

Board of Health Regulation: Chapter 1

Food Establishment Regulation

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1-0.010 Authority and Purpose.

The Board of Health of the Eau Claire City-County Health Department holds the authority to adopt regulations to protect and improve public health under s. 251.04(3) Stats.. Under s. 97.41(1m) Stats., the Department of Agriculture, Trade and Consumer Protection (DATCP) designated the Eau Claire City-County Health Department as an agent for issuing licenses to and making investigations or inspections of retail food establishments and restaurants. Under s. 97.41(7) Stats., the Board of Health may adopt and impose regulations on licensees and premises for which the local health department is the designated agent, which are stricter than these chapters or rules adopted by the state.

1-0.020 Applicability.

The provisions of this regulation shall apply to food establishments in the City and County of Eau Claire including all municipalities within Eau Claire County.

1-0.030 Definitions.

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

- A. “Environmental Health Specialist” means a Registered Sanitarian/Registered Environmental Health Specialist by the State of Wisconsin or the National Environmental Health Association who is employed by the Eau Claire City-County Health Department.
- B. “Food establishment” means any operation that stores, prepares, serves, vends, sells, or otherwise provides food for human consumption. The term food establishment includes a “restaurant” as defined in s. 97.01(14g), Stats., “retail food establishment” as defined in s. 97.30, Stats., a “temporary restaurant” as defined in s. 97.01(15b), Stats..

- C. "Food Processing" means the manufacture or preparation of food for sale through the process of canning, extracting, fermenting, distilling, pickling, freezing, baking, drying, smoking, grinding, cutting, mixing, coating, stuffing, packing, bottling or packaging or through any other treatment or preservation process.
- D. "Frozen dessert" means ice cream, French ice cream, artificially sweetened ice cream, frozen custard, frozen concentrates, ice milk, sherbet, water ice, quiescently frozen confection, quiescently frozen dairy confection, manufactured frozen dessert mix, and frozen whipped cream confections, and includes any mix prepared or frozen as a frozen dessert.
- E. "Health Department" means the Eau Claire City-County Health Department.
- F. "Health Officer" means the director of Eau Claire City-County Health Department or that person's authorized representative.
- G. "Non-processing retail food establishment" means retail food establishments where time/temperature control for safety food, bakery products or other foods are sold at retail and merchants are not engaged in "Food Processing" as defined in 1-0.030 D.
- H. "Other definitions" as enumerated in the Wisconsin State Administrative Code and Wisconsin Statutes adopted by reference in this regulation.

1-0.040 Enforcement.

The provisions of this regulation shall be administered by or under the direction of the Health Officer, who in person or by duly authorized representatives shall have the right to enter, at reasonable hours, upon premises affected by this regulation to inspect the premises, secure samples, examine and copy relevant documents and records or obtain photographic or other evidence needed to enforce this regulation.

1-0.050 Licenses.

- A. *License Required.* No person shall operate a restaurant, retail food establishment or temporary food establishment without first obtaining a license from the Health Department.
- B. *Transferability.* Except as provided under s. 1-0.050 C each retail food establishment, temporary food establishment or restaurant shall have a separate license which shall be prominently displayed in the licensed facility. Licenses are not transferable between persons, establishments or facilities, or to a location other than the one for which it was issued, subject to the express exception that as to location: mobile food establishment and temporary food establishment may be transferred.
- C. *Exemptions.* Licenses are not required under s. 1-0.050 A of this rule for:
 - 1. A retail food establishment that sells only packaged foods or fresh fruits and vegetables, provided the establishment does not sell time/temperature control for safety food and does not engage in food processing.
 - 2. A retail food establishment which is operated by the holder of a food processing plant license under s. 97.29, Stats., if the retail food establishment is operated at the same location as the licensed food processing plant and the retail sales are included in the computation of the food processing plant license fee.
 - 3. A restaurant or retail food establishment if it is an incidental food service as defined in Wisconsin Food Code adopted by reference in this regulation.
- D. *Expiration.* Such licenses shall expire on June 30 following their issuance except that licenses issued under Chapter ATCP 75.104, for restaurants and temporary restaurants

initially issued during the period beginning on April 1 and ending June 30 shall expire June 30 of the following year.

- E. *Conditional License.* The issuance of a license, for any reason, may be conditioned upon the licensee correcting a violation of this regulation within a specified period of time not to exceed six months.
- F. *Preinspection Required.* A license shall not be granted to a person intending to operate a new restaurant or retail food establishment or to a person intending to be the new operator of an existing retail food establishment or restaurant without a preinspection.
- G. *License Suspension and Revocation.* Such licenses may be temporarily suspended by the Health Officer for a violation of any provision of this regulation, or rules adopted by reference by this regulation, which creates an immediate danger to health. Such licenses may be revoked after repeated violations. The licensee shall have an opportunity for a hearing as provided in s. 1-0.120 of this regulation.
- H. *Dual-Licensure Prohibition.* A license under this regulation is not required for any temporary food establishment or mobile food establishment that has a valid license/permit issued by DATCP.
- I. *Application.* Applications for licenses shall be made in writing to the Health Department or such other office as designated by the Health Department on forms provided, stating the name and address of the applicant and the address and location of the proposed food establishment. The Health Department shall, within 15 business days of the receipt of a completed application, act upon the application by denying or granting the license.

1-0.060 Fees.

s. 66.0628, Stats., provides the authority to set and impose fees for services.

- A. *License Fees.* The fees for the licenses shall be established by the Board of Health to cover part or all of the cost of issuing licenses, making investigations, inspections, sampling, sample testing, providing education, training and technical assistance to the establishments, plus the cost required to be paid to the state for each license issued.
 - 1. The fees for licenses shall be established separately for each type of food establishment. Fees may be based on annual food sales.
 - 2. Certified financial information provided by the permit-holder shall be used to place a permit in a sales category. In the absence of certified financial information provided by the permit-holder, the department shall set the permit category of an unlimited restaurant at the category with the highest annual sales.
 - 3. If the annual renewal fee is not received on or before the license expiration date, late fees shall be issued pursuant to s. 1-0.060 B. Additionally, establishments operating 15 calendar days after the expiration will be closed by order of the Health Officer.
- B. *Late and Penalty Fees.*
 - 1. Late fees shall be required, as established by the Board of Health, for each license if the renewal fee is not paid before the license expires. The license fee must be paid or post-marked by June 30 each year.
 - 2. Fees/payments received and returned by the financial institution for insufficient funds are subject to a fee, as established by the Board of Health.
 - 3. Operators found to be operating without a valid license shall be subject to an initial license fee as well as a penalty fee equal to that of the license fee.

4. Operators found to be operating without a certified food manager, as required by the Wisconsin Food Code, shall be subject to a penalty fee equal to that of the reinspection fee as established by the Board of Health in s. 1-0.060 D.
- C. *Preinspection Fees.* An inspection fee is required for the initial inspection of new or existing establishments for which a person intends to be a new operator. Such fees shall be established by the Board of Health.
- D. *Inspection Fees.* An inspection fee is required for the initial inspection of a mobile or temporary food establishment that has a valid license/permit issued by the State of Wisconsin. The inspection fee shall be established by the Board of Health.
- E. *Reinspection Fees.* Reinspection fees shall be established by the Board of Health.
1. A reinspection will be performed under the following circumstances:
 - a. A priority or critical violation(s) is identified during a routine inspection or complaint follow-up and is not correct before the inspector leaves.
 - b. 5 or more priority or critical violations are noted during an inspection, even if they are corrected at the time of the inspection.
 - c. Any violation is repeated on three consecutive inspections or onsite visits.
 - d. A food sample taken from the facility by a health official is tested in the Health Department's certified public health lab and exceeds the standards listed in s. 1-0.100 A.
 2. A reinspection fee will be assessed for a second and each successive reinspection stemming from the same complaint follow-up, sampling event or routine inspection.
 3. A reinspection fee will be immediately assessed when an inspection is unable to be completed due to an establishment refusing entry to a properly identified Environmental Health Specialist.
 4. Reinspection fees will be assessed for every required reinspection completed until such time as the inspection is able to be fully completed or the violation ceases to exist.
 5. The Health Department will generate an invoice for a reinspection fee after the billable reinspection is completed.
 6. The Health Department may not issue or renew an establishment license until all fees due under this regulation are paid in full.
- F. *Plan Review Fees.* Plan review fees shall be established by the Board of Health to cover part or all of the cost to review plans for new construction or extensive remodeling of food establishments. Operators found to have built new or extensively remodeled without a plan review submission and approval shall be subject to a plan review fee as well as a penalty fee equal to that of the plan review fee.

1-0.070 Plans, Construction, Sanitation, and Equipment.

Copies of plans, equipment, and menu specifications for new structures or major remodeling of present structures of restaurants and retail food establishments shall be submitted for approval to the Health Department, along with the plan review fee as required in section 1-0.060 E of this regulation, in advance of construction.

- A. The Health Department shall review and make a determination on whether or not a plan review submission is complete and communicate, in writing, within 10 business days of submission.
- B. After confirming receipt of a complete application, the Health Department shall approve or deny the application within 20 business days.

- C. If the application for a permit is denied, the Health Department shall give the applicant reasons, in writing, for the denial.

1-0.080 Food, Drinks, Equipment, and Facility Examination.

A. Right to Examination.

1. An Environmental Health Specialist or other Health Department personnel, upon proper identification, shall be permitted to have access to all parts of the premises to perform the duties of inspection and sampling as a condition of the license.
2. Samples of food and drink and other substances may be obtained from an establishment and examined as often as necessary by the Health Department to examine for unwholesomeness or adulteration.
3. Samples of products shall be furnished upon request for analysis without cost to the Eau Claire City-County Health Department under this regulation and as a condition of the license.

B. Unsatisfactory Results – Issuance of a Temporary Order.

1. Whenever, as a result of the examination, the Health Department has reasonable cause to believe that any examined food constitutes, or that any construction, sanitary condition or method of operation of the premises or equipment used on the premises creates an immediate danger to health, the Health Department may issue a temporary order and cause it to be delivered to the licensee, or to the owner or custodian of the food, or to both.
2. The order may prohibit the sale or movement of the food for any purpose, prohibit the continued operation or method of operation of specified equipment, require the premises to cease other operations which create the immediate danger to health, or set forth any combination of these requirements.
3. The Health Department may order the cessation of all operations authorized by the license only if a more limited order does not remove the immediate danger to health.
4. No food described in a temporary order issued and delivered under this section may be sold or moved and no operation or method of operation prohibited by the temporary order may be resumed without the approval of the Health Department and the termination of the temporary order, as specified in C of this section.

C. Termination of a Temporary Order.

1. If the Health Department, upon completed analysis and examination, determines that the food, construction, sanitary condition, operation or method of operation of the premises or equipment does not constitute an immediate danger to health, the licensee, owner or custodian of the food or premises shall be promptly notified through personal service or in writing by certified mail and the temporary order shall terminate upon his or her receipt of the written notice.
2. No temporary order is effective for longer than 14 days from the time of its delivery, but a temporary order may be reissued for one additional 14-day period, if necessary, to complete the analysis or examination of samples, specimens or other evidence.

D. Destruction and/or Diversion of Food and/or Food Product.

1. If the analysis or examination shows that the food, construction, sanitary condition, operation or method of operation or the premises or equipment constitutes an immediate danger to health, the licensee, owner or custodian shall be notified within the effective period of the temporary order issued under B and C of this section.

2. The Health Department may issue a final decision for the destruction of food, the diversion of food to uses which do not pose a danger to health, the modification of food so that it does not create a danger to health, changes to or replacement of equipment or construction, other changes in or cessation of any operation or method of operation of the equipment or premises, or any combination of these actions necessary to remove the danger to health.
3. The decision may order the cessation of all operations authorized by the license only if a more limited order will not remove the immediate danger to health.

1-0.090 Transportation of Meat and other Time/Temperature Control for Safety Food.

No person shall carry, transport, convey, cause or permit to be carried in or upon any street, alley, or other thoroughfare any food or food product or other time/temperature control for safety food, sold or intended for sale, for human consumption, unless the same is wrapped, covered, or enclosed in such a manner as to exclude dust, dirt, flies, or vermin. Required food temperatures, as per Wisconsin Food Code, shall be maintained for any time/temperature control for safety food during transportation. A food establishment shall not accept food that is delivered to them which is not in compliance with the above section.

1-0.100 Standards including Bacterial Standards.

- A. The City-County Board of Health may establish reasonable, scientific standards for food, milk, milk products, frozen desserts, meat, fish or fowl and products made therefrom, both raw, partially or fully cooked products.
 1. After grinding, raw meat shall not contain in excess of 2,000 coliform per gram or in excess of 4,000,000 standard plate count of bacteria per gram at any time up to time of sale.
 2. All frozen desserts shall have a standard plate count not to exceed 100,000 per milliliter and a coliform count not to exceed 50 per milliliter. Cultured frozen dessert products are exempt from the plate count standard.
 3. No milk or milk products shall be sold to the final consumer, or to food establishments except for grade A pasteurized. All noncultured pasteurized milk or milk products sold or distributed shall not exceed a plate count of 20,000 per milliliter. All pasteurized milk and milk products sold or distributed shall have a coliform count not to exceed 10 per milliliter.
 4. All ice samples shall have a standard plate count not to exceed 100,000 per milliliter and a coliform count not to exceed 50 per milliliter. All ice samples shall be tested for E. coli using the Colilert/Colisure method. Ice samples shall have a negative result for the presence of E. coli.
- B. Standard test methods. Standard plate counts, coliform determinations and other laboratory tests shall be conducted in accordance with standard methods and procedures as described in “Standard Methods for the Examination of Dairy Products” and/or “Recommended Methods for the Microbiological Examination of Foods”, copies of which are on file at the Health Department office and which may be purchased from American Public Health Association, Inc., 1015 Eighteenth Street N.W., Washington, D.C. 20000.

1-0.110 Roadside or Farmers Markets.

All such operations shall comply with the most recent Wisconsin Department of Agriculture, Trade and Consumer Protection policy guidelines governing such operations as well as all appropriate local and state regulations regarding sale of food.

1-0.120 Regulations, Rules, and Laws Adopted by Reference.

The applicable laws, rules, regulations set forth in s. 97, Stats., Chapters ATCP 75 of the Wisconsin Administrative Code and the amended version of the U.S. Food and Drug Administration (FDA) recommended model food code adopted by the DATCP and retitled the Wisconsin Food Code are incorporated in this regulation by reference and they shall be construed, read and interpreted as though fully set forth herein. The express provisions of this regulation shall control where more restrictive.

1-0.130 Appeals.

Appeals of Health Department orders shall be pursuant to Health Department policy adopted in conformance with the procedures for conducting appeals enumerated in s. 68, Stats. Copies of the appeal procedures shall be available at the Health Department.

1-0.140 Violation—Penalties.

Any person who violates or refuses to comply with any provisions of this regulation shall be subject to a citation under s. 1.24.010 of the City of Eau Claire Code of Ordinances and s. 1.50.010 of the Eau Claire County Code. Each day a violation exists or continues shall be considered a separate offense. Citations shall be issued in the City of Eau Claire under Chapter 1.24 of the City of Eau Claire Code of Ordinances and in Eau Claire County under Chapter 1.50 in the Eau Claire County Code and the issuance shall follow the procedures therein. Injunctive relief may be sought by the Health Department against continuing violations.

1-0.150 Effective Date.

All regulations and parts of regulations in conflict with this regulation are hereby repealed; and this regulation shall be in full force and effect on August 24th of 2016 after its adoption and publication as provided by law.

By order - Eau Claire City-County Board of Health

Dated this twenty-fourth day of August, 2016.

Effective on August 24th, 2016.