

CHAPTER 15

HEALTH

ARTICLE I. HEALTH DIVISION ORGANIZATION AND GENERAL PROVISIONS

- 15-1 APPOINTMENT
- 15-2 CITY MANAGER TO HAVE POWER TO APPOINT ASSISTANTS
- 15-3 DEFINITIONS
- 15-4 ADOPT STATE STATUTES AND ADMINISTRATIVE CODES
- 15-5 DIRECTOR TO HAVE ALL POWERS OF LOCAL HEALTH OFFICERS PURSUANT TO STATE REGULATIONS
- 15-6 GENERAL POWERS
- 15-7 ASSISTANCE FROM POLICE AND CITIZENS
- 15-8 RIGHT TO ENTER PREMISES
- 15-9 RESISTING DIRECTOR PROHIBITED

ARTICLE II. HEALTH NUISANCES AND REGULATIONS

- 15-10 NUISANCE DEFINED
- 15-11 COMPLAINTS OF NUISANCES; RECORDS
- 15-12 REMOVAL: FORM OF NOTICE
- 15-13 ASSESSMENT OF COSTS
- 15-14 ENTRY ON TAX ROLL
- 15-15 STAGNANT POOLS DECLARED NUISANCES

ARTICLE III. PUBLIC SWIMMING POOLS AND SWIMMING PLACES

- 15-16 ADOPT STATE CODE PERTAINING TO SWIMMING POOLS

ARTICLE IV. PRIVATE WELLS

- 15-17 PRIVATE WELLS

ARTICLE V. EXCESSIVE NOISE

- 15-18 EXCESSIVE NOISE

ARTICLE VI. HIGH RISK SEXUAL CONDUCT

- 15-19 HIGH RISK SEXUAL CONDUCT ESTABLISHMENTS

ARTICLE VII. RESERVED (Formerly Tattoo Requirements)

- 15-20 Reserved
- 15-21 Reserved
- 15-22 Reserved

ARTICLE VIII. LEAD POISONING, PREVENTION AND CONTROL

- 15-23 PURPOSE
- 15-24 DEFINITIONS

15-25	LEAD HAZARDS PROHIBITED
15-26	WARNING REQUIRED
15-27	LEAD HAZARD REDUCTION STANDARDS.
15-28	PROHIBITED ACTS.
15-29	PLAN AND CERTIFICATION REQUIREMENTS.
15-30	SITE INSPECTION AND CLEARANCE TESTING.
15-31	ENFORCEMENT AND PENALTIES.

ARTICLE IX. NOTICES, PENALTIES AND SEVERABILITY

15-32	NOTICE
15-33	PENALTIES
15-34	SEVERABILITY

ARTICLE I. HEALTH DIVISION ORGANIZATION AND GENERAL PROVISIONS

SECTION 15-1 APPOINTMENT

The City Health Director shall be appointed by the City Manager as authorized by Section 2-23.

SECTION 15-2 CITY MANAGER TO HAVE POWER TO APPOINT ASSISTANTS

The City Manager may appoint such assistants for the Health Director as the City Manager may deem necessary.

SECTION 15-3 DEFINITIONS

"Health Director" or "Health Officer" shall mean and include the Health Director or any authorized agent of the Health Director.

SECTION 15-4 ADOPT STATE STATUTES AND ADMINISTRATIVE CODES

Except as otherwise specifically provided, all provisions of Chapters 250-255 of the Wisconsin Statutes and all relevant provisions of the Wisconsin Administrative Code adopted pursuant thereto describing and defining regulations with respect to health are hereby adopted and by reference made a part of this Code as if fully set forth herein. It is the intention of this ordinance to include within such references all provisions in effect at the time of adoption of this section together with any applicable prior revisions and all future recodifications, renumberings and amendments unless otherwise expressly provided in such references. It is the intention of this section that any act required to be performed or prohibited by Chapter 250-255 of the Wisconsin Statutes or by the relevant provisions of the Wisconsin Administrative Code, as previously amended, presently in effect or as may be amended in the future, incorporated within this section by reference, is an act required to be performed or is an act prohibited by this section.

SECTION 15-5 DIRECTOR TO HAVE ALL POWERS OF LOCAL HEALTH OFFICERS PURSUANT TO STATE REGULATIONS

The Director of Health of the City shall have the powers and duties provided for local health officers under the provisions of the statutes of the State of Wisconsin, particularly Chapters 250-255 thereof, the rules and

regulations of the State of Wisconsin Division of Health and the ordinances of the City.

SECTION 15-6 GENERAL POWERS

The Health Director:

- (A) May make an annual sanitary survey and maintain a continuous sanitary supervision over all matters within the jurisdiction.
- (B) May make a sanitary inspection periodically of all school buildings and places of public assemblage, and report thereon, to those responsible for the maintenance thereof.
- (C) Shall promote the dissemination of information pertaining to the causes, nature and prevention of prevalent diseases and the preservation and improvement of health.
- (D) Shall take steps necessary to secure prompt and full reports by physicians of communicable diseases.
- (E) Shall enforce the health laws and rules and regulations.
- (F) Shall keep and deliver to the successor a record of all official acts.

SECTION 15-7 ASSISTANCE FROM POLICE AND CITIZENS

The police and all magistrates and other civil officers and all citizens shall aid, to the utmost of their power, the Director in the discharge of the Director's duties, and on requisition the Chief of Police shall serve or detail one or more police officers to serve the notices issued by the Director and to perform such other duties as may be required.

SECTION 15-8 RIGHT TO ENTER PREMISES

The Director may enter into and examine any place at any time to ascertain health conditions provided, however, in a non-emergency situation, no inspection shall be made without a warrant, in the event that the occupant of the premises shall fail to give consent to such inspection.

SECTION 15-9 RESISTING DIRECTOR PROHIBITED

No person shall resist or obstruct the Director of Health while in the discharge of any duty, or shall refuse or neglect to obey any directions given by the said Director in matters pertaining to health.

ARTICLE II. HEALTH NUISANCES AND REGULATIONS

SECTION 15-10 NUISANCE DEFINED

A nuisance is any act, or failure to act, by a person which causes or permits a condition to exist which injures or endangers the public health, safety, or welfare or interferes substantially with the comfortable enjoyment of life, health and safety of another or others.

SECTION 15-11 COMPLAINTS OF NUISANCES; RECORDS

Complaints of improperly kept premises or any condition which may be rightfully considered as a nuisance may be reported in writing to the Health Director, who shall keep an accurate record of such complaints.

The Health Director shall promptly examine the premises complained of and all instructions or orders that may be issued relating to such complaints shall be in writing and the date of issuing such instructions be recorded.

SECTION 15-12 REMOVAL: FORM OF NOTICE

Whenever the Director shall order the removal of any object or the cleaning of any premises, detrimental to health or constituting a health nuisance, the Director shall cause a notice thereof to be served upon the owner or occupant of said premises, of the order to be complied with, which order shall be complied with within five (5) days or such additional time as the Health Director shall deem reasonable.

The Notice shall specify:

"In case of your failure to comply within the time above stated said work will be done by the City of Oshkosh and the expense thereof charged as a special improvement tax against your property."

SECTION 15-13 ASSESSMENT OF COSTS

The cost of said work shall be charged against the lots, pieces or parcels of land upon which said work was done, and shall be assessed against said property and collected in the same manner as provided for the assessment and collection of other special assessment taxes.

SECTION 15-14 ENTRY ON TAX ROLL

The Health Director shall each year certify to the Comptroller, in time for insertion in the tax roll, a list of all the special taxes to be levied by reason of work ordered by the Department; such certified list of special taxes shall be prima facie evidence of the legality and regularity of said special taxes and shall be included in the list of special taxes filed by the Comptroller with the City Clerk.

SECTION 15-15 STAGNANT POOLS DECLARED NUISANCES

Any stagnant pool of water in the City is hereby declared to be a nuisance. It shall be unlawful for any person to permit any such nuisance to remain or exist on any property under that person's control.

ARTICLE III. PUBLIC SWIMMING POOLS AND SWIMMING PLACES**SECTION 15-16 ADOPT STATE CODE PERTAINING TO SWIMMING POOLS**

- A. Chapters HSS 171 and HSS 172 of the Wisconsin Administrative Code, Rules of the Department of Health and Social Services, pertaining to the safety, maintenance and operation of public swimming pools and swimming places, are hereby adopted and by reference made a part of this Chapter with the same force and effect as though set out herein in full. It is the intention of this Chapter to include within such references all provisions of HSS 171 and HSS 172 in effect at the time of adoption of this section, together with any applicable prior revisions and all future recodifications,

renumberings, and amendments unless otherwise expressly provided in such references. Failure to comply with any of the provisions of said Code shall constitute a violation of this section and shall be punishable according to the penalties provided. It shall be the responsibility of the Director of Health to establish and carry out requirements of Chapters HSS 171 and HSS 172.

B. Definitions. All the definitions contained in Chapters HSS 171 and HSS 172 shall apply, and for the purpose of this ordinance, the following terms shall be construed to mean:

1. "Owner": A municipality, or other governmental entity, corporation, company, association, partnership, firm or individual owning, controlling or operating any public swimming place.
2. "Operator": An agent or manager appointed by the owner. The operator shall be designated in writing by the owner to the Director of Health. The Director shall be notified in writing of any change of operators.

C. Inspection of Swimming Pools

1. At least once every three months, the Director of Health shall inspect every operating swimming pool within the City. In addition, a water sample shall be submitted to the City Health Department laboratory for testing at least once per month when each pool is in operation.
2. In addition to Subsection 1., the following activities shall be required:
 - a. Annual sanitary surveys of each licensed facility shall be made to determine conformity with Chapter HSS 172.
 - b. Reports of sanitary surveys shall be submitted to the department (appropriate district sanitarian) within 30 days of completion of such surveys.
 - c. Current copies of local ordinances or local regulations applying to public pools shall be submitted to the Department of Health and Social Services.
 - d. The current names and mailing address of the local official(s) responsible for conducting sanitary surveys shall be submitted to the Department of Health and Social Services.
 - e. A listing of all public pools covered by the local program, during April of each year shall be submitted to the department.

D. Swimming Pool License

1. License Required. It shall be unlawful for any person, organization or governmental agency to operate a swimming pool in the City of Oshkosh without a valid license. Licenses shall be displayed in a conspicuous location in the pool area.
2. Application. Application for license shall be made to the Director of Health and shall state the name and address of the person, firm, municipality, corporation, company or association applying for the license and such other information as the Director of Health shall require.
3. Fee and Exemptions
 - a. The fee for each pool license shall be as established within Chapter 14 of this code.

- b. The City of Oshkosh shall be exempt from payment of the required fee, but must still obtain the required license.

E. Enforcement of Ordinance

1. Suspension of License. The Director of Health shall suspend a license issued under this chapter and shall order the owner or operator of a swimming pool to prohibit use of the pool until correction of the conditions listed herein are met:
 - a. Failure of the pool equipment, structure or enclosure which may jeopardize the health or safety of persons using or operating it.
 - b. Lack of proper equipment for treating, maintaining or testing pool water.
 - c. Presence of unsanitary conditions or hazardous substances in the pool.
 - d. Failure to meet water quality standards.
2. Procedure for Suspension of License. When the Director of Health orders a license suspended and the closing of a swimming pool, a written order shall be served on the owner or operator, either personally or by registered or certified mail. Said notice shall state that the license is suspended, the specific reason for suspension, the corrective actions necessary, and shall order the pool to be closed until the corrections are made. After corrective action is completed, the owner, operator or manager shall notify the Director of Health, in writing, that the pool is ready for inspection. If, upon reinspection, the corrective action is approved, the license shall be reinstated and the pool may be reopened. If the corrective action is not completed or approved, the license shall remain suspended and the pool shall remain closed until such corrections are completed.

ARTICLE IV. PRIVATE WELLS

SECTION 15-17 PRIVATE WELLS

- (A) Filling and Sealing Required. All private wells located on any premises which is served by the public water system of the City shall be properly filled by July 1, 1993 or at the time of connection to the City's water supply system, whichever occurs later. Only those wells for which a well operation permit has been granted by the Health Director may be exempted from this requirement. The Health Director shall order filled any well in this City which tests unsafe for use, which is not in current use, or which is non-complying with Chapter NR 812, Wisconsin Administrative Code. The owner or occupant must demonstrate compliance with NR 812 through a signed statement from a State certified well driller or pump installer. The owner or occupant of the property upon which such well is located shall fill such well in accordance with Section NR 811.17 or Section 812.26, Wisconsin Administrative Code, within thirty (30) days after receipt of notice from the Health Director.
- (B) Well Operation Permit. A permit may be granted to a well owner to operate a well for a period not to exceed three (3) years if the following requirements are met. Application shall be upon forms provided by the City Health Director. This permit may be renewed at its expiration for additional periods, each additional period not to exceed three (3) years, if all the following requirements continue to be met:
 - (1) The well and pump installation meet or are upgraded to meet the requirements of NR 812, Wisconsin Administrative Code, and certification of the acceptability of the well has been granted by a state certified well driller or pump installer and a copy of this certification

accompanies the application for issuing or reissuing of a permit.

- (2) The well has a history of producing safe water and presently produces bacteriologically and chemically safe water as evidenced from laboratory tests by a laboratory certified by the Wisconsin Department of Health and Social Services or the Wisconsin State Laboratory of Hygiene. Such evidence shall include bacteriological sampling, consisting of obtaining a minimum of 2 consecutive safe samples taken a minimum of 2 weeks apart prior to issuing or reissuing the permit and shall accompany the application.
 - (3) The proposed use of the well can be justified as being necessary in addition to water provided by the public water system at the time of issuance or reissuance of the permit.
 - (4) No physical connection shall exist between the piping of the public water system and the private well, which fact shall be certified by the City of Oshkosh plumbing inspector and shall accompany the application for issuance or reissuance of a permit.
 - (5) The well and pump installation is in present use.
 - (6) A well permit application fee as specified within Chapter 14 of this Code shall be paid at the time of application for the issuance or reissuance of the permit.
- (C) Report and Inspections. An abandonment report form, supplied by the Department of Natural Resources or the City of Oshkosh Health Division shall be submitted by the well owner to the Health Director, and the Department of Natural Resources within ten (10) days of the completion of the well abandonment.
- (D) State Department of Natural Resources Regulations Adopted. The rules and regulations pertaining to private wells as promulgated by the Wisconsin Department of Natural Resources, specifically Chapters NR 811 and NR 812, Wisconsin Administrative Code, together with any future renumberings, 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.

ARTICLE V. EXCESSIVE NOISE

SECTION 15-18 EXCESSIVE NOISE

- (1) Scope and Enforcement
 - (a) This section shall apply to the control of all noise originating within the limits of the City. It is the policy of the City of Oshkosh to comply with the noise limitations, as set forth in this section, in all of its own operations and the operations of its contractors and subcontractors.
 - (b) It shall be the duty of the Health Director to administer and enforce the provisions of this section.
- (2) Definitions. As used in this section:
 - (a) "Ambient noise" means the all encompassing background noise associated with a given environment, being usually a composite of sounds from many sources near and far.
 - (b) "A-weighted sound level" means the sound pressure level in decibels as measured on a

- sound level meter using the A-weighting network. The level so read is designated dB (A) or dBA.
- (c) "Commercial district" means any area of the city designated on the official Oshkosh Zoning Map, pursuant to Chapter 30 of this Code, as a Business District or Commercial District or as classified as C1, C2, C3, or C4.
 - (d) "Day" means the hours between 7:00 a.m. and 10:00 p.m.
 - (e) "Decibel (dB)" means a standard unit of sound pressure level.
 - (f) "Hertz (Hz)" means the International unit of frequency, equal to one cycle per second.
 - (g) "Impulsive sound" means a sound of short duration, usually less than one second, with an abrupt onset and rapid decay. Intervals between impacts must be longer than 0.5 seconds.
 - (h) "Industrial district" means any area of the City designated on the official Oshkosh Zoning Map, pursuant to Chapter 30 of this Code, as a Light Industrial, or Heavy Industrial District, or classified as M1, M2, or M3.
 - (i) "Night" means the hours between 10:00 p.m. and 7:00 a.m.
 - (j) "Person" means any individual, firm, partnership or corporation.
 - (k) "Pure tone" means a sound having a single pitch. For the purpose of this section, a pure tone shall exist if the one-third octave band sound pressure level in the band with the tone exceeds the arithmetic average of the sound pressure levels of the two contiguous one-third octave bands by 15 dB bands with center frequencies less than 160 Hz; by 8 dB for bands with center frequencies of 160 Hz to 400 Hz; and 5 dB for bands with center frequencies greater than 400 Hz.
 - (l) "Real property boundary" means an imaginary line along the ground surface, and its vertical extension, which separates the real property owned by one person from that owned by another person, but not including intra-building real property division.
 - (m) "Residential district" means any area of the City designated on the official Oshkosh Zoning map, pursuant to Chapter 30 of this Code, as Single-Family, Two-Family, or Multiple Dwelling Districts, or R-1, R-2, R-3, R-4, R-5 or Agricultural (Ag).
 - (n) "Sound level" means the weighted sound pressure level obtained by the use of a sound level meter and frequency weighting network, such as A or octave band, as specified in American National Standards Institute specifications for sound level meters (ANSI S 1.4-1971, or the latest approved revision thereof). If the frequency weighting employed is not indicated, the A-weighting shall apply.
 - (o) "Sound level meter" means an instrument which includes microphone, amplifier, RMS detector, integrator or time averager, output meter, and weighting networks used to measure sound pressure levels.
 - (p) "Sound pressure" means the instantaneous difference between the actual pressure and the average or barometric pressure at a given point in space, as produced by sound energy.
 - (q) "Sound pressure level" means 20 times the logarithm to the base 10 of the ratio of the RMS

sound pressure to the reference pressure of 20 micropascals ($20 \times 10^{-6} \text{N/m}^2$). The sound pressure level is denoted L_p or SPL and is expressed in decibels.

- (r) "Octave band sound pressure level" means the sound pressure level measured by a sound level meter utilizing an octave band filter which meets the specifications given in American National Standards Institute (ANSI) publication S1.11 - 1966 (R1976).

(3) Noise Limitations

- (a) Noise Limitations in Various Use Districts.

Maximum Sound Pressure Levels (dB) along District Boundaries

Octave Bank Center Frequency (Hertz)	Residential	Commercial
31.5	72	79
63	71	78
125	65	72
250	57	64
500	51	58
1000	45	52
2000	39	46
4000	34	41
8000	32	39
A-scale levels	55 dBA	62 dBA

In industrial districts, at no point where any such district boundary adjoins a residential or commercial district, or at 125 ft. from the nearest lot line of a plant or operation located within an industrial district, whichever distance is greater, shall the sound pressure level emitted from any such plant or operation, or the combined operations of any person, firm, or corporation, exceed the sound level limitations (decibel levels) in the designated octave bands set forth above for the various use districts.

In commercial and residential districts, any property use shall conform with the noise limitations stated above, provided that these limitations shall in every case be applied at or beyond the boundaries of the lot on which such use is established.

When an octave band analysis is not done, an A-weighted sound level measurement of the noise shall be taken. When this method is used, the sound level limitations shall be the A-scale levels included in the table.

Maximum sound pressure levels shall be decreased by five dB if the subject noise consists primarily of a pure tone or if it is impulsive in character.

When the total sound pressure level exceeds the noise source limitations because of high ambient sound levels, the following correction factors shall be subtracted from the total sound pressure level to determine compliance with this section:

When the ambient level differs

The correction factor to

from the noise source limitation by:	be subtracted is:
-10 dB or more	0
-4 to -9 dB	1
-2 to -3 dB	2
0 to -1 dB	3
+1 dB	4

When the ambient level is 2 dB or more above a sound level limitation, a source may add no more than 2 dB to the ambient level.

- (4) Noise Measurement Methods
Noise measurements shall be made in compliance with generally accepted practices and procedures. The Health Director shall prepare and make available upon request, a "Code of Recommended Practices" for the measurement of noise.
- (5) Public Nuisance
Excessive noise as defined in this section, is hereby deemed and declared to be a public nuisance and may be subject to summary abatement procedures, as provided in this Code. Such abatement shall be in addition to administrative proceedings, forfeitures, and penalties provided in this section.
- (6) Prohibited Acts
No person shall make, produce, allow or cause to be produced any noise which exceeds the noise limitations as set forth in this section.
- (7) Noise Exemptions
The noise limitations as set forth in sub-section (3)(a) shall not apply to the following:
 - (a) Non-commercial public speaking and public assembly activities conducted on any public property.
 - (b) Construction sites, public utilities, and public works operations during any day, from Monday through Saturday, inclusive; provided, however, that the sound level at or across a real property boundary shall not exceed 86 dBA without prior written approval from the Health Director.
 - (c) Emergency short term operations which are necessary to protect the public health, safety and welfare of the citizens, including emergency utility and public works operations.
 - (d) Any noise emitted from emergency warning devices and unregulated safety relief valves.
 - (e) Loading or unloading operations or other handling of boxes, crates, containers, building materials, garbage cans, or similar objects during any day.
 - (f) Stationary bells, chimes, sirens, whistles or similar devices, intended primarily for emergency purposes, except industrial whistles; provided, however, that no such device shall be sounded more than five minutes in any hourly period, nor a total of 30 minutes in any twenty-four hour period. Church bells, chimes and carillons may be rung at any time.
 - (g) Domestic power tools, including any mechanically powered sander, lawn or garden tool, snowblower, or similar device used during any day.
 - (h) Industrial whistles, provided that the sounding of any such whistle is to give notice of the

time to begin or stop work or as a warning of fire, danger, or upon request of proper city authorities.

- (i) The sounding of any horn on a railroad train or locomotive on a main line railroad track, provided that any such sounding is required by state law or reasonably required to avoid an impending accident.
- (j) Parades duly licensed pursuant to Chapter 6 of this code.
- (k) Aircraft operations.
- (l) Noise created by human behavior and generally considered to be disorderly conduct which is regulated under Section 17-1 of this code.
- (m) Barking dogs, including kennels, shall be regulated under Chapter 6 of the Oshkosh Municipal Code.

(8) Places of Public Entertainment

No person shall operate, play or permit the operation or playing of any radio, television, phonograph, drum, musical instrument, sound amplifier, or similar device or any combination thereof, which produces, reproduces, or amplifies sound in any place of public entertainment at a sound level greater than 100 dBa as read by the slow response on a sound level meter at any point that is normally occupied by a customer, unless a conspicuous and legible sign which is at least 225 square inches in area is placed outside such place, near each public entrance, stating: "WARNING: SOUND LEVELS WITHIN MAY CAUSE PERMANENT HEARING IMPAIRMENT."

(9) Motor Vehicles

(a) It shall be unlawful for any person to cause noise levels from the operation of a light motor vehicle in excess of 80 dBa at any location within the corporate limits of Oshkosh. Measurements may be made at any distance greater than or equal to 15 feet from the closest approach to the vehicle at any suitable site in accordance with procedures outlined in the code of recommended practices on file with the City Clerk.

Maximum Noise Limits at 15 feet from Vehicle in Use

		Speed limit of 35 mph or less	Speed Limit of more than 35 mph
1.	Any Motorcycle	82 dBa	86 dBa
2.	Any other motor vehicle, including passenger automobiles, or any combination of vehicles towed by such motor vehicle, with a manufacturer's gross vehicle weight rating of less than 10,000 pounds	80 dBa	83 dBa

(10) Variance Permits

A variance permit for time to comply with the noise or vibration limitations as set forth in this section may be requested for any source of noise or vibration in excess of any such limitations.

(a) Application. Application for a variance permit under this sub-section shall be made in

- writing to the Health Director on a prescribed form. Such application shall specify the grounds upon which the variance permit is sought and the date by which the source of any excess noise or vibration for which the variance is sought shall be brought into compliance with this section. An application for a variance permit shall be considered timely made if filed within thirty (30) days following due notification that it is in violation of this section. The proper filing of an application within such time shall toll all penalties provided in this section for any such violation until a final decision has been issued on the merits of such application. The Health Director within ten (10) days of the receipt of an application for a variance permit, shall give public notice thereof.
- (b) Permit. Within a reasonable time following receipt of an application for a variance permit and after public notice thereof has been given, the Health Director shall grant such permit to an applicant if the Director shall find that immediate compliance with the noise or vibration limitations as set forth in this section would result in unnecessary hardship to the applicant. In making the determination, the Health Director shall balance the hardship to the applicant, the community, and other persons of not granting the variance, against the adverse impact on health, safety, and welfare of persons affected, the adverse effect on property affected, and any other adverse impacts of granting the variance. Any person who claims to be adversely affected by the allowance of the variance permit may file a statement with the Health Director containing information to support the claim. The Health Director may require the applicant to submit information not contained in the application which may be necessary for making a determination under this subsection. Within five days following the determination, the Health Director shall mail to all interested parties and place on file with the city clerk a copy of the decision which shall specify the reasons for denying or granting the variance permit.
- (c) Conditions. The Health Director may grant a variance permit under such conditions as are necessary to protect the public health, safety, and welfare, including a schedule for achieving compliance with noise and vibration limitations. Variances exceeding two years may be granted only in exceptional cases, including those for which, in the opinion of the Health Director, control technology is unavailable or available only at a prohibitive cost. Non-compliance with any conditions imposed on the variance shall terminate the variance and subject the person holding it to those provisions of this section for which the variance permit was granted.
- (d) Extension and Modification. Application for extension of time limits or modification of other conditions specified in the variance permit shall be treated like applications for an initial variance, except that the Health Director must find that the need for such extension or modification clearly outweighs any adverse impacts of granting the extension or modification.
- (e) Appeals
- (1) Within thirty days after any decision of the Health Director on a permit application, 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.
 - (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.
- (f) 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.

ARTICLE VI. HIGH RISK SEXUAL CONDUCT

SECTION 15-19 HIGH RISK SEXUAL CONDUCT ESTABLISHMENTS

(A) Definitions

As used in this Article:

- (1) "Booths, stalls, partitioned portions of a room or individual rooms" shall mean such enclosures as are specifically offered to the public or members of that establishment for hire or for a fee as part of a business operated on the premises which offers as part of its business the entertainment to be viewed within the enclosure; which shall include, without limitation, such enclosures wherein the entertainment is dispensed for a fee, but a fee is not charged for mere access to the enclosure.
 - (a) The phrase "booths, stalls, partitioned portions of a room or individual rooms" does not mean enclosures which are private offices used by the owners, managers, or persons employed on the premises for attending to the tasks of their employment, and which are not held out to the public or members of the establishment for hire or for a fee or for the purposes of viewing entertainment for a fee, and which are not open or available to any persons other than owners, managers or employees.
- (2) "Doors, curtains or portal partitions" shall mean full, complete, nontransparent enclosure devices through which one cannot see or view the activity taking place within the enclosure. Such devices shall extend from the floor to a maximum height of six (6) feet above the floor, except doors controlling access to the enclosure which shall extend from a height of not less than two (2) feet above the floor to a maximum height of six (6) feet above the floor.
- (3) "High risk sexual conduct" shall mean fellatio, anal intercourse, and vaginal intercourse with persons who engage in sexual acts in exchange for money.
- (4) "Open to an adjacent public room so that the area inside is visible to persons in the adjacent public room" shall mean either the absence of any "door, curtain or portal partition", or the presence of a door or other device which is made of clear, transparent material such as glass, plexiglass or other such material meeting applicable building codes and safety standards, extending from the floor to the top of the door frame, exclusive of the door

or device framing itself, or the presence of any door, curtain or portal partition, so that the activity inside the enclosure may be viewed or seen without obstruction or distortion by persons outside the enclosure.

(B) Building Standards

- (1) No commercial building, structure, premises or subdivision, partition, portion or part thereof or facilities therein, shall be so constructed, used, designed or operated for the purpose of engaging in, or permitting persons to engage in, sexual activities which include high-risk sexual conduct.
- (2) No person, partnership, corporation or other entity shall own, operate, manage, rent, lease, occupy, or exercise control of any commercial building, structure, premises, or portion or part thereof, which is subject to this Article, which does not meet the construction standards contained in this Article:
 - (a) doors, curtains or portal partitions between subdivisions of a room, portion or part of a building, structure or premises shall be solid, without any openings which would otherwise facilitate or allow sexual activity including high risk sexual conduct between persons on either side of the partition.
 - (b) booths, stalls, or partitioned portions of a room, or individual rooms, used for the viewing of entertainment (an "enclosure") shall have at least one side open to an adjacent public, lighted room or aisle so that the area inside is visible to persons in the adjacent public room or aisle. Access to each enclosure when not in use shall be unrestricted by doors, locks or other control-type devices. The lighting level of each enclosure when not in use and of the adjacent public room or aisle shall be a minimum of 10 foot candles at all times.
 - (c) All doors, curtains and portal partitions, walls and floors within the enclosure and the adjacent public room or aisle shall be light-colored, non-absorbent, smooth textured and easily cleanable.
- (3) No person, partnership, corporation or other entity shall own operate, manage, rent, lease occupy, or exercise control of any commercial building, structure, premises, or portion or part thereof, which is subject to this Article, that is located closer than 500 feet from the nearest lot line, that is the legal boundaries of a parcel of property, of any Class "B"/"Class B" establishment, of any parcel of a similar establishment, any establishment governed by Section 18-9 of this Code, or any school (whether pre-school, elementary, middle or high school), residentially-zoned property, library, church or chapel, park or playground, or licensed day-care facility.
 - (a) It is the intent of this paragraph (3) that such establishments, whose operations on the effective date of this ordinance subject them to regulation of this Section, shall be subject to the provisions of Section 30-4 NON-CONFORMING USE REGULATIONS of this Code, except that such privilege of nonconforming use shall cease upon the discontinuance of the activities within such establishment for seven consecutive calendar days, including any days when the establishment is normally closed for business.

(C) Owner/Operator Responsibilities

- (1) No person, partnership, corporation, or other entity shall own, operate, manage, rent, lease, occupy, or exercise control of any such commercial building, structure, premises, or portion or part thereof, which is subject to this Article, unless:
- (a) there is conspicuously posted inside each booth, stall, partitioned portion of room or individual room an unmutilated and undefaced sign or poster supplied by the Division of Health which contains information regarding sexually transmitted diseases and the "hot line" telephone numbers from which additional information can be sought; and
 - (b) there is conspicuously displayed at a place near the main entrance of the establishment, or portion thereof, any information, brochures, or pamphlets supplied by the Division of Health pertaining to sexually transmitted diseases; and
 - (c) the premises are maintained in a clean and sanitary manner at all times; and
 - (d) there is posted regulations concerning booth occupancy on signs, with lettering at least one inch high, that are placed in conspicuous areas of the establishment and in each of the viewing enclosures; and
 - (e) such person, partnership, corporation or other entity, operator, licensee and employees of the establishment insure compliance of both the establishment and its patrons with the provisions of this Article at all times.

- (D) The Division shall charge its reasonable costs for supplying such posters, brochures, pamphlets and other information supplied under this section.

(E) Patron Responsibility

- (1) Any person who does any of the following shall be guilty of a violation of this Article and shall be subject to the penalties set forth in Article IX of this Chapter:
- (a) occupies an enclosure already occupied by another person, regardless of whether permission to enter has been given.
 - (b) at any time engages in high risk sexual conduct or causes any bodily discharge or litter associated with sexual activity while in the enclosure.
 - (c) removes, destroys, or defaces signs or posters, or who destroys or defaces the information, brochures, or pamphlets, whether supplied by the Health Division or posted by the owner/operator as required in subsection (C) above.
 - (d) damages or defaces any portion of the enclosure.

(F) Exceptions

The standards set forth in this section shall not apply to buildings, structures and premises which are lawfully operating as hotels, motels, apartment complexes, condominiums or rooming houses.

(G) ENFORCEMENT AND APPLICABILITY

It shall be the duty of the Health Director to administer and enforce the provisions of this Article.

Except as otherwise noted, the provisions of this Article shall apply to all commercial establishments, including existing ones, which offer such entertainment as described in sub. (A)(1) above.

**ARTICLE VII. RESERVED
(Formerly TATTOO ESTABLISHMENTS)**

SECTION 15-20	RESERVED
SECTION 15-21	RESERVED
SECTION 15-22	RESERVED

ARTICLE VIII. LEAD POISONING, PREVENTION AND CONTROL

SECTION 15-23 Purpose.

The purpose of this article is to reduce exposure to lead hazards and to eliminate, whenever possible, lead poisoning especially among children six (6) years of age and younger.

SECTION 15-24 Definitions.

- (a) **"Abatement"** means any measure, set of measures or project designed or intended to eliminate or encapsulate lead hazards for at least 20 years under normal conditions. Abatement includes but is not limited to, one or more of the following activities:
- (1) the removal of lead-based paint and/or lead-contaminated dust, the enclosure or encapsulation of lead-based paint, the replacement of lead-painted surfaces or fixtures, and the removal or covering of lead-contaminated soil: and
 - (2) all preparation, cleanup, disposal, and post-abatement clearance testing activities associated with such measures
- (b) **"Clearance"** means the visual examination and/or dust sampling conducted after a lead abatement or other lead hazard reduction activity to determine whether or not the activity and cleanup have been successfully completed. Clearance dust sample levels include all of the following:
- (1) For an uncarpeted floor, 100ug/sq.ft.
 - (2) For an interior window sill, or window stool, 500ug/sq.ft.
 - (3) For a window well, or window trough, 800ug/sq.ft.
- (c) **"Elevated blood lead level" or "Lead poisoning"** means a confirmed concentration of lead in the blood of ten or more micrograms per 100 millimeters of blood, or the current level set by the U.S. Public Health Service Center for Disease Control, whichever is more restrictive.
- (d) **"Lead hazard"** means any substance, surface or object that contains lead and that, due to its condition, location or nature, may contribute to the lead poisoning or lead exposure of a child six (6) years of age and younger.

- (e) **“Lead hazard reduction activity”** means any action designed to permanently or temporarily reduce or eliminate human exposure to lead-based paint hazards through methods that include abatement and/or interim control activities.
- (f) **“Lead-based paint”** means any paint or any other surface coating material containing more than 0.06 percent lead by weight, calculated as lead metal, in the total nonvolatile content of liquid paint or more than 0.7 mg/cm² by x-ray fluorescence spectroscopy in the dried film of applied paint.
- (g) **“Lead Risk Assessor”** means an individual who is certified to conduct lead hazard screens or lead risk assessments, provides options to reduce specific lead hazards, writes lead risk assessment reports or who is an employer of individuals performing lead management activities and who may perform the duties of a lead(Pb) inspector. Training for certification requires successful completion of an accredited 24-hour lead inspector course, followed by a 16-hour lead risk assessor course. In addition, a lead risk assessor must meet one of the following qualifications: (1) Bachelor’s degree and 1 year experience in a related field; (2) Associate degree and 2 years experience in a related field; (3) certification as an industrial hygienist, professional engineer, registered architect, or certification in a related engineering, health, or environmental field; (4) or a high school diploma(or equivalent) and at least 3 years experience in a related field.
- (h) **“Interim controls”** means a set of measures designed to temporarily reduce human exposure or likely exposure to a lead hazard, including but not limited to specialized cleaning, repair, maintenance, painting, temporary containment, and ongoing monitoring of lead hazards or potential hazards.
- (i) **“Owner”** means any person who alone or jointly or severally with others:
- (1) has legal or equitable title to any dwelling, dwelling unit, supplemental location or premises; or
 - (2) who has charge, care or control of the dwelling, dwelling unit, supplemental location or premises as owner, or as executor, administrator, trustee or guardian of the estate of the owner.
- (j) **“Permanent”** means the measure or set of measures may be expected to eliminate or reduce exposure to lead based paint hazards for at least 20 years under normal conditions.
- (k) **“Premises”** means any of the following:
- (1) any single housing unit, multiple housing units, including attached structures, used or intended to be used for living, sleeping, cooking or eating.
 - (2) an educational or child care facility, including attached structures and the real property upon which the facility stands, that provides services to children six (6) years of age and under.
 - (3) other classes of buildings and facilities, including attached structures and real property upon which the buildings or facilities stand, that pose a significant risk of contributing to the lead poisoning or lead exposure of children six (6) years of age and under.
 - (4) any portion of a platted or unplatted lot, parcel or plot of land either occupied or unoccupied.

- (l) **“Risk assessment”** means an on-site investigation to determine and report the existence, nature, severity and location of lead hazards in or on a premises, including:
- (1) information gathering regarding the age and history of the housing and occupancy by children six (6) years of age and under;
 - (2) visual inspection;
 - (3) limited wipe sampling or other environmental sampling techniques;
 - (4) other activity as may be appropriate; and
 - (5) provision of a report explaining the results of the investigation.

SECTION 15-25 Lead hazards prohibited.

Lead hazards will be identified by risk assessment and/or testing when any person six (6) years of age and under who is occupying or has occupied the premises has been identified as having an elevated blood lead level and the premises has been identified as a potential source of that elevated blood lead level. No owner of any premises shall create any lead hazards or allow to exist on the premises any identified lead hazards. The Health Services Division shall conduct a lead risk assessment to identify and evaluate lead hazards and to determine the need for corrective action, where there has been a person six (6) years of age or younger identified as having an elevated blood lead level. The Division shall use reasonable efforts to provide prior notice of the lead risk assessment to the owner of the premises. The Division may remove samples or objects necessary for laboratory analysis to determine the presence of a lead hazard in or on the premises. If the owner refuses admission, the Division may seek a warrant to inspect the premises. The warrant shall advise the owner of the scope of the inspection. Upon written notification by the Health Services Division of the existence of a lead hazard, the owner shall then hire an independent certified lead risk assessor and/or certified lead contractor to develop and submit a written plan, based on the results of the assessment, for lead hazard reduction to the Health Services Division within 30 days. A list of currently certified lead risk assessors and lead certified contractors will be provided by the Health Services Division.

SECTION 15-26 Warning required.

If the owner has not submitted a lead hazard reduction plan within thirty days of notification to the Health Services Division, the Division shall provide and post a premises at which a known lead hazard exists, with a placard at least eight (8) inches by ten (10) inches on all outside entrance doors. In the situation where the premises is part of a multifamily structure the placard shall be placed at the most proximal entrance to the premises affected. The warning shall state:

**Warning
Lead Poisoning Hazard
Danger to Children**

The sign/s shall be removed only after the premises posted is declared lead safe through the process outlined in section 15-26 of the ordinance.

SECTION 15-27 Lead hazard reduction standards.

Abatement shall effectively reduce lead hazards by removal, containment, encapsulation or replacement

and shall include proper preparation, cleanup, disposal, and post-abatement clearance testing activities associated with such measures. Lead hazard reduction work shall be completed in a manner which does not increase lead dust hazards and which does not introduce new lead hazards into the environment. For all lead hazard reduction measures including both abatement measures and "interim control" such as cleaning, wet scraping and repainting, the property shall be reevaluated by an independent certified lead risk assessor to determine if the property meets clearance standards and is considered lead safe.

SECTION 15-28 Prohibited acts.

No person shall use the following to remove lead-based paint or other lead based surface coatings:

- 1) Open flame burning or torching (including propane-fueled heat grids).
- 2) Power sanding tools or power grinders unless these tools are equipped with HEPA exhaust filters or other engineering controls to capture lead dust.
- 3) Abrasive blasting or sandblasting without HEPA local vacuum exhaust tool, and special permission is granted by the Wisconsin Department of Natural Resources.
- 4) Uncontained hydro blasting or high-pressure wash unless granted special permission by the Wisconsin Department of Natural Resources.
- 5) Heat guns operating above 1,100 F.
- 6) Methylene chloride paint removal products.
- 7) Dry scraping (except for limited surface areas).
- 8) Hand sanding unless the sandpaper is designed to be used and used under wet conditions.

SECTION 15-29 Plan and certification requirements.

A specific written plan for the lead hazard reduction project shall be submitted to the Health Services Division prior to the commencement of any lead hazard reduction activities ordered under this code. The plan shall outline the scope of the work to be done, how the abatement and/or interim control work is to be accomplished, a time line for completion of the work, who will do the work and how waste will be removed from the premises and where it will be deposited, who will perform the clearance dust testing and the name and address of the laboratory which will analyze the samples. The person/s who shall perform the abatement work shall meet the certification requirements of HFS 163 Wisconsin Administrative Code or as it may be amended. Lead hazard reduction activities shall not commence without plan approval by the Health Services Division. The Health Services Division may approve such plan as submitted, in whole, or in part or may modify provisions of the plan as appropriate. Any changes in the initial plan must be approved by the Health Services Division. All work must be performed in strict conformance with the plan.

SECTION 15-30 Site inspection and clearance testing.

When the lead hazard reduction work has been completed, the owner shall notify the Health Services Division in writing that the work has been completed in compliance with the plan, along with clearance dust test results if appropriate, indicating the premises has met clearance standards and is considered lead safe. The Health Director or designee may inspect the premises at which the lead hazard reduction work is being performed at any time during the lead hazard reduction process or upon submission of the clearance

report to insure compliance with the written plan.

SECTION 15-31 Enforcement and penalties.

In addition to any other penalties provided within this chapter the Health Services Division shall have the powers granted in Chapter 254 of the Wisconsin Statutes and in Chapter 163 of the Health and Family Services Wisconsin Administrative Code, including any amendments thereto.

ARTICLE IX. NOTICES, PENALTIES AND SEVERABILITY

SECTION 15-32 NOTICE

Any notice, order or other document required to be served under this Chapter shall be served by delivering to and leaving with the owner of the premises upon which such nuisance exists or upon which such other violation exists a copy of said notice personally, or if the owner cannot be found within the City, by leaving a copy thereof at the owner's usual place of abode, if in the City, with some member of the family of suitable age and discretion to whom the contents thereof shall be briefly explained; and if the said owner does not reside in the City, the notice shall be served upon the agent of the owner, if there is an agent residing within the City, by delivering to and leaving with the agent a copy thereof; and if the owner has no agent in the City and does not reside therein, the notice shall in like manner be served upon the occupant of the premises upon which the nuisance exists or upon which the violation exists, and if the premises be not occupied, and the owner cannot be found in the City and has no agent residing therein, the notice shall be served by posting the same upon the main entrance or in some other conspicuous place on the premises, and by publishing in the official newspaper of the City for two (2) consecutive days at least five (5) days prior to the date the work must be completed. If the address of the owner be known to the officer, or can be ascertained by reasonable diligence, and there is no known agent in the City, the officer shall mail a copy of the notice to the last known address of the owner. Such notice may be served by the Health Director, the Chief of Police or other police officer of the City or by the Sheriff, any deputy or any constable of Winnebago County.

SECTION 15-33 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 \$500.00, together with the costs of prosecution, and in default of payment thereof, by imprisonment in the County Jail for a period of not to exceed sixty (60) days. Each day of violation shall constitute a separate offense. In addition to the penalties herein provided, appropriate legal or equitable action may be commenced to enjoin any person from violating any of the provisions of this section.

SECTION 15-34 SEVERABILITY

If any provision, clause, sentence, paragraph, section or part of this ordinance, or application thereof to any person, firm, corporation or circumstance shall, for any reason, be adjudged by a court of competent jurisdiction to be unconstitutional or invalid, said judgment shall not affect, impair or invalidate the remainder of this ordinance and the application of such provision to other persons, firms, corporations or circumstances, but shall be confined in its operation to the provision, clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered and to the person, firm, corporation or circumstance involved. It is hereby declared to be the legislative intent of the common council that this ordinance would have been adopted had such invalid provision or provisions not been included.

