

ORDINANCE NO. 13 - 1

AN ORDINANCE TO AMEND THE MUNICIPAL CODE TO UPDATE THE PROVISIONS PERTAINING TO FOOD ESTABLISHMENTS TO PROVIDE FOR CONSISTENCY WITH CURRENT AND BEST PRACTICES AND THE REGULATIONS ADMINISTERED BY THE STATE OF WISCONSIN DEPARTMENT OF HEALTH SERVICES

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WHEREAS, §11.13 of the Municipal Code providing for the regulation of food establishments was adopted by the Village Board in 1985 and has not been the subject of regulatory amendments of substance since that time; and

WHEREAS, the Village Health Department, in its review of the Village Code in collaboration with staff of the Wisconsin Department of Health Services having recommended the revision of the Code as it pertains to food establishment so that it is consistent with current and best practices and consistent with the provisions of the Wisconsin Administrative Code as it pertains to the regulation of food establishments; and

WHEREAS, the Village Board having reviewed the proposed amendments to the food establishment regulations and having determined that they are reasonable and necessary to protect and promote the health, safety and welfare of the Village.

NOW, THEREFORE, the Village Board of the Village of Hales Corners, Wisconsin, do ordain as follows:

SECTION 1: §11.13 of the Municipal Code of the Village of Hales Corners, Wisconsin, is hereby repealed and recreated to read as follows:

“11.13 FOOD ESTABLISHMENTS – LICENSES AND REGULATIONS.

(1) Definitions. The following definitions shall apply in the interpretation and enforcement of this section.

(a) Department. Shall mean the Hales Corners Health Department.

(b) Food Establishment. Shall mean any operation, building, room or place that stores, processes, prepares, serves, vends, sells or otherwise provides food for human consumption. It shall not include vending machines or kitchens of private homes for family use only.

- (c) Health Officer. Shall mean the Health Officer of the Village of Hales Corners or authorized agent.
- (d) Person. Shall mean an individual, partnership, association, firm, company, corporation, organization, municipality, county, town or state agency, whether tenant, owner, lessee or licensee, or the agent, heir or assignee of any of these.
- (e) All other definitions listed in the Wisconsin Administrative Code Chapter Agriculture, Trade and Consumer Protection (ATCP) 75 and the Appendix thereto and Chapter Department of Health Services (DHS) 196 and the Appendix thereto are hereby adopted by reference.
- (f) For the purposes of this code, the words “permit” and “license” shall mean the same and may be used interchangeably.

(2) License Required. Unless provided in this section, no person shall operate a food establishment who does not possess a valid food establishment license from the Village of Hales Corners.

(3) Application.

- (a) Application for a food establishment license shall be made in writing to the Village Clerk.
- (b) Application shall include:
  - (i) the full name or names of the person or persons making application,
  - (ii) business address of applicant,
  - (iii) nature of business to be licensed,
  - (iv) location of business to be licensed, and,
  - (v) if a corporation, the full names and addresses of its officers and manager or managers.
- (c) All applicants must apply on forms furnished by the Department.

(4) License Exemption. Exemption for a license does not exclude any person handling food for public consumption from inspection and compliance with requirements of the code.

- (a) The following groups shall be exempt from the licensing requirements of this section:
  - (i) Churches, religious, fraternal, youth or patriotic organizations, service clubs and civic organizations holding

*occasional* fundraising sales or serving meals not potentially hazardous to the public.

- (ii) Persons selling wholesale food to licensed food establishments.
- (b) Occasional shall mean less than four (4) days during any 12-month period.
- (c) All food-related activities of the above-listed groups must be brought to the attention of the Health Officer to facilitate proper monitoring.
- (d) Any food service provided solely for the needy.

(5) License Fees.

- (a) The fees for services and activities performed by the Department in carrying out its responsibilities under this Code shall be published in the Village of Hales Corners Health Department Fee Schedule.
- (b) License fees shall accompany the license application.
- (c) There will be no proration of license fees, with the exception of requirements for agent status.
- (d) No license fee paid shall be refunded unless the license is denied.
- (e) Local pre-inspection fees shall be charged and shall include all inspection-related activities prior to the establishment doing business. Pre-inspection fees may be applicable for all new operations, changes in operation, remodeling or extension. Pre-inspection fees are not refundable.
- (f) Failure to correct a violation that requires a second follow-up inspection and any subsequent re-inspections shall require a re-inspection fee.

(6) Late Fees. Late fees shall be applied as per the Hales Corners Health Department Fee Schedule.

(7) Investigation. The food establishment application shall be referred to the Chief of Police who shall investigate the applicant as deemed necessary. The Chief of Police shall indicate approval or disapproval in writing and return the application to the Village Clerk.

(8) Issuance.

- (a) A food establishment license shall be issued by the Village Clerk:
  - (i) upon payment of the license fee,
  - (ii) after approval by the Chief of Police,
  - (iii) after the Health Officer has certified that the food establishment meets the requirements of all applicable regulations, and
  - (iv) after a determination that the applicant does not owe any personal property and/or real estate taxes to the Village.
- (b) Licenses shall be issued only in the name of the licensee of the food establishment and shall not be transferable from one person or place to another.
- (c) The applicant shall have complied with all building, zoning, plumbing, electrical, fire, and health codes.

(9) Wisconsin Administrative Code Provisions Adopted. The applicable laws, rules, and regulations as set forth in Chs. 93, 97, 125, 251, and 254, Wis. Stats.; Chs. DHS 192, 196, and 198, Wis. Adm. Code; and the Memorandum of Understanding Between the Wisconsin Department of Public Instruction (DPI) and the Wisconsin Department of Health Services (DHS) July 1, 2012 – June 30, 2014 are hereby adopted by reference and any amendments thereto, and a copy of each shall be on file and open to public inspection in the offices of the Department and Village Clerk.

(10) Inspection.

- (a) All licensed establishments shall be inspected at least once per year. The Health Officer shall also perform as many other inspections or re-inspections of each licensed establishment that are necessary for the enforcement of this Chapter. One copy of the inspection report shall be given to the licensee or employee of the establishment and the original copy shall remain on file at the Department.
- (b) The licensee shall, upon the request of the Health Officer, permit access to all parts of the establishment and shall permit the copying of any records of food purchased, pest control

reports or other records pertinent to conducting a foodborne or waterborne illness investigation.

(11) Expiration Date. All licenses issued under provisions of this Chapter shall expire on June 30, unless otherwise ordered by the Health Officer.

(12) Renewal.

(a) Renewal notices shall be furnished by the Department prior to the expiration date.

(b) It is the responsibility of the licensee to complete the application form and pay the appropriate fee before the expiration date.

(13) Changes to be Reported.

(a) A licensee shall notify the Department whenever there is a change in any information that is reported on the application form. The licensee shall make this notification in writing within five days after the change occurs.

(b) The licensee shall promptly notify the Department of intention to cease operations.

(14) Suspension of License.

(a) Whenever the Health Officer finds a condition in a licensed establishment which is determined to be a direct and immediate hazard to public health, without warning, notice or hearing, the license may be temporarily suspended.

(b) A license may also be temporarily suspended with prior notice pending correction of violations which constitute a health hazard that is serious, but not an immediate threat to the public health, or for recurring or repeated violations.

(c) A written notice to the licensee, agent, or employee in charge of the licensed establishment shall cite violations, specify the corrective action to be taken, specify the time period within which action shall be taken, and shall state that the license is immediately suspended and all operations are to be immediately discontinued.

(d) Upon notification of suspension, the license must be submitted to the Health Officer for retention until the time of reissuance.

(15) Reinstatement of Suspended License.

- (a) The licensee may, at any time, make application for reinstatement of the license.
- (b) Within one week after the receipt of satisfactory application, accompanied by a signed statement by the applicant that the violations have been corrected, the Health Officer shall make a re-inspection and thereafter as many additional re-inspections as deemed necessary to assure that the applicant has complied with the requirements.
- (c) If the findings indicate compliance, the Health Officer may reinstate the license.

(16) Revocation of License.

- (a) For serious or repeated violations of any of the requirements of this chapter or for interference with the Health Officer in the performance of duties, the Health Officer may permanently revoke the license issued under this chapter. Prior to such action, the Health Officer shall notify the licensee in writing, stating the reasons for which the license is revoked.
- (b) When a license is revoked, the licensee shall turn over the license to the Health Officer and cease operations.
- (c) The licensee may request a hearing, which will be conducted by the Board of Appeals as set forth in Chapter I, Article XII of this Code.

(17) Reapplication for Revoked License.

- (a) A licensee may, at any time, make application for a new license.
- (b) Within one week after the receipt of satisfactory application, accompanied by a signed statement by the applicant that the violations have been corrected, the Department shall make a pre-inspection and thereafter as many additional re-inspections as deemed necessary to assure that the applicant has complied with the requirements.
- (c) If the findings indicate compliance, the Health Officer may issue the license.
- (d) Upon reapplication, all variances and legal non-conforming conditions shall not apply. Reapplication for licensing shall be as a new establishment.

(18) Posting.

(a) Food Establishment licenses must be posted at all times in a conspicuous place visible to the public on the premises of the licensed food establishment.

(b) If the licensee is not able to furnish the license within 48 hours following an inspection, a duplicate license shall be obtained by the licensee.

(19) Conflicts. Whenever conflicts between these rules and regulations and other Village ordinances or state and federal regulations occur, the most stringent rule shall apply.

(20) Penalty. Any person who violates any provision of this section shall be subject to a penalty as provided in section 19.04 of this Code.”

SECTION 2: The terms and provisions of this ordinance are severable. Should any term or provision of this ordinance be found to be invalid by a court of competent jurisdiction, the remaining terms and provisions shall remain in full force and effect.

SECTION 3: All ordinances and parts of ordinances in contravention to this ordinance are hereby repealed.

SECTION 4: This ordinance shall take effect and be in force from and after its passage and publication.

PASSED AND ADOPTED this 25th day of March, 2013.

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Robert G. Ruesch, Village President

Countersigned:

(VILLAGE SEAL)

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Michael F. Weber, Administrator/Clerk