

11.06 - LODGING, RECREATION AND FOOD PROTECTION . (Cr. #2005-10-458; Am. #2013-09-598; #2016-10-633)

- (1) **AUTHORITY.** This section is adopted pursuant to that authority provided by §§ 66.0417, 68, 93, 97.41, 125.68(5), 251.04(3), 252.02, 252.03, 254.47, and 254.69(2), Wis. Stats.; and by ATCP 72, 73, 74, 75, 76, 78, 79, Wis. Adm. Code; and SPS 221, 326, 381-386 and 390-391.
- (2) **PURPOSE.** The purpose of this section is to protect and improve the public health and to authorize the Lincoln 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 hotels, motels, tourist rooming houses, body piercing and tattooing establishments, restaurants, bed and breakfast establishments, campgrounds and camping resorts, recreational and educational camps, public swimming pools and in making investigations and inspections of food vending machines, their operators and vending machine commissaries; and authorizing the Lincoln County Health Department to become the designated agent of the State of Wisconsin Department of Safety and Professional Services, for the purpose of establishing permit fees; issuing permits and making investigations or inspections of retail food establishments, mobile home communities, body piercing and tattooing establishments; and for the purpose of enacting local regulations governing these establishments.
- (3) **APPLICABILITY.** The provisions of this section 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, manufactured home community, vending machine commissary or vending machines in all areas of Lincoln County.
- (4) **DEFINITIONS.** All definitions as set forth in Chs. 66.0417, 68, 97, 125, 251, 252 and 254, Wis. Stats.; and Chs. ATCP 72, 73, 74, 75, 76, 78, 79, Wis. Adm. Code, and SPS 221, 326, 381-386 and 390-391 are incorporated in this section 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 Permit Fee shall mean 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.
 - (b) Duplicate Permit Fee shall mean a fee for the replacement of an original permit.
 - (c) Health Department shall mean the Lincoln County Health Department.
 - (d) Inspection Fee is the fee to conduct an inspection without the intent of licensing an establishment.
 - (e) Late Application Fee shall mean 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 permit to the Health Department.
 - (f) Operator shall mean the owner, operator or person responsible to the owner for the operations of the establishment.
 - (g) Pre-Inspection Fee shall mean the fee associated with the required inspection necessary to determine compliance at the time of a change-in-operator or new business.
 - (h) Re-Inspection Fee shall mean a fee structure for the subsequent inspections needed to address compliance issues with the statutes and administrative codes that govern a respective establishment. The fee for a re-inspection will be a set fee, determined by the Board of Health.
- (5) **ENFORCEMENT.** The provisions of this section 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 section and issue citations or file a summons and complaint with the District Attorney.

(6) 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 establishments, restaurant, campground and camping resort, recreational and educational camp, public swimming establishments, or manufactured home community without first obtaining a permit from the Health Department. Department of Agriculture, Trade, and Consumer Protection 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. Department of Agriculture, Trade, and Consumer Protection licenses shall expire on June 30 of each year following their issuance and may be pro-rated throughout the year. Department of Safety and Professional Services permits shall expire on June 30 of each year following their issuance and are not pro-rated. The issuance of a permit may be conditioned upon the operator correcting a violation of this section 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. The holder of a Department of Agriculture, Trade and Consumer Protection Health Services permit issued under this section may transfer the permit 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.
3. A sole proprietorship that reorganizes as a business entity or a business entity that reorganizes as either a sole proprietorship or a different type of business entity may transfer a Department of Agriculture, Trade and Consumer Protection permit issued under this section for operation of an establishment to the newly formed business entity or sole proprietorship if BOTH of the following conditions are satisfied:
 - (i) The establishment remains at the location for which the permit was issued.
 - (ii) At least one individual who had ownership interest in the sole proprietorship or business entity to which the permit was issued has an ownership interest in the newly formed sole proprietorship for business entity.

(b) Operators or permit licensees of temporary restaurants whom the Health Department has found to be uncooperative or habitual violators of this section may be denied a permit to operate. Temporary permits 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 license or permits shall be granted to any person under this section without a pre-inspection by the Health Department of the premises for which the permit shall be granted.

(d) No license or permit shall be issued until all application fees have been paid.

(7) APPLICATION. Application for license and 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 30 days after receipt of a complete application.

(8) FEES. Permit fees shall be those fees established and used by the Department of Safety and Professional Services and the Department of Agriculture, Trade and Consumer Protection to

implement these respective Wisconsin Administrative Code provisions or otherwise approved annually by the Lincoln County Board of Health.

- (9) PERMIT PUBLIC DISPLAY. Every establishment required to obtain a license or permit pursuant to this section shall display said permit, at all times, in a conspicuous public place.
- (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 on a premises covered by this section, the Health Officer or designee, may issue a temporary order in accordance with section 66.0417 (2), Wis. Stats.
- (11) DENIAL, SUSPENSION OR REVOCATION OF LICENSE. The Health Officer, or designee, may deny any license application or suspend or revoke any license issued under this chapter for non-compliance with this code and regulations, rules and laws adopted by reference under Section 12. The following procedure shall be followed in the denial, suspension or revocation of any license issued under this chapter:
 - (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 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 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 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 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 Lincoln County Board of Health.
 - (e) A licensee or applicant shall be provided a hearing on appeal within 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 10 days before the hearing.
 - (f) The hearing shall be conducted before the Lincoln County Board of Health and shall be conducted in accordance with the procedures outlined in §§ 68.11 (2) and (3), Wis. Stats.
 - (g) Within 20 days of the hearing, the Lincoln County Board of Health shall mail or deliver to the appellant its written determination stating the reasons therefor.
 - (h) A decision by the Health Officer upon a request for review and reconsideration, which is not appealed to the Lincoln County Board of Health, or a decision by the Lincoln 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 30 days of receipt of the final determination per § 68.13, Wis. Stats.

(12) REGULATIONS, RULES AND LAWS ADOPTED BY REFERENCE. The applicable laws, rules and regulations as set forth in Chs. 66.0417, 68, 93, 97, 125, 251, 252 and 254, Wis. Stats.; and Chs. ATCP 72, 73, 74, 75, 76, 78, 79, 198, Wis. Adm. Code; and SPS 221, 326, 381-386 and 390-391 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 section shall control where more restrictive.

(13) VIOLATION; PENALTIES.

- (a) Any person who violates and refuses to comply with any provisions of this chapter shall be subject to a citation and respective forfeiture as established in the Chapter 25 of the General Code of the County of Lincoln for each offense. The Health Officer or the Health Officer's duly authorized representative may issue citations using the standard citation form used in Lincoln County. Citations may be served in person or may be sent by mail. In addition the Health Officer may revoke or amend any applicable license or permit. Each day a violation exists or continues shall be considered a new and separate offense. The Health Department may seek injunctive relief from the circuit court where deemed appropriate to gain compliance.
- (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 the District Attorney.