

CHAPTER 14

FOOD AND FOOD ESTABLISHMENTS.

ARTICLE I. GENERAL REGULATIONS FOR FOOD ESTABLISHMENTS

- 14-1 STATE DIVISION OF HEALTH REGULATIONS ADOPTED
- 14-1.1 ADOPT STATE STATUTES AND ADMINISTRATIVE CODE PROVISIONS
- 14-1.2 SMOKING PROHIBITED INSIDE RESTAURANTS
- 14-2 DEFINITIONS
- 14-3 ESTABLISHMENTS TO WHICH THIS ARTICLE APPLY
- 14-4 PERMIT REQUIRED
- 14-5 TEMPORARY FOOD ESTABLISHMENTS
- 14-6 ISSUANCE AND DISPLAY OF PERMITS
- 14-7 REVOCATION OF PERMITS
- 14-8 REINSTATEMENT OF PERMIT
- 14-9 INSPECTION OF FOOD ESTABLISHMENTS BY HEALTH DIRECTOR
- 14-10 SWAB TEST

ARTICLE II. FEES

- 14-11 FEES
- 14-12 LATE FEES
- 14-13 RE-INSPECTION FEE

ARTICLE III. PENALTIES

- 14-14 PENALTIES

ARTICLE I. GENERAL REGULATIONS FOR FOOD ESTABLISHMENTS

SECTION 14-1 STATE DIVISION OF HEALTH REGULATIONS ADOPTED

The rules and regulations pertaining to recreational and educational camps, mobile homes parks, campgrounds and camping resorts, hotels, motels and tourist rooming houses, restaurants, bed and breakfast for tourists, and vending of food and beverages as promulgated by the Wisconsin Department of Health and Human Services, specifically Chapters HSS 175, HSS 177, HSS 178, HSS 195, HSS 196, HSS 197 and HSS 198, Wisconsin Administrative Code, together with any future additions, deletions or supplements thereto, are herewith incorporated as part of this Chapter and shall be enforced with the same force and effect as though set forth in full herein. Providing, however, that where such rules and regulations are less stringent than other provisions found in this Code, the provisions of this Code shall apply.

With regard to those food establishments which are locally licensed those provisions of Chapters HSS 175, HSS 177, HSS 178, HSS 195, HSS 196, HSS 197 and HSS 198, Wisconsin Administrative Code, together with any future additions, deletions or supplements thereto, are herewith incorporated as part of this Chapter and shall be enforced with the same force and effect as though set forth in full herein, excluding those provisions related exclusively to State Licensing Procedures.

SECTION 14-1.1 ADOPT STATE STATUTES AND ADMINISTRATIVE CODE PROVISIONS

The rules and regulations pertaining to Food Regulation as set forth in Chapter 97 Wisconsin statutes and the rules and regulations pertaining to Retail Food Establishments and Local Government Regulation promulgated by the Wisconsin Department of Agriculture, Trade and Consumer Protection, specifically chapters ATCP 74 and 75, Wisconsin Administrative Code, together with any future additions, deletions or supplements thereto, are herewith incorporated as part of this chapter and shall be enforced with the same force and effect as though set forth in full herein. Providing, however, that where such rules and regulations are less stringent than other provisions found in this Code, the provisions of this Code shall apply.

With regard to those food establishments which are locally licensed those provisions of Chapter 97, Wis. Stats., and Chapters ATCP 74 and 75, Wisconsin Administrative Code, together with any future additions, deletions or supplements thereto, are herewith incorporated as part of this Chapter and shall be enforced with the same force and effect as though set forth in full herein, excluding those provisions related exclusively to State Licensing Procedures.

SECTION 14-1.2 SMOKING PROHIBITED INSIDE RESTAURANTS

A. Definitions. For purposes of this Section, the following terms have the meaning indicated:

1. "Enclosed Area" means all space between a floor and ceiling which is enclosed on all sides by solid walls or windows (exclusive of door or passage ways) which extend from floor to ceiling, including all space therein screened by partitions which do not extend to the ceiling or are not solid, 'other landscaping' or similar structures.
2. "Incidental Food Service" means an establishment, other than a hotel, motel, or convention center, where meals and beverages, including alcohol beverages, offered to transients or the general public is not a primary activity of the establishment. Meals and beverage sales are not a primary activity of the establishment if the total gross sales of meals and beverages does not exceed 20% of the total gross sales of the establishment during the prescribed period of time.
3. "Meal" means any ready to eat food served or sold to the general public in individual or prepackaged single portions or servings for immediate on-premises consumption, or transported off-premises in individual prepackaged carryout servings, or specifically preordered individual or multiple serving portions which are transported to an off-premises location for immediate consumption with or without further preparation. Meal does not include soft drinks, ice cream, milk, milk drinks, ices and confections or free lunches served by taverns consisting of popcorn, cheese, crackers, pretzels, cold sausage, cured fish, or bread and butter. Nor does meal include food items sold by the weight, count or piece in individual packages requiring further preparation for consumption at another location.
4. "Restaurant" means any building, room or enclosed place where meals are prepared or served or sold to transients or the general public.
 - a) Hotels/motels/convention centers. The term "restaurant" shall include any room or enclosed place where meals and beverages are prepared or served or sold to transients or the general public, but shall not include other areas of a hotel/motel or convention establishment, including lodging rooms, private banquet rooms or halls, or taverns as defined in this section.
 - b) The term "restaurant" shall not include:
 - 1) a "tavern" as defined in this section.

- 2) taverns that serve free lunches consisting of popcorn, cheese, crackers, pretzels, cold sausage, cured fish, or bread and butter.
 - 3) 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.
 - 4) any bed and breakfast establishment that serves breakfasts only to its lodgers.
 - 5) the serving of food or beverage through a licensed vending machine.
 - 6) a concession stand at a locally sponsored sporting event, such as a little league game.
 - 7) a "temporary restaurant" operated at a fixed location in conjunction with a single event such as a fair, carnival, circus, public exhibition, anniversary sale or occasional sales promotion.
 - 8) Entire rooms or halls while being used for private functions.
5. "Separately ventilated smoking room" (also known as "smoking room") means an enclosed area that is completely separated from the rest of the restaurant by solid walls of rigid construction that run from floor to ceiling with a separate entrance that has a solid self-closing, self-sealing door with gaskets. This door is to remain closed at all times except when patrons or employees enter or leave the room. The smoking room must be ventilated to a standard specified in the state building code, Wis. Admin. Code Sec. Comm. 64.05, as from time to time amended or renumbered. The ventilation system for the smoking room shall be separate and distinct from the ventilation system for the nonsmoking area or areas. The separately ventilated smoking room must have negative air pressure to ensure that there is no mixing of air from the smoking and nonsmoking areas. Particulate air cleaners or filtration systems are not considered a ventilation system. The separate ventilation must be effective so as to prevent smoke from at any time entering or being present in the non-smoking and smoke-free areas of the restaurant.
6. "Smoking" means inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe, weed, plant, or other combustible substance in any manner or in any form.
7. "Tavern" means any establishment licensed pursuant to Chapter 4 of this Code with a full service bar in which fermented malt beverages and/or intoxicating liquors are sold for consumption upon said premises and whose sale of alcohol beverages accounts for 70% or more of the establishment's gross receipts for meals and beverages, including alcohol beverages for the establishment's most recent license year.
- B. Smoking Prohibited in Restaurants. Smoking shall be prohibited in all enclosed restaurants.
- C. Exception for Incidental Food Service. Premises offering incidental food services shall be exempt from the provisions of this Section, provided that every premises that claims to be an incidental food service premises shall:
1. Provide to the Health Services Division a sworn, written statement attesting that the gross sales of meals and beverages at the establishment during the twelve (12) month period prior to the effective date of this ordinance did not exceed 20% of the total gross sales of the establishment during that same period. This verification shall be provided to the Health Services Division not later than sixty (60) days after the enactment of this ordinance. No smoking shall be permitted in any establishment failing to timely file said documentation.
 - a) Filing a false statement shall be deemed a violation of this Section and upon conviction be required to forfeit not less than five hundred dollars (\$500) and not more than one thousand dollars (\$1,000) plus the costs of prosecution.
 2. Thereafter annually provide to the Health Services Division an additional sworn, written

statement attesting that the gross sales of meals and beverages during the preceding 12 months after the effective date of this ordinance did not exceed 20% of the total gross sales of the establishment during that same time period. This verification shall be provided annually and not later than thirty (30) days after the end of the applicable 12-month period. No smoking shall be permitted in any establishment failing to timely file said documentation.

- a) Filing a false statement shall be deemed a violation of this Section and upon conviction be required to forfeit not less than five hundred dollars (\$500) and not more than one thousand dollars (\$1,000) plus the costs of prosecution.
3. Every new or remodeled establishment that requires a new occupancy permit for any reason or any business changing the nature of the business such that the gross sales of meals and beverages during the preceding 3 months did not exceed 20% of the total gross sales of the establishment during that same time period must comply with the verification and documentation provisions of this subsection for the first three months immediately following the time the final certificate of occupancy is issued by the City, and then annually thereafter as set forth above.
 4. Upon receipt of the documentation required by this subsection, the Health Services Division shall make a determination whether the documentation satisfies the requirements of this Section. If the requirements are met, the Health Services Division shall issue an exemption to said establishment for the following year. If the Health Services Division determines the documentation does not satisfy the requirements of this Section, then no exemption shall be issued, and smoking shall be prohibited in said establishment. The establishment may reapply for an exemption under this Section twelve (12) months after the date on which the exemption was denied.
- D. Exception for Taverns. Taverns, as defined in this section, shall be exempt from the provisions of this Section, provided that every premises that claims to be a tavern shall:
1. Provide to the Health Services Division a sworn, written statement attesting that the gross sales of alcohol beverages at the establishment during the twelve (12) month period prior to the effective date of this ordinance exceeded 70% of the total gross sales for meals and beverages to be consumed on the premises of the establishment during that same period. This verification shall be provided to the Health Services Division not later than sixty (60) days after the enactment of this ordinance. No smoking shall be permitted in any establishment failing to timely file said documentation.
 - a) Filing a false statement shall be deemed a violation of this Section and upon conviction be required to forfeit not less than five hundred dollars (\$500) and not more than one thousand dollars (\$1,000) plus the costs of prosecution.
 2. Thereafter annually provide to the Health Services Division an additional sworn, written statement attesting that the gross sales of alcohol beverages during the preceding 12 months after the effective date of this ordinance exceeded 70% of the total gross sales for meals and beverages to be consumed on the premises of the restaurant during that same time period. This verification shall be provided annually and not later than thirty (30) days after the end of the applicable 12-month period. No smoking shall be permitted in any establishment failing to timely file said documentation.
 - a) Filing a false statement shall be deemed a violation of this Section and upon conviction be required to forfeit not less than five hundred dollars (\$500) and not more than one thousand dollars (\$1,000) plus the costs of prosecution.
 3. Every new or remodeled establishment that requires a new occupancy permit for any reason or any business changing the nature of the business such that the gross sales of alcohol beverages during the preceding 3 months exceeded 70% of the total gross sales for meals and beverages to be consumed on the premises of the restaurant during that same time period must

comply with the verification and documentation provisions of this subsection for the first three months immediately following the time the final certificate of occupancy is issued by the City, and then annually thereafter as set forth above.

4. Upon receipt of the documentation required by this subsection, the Health Services Division shall make a determination whether the documentation satisfies the requirements of this Section. If the requirements are met, the Health Services Division shall issue an exemption to said establishment for the following year. If the Health Services Division determines the documentation does not satisfy the requirements of this Section, then no exemption shall be issued, and smoking shall be prohibited in said establishment. The establishment may reapply for an exemption under this Section twelve (12) months after the date on which the exemption was denied.

- E. Exception for Restaurant Hardship. As a result of complying with this ordinance, a restaurant which realizes a loss of gross receipts greater than fifteen percent (15%) for the three (3) months immediately following the effective date of this ordinance when compared to the same three (3) month period of the previous year, may apply to the Health Services Division for a one-time temporary hardship exemption. Upon granting of the hardship exemption, the restaurant shall be exempt from the requirements of this ordinance for a period of one year.

To obtain a hardship exemption, application to the Health Services Division must be made within one hundred twenty (120) days after this ordinance becomes effective by submitting the following:

- a) Written proof subscribed and sworn to by an accountant certifying that the gross receipts have declined by fifteen percent (15%) for the time period indicated above.
- b) Written proof subscribed and sworn to by an accountant certifying that the restaurant has complied with this ordinance and that the fifteen percent (15%) decline in gross receipts is the direct result of complying with this ordinance and not a result of other factors unrelated to this ordinance.

The Health Services Division shall make the determination regarding hardship within thirty (30) days of receipt of a hardship application or the application will be deemed granted.

This hardship provision does not apply to any restaurant not in existence as of the effective date of this ordinance.

This hardship provision shall be automatically repealed one year after the effective date of this ordinance.

- F. Establishments With Separately Ventilated Smoking Room. Establishments which contain a "separately ventilated smoking room" may treat such room as an establishment separate from the rest of the business establishment and may permit smoking if the room meets the requirements of a tavern as defined under this section. The gross sales of meals and all beverages from such room shall be excluded for purposes of determining whether the balance of facility shall be smoke-free.

- G. Signs Required; Prohibition.

1. The proprietor or other person having control of the restaurant or tavern shall post, in a conspicuous place at every building entrance and in prominent locations throughout the establishment, a sign not smaller than eleven by eight and one-half inches (11" x 8 ½") indicating whether the building permits smoking or whether it is totally smoke free. Each sign shall contain the phone number for the City Health Services Division. The signs shall be posted in such a manner that the public has reasonable notice of the establishment's smoking policy and must be present at any time that establishment is open for business.
2. It shall be unlawful for any person to remove, deface, or destroy any sign required by this Section, or to smoke in any place where any such sign prohibits smoking.

- H. Enforcement

1. Any owner, manager, operator, or employee of any establishment regulated by this Section shall inform persons violating this Section of the appropriate provisions therein. Such person should ask any person who smokes in areas where smoking is prohibited to refrain from smoking, and if the person does not refrain from smoking after being requested to do so, ask the person to leave.
 2. The owner, operator, manager, or other person having control of a restaurant shall remove all ashtrays, cigarette vending machines, and other smoking paraphernalia from any area where this Section prohibits smoking.
 3. The Health Services Division shall enforce this Section.
 4. Notice of the provisions set forth in this Section shall be given to all applicants for a restaurant license in the City of Oshkosh.
 5. Any citizen who desires to register a complaint under this Section may do so with the Health Services Division.
 6. The Health Services Division or the Fire Department shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this Section.
 7. The City Code Inspectors, City Health Services Division, and affiliated agencies and officials shall have the power, whenever deemed necessary, to enter upon the premises of the establishments regulated by this Section to inspect and ascertain compliance with the requirements of this Section.
 8. Notwithstanding any other provision of this Section, a private citizen may bring legal action to enforce this Section.
- I. Retaliation Prohibited. No person or employer shall retaliate in any manner against any customer because such customer exercises any right to a smoke-free environment as required by this Section.
- J. Violation and Penalties.
1. A person who violates any provision of this Section shall upon conviction be required to forfeit not less than fifty dollars (\$50) and not more than one hundred dollars (\$100) plus the costs of prosecution.
 2. A person who owns, manages, operates or otherwise controls the use of an establishment subject to this Section, who violates any provision of this Section upon conviction shall be required to forfeit not more than two hundred dollars (\$200) plus the costs of prosecution for the first violation; not more than three hundred dollars (\$300) plus the costs of prosecution for the second violation within one year of the first conviction; and, not more than five hundred dollars (\$500) plus the costs of prosecution for the second and all subsequent violations within one year of the first conviction.
 3. Each day of violation shall constitute a separate violation.
- K. Other Applicable Laws or Regulations. This Section shall not be interpreted or construed to permit smoking where it is otherwise restricted by any other applicable law or regulation.
- L. Severability. The provisions of this Section are severable. If any provision of this Section is held to be invalid or unconstitutional or if any application of any provision of this Section to any person or circumstance is held to be invalid or unconstitutional, such holding shall not affect the other provisions or applications. It is hereby declared to be the intent of this council that this ordinance would have been adopted had any invalid or unconstitutional provisions or applications not been included herein.

SECTION 14-2 DEFINITIONS

The following definitions shall apply in the interpretation and the enforcement of this Article.

- (A) Food Establishment
The term "food establishment" shall mean any building, room, or place wherein food is processed, prepared, kept, sold, served or offered, and all places used in connection therewith, whether it be wholesale or retail. It shall include food vending machines, catering services, school cafeteria, bake sales and food demonstrations where food is offered to the public: providing, however, it shall not include public markets, residential institutions, family kitchens for family use only, or private organizations and church kitchens when serving their members or congregation only. Private kitchens shall not be used to prepare food which is offered to the public, except for bake sales only.
- (B) Food
"Food" shall include any article used as food or drink by humans whether simple, mixed, compound, alcoholic or non-alcoholic, including food adjuncts such as condiments, spice, etc.
- (C) Food Handler
The term "food handler" shall refer to employees in a food establishment as above defined, and shall mean any person who handles food during preparation, processing or serving, or who comes in contact with any food handling or eating utensils, or who is employed in any room in which food is processed, prepared, kept, sold, served, or offered, or who acts as a caterer.
- (D) Health Director
The term "Health Director" shall mean the Health Director of the City or authorized agent.
- (E) Temporary Food Establishments
The term "temporary food establishment" shall mean one operating for a temporary period in connection with a fair, carnival, circus, public exhibition, or other similar gathering.

SECTION 14-4 PERMIT REQUIRED

- (A) It shall be unlawful for any person to operate a food establishment in the City who does not possess a valid permit from the Health Director or a valid restaurant license issued by the State of Wisconsin. Only a person who complies with the requirements of this Article shall be entitled to receive and retain such a permit or license.

SECTION 14-5 TEMPORARY FOOD ESTABLISHMENTS

The operator of a temporary food establishment shall be required to secure a permit. The temporary permit shall be valid only for the period specified upon the face of the permit.

SECTION 14-6 ISSUANCE AND DISPLAY OF PERMITS

- (A) Permit in Name of Operator
Permits shall be issued only in the name of the operator of said food establishment and shall not be transferable as to person or premises.
- (B) Display of Permit
Every food establishment shall display its permit at all times in a conspicuous place so that all persons visiting such place may readily see the same.

- (C) Defacing or Destroying Permits
It shall be unlawful for any person to post such permit upon premises other than mentioned in the application, or to deface or destroy such license or permit, or to remove it without the consent of the permit holder.

SECTION 14-7 NON-ISSUANCE OR REVOCATION OF PERMITS

- (A) Unless otherwise specifically provided, licenses and permits required under the provisions of this chapter shall not be issued:

- 1) Premises. For any premises for which taxes, assessments, or special charges are delinquent and unpaid.
 - a. This subsection 1) shall not apply to prohibit the issuance of a license for any premises if:
 - i. the unpaid taxes, assessments or special charges were levied against the premises; and
 - ii. the license is necessary for the conduct of business on the premises by a lessee of the premises; and
 - iii. the licensee and owner have no immediate or extended family, business, or financial relationship with one another other than as landlord and tenant.
- 2) Persons. To any person who is delinquent in the payment of taxes, assessments or special charges related to the business or property for which the license or permit is sought.

- (B) Appeal. Alleged errors in the determination of non-issuance of the license may be appealed to the Finance Director within 5 days of notice of the non-issuance of the license or permit. The Finance Director shall issue a notice setting forth a date and time for hearing on the matter, not less than three (3) days nor more than fifteen (15) days after the date of the notice of hearing. At the hearing, the complainant and a representative of the City may be represented by counsel, may present evidence and call and examine witnesses and cross examine witnesses of another party. Such witnesses shall be sworn or affirmed by the person conducting the hearing. The Finance Director shall act as the decision maker. If the Finance Director is unable to so act, a decision maker shall be appointed by the City Manager.

A written determination shall be made directing the continued holding of the license or permit or the issuance of such license or permit. Within ten (10) days of the hearing, the written determination shall be mailed to all interested parties and shall be placed on file with the City Clerk by the decision maker. The written decision shall specify the reasons for the decision made.

Within ten days of the date of posting of the written decision, any person aggrieved thereby may appeal such decision to the Common Council. Appeals shall be taken by filing a notice of appeal specifying the grounds therefor with the City Clerk. On Appeal the Finance Director or other decision maker shall forthwith transmit all papers relating to such appeal to the City Clerk. The Clerk shall give notice of the appeal to the Common Council at its next regular meeting. The Council shall then fix a reasonable time for hearing of the same and give public notice thereof, as well as notice to the parties interested, and shall promptly decide the appeal. Any party to the proceeding as well as any person who may be adversely affected by a decision of the Council may appear at the hearing and may produce witnesses and be represented by counsel. In addition to

any other witnesses presented, the council may subpoena and examine such other persons as it may deem necessary for a fair and impartial hearing of the appeal. The Clerk shall swear or affirm all persons testifying before the council in regard to the appeal, and shall maintain a record of all testimony and other evidence as may be presented.

The Council may reverse, affirm, or modify the decision of the Finance Director or other decision maker appealed from, and to this end may direct issuance or non-issuance of any license or permit. Within ten (10) days after the decision on any appeal, the City Clerk shall cause due notice thereof in writing to be mailed to all parties to the appeal as well as any other persons who may have appeared therein at their last known post office address. Such notice shall specify the grounds for the decision.

Any person aggrieved by the decision of the Common Council on appeal may seek such other legal relief as may be available.

- (C) The Health Director may suspend or revoke any license issued pursuant to this chapter for violations of ordinances or laws regulating the licensed activity and for other good cause.
- 1) Within thirty days after any decision of the Health director to suspend or revoke a license or permit issued under this chapter, any person aggrieved thereby may appeal from any such decision to the Common Council. Appeals shall be taken by filing with the Health Director a notice of appeal specifying the grounds therefor. On appeal the Health Director shall forthwith transmit all papers relating to such appeal to the City Clerk. The Clerk shall place the appeal before the common Council at its next meeting. The Common Council shall fix a reasonable time for hearing of same and give public notice thereof, as well as due notice to the parties interested, and shall promptly decide the appeal.
 - 2) Any party to an appeal as well as any person who claims to be adversely affected by allowance of the variance permit may appear at the hearing of such appeal in person and may produce witnesses and be represented by counsel. In addition, the Common council may examine such other persons as it may deem necessary for a fair and impartial hearing of the appeal. The Clerk shall swear all persons testifying before the Common Council in regard to the appeal, and shall maintain a record of all testimony and other evidence as may be presented.
 - 3) From the evidence before it, the Common Council, in conformity with the provisions of this section, may reverse, affirm or modify the decision of the Health Director appealed from, and, to this end, may direct the issuance of a permit or license.
 - 4) Within five days after any decision on an appeal, the Clerk shall cause due notice thereof in writing to be mailed to all parties to the appeal as well as any other persons who may have appeared therein at their last known post office address. Such notice shall specify the grounds for the decision.
 - 5) Legal Recourse. Any applicant aggrieved by the decision of Common Council or any person so aggrieved may seek such other legal relief as may be available.
- (D) Automatic Revocation. The permit of any establishment is automatically revoked when the business is not operated for thirty (30) days or longer, unless it is seasonal. Except for seasonal businesses, when an establishment is closed for a period of time more than thirty (30) days, the establishment shall be considered a new establishment and may not be reopened until granted a new permit in accordance with this Ordinance.

SECTION 14-8 REINSTATEMENT OF PERMIT

Any food establishment, the permit of which has been suspended, may at any time make application for reinstatement of the permit. After the receipt of a satisfactory application accompanied by a signed statement by the applicant that the violated provision or provisions of this Chapter have been conformed with, the Health Director shall make a reinspection of the premises. If the applicant is complying with the requirements of this Chapter, the Health Director shall reinstate the permit. Thereafter the Health Director may make as many additional reinspections as necessary to assure that the applicant is complying with the requirements.

SECTION 14-9 INSPECTION OF FOOD ESTABLISHMENTS BY HEALTH DIRECTOR

- (A) Frequency
The Health Director shall periodically inspect every food establishment located within the City. If the Health Director finds serious or repeated violations of any terms of this Chapter, after at least twenty-four (24) hours, a second inspection shall be made, and the second inspection shall be used for determining compliance with the requirements of this Chapter. Any violation of the same item of this Chapter on the second inspection, which was capable of being corrected within such period of time, shall result in immediate suspension of the permit.
- (B) Inspection Report
One copy of the inspection report shall be posted or given to the proprietor of the establishment. Another copy shall be filed with the records of the Health Department.
- (C) Access to Establishment
The person operating the food establishment shall upon the request of the Health Director permit access to all parts of the establishment and upon suspicion of uninspected, spoiled, adulterated, or improperly labeled foods, shall permit copying any records of foods purchased so that they may be traced to their source.

SECTION 14-10 SWAB TEST.

The average plate count per utensils surface examined should not exceed one hundred (100). Higher counts are presumptive evidence of inadequate cleansing or bactericidal treatment or recontamination by handling or during storage.

ARTICLE II. FEES

**CITY OF OSHKOSH HEALTH SERVICES DIVISION
PERMIT FEE SCHEDULE**

SECTION 14-11 FEES (New fees beginning July 1, 2009.)

Fees for permits required by this Article are due and payable before the issuance of a permit and annually before July 1 of each year, and shall be as follows:

	CITY FEE	STATE FEE	TOTAL	PREINSPECTION FEE

FOOD SERVICE:				
Limited Service Restaurant (01)	\$ 270.00	\$ 10.00	\$ 280.00	\$125.00
Full Service Restaurant (02)				
(02)A Simple Establishment	\$ 350.00	\$ 20.00	\$ 370.00	\$200.00
(02)B Moderate Establishment	\$ 450.00	\$ 30.00	\$ 480.00	\$300.00
(02)C Complex Establishment	\$ 550.00	\$ 43.00	\$ 593.00	\$400.00
Temporary Restaurant	\$ 163.00	\$ 17.00	\$ 180.00	
Mobile Restaurant: Limited Food Service	\$ 270.00	\$ 10.00	\$ 280.00	\$125.00
Mobile Restaurant: Full Service See (02)	\$ 331.00	\$ 19.00	\$ 350.00	
Mobile Restaurant Base:	\$ 160.00	\$ 10.00	\$ 170.00	
LODGING:				
Hotel/Motel (5-30 Rooms)	\$ 275.00	\$ 17.00	\$ 292.00	\$250.00
Hotel/Motel (31-99 Rooms)	\$ 420.00	\$ 26.00	\$ 446.00	\$300.00
Hotel/Motel (100-199 Rooms)	\$ 475.00	\$ 33.00	\$ 508.00	\$400.00
Hotel/Motel (200+ Rooms)	\$ 530.00	\$ 40.00	\$ 570.00	\$ 500.00
Tourist Rooming House	\$ 175.00	\$ 10.00	\$ 185.00	\$200.00
Bed & Breakfast	\$ 175.00	\$ 10.00	\$ 185.00	\$200.00
CAMPGROUNDS:				
Campground (1-25 Sites)	\$ 270.00	\$ 18.00	\$ 288.00	\$200.00
Campground (26-50 Sites)	\$ 350.00	\$ 25.00	\$ 375.00	\$290.00
Campground (51-100 Sites)	\$ 400.00	\$ 31.00	\$ 431.00	

				\$330.00
Campground (101+ Sites)	\$ 470.00	\$ 36.00	\$ 506.00	\$400.00
Campground 200+ Sites	\$ 520.00	\$ 41.00	\$ 561.00	\$500.00
MOBILE HOME PARKS:				
Mobile Homes (1-20 Sites)	\$ 270.00	\$ 46.00	\$ 316.00	\$200.00
Mobile Homes (21-50 Sites)	\$ 350.00	\$ 83.00	\$ 433.00	\$290.00
Mobile Homes (51-100 Sites)	\$ 430.00	\$ 130.00	\$ 560.00	\$330.00
Mobile Homes (101-175 Sites)	\$ 500.00	\$ 167.00	\$ 667.00	\$400.00
Mobile Homes (176+ Sites)	\$ 570.00	\$ 185.00	\$ 755.00	\$450.00
SPECIAL EVENTS CAMPGROUNDS				
Special Events Campground 1-25 Sites	\$ 270.00	\$ 18.00	\$ 288.00	\$200.00
Special Events Campground 26-50 Sites	\$ 350.00	\$ 25.00	\$ 375.00	\$290.00
Special Events Campground 51-100 Sites	\$ 400.00	\$ 31.00	\$ 431.00	\$330.00
Special Events Campground 101-199 Sites	\$ 470.00	\$ 36.00	\$ 506.00	\$400.00
Special Events Campground 200+ Sites	\$ 520.00	\$ 41.00	\$ 561.00	\$500.00
SWIMMING POOLS:				
Pools Indoor	\$ 550.00	\$ 15.00	\$ 565.00	\$300.00
Pools Outdoor	\$ 470.00	\$ 15.00	\$ 485.00	\$300.00
OTHER:				
Recreational/Educational	\$ 410.00	\$ 44.00	\$ 454.00	\$400.00

Camp				
School Inspection Fees	\$ 270.00	\$ 0.00	\$ 270.00	
MISCELLANEOUS FEES:				
Late Fee	\$ 150.00		\$ 150.00	
Duplicate Permit	\$ 10.00		\$ 10.00	
WIS. DEPT. OF AG., TRADE AND CONSUMER PROTECTION RETAIL FOOD CATEGORIES				
(11) Food Sales of \$1million or more and Processing Potentially Hazardous Food	\$ 1,200.00	\$ 69.00	\$ 1269.00	\$500.00
(22) Food Sales more than \$25,000 but less than \$1million and Processing Potentially Hazardous Food	\$ 650.00	\$ 27.00	\$ 677.00	\$350.00
(33) Food Sales of at least \$25,000 or more and is not engaged in Processing Potentially Hazardous Food	\$ 475.00	\$ 19.00	\$ 494.00	\$250.00
(44) Food Sales less than \$25,000 and is engaged in Food Processing	\$ 325.00	\$ 6.00	\$ 331.00	\$175.00
(55) Does not engage in Food Processing	\$ 260.00	\$ 5.00	\$ 265.00	\$150.00
MISCELLANEOUS FEES:				
Late Fee	\$ 150.00		\$ 150.00	
Duplicate Permit	\$ 10.00		\$ 10.00	

LOCAL PERMITS				
Taverns Not Serving Food	\$ 160.00		\$ 160.00	
Food Processing Establishments	\$ 120.00		\$ 120.00	
School & Church Kitchens, Restaurant Exempt Classification	\$ 140.00		\$ 140.00	
Nonperishable Retail Food Establishments	\$ 140.00		\$ 140.00	
Nursing Homes	\$ 120.00		\$ 120.00	
Senior Center/s	\$ 120.00		\$ 120.00	
Soup Kitchens	\$ 120.00		\$ 120.00	
CITY TEMPORARY FOOD SANITATION PERMIT				
Temporary Retail Food Permit	\$ 80.00		\$ 80.00	
Food Related Events (One to Three Days)	\$ 60.00		\$ 60.00	
MISCELLANEOUS FEE/S:				
Late Fee	\$ 75.00		\$ 75.00	
Duplicate Permit	\$ 10.00		\$ 10.00	
LABORATORY FEES:				
Colilert 24hr. Bacterial Test	\$ 20.00		\$ 20.00	
Nitrate Screening, Fluoride, or Hardness Tests	\$20.00 ea.		\$20.00 ea.	
WELLS:				

Well Permit	\$ 50.00		\$ 50.00	

SECTION 14-12 LATE FEES

The license year commences on July 1 and licenses shall expire on June 30th of the following year. If the annual renewal fee has not been paid as of July 1, an additional fee of One Hundred Fifty Dollars (\$150.00) per establishment shall be required, except for locally licensed/permitted establishments where a Seventy-five Dollar (\$75.00) per establishment shall be required. In addition to any late fee authorized by this section, establishments operating on July 1 without proper license or permit shall be subject to closure by the Health Director. Failure to comply shall result in the issuance of a uniform citation.

SECTION 14-13 RE-INSPECTION FEE

Establishments are subject to a reinspection fee of Seventy-Five Dollars (\$75.00) for all subsequent re-inspections needed to address compliance issues related to the statutes and administrative codes that govern their operation. The re-inspection fee is payable when the re-inspection is completed or is due upon demand from the Health Services Division.

ARTICLE III. PENALTIES

SECTION 14-14 PENALTIES

Any person who shall violate any of the provisions of this Chapter or of any Section thereof, shall upon conviction thereof, be punished by a forfeiture of not less than \$75.00 nor more than \$200.00, together with the costs of prosecution, and in default of payment thereof, by imprisonment in the County Jail for a period not to exceed sixty (60) days. Each day of violation shall constitute a separate offense.