SHEBOYGAN COUNTY ORDINANCE NO. 16 (2015/16)

Re: Authorizing and Implementing Agency Agreement with State Department of Agriculture to License and Regulate Various Commercial Activity under Chapter 17

WHEREAS, through the enactment of Chapter 17 of the Sheboygan County Code of Ordinances, the Sheboygan County Health and Human Services Department, Division of Public Health agreed to be the designated agent of the Wisconsin Department of Health Services for purposes of licensing and regulating various commercial activity, and

WHEREAS, through the enactment of 2015 Wisconsin Act 55, the agency assigned to handle this regulatory activity has been transferred to the Department of Agriculture, Trade, and Consumer Protection, and it is necessary for Sheboygan County to enter into a new agency agreement with the Department of Agriculture, Trade, and Consumer Protection, and

WHEREAS, other provisions of 2015 Wisconsin Act 55 require that if Sheboygan County wishes to act as agent in the manner that it previously acted as agent for the Wisconsin Department of Health Services, it must also agree to act as agent for the Department of Agriculture, Trade, and Consumer Protection for regulation of retail food establishments as well, and

WHEREAS, the Health and Human Services Committee has reviewed the potential of entering into such an agency agreement and believes that it is in the best interests of the citizens of Sheboygan County to do so;

NOW, THEREFORE, the County Board of Supervisors of the County of Sheboygan does ordain as follows:

Section 1. **Amending Chapter 17**. Chapter 17 of the Sheboygan County Code of Ordinances is hereby amended as follows (additions indicated by redlining; deletions by strikeouts):

CHAPTER 17
LICENSURE AND REGULATION OF RETAIL FOOD ESTABLISHMENTS,
HOTELS, MOTELS, RESTAURANTS, TOURIST ROOMING HOUSES,
BED AND BREAKFAST ESTABLISHMENTS,
CAMPGROUNDS AND CAMPING RESORTS,
RECREATIONAL AND EDUCATIONAL CAMPS,
PUBLIC SWIMMING POOLS AND ESTABLISHMENTS POSSESSING
CLASS B AND CLASS C ALCOHOL BEVERAGE LICENSES
AND INSPECTIONS OF FOOD VENDING MACHINES,
THEIR OPERATORS AND VENDING MACHINE COMMISSARIES

17.01 AUTHORITY AND PURPOSE. This Ordinance is adopted pursuant to that authority provided by Wis. Stats. §§ ~~125.68(5),~~ 97.41, 97.615(2), and 251.04(3)~~, 254.47, and 254.69(2);~~ and by Wisconsin Administrative Code Chapters ~~HFS 172, 175, 178, 192, 195, 196, 197, and 198, and Comm 90~~72, 73, 75, 76, 78, and 79 and such other provisions adopted in conformity therewith. The purpose of this Ordinance is to protect and improve the public health and to authorize the Sheboygan County Health and Human Services Department to become the designated agent of the State Department of ~~Health and Family Services~~Agriculture, Trade and Consumer Protection for the purpose of establishing ~~permit~~license fees, issuing ~~permits~~licenses, and making investigations or inspections of retail food establishments, hotels, motels, restaurants, tourist rooming houses, bed and breakfast establishments, campgrounds and camping resorts,

recreational and educational camps, public swimming pools, and establishments possessing Class B and Class C alcoholic beverage licenses, and in making investigations and inspections of food vending machines, their operators and vending machine commissaries.

17.02 APPLICABILITY. The provisions of this Ordinance shall apply to the owner, operator or agent thereof of any retail food establishment, hotel, motel, tourist rooming house, restaurant, bed and breakfast establishment, campground and camping resort, recreational and educational camp, public swimming pool, establishments possessing Class B or Class C alcoholic beverage licenses, vending machine commissary or vending machines in Sheboygan County.

17.03 DEFINITIONS.

(a) All definitions as set forth in Wis. Stats. chs. 97, 125, 251, and 254; and Wisconsin Administrative Code Chapters ~~HFS 172, 175, 178, 192, 195, 196, 197, and 198; and Comm 90~~ATCP 72, 73, 75, 76, 78, and 79 and such other provisions adopted in conformity therewith, are incorporated in this Ordinance by reference and they shall be construed, read, and interpreted as fully set forth herein until amended and then shall apply as amended.

~~(b) "Duplicate Permit Fee" shall mean a fee for the replacement of an original permit.~~

(~~c~~2) "Health and Human Services" or "Department" shall mean the Sheboygan County Health and Human Services Department, Division of Public Health.

~~(d) "Inspection Fee" shall mean a fee for on-site visits, limited to two (2) in a twelve- month period of time or within the license year, to determine that establishments identified in the Ordinance are compliant with the statutes and administrative codes that govern their operation.~~

~~(e) "Late Fee" shall mean a fee for failure to pay established fees by June 30 or the due date.~~

~~(f) "Limited Food Service" shall mean the serving of food which is prepared and packaged off the premises with preparation on the premises limited to heating and serving with single-service articles, e.g., hermetically wrapped sandwiches or frozen pizza.~~ (g) "Local Agent" shall mean the Sheboygan County Health and Human Services Department, Division of Public Health.

(~~g~~3) "Mobile Restaurant" shall mean a restaurant operating from a movable vehicle, pushcart, trailer, or boat which periodically or continuously changes location and wherein meals or lunches are prepared or served or sold to the general public, excepting those vehicles used in delivery of pre-ordered meals or lunches prepared in a licensed restaurant.

~~(h) "Operator" shall mean the owner or person responsible to the owner for the operations of the hotel, motel, bed and breakfast establishment, food service establishment or beverage establishment, vending machine commissary and/or vending machine, campground, camping resort, recreational/educational camps, or public swimming pools.~~

~~(i) "Potentially Hazardous Food"~~

~~(1) Shall mean a FOOD that is natural or synthetic and that requires temperature control because it is in a form capable of supporting:~~

~~A. The rapid and progressive growth of infectious or toxigenic microorganisms;~~

~~B. The growth and toxin production of *Clostridium botulinum;* or~~

~~C. In raw shell eggs, the growth of *Salmonella enteritidis*.~~

~~(2) Includes an animal FOOD (a FOOD of animal origin) that is raw or heat-treated; a FOOD of plant origin that is heat-treated or consists of raw seed sprouts; cut melons; and garlic and oil mixtures that are not acidified or otherwise modified at a FOOD PROCESSING PLANT in a way that results in mixtures that do not support growth as specified under Subparagraph (a) of this definition.~~

~~(3) Does not include:~~

~~A. An air-cooled hard-boiled egg with shell intact;~~

~~B. A FOOD with an a/w value of 0.85 or less;~~

~~C. A FOOD with a pH level of 4.6 or below when measured at 24C (75F);~~

~~D. A FOOD in an unopened HERMETICALLY SEALED CONTAINER that is commercially processed to achieve and maintain commercial sterility under conditions of non-refrigerated storage and distribution;~~

~~E. A FOOD for which laboratory evidence demonstrates that the rapid and progressive growth of infectious or toxigenic microorganisms or growth of *S. enteritidis* in eggs or *C. botulinum* cannot occur, such as a FOOD that has an a/w and a pH that are above the levels specified under Subparagraphs (c) (2) and (3) of this definition and that may contain a preservative, other barrier to growth of microorganisms, or a combination of barriers that inhibit the growth of microorganisms.~~

~~F. A FOOD that may contain an infectious or toxigenic microorganism or chemical or physical contaminant at a level sufficient to cause illness, but that does not support the growth of microorganisms as specified under Subparagraph (a) of this definition.~~

~~(j) "Pre-Inspection Fee" shall mean a fee for consultative services offered within a six- (6-) month period from the date of permit application to persons intending to operate a new hotel, tourist rooming house, bed and breakfast establishment, restaurant, vending machine commissary, or to a person intending to be the new operator of an hotel, tourist rooming house, bed and breakfast establishment, restaurant and vending machine commissary.~~

~~(k) "Re-Inspection Fee" shall mean a fee for the third (3rd) and subsequent inspections needed to address compliance issues with the statutes and administrative codes that govern their operation.~~

~~(l) "Restaurant" shall mean any building, room, or place where meals are prepared, served, or sold to transients or the general public, and all places used in connection with the building, room, or place and includes any public or private school lunchroom for which food service is provided by contract. "Restaurant" does not include:~~

~~(1) Taverns that serve free lunches consisting of popcorn, cheese, crackers, pretzels, cold sausage, cured fish, or bread and butter;~~

~~(2) Churches, religious, fraternal, youth, or patriotic organization, service clubs, and civic organizations which occasionally prepare, serve, or sell meals to the general public;~~

~~(3) Any food service provided solely for needy persons;~~

~~(4) Bed and breakfast establishments; or~~

~~(5) A private individual selling food from a movable or temporary stand at a public farm sale.~~

~~(m) "Temporary Restaurant" shall mean a restaurant that operates at a fixed location in conjunction with a single event such as a fair, carnival, circus, public exhibition, anniversary sale, or occasional sales promotion.~~

~~(n) "Vending Machine" shall mean any self-service device offered for public use which, upon insertion of a coin or token, or by other means, dispenses unit servings of food or beverage either in bulk or in package, without the necessity of replenishing the device between each vending operation. "Vending machine" does not include a device which dispenses only bottled, pre-packaged, or canned soft drinks, a one-cent vending device, a vending machine dispensing only candy, gum, nuts, nut meats, cookies, or crackers, or a vending machine dispensing only pre-packaged, grade A, pasteurized milk or milk products.~~

~~(o) "Vending Machine Commissary" shall mean any building, room, or place in the state at which foods, containers, transport equipment, or supplies for vending machines are kept, handled, prepared, or stored by a vending machine operator, except a place at which the operator is licensed to manufacture, distribute, or sell food products under Wis. Stat. ch. 97.~~

17.04 ENFORCEMENT. The provisions of this Ordinance shall be administered by or under the direction of the Division of Public Health of the ~~Health and Human Services~~ Department by its duly authorized representatives who shall have the right to enter, at reasonable hours, upon premises affected by this regulation to inspect the premises, secure samples or specimens, examine and copy relevant documents and records, or obtain photographic or other evidence needed to enforce this Ordinance.

17.05 LICENSE~~ AND PERMIT~~.

(~~a~~1) No person shall operate retail food establishments, hotels, motels, restaurants, tourist rooming houses, bed and breakfast establishments, campgrounds and camping resorts, recreational and educational camps, public swimming pools and establishments possessing Class B and Class C alcohol beverage licenses and inspections of food vending machines, their operators and vending machine commissaries without first obtaining a non-prorated ~~permit~~license from the ~~Health and Human Services~~ Department. Such ~~permits~~licenses shall expire on June 30 of each year following their issuance except that ~~permits~~licenses initially issued

during the period beginning on April 1 and ending June 30 shall expire June 30 of the following year. The issuance of a ~~permit~~license may be conditioned upon the ~~Permittee~~licensee correcting a violation of this Ordinance within a specified period of time. If the condition is not met within the specified period of time, the ~~permit~~license shall be voided. The ~~permit~~license shall not be transferable to a location other than the one for which it was issued, nor shall a ~~permit~~license be transferred from one operator to another subject to the express exception of:

(~~1~~a) As to location, temporary ~~permits~~licenses may be transferred;

(~~2~~b) As to operator, a ~~permit~~license of a food establishment operator may be transferred to an individual who is an immediate family member of the operator if the operator is transferring operation of the establishment or vending machine to that immediate family member. A parent, child, step-child, grandchild, sibling, or step-sibling shall be considered an immediate family member for purposes of this Ordinance.

(~~b~~2) Operators or ~~permittees~~licensees of temporary restaurants whom the ~~Health and Human Services~~ Department has found to be uncooperative or habitual violators of this Ordinance may be denied a ~~permit~~license to operate. Temporary ~~permits~~licenses may be transferred to a premises other than that for which it was issued, provided that the approval of the new premises is secured from the ~~Health and Human Services~~ Department prior to operating at the new premises.

(~~c~~3) No ~~permits~~licenses shall be granted to any person under this Ordinance without a ~~pre-inspection~~pre-licensing inspection by the ~~Health and Human Services~~ Department of the premises for which the ~~permit~~license shall be granted.

(~~d~~4) No ~~permit~~license shall be issued until all application fees have been paid.

17.06 APPLICATION. Application for ~~permits~~licenses shall be made in writing to the ~~Health and Human Services~~ Department on forms developed and provided by the ~~Health and Human Services~~ Department stating the name and address of the proposed applicant and operator, and the address and location of the proposed establishment, together with any such other information as may be required. The ~~Health and Human Services~~ Department shall either approve the application or deny the ~~permit~~license within thirty (30) days after receipt of a complete application.

17.07 FEES. Fees for the issuance of ~~permits~~licenses, the making of investigations, inspections, providing education, training, and technical assistance to all establishments covered pursuant to this Ordinance, plus the costs required to be paid to the state for each ~~permit~~license issued, are established by and may be amended upon the approval of the Sheboygan County Health and Human Services ~~Board~~Committee. In addition, separate ~~pre-inspection~~pre-licensing fees are hereby established with regard to new establishments or existing establishments which have been transferred to a new operator. The fee schedule for a license shall be on file with the ~~Sheboygan County Health and Human Services~~ Department~~, Division of Public Health~~.

17.08 ~~PERMIT~~LICENSE PUBLIC DISPLAY. Every establishment required to obtain a ~~permit~~license pursuant to this Ordinance shall display said ~~permit~~license at all times in a conspicuous public place.

17.09 ~~PERMIT~~LICENSE SUSPENSION AND REVOCATION. Any ~~permit~~license issued by the ~~Health and Human Services~~ Department pursuant to this Ordinance may be temporarily suspended and the premises ordered closed by the Department for a violation of any provision of this Ordinance or rules adopted by reference by this Ordinance if the

Department determines that an immediate danger to health exists or as may otherwise be allowed by law, including failure to pay any fees required hereunder. The Department may establish such protocols as it deems appropriate to allow license holders opportunities to correct in lieu of suspension and closure. Such ~~permits~~licenses may be permanently revoked after repeated violations.

17.10 REGULATIONS, RULES, AND LAWS ADOPTED BY REFERENCE. The applicable laws, rules, and regulations as set forth in Wis. Stats. chs. 97, 125, 251, and 254; Wisconsin Administrative Code Chapters~~; and HFS 172, 175, 178, 192, 195, 196, 197, and 198; and Comm 90~~ATCP 72, 73, 77, 76, 78, and 79 and such other provisions adopted in conformity therewith are incorporated in this regulation by reference and they shall be construed, read, and interpreted as fully set forth herein until amended and then shall apply as amended. The expressed provisions of this Ordinance shall control where more restrictive.

17.11 VIOLATION/PENALTIES. Any person who violates or refuses to comply with any provisions of this Ordinance shall be subject to a forfeiture of Two Hundred Fifty Dollars ($250.00) for each offense and/or revocation or amendment of their applicable ~~permit~~license. Each day a violation exists or continues shall be considered a separate offense. Where appropriate, injunctive relief may be sought by the ~~Health and Human Services~~ Department against continuing violations. In the alternative, the ~~Health and Human Services~~ Department may pursue enforcement of such Section of these regulations as are prosecutable. Representatives of the Department charged with the administration and enforcement of this Ordinance are authorized to issue citations pursuant to Chapter 90 of this Code with respect to Ordinances which are directly related to their official responsibilities.

17.12 CONSTRUCTION OR ALTERATION OF FOOD ESTABLISHMENTS: PLAN EXAMINATION. No person shall erect, construct, enlarge, or alter a food establishment without first submitting to the ~~Sheboygan County Health and Human Services~~ Department ~~Division of Public Health ("Division of Public Health")~~ 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 floor plans, equipment plans, and specifications; wall, floor, and ceiling finishes; and plans and specifications for food service kitchen ventilation. Submitted plans shall give all information necessary to show compliance with applicable health codes. At the option of the ~~Division of Public Health~~Department, 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 first be obtained from the ~~Division of Public Health~~Department. Plan examination fees shall be paid pursuant to Section 17.07 of this Code.

17.13 CONSTRUCTION OR ALTERATION OF FOOD ESTABLISHMENTS: SITE EVALUATION. A site evaluation by the ~~Division of Public Health~~Department is required when any food establishment begins operation in a location where the immediate predecessor was not a food operation. Site evaluation by the ~~Division of Public Health~~Department is not required for any food operation that has a change in operator or that is remodeled or altered. Such a food operator may voluntarily request site evaluation by the ~~Division of Public Health~~Department which shall provide such evaluation whenever a request is made. Any food operation which voluntarily requests a food evaluation shall pay a site evaluation fee. Site evaluation fees shall be paid as required by Section 17.07.

Section 2. **Authorization to Execute Agreement**. The County Administrator or designee is authorized and directed to enter into an agreement with the Wisconsin Department of Agriculture, Trade and Consumer Protection ("the DATCP") to have the Sheboygan County Health and Human Services Department, Division of Public Health, act

as the DATCP's agent to administer its licensing programs pursuant to Wis. Stat. § 97.41 and such other applicable statutes effective July 1, 2016.

Section 3. **Effective Date**. Section 1 of this Ordinance shall take effect on July 1, 2016. Section 2 of this Ordinance shall take effect upon enactment.

Respectfully submitted this 15th day of March, 2016.

HEALTH & HUMAN SERVICES COMMITTEE*

Vernon C. Koch	*Brian C. Hoffmann*
Vernon C. Koch, Chairperson	Brian C. Hoffmann, Vice-Chairperson
Jacob Van Dixhorn	*James Baumgart*
Jacob Van Dixhorn, Secretary	James Baumgart
Henry Nelson	*Roger R. Otten*
Henry Nelson	Roger R. Otten

Opposed to Introduction:

ENACTED 04.12.2016

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