

ORDINANCE NO. 17-3

ESTABLISHING A JOINT PUBLIC HEALTH ORDINANCE TO BE ADMINISTERED BY THE WASHINGTON OZAUKEE PUBLIC HEALTH DEPARTMENT AND JOINT BOARD OF HEALTH AND AUTHORIZING AGENT STATUS OVER THE FOOD SAFETY AND RECREATIONAL LICENSING PROGRAM FOR OZAUKEE COUNTY

An Ordinance creating Chapter 17 of the Ozaukee County Code of Ordinances pertaining to Public Health and authorizing agent status for the Food Safety and Recreational Licensing Program in Ozaukee County.

The County Board of Supervisors of the County of Ozaukee does ordain that Chapter 17 of the Ozaukee County Code of Ordinances be created as follows:

CHAPTER XVII
PUBLIC HEALTH

17.01 GENERAL PROVISIONS

17.011 TITLE

This ordinance shall be known as the “Washington Ozaukee Public Health Ordinance” and hereinafter referred to as “Ordinance.”

17.012 STATUTORY AUTHORITY

(a) This Ordinance is enacted pursuant to Wis. Stat. § 254.59, as amended, which delegates responsibility to local health officers to abate and remove human health hazards and to enact ordinances concerning abatement or removal of human health hazards that are no less restrictive than related statute.

(b) This Ordinance is further enacted pursuant to Wis. Stats. §§ 97.41, 97.615 (2) and 463.16, as amended, which collectively allow a local health department to enter into agreements with the Departments of Agriculture, Trade and Consumer Protection (DATCP) and Safety and Professional Services (DSPA) to obtain agent status for the purpose of issuing licenses and conducting investigations or inspections of specified facilities engaging in activities that affect public health, to enact ordinances regarding the licenses and facilities for which agent status is granted and to establish and collect applicable state fees and additional fees reasonably necessary to perform duties imposed on local agents by relevant Wisconsin Statute and Administrative Code provisions.

(c) Where this Ordinance differs from relevant Wisconsin Statutes or Administrative Code provisions, the express provisions of the Ordinance shall control provided they do not conflict with, and are at least as restrictive as, the applicable Statute or Code provisions.

17.013 PURPOSE

The County finds that the existence of human health hazards and certain

unhealthy or unsafe conditions in Washington or Ozaukee County may adversely impact the public health, safety and general welfare of those who live, work or engage in leisure activities within Washington or Ozaukee County. The purpose of this Ordinance is to protect the public health, safety and general welfare of the people of Washington and Ozaukee County by controlling and preventing the spread of disease and protecting citizens from hazardous, unhealthy or unsafe conditions.

17.02 DEFINITIONS

17.021 GENERAL

Words and phrases not defined herein shall have their standard dictionary meanings.

17.022 SPECIFIC WORDS AND PHRASES

- (a) "Board" means the Washington Ozaukee Joint Board of Health.
- (b) "County" means Washington County or Ozaukee County or both, collectively.
- (c) "Department" means the Washington Ozaukee Public Health Department and its employees.
- (d) "Health Officer" means the Director of the Washington Ozaukee Public Health Department or the health officer designated by the Board and any agents working under the direction and supervision of the Board.
- (e) "Human Health Hazard" shall have the meaning found in Wis. Stat. § 254.01, as amended.
- (f) "License," wherever used, shall be synonymous with "permit."
- (g) "Owner" shall have the meaning found in Wis. Stat. § 254.55 (2), as amended, except that reference to Owner herein shall include Owners of any property and not be limited solely to Owners of dwellings.
- (h) "Person" includes individuals, partnerships, associations, firms, companies, limited liability companies, corporations, municipalities, societies, institutions, any other entity, Owners and occupants.

17.03 ADMINISTRATION

The Ordinance shall be administered by the Health Officer, the Board, the Department and other local units of government.

17.04 INTERPRETATION

The provisions of the Ordinance shall be held to be the minimum requirements and shall not be deemed a limitation or repeal of any power granted by Wisconsin Statutes, Wisconsin Administrative Code or other applicable law.

17.05 HUMAN HEALTH HAZARDS

17.051 PROHIBITED

No Person shall cause, continue, maintain or permit any Human Health Hazard within the County. Any Person who causes, creates, maintains or permits a

Human Health Hazard within the County, or who shall in any way aid or contribute to the cause of maintenance thereof, shall be in violation of the Ordinance and liable for all costs and expenses related to the abatement or removal of the Human Health Hazard and for any applicable penalty provided herein.

17.052 RESPONSIBILITY OF OWNERS

It shall be the responsibility of all Owners and occupants to maintain their property free of Human Health Hazards and to abate or remove a Human Health Hazard determined to exist on their property. Owners and occupants who fail to maintain their property free of Human Health Hazards or who fail to abate or remove them in a manner approved by the Health Officer shall be in violation of the Ordinance.

17.053 RESPONSIBILITY OF HEALTH OFFICER

The Health Officer shall inspect, or cause to be inspected, property where Human Health Hazards are alleged to exist. In the event an Owner refuses entry for inspection purposes, a special inspection warrant under Wis. Stat. § 66.0119, as amended, shall be obtained.

17.054 ENFORCEMENT

(a) When the Health Officer has conducted or caused an inspection to occur and determines that a Human Health Hazard exists, the Health Officer may issue an order for its abatement or removal.

(b) Orders shall be in writing, unless the private property is made available to the public for its use, in which case the order may be issued verbally at the time the Health Officer determines that a Human Health Hazard exists. Verbal orders shall be effective when made. Verbal orders shall be reduced to writing and a copy of the order provided to the Owner and any occupant within two business days.

(c) All orders, whether verbal or written, shall specify the steps for abatement or removal and a reasonable time period within which abatement or removal must be completed. The Health Officer may require the Owner to hire a licensed or certified professional to abate or remove a Human Health Hazard. The maximum time period specified to abate or remove a Human Health Hazard shall be 30 days, taking into account the potential of harm posed to the public.

(d) Written orders shall be personally served or served by certified mail, return receipt requested, on the Owner and any occupant. If the order is served by certified mail, the abatement or removal time period shall begin tolling on the date the Owner or occupant signed the return receipt.

(e) The Health Officer shall forward a copy of all orders to the local governing body having jurisdiction over the property on which the Human Health Hazard is found. If the Human Health Hazard is not abated or removed within the time period specified in the order, the local governing body may enter upon the property for the purpose of abatement or removal or cause such other action to be taken as permitted by applicable law. If the local

governing body fails to abate or remove the Human Health Hazard, the County may enter the property for the purpose of abatement or removal.

(f) The cost of abatement or removal shall be recovered by the local governing body or the County directly from the Owner or any occupant. If the cost is not paid by the Owner or any occupant, it may be collected by the imposition of a special tax on the property pursuant to Wis. Stat. § 74.01 (5), as amended. The only defenses the Owner may have against the collection of a special tax is that no Human Health Hazard existed or was corrected on the Owner's property, the required procedures herein were not followed or any defense available in Wis. Stat. § 74.33, as amended.

17.06 FOOD SAFETY AND RECREATIONAL LICENSING

17.0601 INCORPORATION OF STATUTES AND REGULATIONS

All provisions relevant to the performance of the Department's duties as local agent of DATCP and DSPS, including definitions, found in Wis. Stats. §§ 66.0417, 97 and 463 and Wis. Admin. Code ATCP Chapters 72, 73, 74, 75, 76, 78, 79 and SPS Chapters 221 and 390, as amended, are incorporated herein by reference.

17.0602 ENTRY BY LOCAL AGENT

Employees of the Washington Ozaukee Public Health Department shall be permitted to enter, at any reasonable hour and upon the presentation of proper identification, any facility in Washington or Ozaukee County for which a license is required by this Ordinance to inspect the facility for any purpose stated in Wis. Stats. §§ 66.0417 (1), 97.12 (1) and Chapters ATCP Subsections 72.06 (1), 73.06 (1), 74.02 (1), 74.05 (2), 74.23, 75.106 (1), 75.206 (1), 76.07 (1), 78.07 (1), 79.07 (1) and Chapter SPS Subsection 221.06 (1), as amended.

17.0603 LICENSE REQUIRED

(a) No Person shall operate a hotel, motel, tourist rooming house, bed and breakfast establishment, retail food establishment, campground, recreational or educational camp, public pool, tattoo or body piercing establishment in Washington or Ozaukee County without first obtaining a license from the Department, unless an exemption applies.

(b) Any license issued pursuant to this Ordinance must be posted in a place visible to the public and may not be altered or defaced.

(c) Any Person operating any of the facilities listed in subsection (a) without a valid license shall be subject to the imposition of a fee for operating without a license in addition to all other applicable fees and charges pursuant to the schedule referenced in subsection 17.068 herein.

17.0604 LICENSE TRANSFERS

Licenses are only transferable as allowed by applicable Wisconsin Statute or Administrative Code provision.

17.0605 APPLICATION PROCESS

(a) A license applicant shall complete an application with an employee of

the Department or complete the application form furnished by the Department, pay all applicable fees and provide any proof, information, inspection reports, approvals, documentation or statements required by any applicable Wisconsin Statute or Administrative Code provision.

(b) The Washington Ozaukee Public Health Department shall issue a license, a conditional license pursuant to subsection (c) or a denial pursuant to subsection (d) within thirty (30) days of receipt of the completed application, fees and required items.

(c) A conditional license shall specify the violations that must be corrected and the time period within which the corrections must be completed. If the corrections are not made within the stated time period, or any extended time period approved by the Department, the license is void. Inspection and license fees will not be refunded when a conditional license is voided.

(d) Denials shall be in writing and provide the reasons for the denial and appeal rights.

17.0606 LICENSE DURATION

All licenses expire each year on June 30th, except that a license initially issued during the period beginning on April 1 and ending on June 30 expires on June 30 of the following year.

17.0607 LICENSE RENEWAL

Licenses may be renewed by payment of the annual license fee before the license expires. If payment is not made by the expiration date, the applicable late fee shall be paid in addition to the annual license fee.

17.0608 FEES

All licensing fees are as set forth on the fee schedule approved and updated annually by the Board. The allowable fees include license fees, preinspection fees, reinspection fees, license renewal fees, temporary restaurant set-up fees, late fees and fees for operating without a license. The fee schedule is available on the Department's website at washozwi.gov.

17.0609 VOIDED LICENSE

Licenses may be voided for failure to pay any applicable fee pursuant to the procedures of applicable Wisconsin Statute or Administrative Code provision.

17.0610 GENERAL ORDERS TO CORRECT VIOLATIONS

Orders to correct violations may be issued by the Department according to the procedures of the applicable Wisconsin Statute or Administrative Code provision.

17.0611 TEMPORARY ORDERS TO CORRECT VIOLATIONS

The Department may issue temporary orders to correct violations of any applicable Wisconsin Statute or Administration code provision pursuant to the procedures in Wis. Stat. 66.0417, as amended.

17.0612 SUSPENSION AND REVOCATION OF LICENSES

The Department may suspend or revoke a license if an order to correct violations

is not complied with in the time period stated or any extended time period agreed upon by the Department. Suspension and revocation notices shall be in writing and contain a notice of right to request a hearing before the Board. Suspensions and revocations will take effect 15 days after issuance of the notice unless the applicant or operator requests a hearing within the same 15 day time period.

17.07

APPEALS

- (a) Anyone aggrieved by an order or decision of the Washington Ozaukee Public Health Department may request a hearing before the Washington Ozaukee Joint Board of Health or its designee to challenge the order or decision of the Washington Ozaukee Public Health Department.
- (b) The applicant or operator shall submit a written request for a hearing not later than fifteen (15) days after the Department issues an order or decision.
- (c) The hearing shall be held no later than thirty (30) days after the Washington Ozaukee County Public Health Department receives the written request for a hearing, unless both parties agree to a later date.
- (d) The Washington Ozaukee Public Health Department shall mail a notice of hearing to the applicant or operator at least five (5) days prior to the hearing; which notice shall set forth the date, time, and place of the hearing.
- (e) The hearing shall be recorded.
- (f) The applicant or operator and the Department may be represented by counsel, provide testimony and cross examine witnesses.
- (g) Witnesses shall be sworn under oath.
- (h) A final written decision shall be issued within ten (10) days of the conclusion of the hearing.
- (I) Any Person who is a party to a proceeding under this subsection may seek certiorari review of the final written decision in the Circuit Court in the County which the licensed facility is located in.

17.08

FORFEITURES AND INJUNCTIONS

- (a) Any Person causing, continuing, maintaining or permitting a Human Health Hazard within the County may, in addition to any other remedy available in this Chapter or other applicable law, be subject to a forfeiture of \$50 per day.
- (b) Any Person violating an order of the Department based on ATCP Chapters 72, 73, 75, 76, 78 or 79, as amended, may, in addition to any other remedy available in this Ordinance or other applicable law, be subject to a forfeiture of \$50 per day pursuant to Wis. Stats. 97.12 (5), as amended.
- (c) Any Person violating an order of the Department based on SPS Chapter 221, as amended, may, in addition to any other remedy available in this Ordinance or other applicable law, be subject to a forfeiture of \$10 per day pursuant to 221.06 (2)(c), as amended.
- (d) All forfeitures shall include applicable costs, fees and surcharges

imposed by Wis. Stat. 814, as amended, and a prison term of up to six months if not paid.

(e) In addition to the fees, forfeitures and other remedies imposed under this Ordinance, the County in which the facility is located may also seek an injunction to prevent the continuation of any violation.

17.09 PROSECUTION OF VIOLATIONS

The Health Officer may refer violations of this Ordinance to the County Corporation Counsel located in the County having jurisdiction over the property for the filing of forfeiture and injunction actions.

17.10 SEVERABILITY

The provisions of this Ordinance shall be deemed severable and it is expressly declared that the Board would have passed the other provisions of this Ordinance irrespective of whether or not one or more provisions may be declared invalid and if any provision of this Ordinance or the application thereof is held invalid, the remainder of the Ordinance and the application of such provisions shall not be affected thereby.

This Ordinance shall take effect upon enactment and publication.

Dated at Port Washington, Wisconsin, this 5th day of July 2017.

SUMMARY: This ordinance sets forth a joint public health ordinance applicable to Washington and Ozaukee Counties for the purpose of controlling human health hazards and to affirm or extend agent status in the Food Safety and Recreational Licensing Program for or to both counties.

VOTE REQUIRED: Majority

HEALTH & HUMAN SERVICES COMMITTEE

RESULT:	APPROVED [UNANIMOUS]
MOVER:	T. Richart, Vice-Chairperson
SECONDER:	D. Clark, Supervisor District 5
AYES:	K. Hertz, T. Richart, D. Clark
EXCUSED:	D. Henrichs, J. Braverman

Lee Schlenvogt
CHAIRPERSON - COUNTY BOARD