

## CHAPTER 31

### LICENSURE AND REGULATON OF HOTELS, MOTELS, RESTAURANTS, FOOD ESTABLISHMENTS, TOURIST ROOMING HOUSES, BED AND BREAKFAST ESTABLISHMENTS, RECREATIONAL AND EDUCATIONAL CAMPS, PUBLIC SWIMMING POOLS AND ESTALISHMENTS POSSESSING CLASS A, CLASS B, CLASS C ALCOHOL BEVERAGE LICESNES AND INSPECTONS OF FOOD VENDING MACHINES, THEIR OPERATORS, VENDING MACHINE COMMISSARIES, AND SCHOOLS.

Created November 19, 2002

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- 31.01 **AUTHORITY AND PURPOSE.** This Ordinance is adopted pursuant to that authority provided by Wis. Stats. ss 97.41(1m), 125.68(5), 251.04(3), 254.47, 254.69(1) and 254.69(2); and Chapters 70, 75, 80; and by Wisconsin Administrative Code Chapters DHS 172, 175, 178, 192, 195, 196, 197 and 198, and COMM 90. The purpose of this Ordinance is to protect and improve the public health and to authorize the City of South Milwaukee Health Department to become designated agent of the State Department of Health Services and Department of Agriculture Trade & Consumer Protection for the purpose of establishing permit fees, issuing permits, and making investigations or inspections of hotels, motels, restaurants, food establishments, tourist rooming houses, bed and breakfast establishments, campgrounds, recreational and educational camps, public swimming pools, and establishments possessing Class A, Class B or Class C alcohol beverage licenses, and in making investigations and inspections of food vending machines, their operators, vending machine commissaries, schools, and national lunch and breakfast programs. 1/18/11, 2016, Amended 6/2/15, 2105
- 31.02 **APPLICABILITY.** The provisions of this Ordinance shall apply to the owner, operator or agents thereof of any hotel, motel, tourist rooming house, restaurant, food establishment, bed and breakfast establishment, campground, recreational and educational camp, public swimming pools, establishments possessing Class A, Class B, or Class C alcoholic beverage licenses, vending machine commissaries or vending machines, school and national lunch and breakfast programs in the City of South Milwaukee.
- 31.03 **REGULATIONS, RULES, AND LAWS ADOPTED BY REFERENCE.** The applicable laws, rules, and regulations as set forth in Wis. Stats. chs, 93, 97, 125, 251, and 254; Wisconsin Administrative Code Chapters; and DHS 172, 175, 178, 192, 195, 196, 197 and 198 and local ordinances Chapter 19 and 21; ATCP 75 and 80, COMM 90 Wisconsin Food Code and the MOU between DPI and DHS are hereby adopted by reference and a copy of each shall be on file and open to public inspection in the offices of the Department and City Clerk. 1/18/11, 2016
- 31.04 **DEFINITIONS.**
- (a) All definitions as set forth in Wis. Stats. 93, 97, 125, 251, and 254; and local ordinances Chapter 19 and 21, Wisconsin Administrative Code Chapters DHS 172, 175, 178, 192, 195, 196, 197 and 198; and ATCP 75 and 80; and COMM 90; and the Wisconsin Food Code are incorporated in this Ordinance. 1/18/11, 2016
  - (b) “Department” shall mean the Environmental Health Consortium consisting of the Cudahy, Saint Francis and South Milwaukee Health Departments.

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- (c) “Duplicate Permit Fee” shall mean a fee for the replacement of the original permit.
- (d) “Licensed Establishment” shall mean an establishment that has a current and valid license that is required under this chapter.
- (e) “Food” means a raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption or chewing gum.
- (f) “Food Establishment” means an operation that stores, prepares, serves, vends, sells or otherwise provides food for human consumption. The term “food establishment” includes a “restaurant” as defined in s.254.61(5) Stats.; a “retail food establishment” as defined in s. 97.30, and a “temporary restaurant” as defined in s. 254.61(5m) Stats.
- (g) “Governing Body” shall mean the local health department in that city in which the business is located or its successor organization if any, or in its absence, the Public Health Administrator.
- (h) “Late Fee” shall mean a fee for failure to pay established fees by June 30 or the due date if different.
- (i) “Permit/License” means the document issued by the regulatory authority that authorizes a person to operate an establishment. The words “permit” and “license” as used throughout this chapter shall be interchangeable.
- (j) “Pre-Inspection Fee” shall mean a fee for consultative services offered to persons intending to operate a new hotel, tourist rooming house, bed and breakfast establishment, restaurant, food establishment, vending machine commissary, swimming pool, campground or to a person intending to be the new operator of an existing hotel, tourist rooming house, bed and breakfast establishment, restaurant, retail food establishment, vending machine commissary, swimming pool and campground. 1/18/11, 2016
- (k) “Re-Inspection Fee” shall mean a fee for the reinspections needed to address compliance issues with the statutes and administrative codes.
- (l) “MILK” shall mean the whole, fresh, clean, lacteal secretion obtained by the complete milking of one or more healthy cows. Milk shall contain not less than 3% of milk fat and not less than 8.25% of milk solids not fat. Milk may be standardized by the addition or removal of cream or by the addition of skim milk. When so standardized, milk shall contain not less than 3.3% of milk fat and not less than 8.25% of milk solids not fat. Milk fat or butterfat is the fat of milk.

- (m) “MILK PRODUCTS” shall mean and include: cream, light cream, coffee cream, table cream, whipping cream, whipped cream, sour cream, cultured cream, cultured sour cream, half and half, sour half and half, cultured half and half, cultured sour half and half, concentrated milk, concentrated milk products, skim milk, skimmed milk, vitamin D milk, vitamin D milk products, fortified milk, fortified milk products, low fat milk, homogenized milk, flavored milk, flavored drink, flavored dairy drink, flavored skim milk, buttermilk, cultured buttermilk, cultured milk, acidified milk, acidified milk products, egg nog, yogurt, cottage cheese and creamed cottage cheese. This definition does not include such products as sterilized milk and milk products hermetically sealed in a container and so processed, either before or after sealing, as to prevent microbial spoilage, or evaporated milk, condensed milk, ice cream and other frozen desserts, butter dry milk products (except as defined herein), or cheese, except when they are combined with other substances to produce any pasteurized milk or milk products defined herein.

31.05 ENFORCEMENT AND RIGHT TO ENTER PREMISES. The provisions of this Ordinance shall be administered by or under the direction of the Department or authorized agent who is authorized to enter during reasonable hours, upon any 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. In the event an owner refuses to allow an inspection, the City’s agent may seek a special inspection warrant to conduct the inspection and the failure to permit the inspection will result in a denial of a new license or re-issuance of a license and may result in revocation of an existing license.

31.06 OBSTRUCTION OF HEALTH DEPARTMENT EMPLOYEES. No person may assault, restrain, threaten, intimidate, impede, interfere with or otherwise obstruct the Department or authorized agent in the performance of his or her duties under this section, nor shall the operator give false information with the intent to mislead the Department or authorized agent.

31.06.5 SANITARY REGULATIONS. No person shall manufacture, prepare for sale, offer, expose for sale or sell food defined in 31.-4(e) unless it is securely protected from filth, flies, dust or contamination or unclean, unhealthful or unsanitary conditions. 1/18/11, 2016

## 31.07 FOOD DEALERS LICENSE AND PERMIT

- (a) No person, partnership, association or corporation may establish a food operation, manufacture, offer for sale, store, distribute or sell food within the City without first having obtained a current and valid food dealer's license. Amended 5/6/08, 1969.
- (b) Licenses shall not be transferable from person to person or from premise to premise with the exception of:  
A license issued under the provisions of WI Stat. 254 may be transferred to an individual who is an immediate family member of the licensee of the establishment. A parent, child, stepchild, grandchild, sibling or step sibling shall be considered an immediate family member for purposes of this Ordinance. A license issued under the provisions of WI Stat. 97 may only be transferred to the spouse of the licensee.
- (c) No permit shall be granted to any person under this Ordinance without a pre-inspection by the Department of the premises for which the permit shall be granted.
- (d) No permit shall be issued until all application fees have been paid.

## 31.08 LICENSE EXEMPTION. Exemption from this license does not exclude any person handling food for public consumption from inspection and compliance with requirements of the ordinance. The Department may waive the license fee for the following:

1. If a food and or drink establishment under the provisions of WI Stat. 254 is a church, religious, fraternal, youth or patriotic organization, service club and civic organization that occasionally prepares, serves or sells meals to the general public.
2. If a food or drink establishment under the provisions of WI Stat. 97 is a church, religious, fraternal, youth or patriotic organization, service club and civic organization that prepares, serves or sells meals to the general public less than 12 days during a 12 month period.
3. Any person selling agriculture products which such person has grown.
4. Taverns that serve free lunches consisting of popcorn, cheese, crackers, pretzels, cold sausage, cured fish, or bread and butter.

5. Any food service provided solely for needy persons.

31.09 APPLICATION. All applicants must apply on forms furnished by the Department. All applications for permits shall be made in writing to the local Governing Body where the business is located. All applications shall list the true, legal names of the owners or operators of the business, whether person, firm, partnership or corporation, and address. All corporations applying for licensure shall be registered with the State of Wisconsin and the name of the registered agent shall be placed on the application. The agent's name and address shall be kept current. The applicant shall provide documents, which reflect the aforementioned registration to the Department. The Department shall either approve the application or deny the permit within thirty (30) days after receipt of a complete application.

31.10 APPEAL. Any person refused or denied a license may appeal the denial through the appeal procedure provided under the provisions of Secs. 68.07 through 68.16 Wis. Stats.

#### 31.11 INSPECTION AND REINSPECTION.

- (a) As a condition of licenses renewal, all establishments licensed under this Chapter shall consent to an annual inspection and reinspection. License renewal may be withheld pending inspection, reinspection and compliance with these regulations. One copy of the inspection report shall be given to the owner, operator or employee of the establishment and another copy shall remain on file at the Department.
- (b) If, upon the reinspection, the order or directive is found not to have been complied with and additional reinspections are required, a fee shall be assessed to the responsible party for each additional reinspection to compensate for the costs of such reinspections. Payment is due on written demand from the Department.
- (c) Operators in charge of retail food establishments shall maintain an effective and constant inventory system and shall use the system to properly rotate the milk and milk products. Such operators shall remove all outdated milk and milk products and prevent their sale to the customer.

31.12 PROCEDURE FOR ISSUING NEW OR RENEWAL LICENSE. The Department or authorized agent shall issue a license to each applicant for a new or renewal license that meets all the requirements of this section and has paid to the city the fee required in the City Fee Schedule. A licensee must obtain approval from the City Common Council in which the business is located if its license has been suspended or revoked in the last 3 years.

**31.13 INSUFFICIENCY OF FUNDS; NON-PAYMENT OF FEES.**

- (a) If funds are found to be insufficient, or for any other reason the funds are not honored, the license will be null and void. Upon notification, the permit must be submitted to the Department for retainment until the time of re-issuance. A license will not be issued until all applicable fees, late fees and processing charges are paid.
- (b) Any individual or corporation that owes the city for unpaid fines, unpaid property taxes, late fees, or license fees relating to a current or previous licensed establishment shall pay all such outstanding fees, before a license is issued.

**31.14 POSTING.** Each license shall be posted in a conspicuous place visible to the public on the licensed establishment premises.

**31.15 CHANGES TO BE REPORTED.**

- (a) A licensee shall notify the Department whenever there is a change in any information that is reported in the application form. The licensee shall make this notification in writing within 5 days after the change occurs.
- (b) The owner of any premises for which a license has been granted shall promptly notify the Department in writing of their intention to cease operations.

**31.16 SUSPENSION OF LICENSE.**

- (a) Whenever the Department finds a condition in a licensed establishment, which is determined to be a direct and immediate hazard to public health, the permit may be suspended without notice or warning.
- (b) A permit may also be suspended, with prior notice, pending correction of violations that constitute a health hazard that is serious, but not an immediate threat to the public health, or for recurring or repeated violations.
- (c) A written notice to the licensee, his agent or employee in charge of the licensed premises, shall cite such conditions specifying the corrective action to be taken, specify the time period within which such action shall be taken, and such order shall state that the license is immediately discontinued.

- (d) Upon notification of suspension, the permit must be submitted to the Department for retainment until the time of reissuance.

31.17 REINSTATEMENT OF A SUSPENDED LICENSE. The license holder whose license has been suspended may at any time, make application for reinstatement of the license. Within one week after the receipt of satisfactory application, accompanied by a signed statement by the applicant that the violations have been corrected, the Department or designee shall make a reinspection and thereafter as many additional reinspections deemed necessary to assure that the applicant has complied with the requirements. If the findings indicate compliance, the Department may reinstate the license.

#### 31.18 REVOCATION OF LICENSE.

- (a) For serious or repeated violations of any to the requirements of this chapter or for interference with the Health Officer or designee in the performance of their duties, the Health Officer or designee may permanently revoke the license issued under this article. Prior to such actions, the Health Officer shall notify the license holder in writing, stating the reasons for which the license is revoked.
- (b) When a license is revoked, the owner/operator shall turn over the license to the Health Officer or designee and cease operations immediately.
- (c) The license of any establishment shall be automatically revoked when the business is not operated for a period of 120 consecutive days, excluding seasonal businesses, unless otherwise ordered by the Health Officer or designee. When closed for such a period except for extensive renovation or refurbishing, the establishment shall be considered a new establishment and shall not be reopened until granted a new permit in accordance with this section.

31.19 APPEAL. Any person whose license has been revoked may appeal the revocation through the appeal procedure provided under the provisions of Secs. 68.07 through 68.16, Wis. Stats.

**31.20 REAPPLICATION FOR A REVOKED LICENSE.**

- (a) A person whose license has been revoked may, at any time, make reapplication for a revoked license. Within one week after the receipt of satisfactory application, accompanied by a signed statement by the applicant that the violations have been corrected, the Department or designee shall make a preinspection and thereafter as many additional reinspections as deemed necessary to assure himself that the applicant has complied with the requirements. The licensee must obtain approval from the City Common Council in which the business is located prior to the re-issuance of the license.
- (b) Upon revocation, all variances and grandfather clauses shall be rescinded. Reapplication for licensure shall be as a new establishment.

**31.21 CONSTRUCTION OR ALTERATION OF FOOD ESTABLISHMENTS.**

- (a) No person shall erect, construct, enlarge or alter a food establishment without first submitting to the Department or designee, plans (drawings) which clearly show and describe the amount and character of the work proposed and without first receiving approval of submitted plans. Such plans shall include floor plan, equipment plan and specifications, wall, floor and ceiling finishes, and plans and specifications for food service kitchen ventilation and plumbing. Submitted plans shall give all information necessary to show compliance with applicable health codes. Submitted plans shall be retained by the Department or designee.
- (b) At the option of the Department or designee, plans need not be submitted to execute minor alterations to a food establishment. Approved plans shall not be changed or modified unless approval of such changes or modifications shall have first been obtained from the Department or designee.

**31.22 RECREATIONAL AND EDUCATIONAL CAMPS.**

The City does hereby adopt Ch DHS 175, Wis. Adm. Code, to apply to any recreational or educational camp located within the City. 1/18/11, 2016

**31.225 CAMPGROUNDS.**

The City does hereby adopt Ch DHS 178, Wis. Adm. Code, to apply to any campgrounds within the City. 1/18/11, 2016

31.23 SWIMMING POOLS.

The City does hereby adopt Ch DHS 172, Wis. Adm. Code, to apply to any public swimming pool located within the City. 1/18/11, 2016

31.24 HOTEL, MOTEL AND TOURIST ROOMING HOUSES.

The City does hereby adopt Ch. DHS 195, Wis. Adm. Code, to apply to any hotel, motel and tourist rooming houses located within the City. 1/18/11, 2016

31.245 VENDING MACHINES.

The City does hereby adopt Ch. DHS 198, Wis. Adm. Code, to apply to any vending machine located within the City. 1/18/11, 2016

31.25 VIOLATIONS.

No person shall violate any provisions of this chapter.

- (1) Enforcement. The Department or its designee shall enforce any provision of this chapter.
- (2) Enforcement Procedure.
  - (a) Inspection. If, upon inspection, the Department or designee finds that any licensed or unlicensed establishment is conducted or managed in violation of the ordinances or regulations of the City, laws of the State or regulations of any agency of the State prescribing standards of health or sanitation, the Department or designee shall serve a written order upon the licensee, his agent or employee in charge of the licensed premises or the person responsible for the violation, notifying him of such violations.
  - (b) Exceptions to Written Order. In extreme cases where a violation poses an immediate health hazard as determined by the Department or designee or, in the case of repeating occurrences of the same violation by the same person, the actions specified in sub. (c)(7) can be initiated immediately.

- (c) Noncompliance With Order. If a person does not comply with a written order from the department or designee, the person may be subject to one or more of the following actions, and/or penalties.
1. The issuance of a citation.
  2. A reinspection fee.
  3. Suspension of license.
  4. Revocation of license.
  5. Commencement of legal action against the person seeking a court imposed forfeiture and/or imprisonment.
  6. Commencement of legal action against the person seeking an injunction to stop, abate the violation and/or correct the damage created by the violation.
  7. Any other action authorized by this chapter or by other applicable laws as deemed necessary by the Department or designee.
  8. The initiation of one action or penalty under this section does not exempt the apparent violator from any additional actions and/or penalties listed in this section.

#### 31.26 FEES.

- (a) The fees for services and activities performed by the Department in carrying out its responsibilities under this code shall be determined by resolution of the Common Council and published in the Administrative Fee Schedule.
- (b) Fees to Accompany Application. License fees imposed under this chapter shall accompany the license application. If a license is granted, the Department shall issue the applicant a receipt for license fee.
- (c) No Proration. There will be no proration for license fees.
- (d) Refunds. No license fee paid shall be refunded, unless a refund is requested prior to a preinspection for a new establishment.
- (e) Local Preinspection Fees.
1. Preinspection fees shall be charged as enumerated in Administrative Fee Schedule.

2. Preinspection fees shall include all consultation prior to the establishment doing business.
  3. Preinspection fees may be applicable for all new operations and changes in operation.
  4. Preinspection fees are not refundable.
- (f) **Late Fees.** A late fee, as enumerated in the Administrative Fee Schedule, shall be charged for all licenses issued under provisions of this chapter.
1. This shall apply when an application is not renewed before the expiration date, unless waived by the Department.
  2. A late fee shall also apply to a new establishment or any establishment with a new operator doing business before obtaining the required licenses, as provided for in this chapter.
- (g) **Duplicate License Fee.** A duplicate license fee as enumerated in the Administrative Fee Schedule shall be charged to duplicate any license provided for in this chapter.
- (h) **License Fees.** License fees, as enumerated in the Administrative Fee Schedule.
- (i) All fees shall be accounted for separately and applied to the expenses under Chapter 31.
- (j) **Reinspection.**
1. A reinspection fee shall be charged as enumerated in the Administrative Fee Schedule.

#### 31.27 EXPIRATION DATES.

- (a) All licenses issued under provisions of this chapter shall expire, unless otherwise ordered by the Department or authorized agent, as follows:

Food/drink	June 30
Hotel/Motel	June 30

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Public Swimming Pool	June 30
Boarding/Rooming House	December 31
Bed & Breakfast	June 30
Recreation & Educational Camps	June 30
Campgrounds	June 30
Vending Machines	June 30

- (b) The licenses shall expire at midnight of the last effective day of the license, unless otherwise provided by these ordinances of State laws.

31.28 RENEWAL

- (a) The Department prior to the expiration date shall furnish renewal notices. It is the responsibility of the owner/operator to complete the application form and pay the appropriate fee before the expiration date of such license.
- (b) Uncooperative, habitual violators may be refused license renewal.

31.29 Whenever conflicts between these rules and regulations and other City Ordinances or State and Federal regulations occur, the most stringent rule shall apply.

31.30 PENALTY FOR VIOLATION. Any person, partnership, firm or corporation who fails to comply with the order of the Health Officer or its designee or who violates section 31.06 shall be subject to a forfeiture of not less than \$50.00 and not more than \$500.00 per day for each day the condition ordered corrected continues uncorrected after the expiration of the time period stated in the order or violation of 31.06, together with the costs of the action.

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