing the regulations set forth in this ordinance or adopted by reference., BCDHHS will perform inspections for vending machines, vending storage facilities and commissaries, and; the DATCP maintains the permitting responsibility. The Buffalo County Department of Health and Human Services is hereby designated to act as the agent of the State of Wisconsin Department of Agriculture, Trade, and Consumer Protection for the above-stated purposes.

**SECTION (2) APPLICABILITY**

The provisions of this ordinance shall apply to the owner and operator of any food establishment, hotel, motel, tourist rooming house, bed and breakfast establishment, campground, camping resort, recreational/educational camp, public swimming pool vending machine commissary, vending machine storage, and vending machines in all areas of Buffalo County.

**SECTION (3) DEFINITIONS**

- (a) In addition to those definitions set forth expressly hereinafter, all definitions set forth in Wisconsin Statutes Chapters 97, 251, 252, 254, 463, and Wisconsin Administrative Code Chapters ATCP 72, 73, 74, 75, 76, 78, 79 and SPS 221 are incorporated into this ordinance by reference and shall be construed, read, and interpreted as set forth herein. The express provisions of this Ordinance shall control where more restrictive.

- (b) "Approved" means acceptable to the Department of Health and Human Services, based on determination of conformance with applicable statute provisions and good public health practices.
- (c) "Duplicate Permit Fee" shall mean a fee for the replacement of an original permit.
- (d) "Health Department" shall mean the Buffalo County Department of Health and Human Services.
- (e) "Health Officer" in this ordinance and referenced State codes, shall mean the person, or the Health Officer's designated representative, responsible for administering the environmental health programs as outlined in the Agent agreement (ATCP 72.02) with the Department of Agriculture, Trade and Consumer Protection..
- (f) "Late fee" shall mean a fee for failure to pay established fees by the required time deadline.
- (g) "Operator" shall mean the owner, manager or person responsible to the owner for the operations of the hotel, motel, bed and breakfast establishment, food establishment, vending machine commissary, vending machine storage, or vending machine, campground, camping resort, recreational/educational camp, tourist rooming house, or public swimming pool.
- (h) "Pre-inspection" shall mean a pre-opening public establishment inspection for persons intending to operate a new public facility, such as a food establishment, recreational/ educational camp, hotel, motel, bed and breakfast, tourist rooming house, campground, camping resort, public swimming pool, or other food service establishment, or for a person intending to be the new operator of those establishments, done within 30 days from the date of permit application.
- (i) "Pre-inspection fee" shall mean a fee for pre-opening establishment inspection and consultations offered within a six month period from the date of permit application to persons intending to operate a new motel, new hotel, tourist rooming house, bed and breakfast, restaurant, vending machine commissary or retail food establishment, or to a person intending to be the new operator of an existing motel, existing hotel, tourist rooming house, bed and breakfast establishment, restaurant, vending machine commissary or retail food establishment.
- (j) "Re-inspection fee" shall mean a fee for any follow-up inspection done to address repeat violation(s) of ordinance, administrative codes, or statute noted during previous inspections.
- (k) "Temporary restaurant inspection fee" means an inspection fee charged to a Temporary Restaurant, mobile restaurant, or mobile retail establishment/operator who holds a current temporary restaurant, mobile restaurant, or mobile retail license from the Wisconsin Department of Agriculture Trade & Consumer Protection who is operating in Buffalo County.

#### **SECTION (4) ENFORCEMENT**

The provisions of this regulation shall be administered by or under the direction of the Health Officer, 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 regulation. Such Health Officer or duly authorized representative is also authorized to issue corrective orders, suspend or cancel permits as warranted and take other enforcement measures as may be necessary to protect public health and safety.

In addition to the imposition of fees imposed under the authority of this ordinance, State Statute and Administrative Code, legal action may be initiated against a violator, as requested by the Health Officer. Upon making such determination, the Health Officer shall refer the violation to the Buffalo County Corporation Counsel who may obtain an injunction to correct and/or abate the violation or may issue a complaint seeking a court-imposed forfeiture under this ordinance.

#### **SECTION (5) APPLICATION FOR PERMIT**

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. Applications for permits for vending machines, vending storage facilities, and commissaries, shall be made to the Wisconsin Department of Trade and Consumer Protection so long as permitting responsibility is maintained therein.

#### **SECTION (6) PERMIT**

- (a) No person shall operate a food service establishment, catering food service, mobile restaurant, temporary restaurant, bed and breakfast establishment, hotel, motel, tourist rooming house, campground, recreational/ educational camp, or public swimming pool without; first, obtaining a permit from the Health Department or secondly, possessing a valid permit as outlined in Section 7 of this Ordinance. 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:

- i. as to location, temporary permits may be transferred, and/or;
  - ii. as to the operator, a permit may be transferred to an individual who is an immediate family member if the holder is transferring operation of the establishment or vending machine to the immediate family member.
- (b) Operators or Permit holders found by the Health Department to be repeat violators of this Ordinance may be denied a permit to operate. A decision by the Health Officer to deny 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, regulations or orders which may have been violated. The Health Officer 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.
- (c) A Temporary Restaurant Inspection Fee will be charged for establishment operators who hold a valid license from the Department of Agriculture Trade & Consumer Protection. If a temporary restaurant operator, mobile restaurant operator, or mobile retail food operator does not hold a current license, a Buffalo County permit will be required to operate.
- (d) No permits shall be granted to any person under this Ordinance without a pre-inspection (with the exception of a temporary restaurant license) by the Health Department of the premises for which the permit shall be granted. A pre-inspection shall only apply to and include consultation and a pre-opening inspection offered within 30 days from the date of permit application to persons intending to operate a new hotel, motel, tourist rooming house, bed and breakfast establishment, food establishment, public swimming pool, water attraction, or to a person intending to be the new operator of an existing hotel, motel, tourist rooming house, bed and breakfast establishment, restaurant, public swimming pool, water attraction, tattoo and/or body piercing establishments.
- (e) No permit shall be issued until; all application fees, citations, or other applicable fees are paid. A permit will not be issued until all outstanding critical violations, noted during previous inspections, are in compliance.
- (f) If annual permit renewal applications with required fees are not submitted to the Health Department within 15 days after the permit period, the department shall require the licensee to pay a late penalty fee, in addition to the annual permit fee.

## **SECTION (7) FOOD SERVICE PERMIT RECIPROCITY**

A current mobile restaurant permit, temporary restaurant permit, or mobile retail food permit, issued from the Wisconsin Department of Agriculture, Trade, & Consumer Protection, or those Department's designated agents, shall be recognized as valid in Buffalo County for that type of food service for which it was issued. However, all food service establishments serving meals to the public in Buffalo County will be subject to an inspection(s) from the Buffalo County Health Department Environmental Health Specialist to ensure safe food handling practices are being conducted, as outlined in ATCP 75, regardless of the permit held by the food service operator. The food service operators covered under this section will be subject to comply with provisions of this Ordinance. Establishments under this section may also be subject to an inspection fee as established in the fee schedule approved by the Buffalo County Department of Health and Human Services and Veteran's Committee. Non-compliance with provisions of this Ordinance shall result in food service operation privileges in Buffalo County to be suspended or revoked as outlined in Section 1.10 of this Ordinance.

### **SECTION (8) FEES**

The fees for issuance of permits, making investigations, inspections, training and technical assistance to establishments and costs required to be paid to the state for each permit issued shall be as provided through the fee schedule approved by the Buffalo County Department of Health and Human Services and Veteran's Committee as adopted by resolution. Fees shall be periodically adjusted to reflect changes in the cost of financing all activities related to this ordinance.

- (a) **NON-PRORATION OF FEES.** Permit fees and other applicable fees are not prorated for the fiscal year and must be paid in full at any time.
- (b) **PRE-INSPECTIONS AND THEIR ASSOCIATED FEES.** Pre-inspections are required to be conducted for establishments within the scope of Wisconsin Statutes Ch 97.30.
- (c) **LATE FEES.** Assessed to all Wisconsin Statutes 97 establishment licensees for payment after July 1.
- (d) **REINSPECTION FEES.** Assessed to any licensed establishment when an inspection reveals imminent hazards not corrected immediately, repeat violations, or excessive violations. This does not include follow ups or multiple site visits as a part of a pre-inspection.

### **SECTION (9) PUBLIC DISPLAY OF PERMIT**

Every licensed establishment shall be required to obtain a permit pursuant to this Ordinance and shall display said permit, at all times, in a conspicuous public place.

### **SECTION (10) PERMIT SUSPENSION AND REVOCATION**

Permits issued by the Health Department pursuant to this Ordinance may be immediately or temporarily suspended for a violation of any provisions hereof or of the State Statutes or Administrative Code provisions adopted by reference herein, if the Health Department determines that an imminent health hazard exists. Such suspension shall remain in place until such time the hazard is abated. An imminent health hazard may include but is not limited to; lack of basic facilities such as water; electricity or a properly functioning sewer; evidence of a sewer backup or surface or air contamination; insect or rodent infestation; evidence of an ongoing food or waterborne illness associated with the operation of the establishment; lack of a functioning hand washing facility; lack of hot or cold holding equipment; or there is a condition that endangers the health or safety of the public as identified by the Health Officer. After repeated violations of this Ordinance or violations which have already created a serious environmental or public health hazard, permits may be permanently revoked by written notice mailed or served on the permit holder. The decisions of Health Department staff shall be subject to review by the Administrator of the Department and shall be carried forth according to the following procedure:

- (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 for Review and Reconsideration to the Health Officer within 30 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 15 working days of receipt of the Request for Review and Reconsideration, the Health Officer shall review the 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 30 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 Buffalo County Department of Health and Human Services and Veteran's Committee.
- (e) A licensee or applicant shall be provided a hearing on appeal within 15 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 10 days before the hearing.



- (f) The hearing shall be conducted before the Buffalo County Department of Health and Human Services and Veteran's Committee and shall be conducted in accordance with the procedures outlined in Wisconsin Statute Chapter 68.11 (2) and (3).
- (g) Within 20 days of the hearing, the Buffalo County Department of Health and Human Services and Veteran's Committee shall mail or deliver to the applicant 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 Buffalo County Department of Health and Human Services, or a decision by the Buffalo County Department of Health and Human Services on an appeal of a decision by the Health Officer of a request for review and reconsideration shall be a final determination under Section 68.12(2), Wisconsin State Statutes.
- (i) Any party to a proceeding resulting in a final determination may seek review thereof by certiorari within 30 days of receipt of the final determination per Section 68.13, Wisconsin State Statutes.
- (j) OPERATING WITHOUT A LICENSE. Any person who operates without a license as required above shall be subject to a fee in the amount set forth in the fee schedule approved by the Buffalo County Department of Health and Human Services and Veteran's Committee. 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 as outlined in WI State Statute 97.

#### **SECTION (11) POOL CLOSING CRITERIA**

A public pool shall be immediately closed and not reopened until proof of correction is evident. Reasons for immediate closure shall include but are not limited to; a condition that endangers the health or safety of the public; the clarity of the pool is such that the bottom pool drain is not readily visible; inadequate disinfection; lack of life safety equipment; the bottom pool drain grate/cover is missing; and other criteria as outlined in Chapter ATCP 76, Wisconsin Administrative Code.

#### **SECTION (12) PLANS REVIEW**

All persons who hereafter construct remodel or convert buildings or facilities for use as a food or lodging establishment, shall conform and comply in their construction, erection or alteration with the requirements of this Ordinance.

A pre-inspection, which is required for new and change of ownership establishments, will not be conducted nor a permit to operate issued until plans, with required information as outlined in a worksheet developed and provided by the Health Department, have been submitted for review to the Health Department.

Such plans for food facilities shall include expected menu, floor plan, equipment plan and specifications, plumbing layout, wall, floor and ceiling finishes and plans and specifications for food service kitchen ventilation. Submitted plans shall give all information necessary to show compliance with applicable health codes. Submitted plans shall be retained by the Health Department. Plan submittal to the Health Officer is in addition to any plan submittal requirement of the Buffalo County Zoning Department.

- (a) At the option of the Health Officer, plans need not be submitted to execute minor alterations. Minor alterations include, but are not limited to, the replacement of existing equipment, the replacement of existing floor, wall or ceiling coverings or other cosmetic or decorating activity.
- (b) Any plans approved by the Health Department shall not be changed or modified unless the Health Officer has reviewed and approved the modifications or changes. Final approved plans will be kept in perpetuity as part of the legal file for the establishment.

#### **SECTION (14) REGULATIONS, RULES AND LAWS ADOPTED BY REFERENCE**

The applicable laws, rules, regulations set forth in Chapters 97, 254 and 463 of Wisconsin Statutes and Sections ATCP 72, 73, 74, 75, 76, 78, 79 and SPS 221 of the 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 express provisions of this ordinance shall control where more restrictive.

#### **SECTION (15) PENALTY**

Any person violating a provision of this ordinance shall be reported to the Health Officer. The Health Officer or designee may sign a complaint and report the violation to the Corporation Counsel for prosecution with assigned penalty. It shall be the duty of the Corporation Counsel to expeditiously prosecute all such violators. A violator upon conviction of the Health Officer's violation complaint shall forfeit to the County a penalty of not less than \$100.00 and not more than \$1,000.00 together with the taxable costs in such action. Each day of violation shall constitute a separate offense. The penalty associated with the citation is a civil forfeiture and if the citation is paid in accordance with an adopted forfeiture schedule a court appearance is not required.

#### **SECTION (16) EFFECTIVE DATE**

This ordinance shall take effect upon its adoption and publication as required by law.