



## Legislation Details (With Text)

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**Title:** A substitute ordinance relating to reordering and revising food license regulations for the purposes of correcting errors, clarifying and standardizing language and eliminating obsolete provisions.

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171098  
SUBSTITUTE 2

### THE CHAIR

A substitute ordinance relating to reordering and revising food license regulations for the purposes of correcting errors, clarifying and standardizing language and eliminating obsolete provisions.

Chapter 68 rc  
81-55-2 am  
81-56.3-4 cr  
115-45-2-b rn  
115-45-2-b cr  
115-45-3 rn  
115-45-3 cr  
214-5 am

This ordinance:

1. Amends and creates various definitions for clarity and consistency with city and state code.
2. Repeals unused and outdated definitions.
3. Reorganizes general administrative provisions for clarity and consistency.
4. Reorganizes provisions relating to temporary food dealers.
5. Repeals provisions relating to seasonal food dealers, to be consistent with state law.

6. Creates a new subchapter dedicated to licensing procedure. Currently, licensing procedures are located throughout the chapter and do not sufficiently reference the standard licensing procedures set forth in chapter 85.
7. Removes the distinctions among food peddler license types. Currently, licenses are issued in three different types: pushed, pedaled or pulled vehicles; motorized vehicles; and carried containers.
8. Repeals provisions relating to signage and unique identifiers for food peddlers. A food peddler is still required to display a license.
9. Repeals a provision allowing soda water to be sold only in single-service bottles, cups or aluminum cans.
10. Provides that specifications for time-lapse security cameras and specifications for storage of security footage be approved by the chief of police. Current specifications are too specific and outdated.
11. Repeals provisions relating to the food license review board.
12. Expands the prohibition of the sale of food items from medians to include all items sold from vehicles.
13. Amends the times at which the sale of items from parked vehicles is prohibited to:
  - a. Between the hours of 3 a.m. and 6 a.m. Monday through Friday.
  - b. Between the hours of 3:30 a.m. and 6 a.m. Saturday and Sunday.

Previously, city-licensed food peddlers could not sell at these times unless obtaining a “night operation” sub-license. State-licensed food peddlers, however, could sell at these times.

The Mayor and Common Council of the City of Milwaukee do ordain as follows:

Part 1. Chapter 68 of the code is repealed and recreated to read:

## **CHAPTER 68 FOOD LICENSE REGULATIONS**

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### SUBCHAPTER 1 GENERAL PROVISIONS

#### **68-1. Definitions.** In this chapter:

- 1. ACTIVE MANAGERIAL CONTROL** means the purposeful incorporation of specific actions or procedures by business management into the operation of a business to attain control over foodborne illness risk factors. Active managerial control is a preventive rather than reactive approach to food safety through a continuous system of monitoring and verification.
- 2. ADULTERATED** means prepared, packaged or held under conditions in which contamination or injury to health may occur.
- 3. BASIC FOOD ITEMS** means milk and dairy products, bread products, prepared sandwiches, frozen entrees, refrigerated food and baby food.
- 4. CARRIED CONTAINER** means a container carried on foot which contains food for sale.
- 5. CERTIFICATE HOLDER** means a person who holds a valid, current certificate of food protection practices, commonly referred to as a certified food managers license, issued by the Wisconsin department of agriculture, trade and consumer protection under s. 97.33, Wis. Stats.
- 6. COMMISSIONER** means the commissioner of health or the commissioner's duly authorized representative.

- 7. COMMUNITY FOOD PROGRAM** means any site at which all food is provided free of cost to those in need or to organizations who serve persons in need, such as a free meal site or food pantry.
- 8. COMMUNITY GARDEN** shall have the meaning provided in s. 295-201-112.
- 9. COMPLIANCE ORDER** means an order which identifies mandatory interventions a food establishment must implement to achieve active managerial control of risk factors the department has identified as contributing to an establishment's history of noncompliance.
- 10. COMPLIANCE PLAN** means a written document that details specific actions or procedures by an operator to achieve active managerial control over foodborne illness risk factors. A compliance plan identifies how an operator will implement and maintain an effective food safety management system.
- 11. CONVENIENCE FOOD STORE** means a store that meets either of the following conditions:
- a. Contains less than 5,000 square feet of retail sales space, has, as its primary business, the sale of basic food items, and sells household products.
  - b. Is a filling station that sells basic food items and household products.
- 12. COTTAGE FOOD PRODUCT** means food products prepared and canned in a residential kitchen, sold to the public, and meeting the requirements of s. 97.29(2)(b)2, Wis. Stats.
- 13. CORE VIOLATION** means a failure to meet provisions of the Wisconsin Food Code that relate to general sanitation and overall maintenance of the equipment and the facilities. A core violation includes, but is not limited to, a failure to keep the floors, walls, and ceilings of an establishment clean, failure of food employees to wear hair restraints, or keeping a facility or equipment in disrepair.
- 14. DEPARTMENT** means the Milwaukee health department.
- 15. EXCESSIVE VIOLATIONS** shall include both the number and magnitude of violations identified during an inspection or investigation. An establishment shall be found to have excessive violations if any of the following conditions are met:
- a. The total number of violations identified during an inspection or investigation exceed the pre-determined limit for the establishment type.
  - b. An imminent health hazard or violation serious enough to require the issuance of an emergency order to suspend all or part of an operation or issue a notice of intent to close an establishment, regardless of the total number of violations identified during an inspection.
  - c. Failure to abide by a restriction placed upon an establishment as a condition of plan approval or part of a compliance order.

**16. FARM STAND** means a temporary or permanent structure used for the sale of fresh produce, herbs, flowers, plants, nuts, honey, cider, maple syrup, sorghum and cottage food products.

**17. FILLING STATION** shall have the meaning provided in s. 295-201-189.

**18. FOOD** means all articles of food, drink or condiment, including ice and water used for human consumption, whether simple, mixed or compound, and articles used or intended for use as ingredients in the composition or preparation thereof.

**19. FOOD DISTRIBUTOR** means an individual who transports food for sale to retail and wholesale establishments and does not perform any processing or repacking of food items.

**20. FOOD ESTABLISHMENT** shall have the meaning provided in ch. DHS 196 Appendix, Wis. Adm. Code, as amended. This term shall include any restaurant, food peddler, community food program, school, college, university, or temporary food stand.

**21. FOOD HANDLER** means a person engaged in the preparation, processing or service of food.

**22. FOOD MANUFACTURER** means anyone using raw ingredients to create a new food product for sale to retail or wholesale establishments.

**23. FOOD PEDDLER** means any person who sells food from a food peddler vehicle or from a carried container.

**24. FOOD PEDDLER VEHICLE** means any pushed, pedaled, pulled or motorized vehicle from which food is prepared or sold.

**25. FRESH PRODUCE** means unprocessed, unfrozen, whole, raw fruits and vegetables that have not been combined with other ingredients.

**26. HACCP PLAN** means a written document that specifies the formal procedures for following the Hazard Analysis Critical Control Point (HACCP) principles developed by The National Advisory Committee on Microbiological Criteria for Foods.

**27. HISTORY OF NONCOMPLIANCE** means having reached, through repeated enforcement, an administrative hearing or intent to close at any time in the preceding 24-month period. Any food establishment having a license suspended shall be considered as having a history of noncompliance for 36 months, beginning from the effective date of the suspension.

**28. HOUSEHOLD PRODUCTS** means cleaning products, paper products, baby products and pet food.

**29. ICE CREAM PEDDLER** means any person who physically operates an ice cream vending vehicle or any person who physically conducts ice cream vending from such a vehicle or from a carried container.

**30. ICE CREAM VENDING VEHICLE** means any pushed, pedaled, pulled or motorized vehicle from which ice cream or similar frozen confections are prepared or sold.

**31. IMMINENT HEALTH HAZARD** means a product, practice, circumstance, or event posing a significant threat or danger to health and creating a situation that requires immediate correction or cessation of operation to prevent injury or illness, as determined by the department.

**32. INSPECTION** means an evaluation of an establishment to assure that the equipment, facilities, and operational plan are code-compliant and adequate for the operation. This definition shall include the following:

- a. Pre-inspection, or a preoperational evaluation performed prior to approval to operate or implement a modification to an establishment's operational plan.
- b. Re-inspection, or an evaluation performed to determine if a food establishment has obtained compliance with findings or orders issued by the department.
- c. Routine inspection, or the thorough periodic examination of an operation to determine compliance with code provisions, laws and regulations.

**33. INSPECTION PLACARD** means a graded notice that describes the compliance status of a food establishment at the most recent inspection, re-inspection, or investigation.

**34. INVESTIGATION** means the process of assessing the credibility of a complaint made against an individual or food establishment related to licensure, sanitation or foodborne illness.

**35. MOTORIZED VEHICLE** means a vehicle which uses a mechanical engine to propel it.

**36. NONPROFIT ORGANIZATION** shall have the definition provided in s. 101-23.7-1-c.

**37. OCCASSIONAL SALE** means offered for sale for not more than 3 days in any 12-month period.

**38. PERSON** means any individual, firm or corporation.

**39. POTENTIALLY HAZARDOUS FOOD** shall have the definition provided in ch. ATCP 75, Appendix, Wis. Adm. Code.

**40. PRIORITY FOUNDATION ITEM** shall have the definition provided in ch. ATCP 75, Appendix, Wis. Adm. Code.

**41. PRIORITY FOUNDATION VIOLATION** means a violation of a priority foundation item.

**42. PRIORITY ITEM** shall have the definition provided in ch. ATCP 75, Appendix, Wis. Adm. Code.

**43. PRIORITY VIOLATION** means violation of a priority item.

**44. PROCESSING** means any manipulation of food, including assembling, grinding, cutting, mixing, baking, grilling, frying, coating, stuffing, packing, bottling, packaging, canning, extracting, fermenting, distilling, pickling, freezing, drying or smoking. Processing does not include the act of harvesting, washing, and packing of raw agricultural products.

**45. PRODUCTION KITCHEN** means a kitchen in a school in which food preparation activities beyond reheating, portioning and hot and cold holding are performed.

**46. PUSHED, PEDALED OR PULLED VEHICLE** means a vehicle which does not have a mechanical engine to propel it and is moved by human power.

**47. READY-TO-EAT FOOD** means restaurant-style food that is offered or prepared for sale and is ready for consumption, regardless of whether consumption is on the premises where the food is sold.

**48. RECURRING VIOLATION** means the same violation on any 3 inspections or investigations in the previous 24-month period. Inspections or investigations do not need to be consecutive.

**49. REINSPECTION** means an inspection to determine if a food establishment has obtained compliance with findings or orders issued by the department.

**50. REPEAT VIOLATION** means the same violation on 2 successive routine inspections.

**51. RISK CONTROL PLAN** means a written document developed by an establishment in cooperation with the department for the purpose of identifying and implementing controls to address a repeat or recurring violation.

**52. SATELLITE KITCHEN** means a kitchen in a school in which the food handling activities are limited to the reheating or holding of cooked food that has been delivered from a production kitchen, storage of cold ready-to-eat food items and portioning and serving of bulk products either delivered from a production kitchen or requiring no on-site preparation for service.

**53. SELF-INSPECTION** means the use of a department developed checklist on either a daily or weekly basis to monitor ongoing establishment compliance.

**54. SERIOUS FOOD-HANDLING SANITATION VIOLATION** means a violation that is the basis of a citation by the department and that involves a potentially hazardous food temperature violation, a food or equipment cross-contamination violation, a poor hygienic practice by a food handler violation or a confirmed case of food-borne illness.

**58. SHARED KITCHEN** means a commercial kitchen in which more than one food establishment or operation with different license holders is using the same commercial kitchen facilities for the storage or production of food or as an operational base, ware-washing facility, commissary for a food peddler, seasonal market, temporary event vendor, food manufacturer or caterer.

**56. TEMPORARY EVENT** means a single event held at a fixed location not lasting more than 14

consecutive days. This definition shall include a fair, festival, fundraiser for a nonprofit organization, carnival, circus, public exhibition, anniversary sale or occasional sale.

**57. VARIANCE** means a written document approved by the department that authorizes a modification or waiver of one or more regulatory requirements, provided that, in the opinion of the department, the modification will not result in a health hazard or nuisance.

**58. VENDING MACHINE** shall have the definition provided in s. ATPC 75.203(14), Wis. Adm. Code. A food display case, including a case with temperature control, which allows a user to access multiple items simultaneously is not considered a vending machine, even if the items are purchased through a self-checkout process.

**59. VETERAN** means any person who served in any way in the armed forces of the United States who has a 25% disability or more, or has a cardiac disability recognized by the U. S. department of veterans affairs.

**68-3. Adoption of State Code.** Except as otherwise provided in this chapter, the city of Milwaukee adopts chs. 97, 98 and 254, Wis. Stats., and chs. ATPC 74, 75, 80, and 88, Wis. Adm. Code, as amended, and where pertaining specifically to food establishments, chs. SPS 314, 316, and 361 to 365 Wis. Adm. Code, as amended, as part of this code. Adoption of ATPC 74 and 75, Wis Adm. Code, includes the adoption of the Wisconsin Food Code, which is an appendix to both chapters. Wherever the term "regulatory authority" is used in the Wisconsin Food Code it shall be held to mean the commissioner.

**68-5. Authority. 1. TO REGULATE.** The commissioner may adopt written rules and regulations as necessary for the enforcement of this chapter and shall file with the city clerk a certified copy of all such rules and regulations. A certified copy of the rules and regulations shall also be kept on file in the office of the commissioner. The rules and regulations shall have the same force and effect as the provisions of this section, and the penalty for violations thereof shall be the same as the penalty for violations of this chapter. In addition, unless otherwise provided in this chapter, the commissioner shall have the authority to enforce the provisions of ch. 214 pertaining specifically to fire prevention in food establishments.

**2. TO ENFORCE.** a. The commissioner shall enforce the regulations of this chapter and may issue orders to effect corrections of violations. The commissioner shall issue citations pursuant to the procedure set forth in s. 50-25, except orders to correct violations of ch. 214 shall be enforced as specified in ch. 200.

b. If the conditions imposed by any provision of the code of ordinances are either more restrictive or less restrictive than comparable conditions imposed by the Wisconsin Food Code, or any other law, statute, rule, resolution, ordinance, or regulation of any kind, the regulations which are more restrictive or which impose higher standards or requirements shall govern.

**3. TO INSPECT.** a. Except for an establishment exempted from inspection by state law, a representative of the department, after presentation of proper identification, shall be permitted to enter any food establishment at any reasonable time to make inspections in accordance with this chapter.



b. The department shall have authority to:

b-1. Conduct a reasonable examination of a licensee's business records, including:

b-1-a. Information related to establishing the business's total amount of gross food sales.

b-1-b. Materials used to demonstrate adherence to approved plans.

b-1-c. Materials required to inspect or assess the food purchased, received or used by an food establishment.

b-2. Examine a licensee's food, food preparation, storage and display areas.

b-3. Collect environmental and food samples for laboratory analysis. The department shall offer to pay fair market value for any samples taken, unless the sampling is conducted as a follow-up to a previous unsatisfactory test result.

b-4. Take photographs to document inspection or investigation findings.

c. No person may assault, restrain, threaten, intimidate, impede, interfere with or otherwise obstruct the commissioner in the performance of his or her duties.

d. No person may obstruct or provide false, deceptive or misleading information to the commissioner.

e. Violation of this subsection may result in corrective action, including revocation of a license.

**68-7. Food Plans. 1. PLANS REQUIRED.** a. General. All food establishments requiring licensure and all food establishments requiring registration under s. 68-21-2-c or d shall submit food operation plans and food facilities plans, on forms approved by the commissioner, to the department and the city clerk's office. Plans shall be retained by the commissioner for as long as the plans are in effect.

b. Food Operation Plans. Food operation plans shall be approved by the department before a license or registration is issued. Plans shall include sufficient operational detail to evaluate the potential risk of the proposed operation, as determined by the commissioner, including:

b-1. The size of the food operation, including anticipated gross sales.

b-2. The types of food sold, including any menus.

b-3. The methods of food preparation and sale.

c. Food Facilities Plans. Food facilities plans shall be approved by the department before any person may erect, construct, enlarge or alter a licensed or registered food establishment or otherwise make any substantial operational changes to a food establishment. Implementing a process specified in the Wisconsin Food Code as requiring a HACCP plan or requiring regulatory

approval prior to implementation shall be considered a substantial operational change requiring plan submission. Plans shall consist of drawings which clearly show and describe the nature and extent of the work proposed, including:

c-1. Floor plans, equipment plans and specifications.

c-2. Wall, floor and ceiling finishes.

c-3. Plans and specifications for food service kitchen ventilation.

c-4. Any other information necessary to demonstrate compliance with applicable health code provisions.

**2. EXCEPTION.** At the discretion of the commissioner, the requirement for plan submission may be waived for minor alterations to a food establishment.

**3. SHARED KITCHEN AGREEMENT.** A signed shared kitchen agreement shall be submitted with any application proposing to share space in a commercial kitchen operated by an agent other than the applicant.

**4. SITE EVALUATION.** a. A site evaluation may be conducted by the department upon written request of a food establishment.

b. A site evaluation shall include an assessment of the general suitability of a facility for use as a food establishment, and shall identify general modifications to the facility needed to meet the requirements of this chapter.

c. If a site evaluation has already been conducted for a particular location and is in conformance with all current requirements of this chapter, the evaluation shall be provided free of charge upon request of the operator.

d. A site evaluation shall provide general guidance rather than guidance based on a food establishment's planned operation and shall not replace the need to submit and obtain approval for a food establishment operation or facilities plan.

**5. VARIANCE.** a. For processes identified in the Wisconsin Food Code as requiring a variance for situations where strict adherence to any public health-related provision of this chapter, ch. 214, or any state regulations adopted in s. 68-3 is impractical for a particular food establishment, or at the commissioner's discretion, the commissioner may approve a variance for that food establishment if the commissioner is provided with satisfactory proof that the granting of the variance will not jeopardize public health, safety or welfare.

b. Application for a variance shall be submitted in writing to the commissioner on a form provided by the department. The application shall be accompanied by the documentation specified in par. e.

c. Upon receipt of a complete application, the commissioner shall review the request and grant or

deny the request in writing within 30 days. If a variance is granted, the commissioner shall maintain a copy of the variance in the food establishment's file.

d. No variance shall be issued until the applicant paid the application fee specified in s. 81-55.3.

e. Documentation supporting a proposed variance shall include the following information:

e-1. A description of the proposed variance from this chapter, ch. 214 or state regulations, citing relevant code provisions or regulations.

e-2. A description of how any potential public health hazards or nuisances will be addressed if the variance is granted.

e-3. If requested by the commissioner and relevant to the variance request, a hazard analysis and HACCP plan.

f. A variance shall be valid for 5 years from the date of issuance unless revoked for non-compliance. An operator wishing to extend a variance approval shall be required to submit a variance renewal request. Failure to file a request for variance renewal prior to expiration shall result in any subsequent application being considered a new application.

g. Failure by a food establishment to adhere to the terms of a variance approval shall be grounds for corrective action, including revocation of the variance approval.

**6. FEES.** Plan examination and modification fees , site evaluation fees, and inspection fees shall be submitted and paid as required in ss. 81-55 and 81-55.3. Fees shall be nonrefundable and include the cost of all inspections required for a plan, if applicable.

**68-9. Inspection and Investigation. 1. PRE-INSPECTION.** a. New Establishment. Every food establishment shall be inspected by the department prior to issuance of a new license. License issuance or renewal may be withheld pending inspection, investigation, re-inspection, and plan verification or validation.

b. Existing Establishment. Inspections shall be required for any licensed food establishment wishing to make changes to the physical premises. Additional inspections may be required for any significant changes to a food plan or operation, as determined by the commissioner.

**2. ROUTINE INSPECTION.** a. Food Dealer. Within 60 days of license issuance, a food dealer shall be inspected. The department shall routinely inspect all licensed food dealers at least once every 12 months.

b. Food Peddler. Within 60 days of license issuance, all vehicles, carts or carried containers of a licensed food peddler shall be inspected. A renewal food peddler license shall not be issued until an inspection is performed and any priority and priority foundation violations have been corrected.

c. Temporary Food Dealer. The department shall inspect each temporary food dealer

establishment licensed under this chapter.

d. Wisconsin Department of Agriculture, Trade and Consumer Protection License Inspections. The department is authorized by the state to inspect all state-licensed mobile restaurants and temporary events.

**3. REINSPECTION.** a. General. The department shall, within 30 days, reinspect every violation found during an inspection or a compliant investigation, regardless of a licensee's ability to correct a violation during the inspection, to ensure the violation is corrected or remains corrected.

b. The department shall make as many additional reinspections as are necessary for the enforcement of this chapter.

**4. COMPLAINT INVESTIGATION.** The department shall investigate all complaints alleging violations of licensing, sanitation, foodborne illness or food handling. If the department identifies violations during a complaint investigation and orders are issued, the orders shall be subject to the same reinspection requirements and fee schedule as those identified during a routine inspection.

**5. REINSTATEMENT INSPECTION.** a. Requirement. Whenever a food establishment is required by the department to cease or suspend any part of its food sales or processing, the establishment shall not resume food operations until an inspection determines that the conditions responsible for the requirement to cease or suspend food operations no longer exist.

b. Correction. Upon notification by the food establishment that the conditions responsible for the requirement to cease or suspend food operations have been corrected, the department shall, within two business days, perform an inspection to determine if the food establishment may resume operation.

c. Reinstatement. Upon determination that the basis for the requirement to cease or suspend food operations has been addressed, the department shall provide the food establishment written notice that it may resume operation.

d. Notification. The Wisconsin department of agriculture, trade and consumer protection, the city clerk's office and the police department shall be notified of any food establishment ordered to cease or suspend operation and when an order is lifted. Electronic notification shall be considered as meeting the notification requirement.

**6. INSPECTION PLACARDS.** a. Issuance. Upon completion of an inspection or investigation, the department shall issue an inspection placard to the food establishment.

b. Design. The commissioner shall design the placard, which shall show the name and address of the food establishment, the date of the inspection or investigation, the name of the licensee, and the results of the inspection or investigation.

c. Posting Required. It shall be unlawful to operate a food establishment unless an inspection placard is posted in accordance with this subsection. Each food establishment shall post only the

most recent inspection placard.

d. Location. A food placard shall be posted in a conspicuous place on the food establishment premises that is readily and easily visible to the public. To qualify as a conspicuous place, the placard shall be:

d-1. Not lower than 4 feet nor higher than 6 feet from the ground or floor.

d-2. Within 5 feet of the front door or direct entrance.

d-3. Unobscured and on the establishment's front window, door, or exterior wall.

d-4. In a location approved by the health inspector to ensure proper notice to the general public and to patrons of the food establishment.

e. Placard to Remain Intact. An inspection placard shall not be defaced, marred, camouflaged, hidden or removed. The operator shall report any stolen placard to the police department and provide documentation of the police report to the health department for a replacement placard.

f. Violation; Penalties. f-1. An operator that violates any of the provisions of this subsection may be required to appear before the licensing committee.

f-2. The department shall order immediate closure of a food establishment that has failed to meet the criteria established by the department. The license issued to the food establishment shall be suspended, and a placard serving as notice of closure shall be posted until the license is reinstated.

**7. REPORTS.** a. Issuance. When an inspection or investigation is made by the department of a food establishment, the findings shall be recorded in a form approved by the commissioner. A copy of the inspection or investigation report shall be provided to the food establishment, in a form approved by the commissioner.

b. Receipt. b-1. An inspector shall request a signed acknowledgment of receipt of an inspection report when the report is issued at a food establishment.

b-2. The signed acknowledgement shall not constitute an agreement with the findings of the report.

b-3. Refusal to sign an acknowledgment of receipt shall not affect the license holder's obligation to correct the violations noted in the inspection report within the time frames specified.

b-4. Refusal to sign the acknowledgment of receipt shall be noted on the inspection report in place of the signature.

b-5. Documentation of delivery of the report shall be retained by the department and shall be considered evidence of issuance.

c. Reports are Public Record. Inspection reports shall be public record and posted on the

internet.

**8. APPEAL OF INSPECTION.** a. Request for Appeal. If a food establishment disagrees with an inspection report, the food establishment may submit a written request for an appeal within 5 business days of the issuance of the report. The request for an appeal shall include:

a-1. The date of the inspection.

a-2. The violation being appealed.

a-3. The reason the licensee believes a provision of the code does not apply or was inappropriately applied.

b. Appeal Deadline. Failure to submit a written request for appeal within 5 business days of the issuance of an inspection report shall be considered grounds to deny an appeal unless a request for an extension is received prior to the 5-business day period elapsing. Failure to submit a written request to hold posting of an inspection report or placard with a written appeal of an inspection report shall result in the report or placard being posted.

c. Appeal Hearing and Determination. An appeal shall be heard by the commissioner within 10 business days following receipt of a written appeal request. The inspection report or inspection placard shall be updated based on the outcome of the appeal and issued to the food establishment.

**9. FEES.** The department shall charge the health code inspection fees provided in s. 60-70.

**68-11. Food Safety Advisory Committee. 1. ESTABLISHMENT.** The commissioner shall appoint and maintain a food safety advisory committee.

**2. PURPOSE.** The food safety advisory committee shall assist in developing policies and regulations that enhance food safety and create an environment that is supportive for the continued growth of the food industry. The committee shall provide guidance to the commissioner on licensing, inspection fees, inspection criteria, grading of food establishments, and compliance and enforcement activities for the department.

**3. COMPOSITION.** This committee shall be comprised of representatives from restaurants, retail food establishments, peddlers, temporary event vendors, food manufacturers, consumers and academia.

**68-13. Annual Report Required.** The commissioner shall, by April 1 of each year, submit to the common council and the mayor a written food safety report. The report shall include the following information:

**1.** A summary of activities in the previous year undertaken by the department to improve the safety of food being produced or sold within the city.

**2.** An evaluation of the inspection program's effectiveness using the quality assurance criteria

defined by the U. S. Food and Drug Administration Voluntary National Retail Food Regulatory Program Standards.

3. Inspection and investigation findings for the previous 3-year period, including the frequency of foodborne illness risk factor violations by establishment type and aldermanic district.

4. The frequency of occurrence of foodborne illness reported to the department and a summary of any outbreak investigations performed.

## SUBCHAPTER 2 LICENSING PROCEDURES

**68-21. Licensure of Food Establishments; General. 1. LICENSE REQUIRED.** Unless otherwise provided in this chapter, no person may carry on the business of a food establishment without first having obtained a license under this chapter.

**2. EXCEPTIONS.** A license shall not be required of any of the following:

a. A person selling only bottled or canned non-alcoholic drinks that do not require refrigeration.

b. A stand offering homemade beverages or food items not requiring heating or refrigeration, provided the stand is:

b-1. Not connected with any temporary event.

b-2. Located on private property in a residential area.

b-3. Operated by a child under the age of 14.

c. A community food program, provided all food is provided free of cost to persons in need or organizations serving persons in need.

d. Any primary or secondary school meal program, whether public or private, provided all of the following conditions are met:

d-1. Food service is limited to students who attend the school or to children as part of a free summer meal program.

d-2. All food preparation and service is performed by staff directly employed by the school.

d-3. The school registers annually with the department at least 10 days prior to operating or prior to the first day of the school year, and pays the registration and inspection fees specified in s. 81-55.5.

d-4. Prior to initial operation, the program submits plans in compliance with s. 68-7, and

undergoes inspection prior to operating.

d-5. The program undergoes 2 inspections per school year. Inspections or investigations where significant noncompliance is found shall be subject to additional fees, as specified in s. 60-70.

e. A food manufacturer that derives 25% or more of its gross sales from wholesale trade, has obtained a food processing plant license from the state, and does not serve meals to the public.

f. A food distributor that derives 25% or more of its gross sales from wholesale trade, has obtained a food warehouse license from the state, and does not serve meals to the public.

g. A retail food establishment exempt from licensure under s. 97.30(2)(b), Wis. Stats., or s. ATCP 75.03(9), Wis. Adm. Code, including:

g-1. A retail food establishment selling only packaged foods or fresh fruits and vegetables, provided the establishment does not sell potentially hazardous food and does not engage in food processing.

g-2. A temporary retail food establishment operated by a religious, charitable or nonprofit organization for no more than 12 days in any license year.

g-3. A food peddler with a food peddler license who operates on private property as part of a festival as defined in s. 108-1-2.5, street festival as defined in s. 95-1-2, or special event as defined in s. 105-55.5, provided the food operation remains unchanged from that conducted routinely under the operator's existing food peddler license.

**3. APPLICATION.** License application forms shall be obtained from the city clerk and require the information specified in s. 85-12.

**4. FINGERPRINTING.** a. All applicants for food dealer and temporary food dealer licenses shall be exempt from the fingerprinting requirement provided in s. 85-21-1.

b. All applicants for food peddler licenses and ice cream peddler licenses shall be fingerprinted, as provided in s. 85-21-1.

**5. CHANGES TO BE REPORTED.** See ss. 85-35 to 85-39 for provisions relating to changes to applications and plans of operation. In addition:

a. Changes in the food facility or operational plan submitted as part of a supplemental application shall be submitted in accordance with s. 68-7.

b. A licensee shall promptly notify the city clerk in writing of his or her intention to cease operations.

**6. LICENSE FEE.** See ch. 81 for the required license fee.

**7. DISQUALIFICATION.** Whenever any application is denied, or a license is revoked,



surrendered or not renewed, the procedures provided in ss. 85-13, 85-15 and 85-17 shall apply.

**8. INVESTIGATION.** In addition to the requirements of s. 85-21-2, if applicable:

a. Each application for a new food dealer license shall be referred to the commissioner and the department of neighborhood services for inspection.

b. Each application for a new food peddler license shall be referred to the commissioner for inspection.

c. Each application for a temporary food dealer license shall be referred to the commissioner for inspection.

**9. ISSUANCE.** See s. 85-12.5 for provisions relating to the issuance of a license.

**10. POSTING.** Each license shall be posted in a conspicuous place on the food establishment.

**11. TRANSFER.** A license may not be transferred from one person or entity to another, from one premises to another, or from one food peddler vehicle, cart or carried container to another, except:

a. An individual may transfer a license to an immediate family member, as defined in s. 97.608(4)(a)2, Wis. Stats., if the individual is transferring operation of a restaurant, as defined in s. 254.61(5), Wis. Stats.

b. A food peddler changing operational bases may amend a food peddler license to reflect the new operational base.

**12. RENEWAL.** Application for renewal of a license shall be made to the city clerk in accordance with the provisions of s. 85-26. The city clerk shall refer the application to the chief of police. If the applicant still meets the licensing qualifications, the license shall be issued unless a written objection has been filed under s. 85-3. If there is objection to renewal of the license, the procedure for considering the renewal application shall be as specified in ss. 85-3 to 85-5.

**13. SUSPENSION AND REVOCATION.** Any license issued under this chapter may be suspended or revoked for cause by the common council after notice to the licensee and a hearing. Notice and hearing on the revocation shall be conducted in accordance with ss. 85-3 to 85-5.

**68-23. Food Dealers. 1. LICENSE REQUIRED.** Unless otherwise provided in this chapter, no person may manufacture, offer for sale, store, distribute or sell food within the city without first having obtained a food dealer license.

**2. PROCEDURE FOR ISSUING NEW LICENSE.** a. The city clerk shall issue a license to each applicant for a new license who meets all the requirements of this section and has paid to the city treasurer the fee specified in s. 81-55, unless there is an objection by the commissioner, the department of neighborhood services, the common council member in whose district the food

establishment would be located, or any person affected by the operation or proposed operation of the applicant.

b. If the common council member objects to an application, the applicant may request in writing an appeal before the licensing committee. An appeal shall be requested no more than 10 working days after the date on which the applicant was notified of the recommendation of the common council member. Appeals shall be subject to common council review and approval in accordance with the provisions of ss. 85-2.7 and 85-5.

**3. TEMPORARY OPERATION.** a. No food establishment may operate at any temporary site, location, stand or event without having obtained a temporary food dealers license.

b. A temporary food dealers license shall authorize a food establishment to prepare, process, serve or sell food at temporary events for one year from the date of issuance. This authority shall be contingent upon the license holder also obtaining any other special privileges or licenses required for the conduct of a temporary food dealer.

c. A food dealer seeking a temporary change of plan to a licensed premises shall comply with s. 85-39.

d. The following license holders shall be exempt from the requirement provided in par. a, provided the activities of the food establishment remain unchanged from those allowed under the existing license:

d-1. Food peddlers operating on private property at a festival grounds as defined in s. 295-201-187, a street festival as defined in s. 95-1-1-I, or a special event as defined in s. 105-55.5.

d-2. Mobile or temporary retail food establishments licensed under s. ATCP 75.03, Wis. Stats.

d-3. Mobile restaurants licensed under s. ATCP 75.104, Wis. Stats.

e. The procedures for issuance of a temporary food dealers license shall be as set forth in sub. 2. An individual who has applied for, but has not been issued, a food dealer license shall not be issued a temporary food dealer license at the location where the food dealer license application is pending, unless the common council member in whose district the food dealer license is pending has approved the temporary food dealer license application.

f. Failure to pay for and obtain any license necessary to operate a temporary event at least one business day prior to the event occurring may result in the applicant for a temporary food dealers license not being allowed to participate in the event.

**68-25. Food Peddlers. 1. FINDINGS.** The common council finds that regulation of the health conditions of food sold by food peddlers is necessary for the prevention of disease and sickness within Milwaukee, and that such regulation is vital to the health, safety and welfare of residents of and visitors to the city.

**2. LICENSE REQUIRED.** No person shall engage in the sale of any food from any vehicle, cart

or carried container on a public street without first obtaining a food peddler license issued under this chapter or a mobile food license issued by the state of Wisconsin for the food being sold. A separate license shall be required for each vehicle, cart or carried container from which food is sold.

**3. APPLICATION.** In addition to the information required under s. 85-12, application for a food peddler license shall contain the following:

- a. A description of the locations where the applicant intends to sell food.
- b. The hours of the day during which the applicant intends to sell food.
- c. A physical description of the unit proposed to be licensed, including, if a motor vehicle, the license plate number or vehicle identification number.
- d. A menu of the food items to be sold, along with information on the food processing to be performed.
- e. If using a shared kitchen as an operational base, a signed copy of the shared kitchen agreement. If the operational base is outside the city, a copy of the food license and the most recent inspection report.
- f. Whether the applicant is a veteran.

**4. PROCEDURE FOR ISSUING NEW OR RENEWAL LICENSE.** a. An application for food a peddler permit shall be referred to the commissioner, who shall cause an investigation to be made. If the commissioner approves the application, the city clerk shall issue the license, provided the applicant meets all the requirements of this section and has paid to the city treasurer the applicable fees.

b. If the commissioner objects to an application, the applicant may request in writing an appeal before the licensing committee. An appeal shall be requested no more than 10 working days after the date on which the applicant was notified of the objection of the commissioner. An appeal shall be subject to common council review and approval in accordance with the provisions of ss. 85-2.7 and 85-5.

**68-27. Ice Cream Peddlers. 1. FINDINGS.** The common council finds that an individual involved in the business of ice cream peddling comes into frequent and substantial contact with children. Additionally, an individual peddling ice cream from an ice cream vending vehicle makes frequent stops, deals with customers congregating near the path of the vehicle, and is responsible for driving safely when operating a motor vehicle. Therefore, the common council finds it necessary for the safety and welfare of the public to license individuals peddling ice cream.

**2. LICENSE REQUIRED.** No person shall operate or act as an ice cream peddler within the city without first having obtained an ice cream peddler license. The ice cream peddler license required by this section shall be in addition to the food peddler license required in s. 68-41. No ice cream peddler license shall be required if all retail sales are conducted at a temporary event,

as defined in s. 68-1-56, provided that average daily attendance is estimated at 5,000 persons or more.

**3. APPLICATION.** In addition to the information required under s. 85-12, application for an ice cream peddler license shall contain one recent photograph suitable in size and form, as determined by the city clerk, for inclusion on the applicant's official license.

**4. PROCEDURE FOR ISSUING NEW OR RENEWAL LICENSE.** a. A food peddler application received by the city clerk shall be forwarded to the chief of police for review and criminal background check.

b. Upon review and report of the chief of police and subject to the requirements of s. 111.335, Wis. Stats., the license shall be granted to an applicant who has not been required to register as a sex offender pursuant to s. 301.45, Wis. Stats., or who has not been convicted of violating s. 940.22(2), 940.225(1), (2) or (3), 944.06, 948.02(1) or (2), 948.025, 948.05, 948.055, 948.06, 948.07, 948.075, 948.08, 948.095, 948.11(2)(a) or (am), 948.12, 948.13, or 948.30, or of s. 940.30 or 940.31, Wis. Stats., if the victim was a minor, or who has not been convicted of operating a vehicle under the influence of an intoxicant or other drug pursuant to s. 346.63, Wis. Stats., in the past 3 years. These provisions shall also apply to the granting of this license to any applicant who has been convicted pursuant to similar statutes in other states or foreign jurisdictions.

c. In addition to the provisions of par. b, the chief of police may object to granting of the license based on the applicant's criminal history, including whether the applicant has been charged with or convicted of any felony, misdemeanor, municipal offense or other offense, the circumstances of which substantially relate to the licensed activity.

d. If the chief of police or another interested party objects to an application, the applicant may request in writing an appeal before the licensing committee. An appeal shall be requested no more than 10 working days after the date on which the applicant was notified of the objection of the chief of police. An appeal shall be subject to common council review and approval in accordance with the provisions of ss. 85-2.7 and 85-5.

e. If the chief of police approves an application, the city clerk shall issue the license, provided the applicant meets all the requirements of this section and has paid to the city treasurer the applicable fees.

### SUBCHAPTER 3 OPERATING REGULATIONS

**68-31. Sanitation. 1. General.** No person shall manufacture, prepare for sale, offer, expose for sale or sell food unless it is securely protected from filth, flies, dust, contamination or other unclean, unhealthful or unsanitary conditions.

**2. Food Wrappers.** No person shall give away, sell or offer for sale any food which is pronounced by the commissioner liable to contamination, putrefaction or other types of spoilage, by using

wrappers, covers, or containers, or including in the package or wrapping any token or other symbol which may be returned for premiums, or anything of other value.

**3. Premiums or Tokens.** Whenever the condition of sale provides that the token, symbol, or other item, which is to be returned for anything of value, can be mailed only to an office or other location where food is not prepared, processed, stored or offered for sale, and where the premium or other item of value is not an article of primary interest to children, the use of such tokens, symbols or other items shall not be in violation of the provisions of this section.

**4. Common Drinking Cups.** The furnishing or use of a common drinking cup or receptacle for drinking water in any public place or in any railroad station is prohibited. Any person who furnishes, installs or offers for public use such common drinking cup or receptacle for drinking water in any public place, or in any public institution, hotel, theater, factory, department store, public hall or public school, or in any railroad station in the city, shall be punishable by a fine of not less than \$5 nor more than \$25.

**68-33. Security in Certain Convenience Food Stores. 1. REGULATIONS.** Unless otherwise provided in this section, every convenience food store shall:

- a. Locate the cash register so that the employee and customer are both visible from the storefront, provided that this location can be accomplished without incurring additional cost that would not otherwise be ordinarily incurred.
- b. Keep glass entrance and exit doors clear of any signs or advertisements, with the exception of a sign which states that the cash register contains \$50 or less and that the safe is not accessible to employees.
- c. Maintain a safe conforming to the standards of the chief of police.
- d. Provide lighting for the store's parking area during all hours of darkness when employees or customers are on the premises at a minimum average of 2-foot candles per square foot, unless the store is not open for business after sunset and before sunrise.
- e. Install at least 2 high resolution surveillance security cameras which can produce reproducible digital color images from a digital video recorder. Each camera shall display a date and time stamp on each image, and produce retrievable images suitable for permanent police records. Digital video recording equipment shall be maintained in proper working order and operated at all times during store operating hours. In addition:
  - e-1. At least one camera shall provide an overall view of the counter and register area, and at least one camera shall be positioned to provide a clear, identifiable, full-frame image of the face of each person entering and leaving the store. Camera views shall not be obstructed by store fixtures or displays.
  - e-2. If a time-lapse digital video recorder is operated, recording speed shall be approved by the chief of police.

e-3. All digital video records shall be stored in a manner provided by the police department, maintained in good viewing order for 30 days after recording, and made available upon request to the licensing committee and chief of police.

f. Have customer entrance and customer exit doors that are made of glass or other transparent material, except that a store that does not have such doors on August 17, 1994 shall not be required to install such doors until the holder of the store's food dealer license changes.

**2. EXEMPTIONS.** a. The requirements of this section do not apply to a convenience food store that conforms to either of the following descriptions:

a-1. The store is located in an enclosed shopping structure, enclosed commercial building or hospital. A convenience food store is not in an enclosed structure or building if a customer can enter it directly from the outside.

a-2. The store physically separates employees from customers with a solid partition that bars a person from entering the employee area from the customer area, has a secure lock on the employee side of any door between the employee area and the customer area, and conducts all transactions through a service window or similar arrangement.

b. At the discretion of the chief of police, a convenience store may be exempted from any or all of the regulations specified in sub. 1. The owner or operator of a convenience food store that seeks an exemption under this paragraph shall submit to the police department a written exemption request that includes the specific reasons that the applicant believes the exemption should be granted. The chief of police may grant an exemption to a requestor if the chief of police finds that the security provisions at the location are adequate.

**3. ROBBERY PREVENTION TRAINING.** All owners and employees of a convenience food store shall be required to complete a training course in robbery prevention approved of or provided by the police department within 120 days of ownership or employment.

**68-35. Shared Kitchens. 1. REVIEW AND APPROVAL.** a. Any time one or more food establishments propose to operate out of the same commercial kitchen, the primary license holder shall notify the department of his or her intent to share kitchen space.

b. If not previously approved by the department, the addition of other users sharing commercial kitchen space shall be considered a significant operational change requiring plan review and approval as specified in s. 68-7.

c. The commissioner may prohibit use of a commercial kitchen as a shared kitchen based on either the size of the kitchen or the compliance history of the food establishment.

d. Unless operated by the same licensee, each shared kitchen user shall obtain his or her own food dealer license.

**2. OPERATOR DUTIES.** The primary license holder shall: a. Ensure the physical facilities and all equipment provided by the primary license holder in the shared kitchen are in compliance with all

local, state and federal regulations, including compliance with all health and sanitation requirements.

b. Ensure that any person engaged in food preparation or storage within the facility is properly licensed. Allowing an unlicensed user to prepare food for sale shall be considered a violation and grounds for corrective action, including revocation of the food dealer license.

c. Maintain records on site regarding the use of the shared kitchen for a period of 24 months from the date of entry and make the records immediately available upon request by the department at the time of inspection or investigation. Failure to maintain records or to provide required records to the department shall be grounds for the department to rescind approval to permit shared use of the kitchen. Each of the following records shall be maintained and made available by the primary license holder:

c-1. A list of all shared kitchen users and current contact information.

c-2. For each shared kitchen user, a copy of the following documents:

c-2-a. A menu approved by the department.

c-2-b. A valid food dealer license.

c-2-c. All agreements entered into by the primary license holder with each shared kitchen user, including the effective date, and if applicable, the termination date of each agreement.

c-2-d. If the shared kitchen user is processing or storing potentially hazardous foods, a valid food service manager certificate.

c-3. A weekly or monthly schedule of the proposed dates and times when each shared kitchen user, including the primary license holder, intends to use the shared kitchen.

c-4. A shared kitchen user sign-in log indicating the dates and times each shared kitchen user arrived and departed.

d. Notify the department if a shared kitchen user discontinues, terminates or otherwise withdraws from any contract or agreement, or if a shared kitchen user repeatedly fails to use the space during his or her scheduled time without contacting the primary license holder.

e. Provide access for inspection by the department to all locked equipment located in any storage area maintained in the shared kitchen.

f. Ensure that the number of shared kitchen users operating in the shared kitchen does not pose a health or safety risk, and remains within the total number of users and total number of simultaneous users for which the establishment is approved.

**3. USER DUTIES.** A shared kitchen user issued a secondary or subsequent license for a food establishment shall:

- a. Conform to the requirements provided in s. 68-7.
- b. Comply with all food safety requirements and regulations set forth in this chapter. Primary license holders and shared kitchen users shall be jointly and individually liable for any equipment or facility violations.
- c. Ensure a certified food manager is on site at all times that potentially hazardous food is being prepared, tasted, handled, packaged, prepared for storage, served or otherwise used, and make available, upon request, a food manager certificate.
- d. Have a copy of a city-issued license posted on site at all times when the shared kitchen user is using the shared kitchen.

e. Keep and maintain on file each of the following records:

e-1. A list identifying the dates and times the user uses the shared kitchen.

e-2. A copy of the written statement signed by the primary license holder of the shared kitchen stating that the shared kitchen user has been authorized to rent, lease or use the shared kitchen. The statement shall include the start date and end date, if any, to which the authorization applies.

**4. USER RECORDS.** The records required under sub. 3-e shall be maintained by the shared kitchen user for a period of at least 24 months after the date of entry of a record. Upon a request by any authorized city official, the shared kitchen user shall make these records immediately available for inspection by an authorized city official.

**68-37. Food Peddlers. 1. Sales on the Public Right-of-Way Only.** All sales shall be made on the public right-of-way directly from pushed, pedaled, pulled or motorized vehicles or carried containers unless one of the following exemptions is met:

- a. A food peddler is selling food at the invitation of a business owner, provided all sales are made only to employees of the business and not to the general public.
- b. A food peddler is issued a special occupancy permit by the department of neighborhood services allowing food sales by the food peddler on a private property.

**2. Operating Restrictions.** A food peddler shall comply with all regulations provided under ch. 101 and ss.105-56 and 115-45, as enforced by the commissioner of public works or the chief of police. Repeat violation of these restrictions shall be considered grounds for suspension, revocation or nonrenewal of a food peddler license.

**3. Keeping of Perishable Food.** All perishable foods shall be kept in one of the following ways:

- a. Frozen.
- b. Refrigerated at 41° F or lower by means of mechanical refrigeration.



c. Heated and maintained at 135° F or higher.

**4. Scale Required.** A food peddler shall provide a scale for items that are sold by weight and weighed at the time of sale. The scale shall be approved and licensed under ss. 81-135 and 82-14.

**5. Noise Restricted.** A food peddler shall comply with the noise nuisance regulations of s. 80-65-4 and all other noise regulations of this code.

**6. Compliance with Police Department.** A food peddler shall comply with any request from the police department to relocate for public health, safety or welfare reasons.

**7. Fire Extinguisher.** A food peddler doing any cooking or heating, whether that heating uses a combustible gas, electric heating device or an open flame, shall have and maintain a fire extinguisher appropriate for the operation.

**8. Base of Operation.** Every food peddler shall obtain a mobile base license. Unless operated at a licensed temporary event where facilities are provided on site or granted a variance by the department, each food peddler vehicle, cart or carried container shall return to its operational base every 24 hours for food, water and supplies, or for cleaning and servicing operations, including the emptying and cleaning of waste containers. A log shall be maintained indicating the dates and times the food peddler vehicle, cart or carried container was last serviced at a base of operation. Failure to use or maintain an operational base or failure to maintain an updated service base log shall be considered grounds for suspension or revocation of the food peddler license.

**9. Blocking Pedestrian Access to Doorways Prohibited.** Blocking or restricting any individual's access to a business or residential doorway shall be prohibited.

**10. Blocking Sidewalk Prohibited.** Occupying any sidewalk so as not to permit any pedestrian at any time to have a minimum 5-foot clearance shall be prohibited.

**11. Door-to-Door Sales Prohibited.** Selling food door-to-door shall be prohibited.

**12. Horn Use Prohibited.** Use of any type of horn by a food peddler with a carried container or a pushed, pedaled or pulled vehicle shall be prohibited.

**13. Carried Container And Vehicle Design And Construction Regulations.** a. **Self-Contained Food Peddler Vehicles.** Each food peddler vehicle shall be self-contained so that all extensions, counter space, foldouts, awnings, or other contrivances for the preparation and sale of food shall be attached to the main body of the food peddler vehicle or cart and move along with it.

b. **Size Limitations.** Each food peddler vehicle shall conform to the following size limits:

b-1. A motorized food peddler vehicle shall be 25 feet or less in length.

b-2. A pushed, pedaled or pulled food peddler vehicle shall conform to the following size limits:

b-2-a. Width including wheels shall be 4 feet or less.

b-2-b. Length shall be 9 feet or less, of which not more than 6 feet of length shall be used for the display, storage, or preparation of items for sale.

b-2-c. Height shall be 6 and one-half feet or less, excluding awnings or umbrellas.

c. Generator Noise. A food peddler vehicle using a generator shall produce not more than an average of 80 decibels of sound, as measured 4 feet from the generator.

**68-39. Peddling of Food by Minors. 1. FINDINGS.** The common council finds that persons under 12 years of age are susceptible to injury and other harm when engaged in street trades, particularly when engaged in activities involving the sale or distribution of food and beverages, including water, on highways, streets and alleys of the city. The common council further finds that regulation of food peddling by persons under 12 years of age is necessary for the health, safety and welfare of residents and visitors to the city.

**2. PROHIBITED.** In accordance with s. 103.23(1), Wis. Stats., no person under 12 years of age shall be employed or permitted to work at any time in any street trade, as defined in s. 103.21(6) Wis. Stats., to include the selling, offering for sale, soliciting for, collecting for, displaying or distributing any articles or goods on any street or public place.

#### SUBCHAPTER 4 COMPLIANCE AND ENFORCEMENT

**68-41. Notices and Orders. 1. ORDER TO CORRECT.** a. If, upon inspection or investigation, the department finds that any food establishment is conducted or managed in violation of any of the ordinances or regulations of the city, or the laws of the state of Wisconsin, it shall be the duty of the department to serve a written order to an establishment operator, licensee, licensee's agent, or employee in charge of the premises, stand or food peddler vehicle, cart or carried container, notifying the operator of the violation.

b. A violation shall be recorded on an inspection or investigation form. For each violation identified, the written order shall include:

b-1. The code section violated.

b-2. A brief description of the violation.

b-3. The corrective action the food establishment needs to make.

b-4. A specific date or time by which the violation shall be corrected.

c. The maximum time interval for correction of a priority or priority foundation violation shall be 72 hours.

d. The maximum time interval for correction of a core violation shall be 90 days. The time limit may be extended upon mutual agreement of the department and the food establishment, provided no health hazard exists or will result from allowing an extended schedule for compliance. The extended time limit shall be no longer than the interval until the operator's next routine inspection.

e. An inspection report shall indicate whether an operator was able to correct any violation at the time of the inspection and whether any orders relate to repeat violations.

f. An order may be appealed in writing to the commissioner within 5 days of the inspection or investigation.

**2. ORDER TO OBTAIN ACCESS.** If a food establishment or a suspected food establishment denies the department access to the establishment to enforce the provisions of this chapter, the agent of the department shall present to the person in charge his or her official credential, explain the authority upon which access is requested, and make a final request for access. If the person in charge continues to refuse access, the department shall issue an order to obtain access to the food establishment, or suspected food establishment. Failure to comply with the order to obtain access shall result in either an emergency order to suspend or an order to cease food operations. Repeated failure by a licensed establishment to provide the department access to inspect shall be grounds for citation, suspension or revocation.

**3. EMERGENCY ORDER TO SUSPEND.** a. The department may summarily suspend any food license without prior warning, notice or hearing if it determines, through investigation, inspection, or examination of employees, food, records or other means as specified in this chapter or under the Wisconsin Food Code, that an imminent health hazard exists.

b. An emergency order to suspend shall state:

b-1. That the food license is immediately suspended and that all food operations shall immediately cease.

b-2. The reason for summary suspension, with reference to the provision of the city code or state statute in violation.

b-3. The conditions that must be met before the emergency order is removed.

b-4. The process for requesting a reinstatement inspection to certify that the reason for the suspension has been eliminated.

b-5. That a fee, as specified in s. 60-70, shall be assessed for the inspection or investigation that identified the hazard, and that a reinstatement inspection fee shall be charged for each inspection performed to assess hazard elimination.

c. An emergency order to suspend shall be valid for up to 14 days. The emergency order may be extended for an additional 14 days, provided the food establishment is offered the opportunity for a license review hearing before the commissioner. The license review hearing may be waived upon mutual agreement of the department and the food establishment. If after 28 days the hazard remains, the emergency order shall be rescinded and reissued as a notice of suspension.

d. The commissioner shall promptly notify the city clerk and police department when any suspension is placed or when a suspension is removed.

e. Any person to whom an emergency order to suspend is issued shall immediately comply with the order, but upon written petition to the department shall be afforded a hearing before the commissioner within 5 working days of order issuance.

f. Failure to allow an inspector immediate access to the premises to determine whether such grounds exist shall be grounds for suspension. The commissioner shall promptly notify the city clerk of this failure.

**4. ORDER TO CEASE FOOD OPERATIONS.** a. The commissioner may order, without prior warning, notice or hearing, a food establishment exempt from licensure or an unlicensed food establishment to cease its operations if it is determined through investigation, inspection or examination of employees, food, records or other means as specified in this chapter or under the Wisconsin Food Code, that an imminent health hazard exists, that an establishment is operating without a license, or that the establishment has failed to register with the department prior to operation.

b. The order to cease operation for a licensed food establishment shall state:

b-1. That all food operations shall immediately cease.

b-2. The reasons for the order to cease operation with reference to the provisions of the city code or state statute that are being violated.

b-3. The conditions that must be met before the order is removed.

c. The order to cease operation for an exempt food establishment whose food operation was suspended due to a health hazard shall state:

c-1. The process for requesting a reinstatement inspection to certify that the reasons for the order were eliminated.

c-2. That a fee, as specified in s.60-70, shall be assessed for the inspection or investigation that identified the hazard and that a reinstatement inspection fee will be charged for each inspection performed to assess hazard elimination.

d. The commissioner shall promptly notify the city clerk and the police department when any order to cease operations is placed or when an order to cease operations is removed.

e. Any person to whom an order to cease operations is issued shall immediately comply with the order, but upon written petition to the department shall be afforded a hearing before the commissioner within 5 working days of order issuance.

f. Failure to allow an inspector immediate access to the premises to determine whether such grounds exist shall be grounds for suspension. The commissioner shall promptly notify the city clerk of this failure.

**5. HEARING NOTICE.** a. A food establishment shall be notified at least 3 days in advance of any hearing conducted by the commissioner. The hearing notice shall include:

a-1. The date, time and place of the hearing.

a-2. The purpose of the hearing and the potential outcomes.

a-3. A statement that an opportunity will be given to the appellant to challenge the order or action, present witnesses under oath, and confront and cross-examine opposing witnesses under oath.

a-4. A statement that the appellant may be represented by an attorney of the appellant's choice at the appellant's expense, if the appellant so wishes.

a-5. A listing of all inspections, investigations and orders under consideration.

a-6. A listing of the applicable code provisions, rules or statutes.

a-7 A short and plain statement of the matters asserted.

a-8. A statement that the licensee may request a change of time or date until 48 hours prior to the hearing; however, the rescheduled hearing shall be no later than 5 days from the originally-scheduled hearing date.

b. The notice shall be sent by certified mail to the agent or hand delivered to the person in charge at the food establishment.

**6. COMPLIANCE ORDER.** a. When a food establishment is determined to have a history of noncompliance, the commissioner shall order the establishment to implement interventions necessary to prevent foodborne illness and continued violation of the provisions of this chapter.

b. A compliance order shall require that the food establishment complete one or more of the following actions:

b-1. Risk control plan.

b-2. Compliance plan.

b-3. Safety training.

b-4. Self-inspection.

b-5. Standard operating procedures.

b-6. Recipe and process instructions.

b-7. Equipment and layout changes

c. Operational or equipment changes, risk control plans and compliance plans shall be subject to the fees specified in s. 60-70.

**7. NOTICE OF INTENT.** The department shall issue a notice of intent prior to issuing a suspension, revocation or restriction to a food establishment. A notice of intent shall not be required when such action is taken due to the identification of an imminent health hazard. The notice of intent shall clearly identify what actions must be taken, the time frame for the actions to be completed, and the consequence for not obtaining compliance.

**8. NOTICE OF SUSPENSION, REVOCATION OR RESTRICTION.** a. If, after being served the notice of intent, a food establishment fails to meet the requirements specified in the intent order, the department shall issue a notice of suspension, revocation or restriction. For a suspension or revocation, the establishment shall be required to immediately cease all or part of the food operation. For restrictions to the food establishment, the operator shall immediately comply with the limitations placed on food operations.

b. The notice of suspension, revocation or restriction shall state:

b-1. That the food license is immediately suspended, revoked or restricted and that all food operations suspended, revoked or restricted shall immediately cease.

b-2. The reasons for notice, including the circumstances leading to the notice being issued.

b-3. The minimum period for the suspension, revocation or restriction, and the conditions that must be met for it to be removed.

b-4. The process for requesting a reinstatement inspection to certify that the conditions for reinstatement have been met.

b-5. That a reinstatement inspection fee, as specified in s. 60-70 shall be charged for each inspection performed to assess that the conditions to lift the suspension, revocation or restriction have been met.

b-6. That a suspension, revocation or restriction of a food license may be appealed to the commissioner. An appeal shall be submitted in writing to the department within 5 business days of the notice being issued.

c. The department shall promptly notify the city clerk and police department when any suspension, revocation or restriction is placed or removed.

**68-43. Restrictions. 1. RESTRICTION OR EXCLUSION OF FOOD WORKER.** a. To prevent possible disease transmission, a food establishment worker suspected of having a foodborne illness or being exposed to a foodborne illness shall be restricted from handling food in a food establishment, and may be excluded from working in a food establishment, at the discretion of the commissioner.

b. The department may issue an order of restriction or exclusion to a food worker or the license holder, and may do so without prior warning, notice of a hearing, or a hearing.

c. The exclusion or restriction order shall include:

c-1. The reason for the restriction or exclusion.

c-2. The evidence that the food worker or licensee may provide to demonstrate that the reasons for the restriction or exclusion have been eliminated.

c-3. The process for appealing the order to the commissioner.

**2. OPERATIONAL RESTRICTIONS.** a. The department may place limitations or conditions on a license if the department determines it necessary to protect public health.

b. Restrictions shall remain in place until removed by the department or until vacated by the commissioner.

c. An operator found engaged in a practice in conflict with the limitations or conditions placed on the operator's license shall be considered in violation of this chapter and shall be subject to corrective action, including inspection fees, citation, suspension and revocation.

d. Restrictions or conditions ordered by the department shall be appealable to the commissioner.

**68-45. Penalties. 1. GENERAL.** a. Any person who violates or fails to comply with this chapter shall, upon conviction, be subject to a Class N penalty, as provided in s. 61-20, in addition to any other penalty set forth herein. In addition, a citation may be issued with or without prior notice as set forth in s. 50-25.

b. Any food establishment that violates any of the provisions of s. 68-9-6 shall forfeit \$300 per day.

**2. FOOD PEDDLERS.** a. Any person violating any of the provisions of s. 68-41, except those identified in par. b, shall, upon conviction, be subject to a Class B penalty as set forth in s. 61-8.

b. Any person violating s. 68-41-5-a, ss. 68-41-5-c to e, or ss. 68-41-5-j to m shall, upon conviction, be subject to any of the following penalties:

b-1. A forfeiture of not less than \$20 nor more than \$200 for each violation.

b-2. A suspension of the food peddler's license for not less than 10 days nor more than 30 days,

or a revocation of the food peddler's license for the remainder of its term.

c. At the discretion of the court, a penalty under par. b may be imposed as follows:

c-1. The penalty may be imposed on an agent.

c-2. Whenever the court finds that the business, organization or person that holds the food peddler's license under which the agent's sales are made has failed to properly supervise the agent, the penalty may be imposed on the business, organization or person.

c-3. The penalty may be imposed on both an agent and the business, organization or person that holds the food peddler's license under which the agent's sales are made.

d. An ice cream peddler license may be revoked by the health department upon conviction of a licensee for violation of any provision specified in s. 68-43-4-b. The commissioner shall promptly notify the city clerk of any revocation.

e. Any license revoked by the health department under par. d may be appealed to the administrative review appeals board. If the commissioner has cause to seek revocation of a license under par. d, he or she shall give prompt notice to the licensee of the intent to revoke the license with an opportunity to appeal the revocation to the administrative review appeals board.

**3. ICE CREAM PEDDLERS.** a. Any person violating any of the provisions of s. 68-43 shall, upon conviction, be subject to a Class I penalty, as set forth in s. 61-15.

b. Any person licensed under s. 68-41 employing a person required to obtain a license under s. 68-43 who is not licensed, shall, upon conviction, be subject to a Class I penalty, as set forth in s. 61-15.

**4. CERTIFIED FOOD MANAGERS.** Any person violating s. 68-23-3-c shall, upon conviction, be subject to a Class I penalty, as provided in s. 61-15.

**5. PEDDLING OF FOOD BY MINORS.** a. Any person violating s. 68-39 shall, upon conviction, be subject to a Class F penalty, as provided in s. 61-12.

b. Any person subject to sanction as a juvenile under this subsection shall not be subjected to a forfeiture or other penalty greater than that permitted by state law.

Part 2. Section 81-55-2 of the code is amended to read:

**81-55. Food Dealer's License.**

**2.** A ~~[[non-refundable]]~~ fee of \$300 shall be charged at the time of new application. >>This fee shall be non-refundable if an inspection is performed prior to withdrawal or denial of the application.<<

Part 3. Section 81-56.3-4 of the code is created to read:



### **81-56.3. Food Peddler Licenses.**

4. A veteran, as defined in s. 68-59, shall be granted a food peddler license without payment of any fee. The veteran shall be the operator of the food peddler vehicle or carried container for which the fee has been waived.

Part 4. Section 115-45-2-b of the code is renumbered 115-45-2-c.

Part 5. Section 115-45-2-b of the code is created to read:

### **115-45. Selling Articles from Parked Vehicles.**

#### **2. LOCATIONS WHERE SELLING PROHIBITED.**

b. From the Median or Safety Island. Except when the roadway has been closed to traffic by common council resolution and the vehicle is otherwise in compliance with this section.

Part 6. Section 115-45-3 of the code is renumbered 115-45-4.

Part 7. Section 115-45-3 of the code is created to read:

**3. TIMES WHEN SELLING PROHIBITED.** a. The sale of items from parked vehicles shall be prohibited as follows:

a-1. Between the hours of 3 a.m. and 6 a.m. Monday through Friday.

a-2. Between the hours of 3:30 a.m. and 6 a.m. Saturday and Sunday.

a-3. As established by a plan of operation approved by the common council.

b. This prohibition shall not apply on January 1, Memorial Day, Juneteenth, the 3rd and 4th of July, Labor Day, on city streets adjacent to State Fair Park during the run of the Wisconsin State Fair or during any other specific dates specified by the common council by resolution.

Part 8. Section 214-5 of the code is amended to read:

**214-5. Delegation of Authority.** The commissioner in the performance of his or her duties relating to fire inspections may delegate limited authority to the health department to conduct such inspections. >>In addition, the commissioner of health shall have enforcement authority pertaining specifically to fire prevention in food operation premises.<<

APPROVED AS TO FORM

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Legislative Reference Bureau

Date: \_\_\_\_\_  
IT IS OUR OPINION THAT THE ORDINANCE  
IS LEGAL AND ENFORCEABLE

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Office of the City Attorney  
Date: \_\_\_\_\_  
City Clerk-License Division  
LRB170300-2  
Andrew VanNatta: Jeff Osterman  
03/27/2018