

ORDINANCE NO. 2017-03

AN ORDINANCE TO REPEAL AND RE-CREATE CHAPTER 375 OF THE VILLAGE OF FOX POINT VILLAGE CODE CONCERNING HEALTH AND SANITATION LICENSES AND PERMITS

WHEREAS, the Village of Fox Point is a member community of the North Shore Health Department; and

WHEREAS, the Health Director/Health Officer for the North Shore Health Department has recommended that the Village of Fox Point, Village Code be amended and updated in order to reference current state regulations, and in conjunction with a larger project to ensure uniformity of such ordinances across all seven municipalities in the North Shore; and

WHEREAS, the Village Board for the Village of Fox Point concurs in the recommendation of the Health Director/Health Officer of the North Shore Health Department, and hereby intends to adopt the changes that have been recommended.

NOW THEREFORE, the Village Board of the Village of Fox Point, Milwaukee County, Wisconsin does hereby ordain as follows:

SECTION 1 Chapter 375 of the Village of Fox Point Village Code entitled, "Health and Sanitation Licenses and Permits" is hereby repealed and re-created with the new title "Food, Lodging, and Recreational Safety and Licensing" as follows:

Chapter 375. Food, Lodging and Recreational Safety and Licensing

§375-1 North Shore Health Department; Authority and Organization.

A. Authority and Purpose

This chapter is adopted pursuant to authority provided by Wis. Stats. §§ 97.41 which authorizes local health departments to become the designated agent of the State Department of Agriculture Trade and Consumer Protection ("ATCP") for the purpose of issuing permits, making investigations or inspections and enforcing the applicable state administrative codes for the operations of retail food establishments, restaurants, hotels and motels, tourist rooming houses, bed and breakfast establishments, campgrounds, recreational and educational camps, tattoo and body piercing establishments, public swimming pools, and establishments possessing class A, class **B**, or class C alcohol beverage licenses (for sanitation and health purposes and not alcohol licensing purposes), and in making investigations and inspections of food vending machines, their operators, vending machine commissaries, and the national school lunch and breakfast program and establishing permit and inspection fees related to the inspections and issuance of such permits. The local health department, acting through the environmental health consortium

will be required to enter into a contract with the ATCP regarding the powers and duties that it will be authorized to perform under the applicable statutes, this chapter and the contract.

B. North Shore Health Department authorized. The North Shore Health Department shall provide public health services for the Village of Fox Point pursuant to an intergovernmental agreement between the Village of Fox Point and other North Shore municipalities, as such agreement may be amended from time to time, and it shall be the Village of Fox Point Health Department.

C. Board of Health

(1) Creation. The North Shore Health Department Board of Health shall be the Board of Health for the Village of Fox Point.

(2) Composition.

(a.) The Board of Health shall consist of one representative from the Villages of Bayside, Brown Deer, Fox Point, River Hills, Shorewood and Whitefish Bay and the City of Glendale. Each community's representative to the Board of Health shall serve for a term of two years. The medical officer shall be a member of the North Shore Health Department Board and be appointed by the Board of Health for a two-year term. The health officer to the North Shore Health Department shall be staff representative to the board.

(b.) Each person appointed to represent a municipality shall have demonstrated interest or competence in the field of public health or community health. Appointments made to the Board of Health shall consist of no more than eight members, and at least three of these members shall be persons who are not elected officials or employees of the governing bodies. A good faith effort shall be made to appoint a registered nurse and a physician. The Board of Health should reflect the diversity of constituents served.

(3) Appointment of Village representative. The Village of Fox Point's representative shall be appointed by the Village President for a two-year term, subject to confirmation by the Village Board of Trustees.

(4) Selection of officers. The Board of Health shall annually elect a chair and clerk at its first meeting of each calendar year. The director of the North Shore Health Department or his/her designee shall record minutes for Board of Health meetings.

(5) Meetings. All meetings of the North Shore Health Department Board of Health shall be properly posted and notice given in accordance with Wisconsin's Open Meeting Law. [1] Meetings shall be held at least quarterly. The Board of Health may meet more often, on an as-needed basis, at the call of the chair, so long as the meeting is properly posted and notice given in accordance with § 19.84, Wis. Stats.

[1] Editor's Note: See §§ 19.81 to 19.98, Wis. Stats.

(6) Jurisdiction and duties.

(a.) The Board of Health shall govern the North Shore Health Department and ensure the enforcement of state public health statutes and public health rules of the department, subject to the "Agreement for Public Health Services, North Shore Health Department" and applicable ordinances of each participating municipality.

(b.) Specifically, the Board of Health shall:

[1] Assist in determining public health needs and advocate for the provision of reasonable and necessary public health services.

[2] Develop policy and provide leadership that fosters local involvement and commitment, that emphasizes public health needs and that advocates equitable distribution of public health resources and complementary private activities commensurate with public health needs.

[3] Ensure conformance with the "Agreement for Public Health Services, North Shore Health Department."

[4] Assure that measures are taken to provide an environment in which individuals can be healthy.

[5] Assure that the North Shore Health Department is a Level II or III health department, as specified in § 251.04(1) and (2), Wis. Stats.

§ 375-2. Applicability.

The provisions of this chapter shall apply to the owner, operator or agents thereof of any hotels, motel, tourist roominghouse, restaurant, food establishment, bed and breakfast establishment, campgrounds, recreational and educational camp, public swimming pools, tattoo and body piercing establishments, establishments possessing class A, class B, or class C alcohol beverage licenses, vending machine commissaries or vending machines and the national lunch and breakfast program in the Village.

§ 375-3. Regulations, rules and laws adopted by reference.

The applicable laws, rules, definitions and regulations as sets forth in Wis. Stats, chs 97, 125, 251, 254; Wis. Admin. Code chs. ATCP 72, 73, 74, 75, 76, 78, 79; and Wis. Admin. Code ch. SPS 390, and any future amendments thereof are hereby incorporated herein and adopted by reference, and shall be made available for public inspection.

§ 375-4. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

"Department or local health department" means the North Shore Health Department.

"Duplicate permit fee" means a fee for the replacement of the original permit.

"Environmental health consortium" means the North Shore Health Department for the purposes set forth in § 375-1 A.

"Health officer" means the Director of the North Shore Health Department, which is the health department for the Village.

"Inspection Fee" means a fee charged for inspection services required or a fee charged for inspecting a mobile food establishment or temporary food establishment that has a valid license from another jurisdiction or the Department.

"Late fee" means a fee for failure to pay established fees by June 30 or the due date, if different.

"Licensed establishment" means an establishment that has a current and valid license that is required under this chapter.

"Permit or license" means the document issued by the Department that authorizes a person to operate an establishment. The terms "permit" and "license," as used throughout this chapter, shall be interchangeable.

"Preinspection fee" means a fee paid for an inspection made before issuance of an initial permit or when there is a change of operator.

"Reinspection" means a mandatory inspection to ensure that priority, critical or recurring violations have been corrected, including:

- a. An observed violation of immediate danger to public health (priority or critical) that is not corrected during the inspection;
- b. Six or more priority (critical) violations observed and noted,
- c. Repeat violations noted during two previous inspections (3 consecutive times); or
- d. With consultation from a supervisor, an excessive number of violations that show a lack of managerial control observed during an inspection.

"Reinspection fee" means a fee for the this chapter and subsequent reinspections needed to address compliance issues with the statutes and administrative codes.

"Routine inspection" means the annual evaluation of a licensee's operation of its establishment.

§ 375-5. Enforcement and right to enter premises.

After the regulatory authority presents official credentials and provides notice of the purpose of, and an intent to conduct an inspection, the person in charge shall allow the regulatory authority to determine if the establishment is in compliance with applicable codes by allowing access to the establishment, allowing inspection, and providing information and records to which the regulatory authority is entitled according to law, during the establishments hours of operation and other reasonable times.

§ 375-6. Obstruction of health department employees.

No person may assault, restrain, threaten, intimidate, impede, interfere with or otherwise obstruct the Department or authorized agent in the performance of his duties under this chapter, and the operator shall not give false information with the intent to mislead the Department or authorized agent.

If the person in charge denies access to the regulatory authority, the regulatory authority shall:

(A) Inform the person in charge that:

- a. The permit holder is required to allow access to the regulatory authority as specified under § 375-5 of this chapter.
- b. Access is a condition of the acceptance and retention of an establishments permit to operate as specified under § 375-11.
- c. If access is denied, an order issued by the appropriate authority allowing access, hereinafter referred to as an inspection order, may be obtained according to law.

(B) Make a final request for access.

(C) If denied access to an establishment for an authorized purpose and after complying with subsection (B) of this section, the regulatory authority may apply for the issuance of an inspection order to gain access as provided in law.

(D) The regulatory authority may order access for one or more of the following purposes, subject to law for gaining access:

- a. If admission to the premises of an establishment is denied or other circumstances exist that would justify an inspection order under law, to make an inspection including taking photographs;
- b. To examine and take samples of the food; and
- c. To examine the records on the premises relating to food purchased, received, or used by the establishment.

(E) The regulatory authority's inspection order shall

- a. Stipulate that access be allowed on or to the described premises, food, or records under the order's provision;
- b. Provide a description that specifies the premises, food or records subject to the order; and
- c. Specify areas to be accessed and activities to be performed.

§ 375-7. Licensing.

(A) No person may operate or provide the services, food or other products that requires a license under this chapter without first having obtained a current and valid license.

(B) No permit shall be granted to any person under this chapter without a preinspection by the Department of the premises for which the permit shall be granted.

(C) No permit shall be issued until all application fees have been paid.

(D) A food vendor may be exempt from licensing if the vendor has obtained a valid Mobile Retail Food License from the Department of Agriculture, Trade and Consumer Protection and is able to provide a copy of the license to the North Shore Health Department.

(E) A food vendor may be exempt from licensing if the vendor has obtained a valid Processing Plant License for non-potentially hazardous, pre-packaged food which pertains specifically to the items that wish to be sold and is able to provide a copy of the license to the North Shore Health Department.

§ 375-8. Sanitation regulations applicable regardless of license exemption.

Statutory exemptions from the requirement to obtain a food license does not exclude any person handling food for public consumption from inspection and compliance with all sanitation requirements of this chapter and shall pay all necessary fees as it pertains to the fee schedule associated with such action.

§ 375-9. Application.

All applicants must apply on forms furnished by the Department. All applications for permits shall be made in writing to the Department where the business is located. All applications shall list the true, legal names of the owners or operators of the business, including partners and managing members of limited liability companies and the addresses. All corporations and limited liability companies applying for licensure shall be registered with the state, and the name of the registered agent shall be placed on the application. The agent's name and address shall be kept current. The applicant shall provide documents which reflect the aforementioned registration to the Department. The Department shall either approve the application or deny the permit within 30 days after receipt of a complete application.

§ 375-10. Construction or alteration of food establishments.

- (A) No person shall erect, construct, enlarge or alter a food establishment without first submitting to the Department or its designee plans (drawings) which clearly show and describe the amount and character of the work proposed and without first receiving approval of submitted plans. Such plans shall include a floor plan, equipment plan and specifications, wall, floor and ceiling finishes, and plans and specifications for food service kitchen ventilation and plumbing, an intended menu, anticipated volume of food to be stored, prepared, and sold or served, HACCP (Hazard Analysis Critical Control Points) plans, variance requests and standard procedures that ensure compliance with the Wisconsin Food Code. Submitted plans shall give all information necessary to show compliance with applicable health codes. Submitted plans shall be retained by the Department or its designee and shall treat as confidential in accordance with law. Information that meets the criteria specified in law for a trade secret and is contained on inspection report forms and in plans and specifications submitted.
- (B) At the option of the Department or its designee, plans need not be submitted to execute minor alterations to a food establishment. Approved plans shall not be changed or modified unless approval of such changes or modifications shall have first been obtained from the Department or its designee.

§ 375-11. Inspection and Reinspection.

- (A) Except as specified in (B) of this section, a permit holder shall at the time of the inspection correct a violation of a Priority Item or Priority Foundation Item of the Food Code, or any item of critical nature within the applicable code associated with license held by that establishment, or if deemed critical by the regulatory authority and implement corrective actions.
- (B) Considering the nature of the potential hazard involved and the complexity of the corrective action needed, the regulatory authority may agree to or specify a longer time frame as specified in policy for critical, priority, priority foundation, and core items.
- (C) At the conclusion of the inspection the regulatory authority shall provide a copy of the completed inspection report and the notice to correct violations to the permit holder or to the person in charge, and request a signed acknowledgement of receipt.
- a. If the permit holder or the person in charge refuses to sign acknowledgment the regulatory authority shall:
 - b. Inform the person who declines to sign an acknowledgement of receipt of Inspectional findings that a signature does not represent agreement with findings,
 - c. Refusal to sign an acknowledgment of receipt will not affect the permit holder's obligation to correct the violations noted in the inspection report within the time frames specified; and
 - d. Make a final request that the permit holder or the person in charge sign an acknowledgment receipt of inspectional findings.

(D) As a condition of license renewal, all establishments licensed under this chapter shall consent to an annual inspection and reinspection. License renewal may be withheld pending inspection, reinspection and compliance with these regulations.

(E) Whenever an order or directive is issued on a health code violation which requires a reinspection to determine compliance, one reinspection shall be made without charge in a timely manner as determined by local policy and documented by the Department following the time period given in the order or directive. If, upon the first reinspection, the order or directive is found not to have been complied with and additional reinspections are required, a fee shall be assessed to the responsible party for each additional reinspection to compensate for the costs of such reinspections. Payment is due on written demand from the Department.

§ 375-12. Hold Order, Warning or Hearing Not Required

The regulatory authority may issue a hold order according to policy to a permit holder or to a person who owns or controls the food, as specified previously in this ordinance, without prior warning, notice of a hearing, or a hearing on the hold order.

(A) According to time limits imposed by Wisc. Stat. 97.12, the regulatory authority may place a hold order on a food that:

- a. Originated from an unapproved source;
- b. May be unsafe, adulterated, or not honestly presented;
- c. Is not labeled according to law, or, if raw molluscan shellfish, is not tagged or labeled according to law; or
- d. Is otherwise not in compliance with this ordinance.

(B) If the regulatory authority has reasonable cause to believe that the hold order will be violated, or finds that the order is violated, the regulatory authority may remove the food that is subject to the order to a place of safekeeping.

§ 375-13. Procedure for issuing new or renewal license.

(A) The Department shall issue a license to each applicant for a new or renewal license that meets all the requirements of this chapter and has paid to the Department all applicable fees.

(B) If an applicant for a permit to operate is denied, the regulatory authority shall provide the applicant with a notice that includes:

- a. The specific reasons and Code citations for the permit denial;
- b. The actions, if any, that the applicant must take to qualify for a permit; and
- c. Advisement of the applicant's right of appeal and the process and time frames for appeal that are provided in law.

§ 375-14. Nonpayment of fees.

- (A) A license will not be issued until all applicable fees, late fees and processing charges are paid.
- (B) No license shall be issued to any person that owes the Village for overdue forfeitures, unpaid real or personal property taxes, assessments or special charges, late fees, or license fees relating to a current or previous licensed establishment until all such outstanding amounts are paid.
- (C) No license shall be issued for any premises or property for which there are outstanding real or personal property taxes, assessments or special charges, late fees, or license fees relating to a current or previous licensed establishment until all such outstanding amounts are paid.

§375-15. Changes to be reported.

- (A) A licensee shall notify the Department whenever there is a change in any information that is reported in the application form. The licensee shall make this notification in writing within five days after the change occurs.
- (B) The owner of any premises for which a license has been granted shall promptly notify the Department in writing of their intention to cease operations.

§ 375-16. Ceasing Operations and Reporting.

Whenever the Department or permit holder finds a condition in a licensed establishment which is determined to be a direct and immediate hazard to public health such as fire, flood, extended interruption of electrical or water service, sewage backup, misuse of poisonous or toxic materials, onset of an apparent foodborne illness outbreak, gross insanitary occurrence or condition, or other circumstances that may endanger public health, the permit may be suspended without notice or warning or the permit holder shall immediately discontinue operations and notify the regulatory authority

- (A) If operations are discontinued, the permit holder shall obtain approval from the regulatory authority before resuming operations.
- (B) A permit holder need not discontinue operations in an area of an establishment that is unaffected by the imminent health hazard as deemed so by the regulatory authority.

§ 375-17. Suspension of a Permit or License.

Whenever the Department has reasonable grounds to believe there are violations that constitute a health hazard that are serious but not an immediate threat to the public health, or for recurring or repeated violations, a permit may be suspended if the Department serves a written notice of the violations and corrective actions required to the licensee, the agent or employee in charge of the licensed premises shall specify a reasonable time limit for any

corrective action required, indicate a inspection shall be made to certify that reasons for the suspension have been eliminated and that the permit holder may request an appeal hearing by submitting a timely request as specified in § 375-21.

(A) Upon notification of suspension, the permit must be surrendered to the Department until the time or reissuance.

(B) The Department may suspend any permit or license issued under this chapter upon failure to pay any fees due under this chapter. The Department will notify the permit holder in writing that the permit has been suspended and the reason why. The suspension will continue until payment of all past due fees.

§ 375-18. Reinstatement of a suspended license.

The license holder whose license has been suspended may at any time request reinstatement of the license. Accompanied by a signed statement by the applicant that the violations have been corrected, within 7 days after the request for reinspection, the Department or its designee shall make a reinspection and thereafter and many additional reinspections deemed necessary to assure that the applicant has complied with the requirements. If the findings indicate compliance, the Department may reinstate the license.

§ 375-19. Revocation of license.

For serious or repeated violations of any of the requirements of this chapter, or for interference with the health officer or his designee in the performance of their duties, the health officer or his designee may permanently revoke the license issued under this chapter. Prior to such actions, the health officer shall notify the license holder in writing, stating the reasons for which the license is revoked. When a license is revoked, the owner or operator shall turn over the license to the health officer or his designee and cease operations immediately.

§ 375-20. Reapplication of a revoked license.

A person whose license has been revoked may, at any time, make reapplication for a revoked license. Within 7 days after the receipt of satisfactory application, accompanied by a signed statement by the applicant that the violations have been corrected, the Department or its designee shall make a preinspection and thereafter as many additional reinspections as deemed necessary to assure that the applicant has complied with the requirements. If the findings indicate compliance, the Department may reinstate the license.

§ 375-21. Appeal.

Any person refused or denied a license or who has had a license revoked or suspended, or wishes to dispute any order issued by the regulatory authority may appeal through the appeal procedure provided under the provisions of Wis. Stats. §§ 68.07-68.16.

§ 375-22. Rights of Recipients of Orders or Decisions.

A recipient of an order or decision may file a petition for judicial review in a court of competent jurisdiction after available administrative appeal remedies are exhausted

§ 375-23. Conditions Warranting Remedy.

- (A) The regulatory authority may seek administrative or judicial remedy to achieve compliance with the provisions of this ordinance if an establishment:
- a. Fails to have a valid permit to operate;
 - b. Violates any term or condition of a permit as specified within ordinance;
 - c. Allows serious or repeated code violations to remain uncorrected beyond time frames for correction approved, directed, or ordered by the regulatory authority;
 - d. Fails to comply with regulatory authority order issued concerning an employee or conditional employee suspected of having a disease transmissible through food by infected persons;
 - e. Fails to comply with a hold order;
 - f. Fails to comply with an order issued as of a hearing for an administrative remedy;
 - g. Fails to comply with a summary of suspension order issued by the regulatory authority.

§ 375-24. Violation of this Chapter.

No person shall violate any provisions of this chapter.

The Department or its designee shall enforce any provision of this chapter, and the enforcement provisions of the statutes or state administrative code sections adopted by this chapter and Wis. Stats. Ch. 93, Department of agriculture, trade and consumer protection which are hereby incorporated herein as though fully set forth pertaining to the authority for compliance and enforcement of these provisions: Wisc. Admin. Code ATP 75.

§ 375-25. Compliance and Enforcement.

- (A) If upon inspection, the Department or its designee finds that any licensed or unlicensed establishment is conducted or managed in violation of the ordinances or regulations of the village, laws of the state, or regulation of any agency of the state prescribing standards of health or sanitation, the Department or its designee shall serve a written order upon the licensee, his agent or employee in charge of the licensed premises or the person responsible for the violation, notifying him of such violations.
- (B) In extreme cases where a violation poses an immediate health hazard as determined by the Department or its designee or in the case of repeating occurrences of the same violation by the same person, the actions specified in (C) of this section may be initiated immediately.

(C) If a person does not comply with a written order from the Department or its designee, the person may be subject to one or more of the following actions, and/or penalties:

- a. Issuance of a citation. The Departments' health officer or any other person duly authorized by the health officer is authorized pursuant to Wis. Stats. § 800.02 to issue municipal citations for any violations of the provision of this chapter.
- b. A reinspection fee.
- c. Suspension of license.
- d. Revocation of license.
- e. Commencement of legal action against the person seeking a court imposed forfeiture.
- f. Commencement of legal action against the person seeking an injunction to stop, abate the violation and/or correct the damage created by the violation.
- g. Any other action authorized by this chapter or by other applicable laws as deemed necessary by the Department or its designee.
- h. The initiation of one action or penalty under this section does not exempt the apparent violator from any additional actions and/or penalties listed in this section.

§ 375-26. Fees.

- (A) Established; location. The fees for licenses, inspections, services and activities performed by the Department in carrying out its responsibilities under the chapter shall be reviewed and approved by the Village Board and shall be on file and open to the public in the Department's office and the office of the Village Clerk.
- (B) Fees to accompany application. Licenses fees imposed under this chapter shall accompany the license application. The Department shall issue the applicant a receipt for the license fee.
- (C) Refunds. No fee paid may be refunded, unless a refund is requested prior to receiving a completed application or for work not yet completed.
- (D) Fees kept separate. All fees shall be accounted for separately and applied to the expenses under this chapter.

§ 375-27. Expiration dates.

- (A) All licenses issued under provisions of this chapter shall expire, unless otherwise ordered by the Department or authorized agent, as follows:
 - a. Food/drink: June 30.

- b. Hotel/motel: June 30.
- c. Public swimming pool: June 30.
- d. Boardinghouse/roominghouse: December 31.
- e. Bed and breakfast: June 30.
- f. Recreational and educational camps: June 30.
- g. Campgrounds: June 30.
- h. Tattoo or body piercing establishment: June 30.
- i. Vending machines: June 30.

(B) The licenses shall expire at 12:00 a.m. of the last effective day of the license, unless otherwise provided by this chapter or applicable provisions of state law.

§375-28. Renewal.

The Department, prior to the expiration date, shall furnish renewal notices. It is the responsibility of the owner or operator to complete the application form and pay the appropriate fee before the expiration date of such license.

§.375-29. Conflicts.

Whenever conflicts between this chapter and other Village ordinances or state and federal regulations occur, the more stringent rule shall apply.

SECTION II CONTINUATION OF EXISTING PROVISIONS

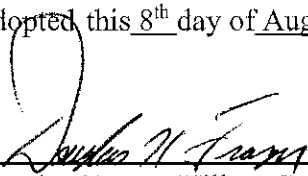
The provisions of this ordinance, to the extent that they are substantively the same as those of the ordinances in force immediately prior to the enactment of this ordinance, are intended as a continuation of such ordinances and not as new enactments, and the effectiveness of such provisions shall date from the date of adoption of the prior ordinances. In addition, the adoption of this ordinance shall not affect any action, prosecution or proceeding brought for the enforcement of any right or liability established, accrued or incurred under any legislative provision prior to the effective date of this ordinance for the time that such provision was in effect, and the repeal of any such provisions is stayed pending the final resolution of such actions, including appeals.

SECTION III SEVERABILITY.

The several sections of this ordinance are declared to be severable. If any section or portion thereof shall be declared by a court of competent jurisdiction to be invalid, unlawful or unenforceable, such decision shall apply only to the specific Section or portion thereof directly specified in the decision, and shall not affect the validity of any other provisions, Sections or portions thereof of the charter ordinance. The remainder of the ordinance shall remain in full force and effect. Any other ordinances whose terms are in conflict with the provisions of this ordinance are hereby repealed as to those terms that conflict.

SECTION IV EFFECTIVE DATE. This ordinance shall take effect following its passage and publication or posting as provided by law.

Adopted this 8th day of August, 2017.



Douglas Frazer, Village President

Attest:



Kelly Meyer, Village Clerk