

**WAUPACA COUNTY CODE OF ORDINANCES**  
**Chapter 10**  
**Public Nuisances/Health Hazards**

**10.01 PUBLIC NUISANCES PROHIBITED**

No person shall erect, contrive, cause, continue, maintain or permit to exist any public nuisance within the County.

**10.02 PUBLIC NUISANCE DEFINED**

A public nuisance is a thing, act, occupation, condition or use of property, which continues for such length of time as to:

- A.** Substantially annoy, injure or endanger the comfort, health, repose or safety of the public.
- B.** In any way render the public insecure in life or in the use of property.
- C.** Greatly offend the public morals or decency.
- D.** Unlawfully and substantially interfere with, obstruct or tend to obstruct or render dangerous for passage any street, alley, highway, navigable body of water or other public way or the use of public property.

**10.03 PUBLIC NUISANCES AFFECTING HEALTH**

The following acts, omissions, places, conditions and things are specifically declared to be public health nuisances; but such enumeration shall not be construed to exclude other health nuisances coming within the definition of 10.02:

- A. Adulterated Food:** All decayed, adulterated or unwholesome food or drink sold or offered for sale to the public.
- B. Unburied Carcasses:** Carcasses of animals, birds or fowl not intended for human consumption or food which are not buried or otherwise disposed of in a sanitary manner within 24 hours after death.
- C. Breeding Places for Vermin, Etc.:** Accumulations of decayed animal or vegetable matter, trash, rubbish, rotting lumber, bedding, packing material, scrap metal or any material in which flies, mosquitoes, disease-carrying insects, rats or other vermin can breed.
- D. Stagnant Water:** All stagnant water in which mosquitoes, flies or other insects can multiply.

- E. Privy Vaults and Garbage Cans:** Privy vaults and garbage cans which are not fly-tight.
- F. Noxious Weeds:** All noxious weeds and other rank growth of vegetation. All weeds and grass shall be kept cut to a height of not to exceed one foot. The County may cause all weeds and grass to be cut and removed and brush to be removed and the cost thereof charged to the property under Sec. 66.60(16), Wisconsin Statutes.
- G. Water Pollution:** The pollution of any public well or cistern, stream, lake, canal or other body of water by sewage, creamery or industrial wastes or other substances.
- H. Noxious Odors, Etc.:** Any use of property, substances or things within the County emitting or causing any foul, offensive, noisome, noxious or disagreeable odors, gases, effluvia or stenches extremely repulsive to the physical senses of ordinary persons which annoy, discomfort, injure or inconvenience the health of any appreciable number of persons within the County.
- I. Street Pollution:** Any use of property which causes any noxious or unwholesome liquid or substance to flow into or upon any street, gutter, alley, sidewalk or public place within the County.
- J. Air Pollution:** The escape of smoke, soot, cinders, noxious acids, fumes, gases, fly ash, industrial dust or other atmospheric pollutants within the County in such quantities as to endanger the health of persons of ordinary sensibilities or to threaten or cause substantial injury to property in the County.

#### **10.04 PUBLIC NUISANCES OFFENDING MORALS AND DECENCY:**

The following acts, omissions, places, conditions and things are specifically declared to be public nuisances offending public morals and decency, but such enumeration shall not be construed to exclude other nuisances offending public morals and decency with the definition of Sec. 10.02:

- A. Disorderly Houses:** All disorderly houses, bawdy houses, houses of ill-fame, gambling houses and buildings or structures kept or resorted to for the purpose of prostitution, promiscuous sexual intercourse or gambling.
- B. Gambling Devices:** All gambling devices and slot machines.
- C. Unlicensed Sale of Liquor and Beer:** All places where intoxicating liquor or fermented malt beverages are sold, possessed, stored, brewed,

bottled, manufactured or rectified without a permit or license therefore as required by County Ordinance or State Statutes.

- D. Continuous Violation of County Ordinances:** Any place or premises within the County where County Ordinances or State laws relating to public health, safety, peace, morals or welfare are openly, continuously, repeatedly and intentionally violated.
- E. Illegal Drinking:** Any place or premises resorted to for the purpose of drinking intoxicating liquor or fermented malt beverages in violation of State laws.

#### **10.05 PUBLIC NUISANCES AFFECTING PEACE AND SAFETY:**

The following acts, omissions, places, conditions and things are declared to be public nuisances affecting peace and safety, but such enumeration shall not be construed to exclude other nuisances affecting public peace or safety coming within the definition of Sec. 10.02.

- A. Signs, Billboards, Etc.:** All signs and billboards, awnings and other similar structures over or near streets, sidewalks, public grounds or places frequented by the public, so situated or constructed as to endanger the public safety.
- B. Illegal Buildings:** All buildings erected repaired or altered in violation of the provisions of the ordinances of the County relating to materials and manner of construction of buildings and structures within the County.
- C. Unauthorized Traffic Signs:** All unauthorized signs, signals, markings or devices placed or maintained upon or in view of any public highway or railway crossing which purport to be or may be mistaken as official traffic control devices, railroad signs or signals or which because other color, location, brilliance or manner of operation interfere with the effectiveness of any such device, sign or signal.
- D. Obstruction of Intersections:** All trees, hedges, billboards or other obstructions which prevent persons driving vehicles on public streets, alleys or highways from obtaining a clear view of traffic when approaching an intersection or pedestrian crosswalk.
- E. Tree Limbs:** All limbs of trees which project over and less than 10 feet above any public sidewalk, street or other public place.
- F. Dangerous Trees:** All trees that are a menace to public safety or are the cause of substantial annoyance to the general public.

- G. Fireworks:** All use or display of fireworks except as provided by State laws and County ordinances.
- H. Dilapidated Buildings:** All buildings or structures so old dilapidated or out of repair as to be dangerous, unsafe, unsanitary or otherwise unfit for human use.
- I. Wires and Cables Over Streets:** All wires and cables over streets, alleys or public grounds which are strung less than 15 feet above the surface thereof.
- J. Noisy Animals or Fowl:** The keeping or harboring of any animal or fowl which by frequent or habitual howling, yelping, barking, crowing or making of other noises greatly annoys or disturbs a neighborhood or any considerable number of persons within the County.
- K. Obstructions of Streets; Excavations:** All obstructions of streets, alleys, sidewalks or crosswalks and all excavations in or under the same except as permitted by the ordinances of the County or which, although made in accordance with such ordinances, are kept or maintained for an unreasonable or illegal length of time after the purpose thereof has been accomplished or do not conform to the permit.
- L. Unlawful Assemblies:** Any unauthorized or unlawful use of property abutting on a public street, alley or sidewalk or of a public street, alley or sidewalk which causes large crowds of people to gather, obstructing traffic and free use of the streets or sidewalks.
- M. Shining Artificial Lights on Wild Animals:**
1. No person shall shine artificial lights from a motor vehicle with the intent of observing, pursuing or disturbing any deer or other wild animals, other than when authorized by the State hunting regulations, outside the incorporated limits of any village or city within Waupaca County, between 10:00 p.m. and sunrise.
  2. This prohibition shall not preclude owners or tenants of farmland from using motor vehicle lights while tilling the soil or harvesting crops, or in the inspection or herding of domestic animals on their own premises when in fact such domestic animals are in the area.
  3. This prohibition shall not apply to law enforcement officials in the performance of their duties.

4. Any person convicted of violating this subsection shall be assessed a forfeiture of not less than \$25 nor more than \$500 plus the costs of prosecution.
5. This subsection shall not be substituted or used in place of Sec. 29.99, Wis. Stats, which prohibits the hunting or shooting of deer with the aid of artificial lights, with the aid of an airplane, or the illegal snaring of deer, or for violation of Sec. 29.13(5), 29.48 and 29.49, Wis. Stats.

#### **10.06 ABATEMENT OF PUBLIC NUISANCES:**

- A. Enforcement:** The County Officials shall enforce those provisions of this chapter that come within the jurisdiction of their offices, and they shall make periodic inspections and inspections upon complaint to insure that such provisions are not violated. No action shall be taken under this section to abate a public nuisance unless the officer has inspected or caused to be inspected the premises where the nuisance is alleged to exist and has satisfied himself that a nuisance does in fact exist.
- B. Summary Abatement:** If the inspecting officer determines that a public nuisance exists within the County and that there is great and immediate danger to the public health, safety, peace, morals or decency, the Chairman of the County Board may direct the proper officer to cause the same to be abated and charge the cost thereof to the owner, occupant or person causing, permitting or maintaining the nuisance, as the case may be.
- C. Abatement After Notice:** If the inspecting officer determines that a public nuisance exists on private premises but that the nature of such nuisance does not threaten great and immediate danger to the public health, safety, peace, morals or decency, he shall serve notice on the person causing or maintaining the nuisance to remove the same within 10 days, the proper officer shall cause the nuisance to be removed as provided in Sub. (B).
- D. Other Methods Not Excluded:** The County or its officials shall construe nothing in this chapter as prohibiting the abatement of public nuisances in accordance with State laws.
- E. Court Order:** Except when necessary under Sub. (B), an officer hereunder shall not use force to obtain access to private property to abate a public nuisance but shall request permission to enter upon private property if such premises are occupied and, if such permission is denied, shall apply to any court having jurisdiction for an order assisting the abatement of the public nuisance.

## **10.07 COST OF ABATEMENT:**

In addition to any other penalty imposed by this chapter for the erection, contrivance, creation, continuance or maintenance of a public nuisance, the cost of abating a public nuisance by the County shall be collected as a debt from the owner, occupant or person causing, permitting or maintaining the nuisance; and if notice to abate the nuisance has been given to the owner, such cost shall be assessed against the real estate as a special charge.

## **10.08 REGULATING RESTAURANTS, HOTELS, MOTELS AND TOURIST ROOMING HOUSES, BED AND BREAKFAST ESTABLISHMENTS, VENDING OF FOOD FACILITIES, PUBLIC POOLS & WATER ATTRACTIONS, RECREATIONAL AND EDUCATIONAL CAMPS, CAMPGROUNDS, TATTOO AND BODY PIERCING ESTABLISHMENTS, RETAIL FOOD ESTABLISHMENTS, AND MANUFACTURED HOME COMMUNITIES (Amended 3/18/14, Amended 4/21/15, Amended 8/18/15))**

### **A. Administration**

This ordinance shall be administered by the Waupaca County Department of Health and Human Services.

### **B. Authority**

1. The County Sanitarian or his/her duly authorized representative shall enforce the regulations of this chapter, and may issue orders to effect correction of violations and may issue citations pursuant to Ordinance No. 25 of Waupaca County. All enforcement actions shall minimally be analogous to Sec. 254.85, 254.86, 254.87, 254.88, and 97.12 Wis. Stats.
2. Waupaca County Corporation Counsel/District Attorney may in his/her discretion, commence legal action and may proceed pursuant to the provisions outlined in Sec. 66.0113 or 66.0114, Wis. Stats., or pursuant to the issuance of a summons and complaint.
3. The Waupaca County Department of Health and Human Services is an agent for the Wisconsin Department of Health Services, Wisconsin Department of Agriculture Trade & Consumer Protection and for the Wisconsin Department of Safety and Professional Service under the provisions as set forth in Chapter 254, subchapter VII, Sec. 254.47, Sec 97.41, and Sec. 101.935, Wis. Stats., respectively, with the powers as described in Sec. 254.74, Wis. Stats. The duties under the state statute are described in the

WI Administrative Code Chapter DHS 192 and the written Terms of Agreement Contract.

4. Waupaca County adopts by reference the following chapters of the WI Administrative Codes: DHS 192, DHS 196, DHS 195, DHS 197, DHS 198, DHS 172, SPS 390, DHS 175, DHS 178, DHS 173, ATCP 75 and SPS 326 and all other state and federally referenced rules and Memorandums of Understanding.
5. Waupaca County recognizes and adopts the same exemptions for inspections and licensure as contained in the aforementioned state statutes, administrative codes and the State of Wisconsin Department of Health Services and Wisconsin Department of Agriculture & Consumer Protection policies.

### **C. Severability**

Each section, paragraph, sentence, clause, word or provision of this ordinance is severable, and if any provisions shall be held unconstitutional or invalid for any reason, such decision shall not affect the remainder of the ordinance nor any part thereof other than that affected by such a decision. Any subsequent change to Wis. Stats. or Administrative Codes are incorporated by reference hereto.

### **D. Definitions**

1. "County" means Waupaca County, Wisconsin.
2. "Conditional License" means granting the temporary operation of an establishment. It requires a signed agreement of compliance within a specific period of time to be determined by the county sanitarian and by policy.
3. "Department" means the Waupaca County Department of Health and Human Services.
4. "Director" means the Director of the Waupaca County Department of Health and Human Services.
5. "Health Officer" means the Health Services Coordinator of his/her authorized agent.
6. "License" means the granting of permission in a written/certificate form from the appropriate authority to carry on an activity. In this chapter, it is synonymous with permit.

7. "Person" means 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.
8. "Sanitarian" means the Waupaca County Wisconsin Registered Sanitarian and/or National Environmental Health Association Registered Environmental Health Specialist or his/her representative.
9. "Second and subsequent follow-up inspection" means any reinspection that becomes necessary because critical or multiple violation(s) governing that establishment continue to exist, after notification of same violation (s) and of appropriate time to correct them has been issued.

## **E. Issuance of a License**

### **1. License Application**

License application shall be made to the Waupaca County Department of Health and Human Services using forms approved and supplied by the Department and accompanied with the appropriate license fee and pre-inspection fee. Licenses hereunder shall not be granted or issued by the Department unless and until the sanitarian determines and certifies the premises to be licensed is in compliance with all the applicable terms and conditions of all WI Administrative Codes under contract. Conditional licenses may be issued per policy.

Applications for licenses required in this chapter shall contain, but not be limited to, the following information:

- a. The name, home address and date of birth of the entity requesting the privilege of operating the said business/conducting the activity.
- b. The trade name and address of the establishment.
- c. Whether the applicant is a person, corporation, or partnership:
  1. If the applicant is a corporation, the application shall contain the registered agent's name, home address and date of birth.

2. If the applicant is a partnership, the applicant shall include the names, home addresses and date of births of the partners.
3. The mailing address of the legal licensee.
- d. The signature of all applicants and their agents to confirm that all information on the application is correct, and to acknowledge that any change in the information on the application shall be reported to the sanitarian within 30 days of the change.

## 2. License Issuance

The sanitarian shall issue a license to the applicant only after compliance with the requirements of this chapter and upon payment to the department of all required fees. The Department's decision to grant or withhold a license shall not exceed 30 calendar days, unless application is for a retail food establishment, in which case a decision shall not exceed 15 calendar days. The decision of withhold shall accompany written inspection or documentation of justification or cause. (See Section 7C on Denial of Permit).

- a. No license may be issued until all applicable fees have been paid.

## 3. License Period

The license period for licenses issued per the DHS contract shall be from July 1 through June 30, except for a conditional license. Those licenses initially issued during the period beginning on April 1 and ending on June 30, expire on June 30 of the following year.

## 4. Display of License

All licensees shall post their license in plain public view on the premise for which the license is issued and shall be so posted for the duration that the license is in effect.

## **F. Fees**

License fees will be adjusted annually by the Health and Human Services Board, through adoption of the county budget, to reflect any cost increase in issuing licenses and conducting inspections.

1. Non-Proration of Fees. Permit fees and other applicable fees are not prorated for the fiscal year and must be paid in full at any time.
2. Pre-Inspections and their associated fees. Pre-inspections are required to be conducted for establishments within the scope of Sec. 254 Subchapter VII, Wis. Stats and WI Admin Code ATCP 75.03.
3. Late Fees. Assessed to all Sec. 254.69, Wis. Stats. establishment licensees for payment after July 1.

## **G. Enforcement of Statutes and Rules**

1. Inspection by Health Department

The sanitarian, upon presenting proper identification, shall have the authority and duty to enter any licensed premises during regular business hours to inspect the same for compliance with incorporated codes, with respect to a business open at least forty (40) hours per week. In the absence of regular business hours, inspections shall be made at any reasonable hour. In the event of an emergency, an inspection may be made at any time.

2. Temporary Orders

Whenever, as a result of an inspection conducted pursuant to this chapter, the sanitarian has reasonable cause to believe that any examined food constitutes, or that any construction, sanitary condition, operation or method of operation of the premises or equipment used on the premises creates an immediate danger to health of the public, the sanitarian may proceed as stated in Sec. 66.0417, Wis. Stats. or Chapter 254.85 or Chapter 97.12 to issue a temporary order to prohibit the sale or movement of food for any purpose, prohibit the continued operation or method of operation of equipment, require the premises to cease any other operation or method of operation which creates an immediate danger to public health. Sec. 66.0417, Wis. Stats. is incorporated herein by reference and made a part of this ordinance as if fully set forth herein.

3. Denial, Suspension or Revocation of License

The Health Officer or designee may deny any license application or suspend or revoke any license issued under this chapter for non-compliance with this code or any other state or county law. The following procedure shall be followed in the denial, suspension or revocation of any license issued under this chapter:

- a. A decision to deny, suspend or revoke a license shall be in writing and shall state, with specificity, the reasons for the decision and shall state any and all applicable statutes, ordinances, rules, regulation or orders which may have been violated. The Health Officer or designee shall send to the licensee a copy of the written decision by mail or by personal service. Said notice shall inform the licensee or applicant of the right to have this decision reviewed and the procedure for such review.
- b. A licensee or applicant aggrieved by a decision to deny, suspend or revoke a license must send a written Request and Reconsideration to the Health Officer and/or designee within 10 working days of receipt of the notice of the decision. The Request for Review and Reconsideration shall state the grounds upon which the person aggrieved contends that the decision should be reversed or modified.
- c. Within 15 working days of receipt of the Request for Review and Reconsideration, the Health Officer and/or designee shall review its initial determination. The Health Officer and/or designee may affirm, reverse or modify the initial determination. The Health Officer or designee shall mail or deliver to the licensee or applicant a copy of the decision on review which shall state the reasons for such a decision. The decision shall advise the licensee or applicant of the right to appeal the decision, the time within which appeal shall be taken and the office or person with whom Notice of Appeal shall be filed.
- d. A licensee or applicant who wishes to appeal a decision on review must file a notice of appeal within 10 working days of receipt of the Health Officer's and/or designee decision on review. The Notice of Appeal shall be filed or mailed to the Health Officer and/or designee. The Health Officer and/or designee shall immediately file said Notice with the Waupaca County Health and Human Services Board.
- e. A licensee or applicant shall be provided a hearing on appeal within 45 days of receipt of the Notice of Appeal. The Health Officer and/or designee shall serve the licensee or applicant with notice of hearing by mail or personal service at least 5 days before the hearing.
- f. The hearing shall be conducted before the Waupaca County Health and Human Services Board and shall be conducted

in accordance with the procedures outlined in Sec. 68.11 (2) and (3), Wis. Stats.

- g. Within 15 days of the hearing, the Waupaca County Health and Human Services Board shall mail or deliver to the applicant, its written determination stating the reasons therefore. This is the final county determination.

## **H. Penalty**

Any person who violates this ordinance may be fined not less than \$100.00, nor more than \$1,000.00. Any person who fails to comply with an order of the Department under this ordinance, shall forfeit \$50.00 for each day of non-compliance after the order is served upon or directed to him/her per Sec. 254.69 and 97.41, Wis. Stats. and in case of action under Sec. 254.87, Wis. Stats., Court review, after reasonable time after final determination.

Pursuant to Sec. 252.25, Sec 254.88, Sec 97.72, Sec. 97.73 Wis. Stats., WI Administrative Codes incorporated by reference, and Waupaca County Code of Ordinance # 25 the Department is authorized to enforce this ordinance through the use of County citations and/or petitions for injunctive relief.

## **10.09 SPECIFIC INCORPORATION OF CODES**

### **A. Hotels, Motels and Tourist Rooming House Requirements**

No person, party, firm, or corporation shall operate a Hotel, Motel or Tourist Rooming House, as defined in WI Administrative Code DHS 195, without first obtaining a annual license therefore from the Waupaca County Department of Health and Human Services, or contrary to the terms and conditions of this ordinance, or DHS 195 of the WI Administrative Code, and Chapter 254, Subchapter VII, Wis. Stats. provisions, which are incorporated herein by reference and made a part of this ordinance as fully set forth herein.

### **B. Restaurants/Meal Food Service Requirements**

Except as provided in Sec. 254.61(5), Wis. Stats., no person, party, firm or corporation shall operate a Restaurant, Temporary Restaurant or Mobile Restaurant, as defined in WI Administrative Code DHS 196, without first obtaining a license therefore from the Waupaca County Department of Health and Human Services, or contrary to the terms and conditions of this ordinance, or DHS 196 of the WI Administrative Code, and Chapter 254, Subchapter VII, Wis. Stats. provisions, which are incorporated herein by reference and made part of this ordinance as fully set forth herein.

**C. Bed and Breakfast Establishment Requirements**

No person, party, firm, or corporation shall operate a Bed and Breakfast Establishment as defined in WI Administrative Code DHS 197 for more than 10 nights in a year, without first obtaining a license from the Waupaca County Department of Health and Human Services, or contrary to the terms and conditions of this ordinance, or DHS 197 of the WI Administrative Code, and Chapter 254, Subchapter VII, Wis. Stats. provisions, which are incorporated herein by reference and made a part of this ordinance as fully set forth herein.

**D. Vending of Food Requirements**

No person, party, firm, or corporation shall operate a Vending Machine Commissary or a Vending Machine, as defined in WI Administrative Code DHS 198, without first obtaining an annual license therefore from the Wisconsin Department of Health Services, or contrary to the terms and conditions of this ordinance or DHS 198 of the WI Administrative Code, and Chapter 254, Subchapter VII, WI Stat. provisions, which are incorporated by reference and made a part of this ordinance as fully set forth herein. Pursuant 254.69 Waupaca County is authorized to make inspections and investigations of Vending Machine Commissaries, Vending Machine Operators, and Vending Machines.

**E. Public Pools & Water Attraction Requirements**

No person, party, firm, or corporation shall operate a Public Swimming Pool or Water Attraction, as defined in WI Administrative Codes DHS 172 and DSPS 390, without first obtaining a annual license therefore from the Waupaca County Department of Health and Human Services, or contrary to the terms and conditions of this ordinance, or DHS 172 of WI Administrative Code, and Chapter 254, Subchapter VII, WI Stat. provisions, which are incorporated herein by reference and made a part of this ordinance as fully set forth herein.

**F. Recreational and Educational Camp Requirements**

No person, party, firm, or corporation shall operate a Recreational and Educational Camp, as defined in WI Administrative Code DHS 175, without first obtaining a annual license therefore from the Waupaca County Department of Health and Human Services, or contrary to the terms and conditions of this ordinance, or DHS 175 of the WI Administrative Code, and Chapter 254 Environmental Health, Subchapter VII, Wis. Stats. Sec. provisions, which are incorporated herein by reference and made a part of this ordinance as fully set forth herein.

**G. Campground Requirements**

No person, party, firm, or corporation shall operate a Campground, as defined in WI Administrative Code DHS 178, without first obtaining a annual license therefore from the Waupaca County Department of Health and Human Services, or contrary to the terms and conditions of this ordinance, or DHS 178 of the WI Administrative Code, and Chapter 254, Subchapter VII, Wis. Stats. Sec. provisions, which are incorporated herein by reference and made a part of this ordinance as fully set forth herein.

**H. Tattoo and Body Piercing Establishment Requirements**

No person, party, firm, or corporation shall operate a Tattooing and/or a Body Piercing Establishment, as defined in WI Administrative Code DHS 173, without first obtaining a annual license therefore from the Waupaca County Department of Health and Human Services, or contrary to the terms and conditions of this ordinance or DHS 173 of the WI Administrative Code, and Chapter 252, Wis. Stats. Sec. provisions, which are incorporated herein by reference and made a part of this ordinance as fully set forth herein.

**I. Manufactured Home Communities Requirements**

No person, party, firm, or corporation shall operate a Manufactured Home Community, as defined in WI Administrative Code DSPS 326, without first obtaining a annual license therefore from the Waupaca County Department of Health and Human Services, or contrary to the terms and conditions of this ordinance, or DSPS 326 of the WI Administrative Code, and Chapter 101 and Chapter 254, Subchapter VII, Wis. Stats. Sec. provisions, which are incorporated herein by reference and made a part of this ordinance as if fully set forth herein.

**J. Retail Food Establishment Requirements**

No person, party, firm, or corporation shall operate a Retail Food Establishment as defined in WI Administrative Code ATCP 75, without first obtaining an annual license from the Waupaca County Department of Health and Human Services, or contrary to the terms and conditions of this ordinance, ATCP 75 of the WI Administrative Code, Chapter 97, and Chapter 254, , Wis. Stats. provisions which are incorporated by reference and made a part of this ordinance as if fully set forth herein.

**EFFECTIVE DATE:** Upon adoption of and publication by the County Board of Supervisors, this amendment will be in full force and effect within Waupaca County.

## **MANURE MANAGEMENT (Adopted June 21, 2005)**

### **10.50 GENERAL PROVISIONS**

**A. Title:**

This ordinance (Sections 10.50 through 10.55) shall be known and cited as the Waupaca County Manure Management Ordinance, and is hereinafter referred to as the Ordinance.

**B. Findings, Purpose and Authority:**

The Waupaca County Board of Supervisors finds that storage of manure in storage facilities not meeting sufficient technical design and construction standards may cause pollution of the surface and ground waters of Waupaca County and may result in harm to the health of county residents, to livestock, aquatic life and other animals and plants and to the property tax base of Waupaca County.

The Waupaca County Board of Supervisors also finds that improper management of manure storage facilities and utilization of stored manure may cause pollution of the ground and surface waters of Waupaca County. The Waupaca County Board of Supervisors further finds that the technical standards developed by the United States Department of Agriculture, Natural Resource Conservation Service and adopted by the Waupaca County Land and Water Conservation Committee provide effective, practical and environmentally safe methods of storing and utilizing manure.

This ordinance is enacted, pursuant to the following Wisconsin Statutes, §59.02, §59.03, §59.69, §59.70, §66.0119, §92.15, and §92.16. The purpose of the ordinance is to regulate the design and construction of manure storage facilities in order to prevent surface and ground water pollution that may cause harm to the health of county residents; and enforce the technical standards established by the United State Department of Agriculture Natural Resource Conservation Service (USDA-NRCS) as adopted by the Waupaca County Land Conservation Committee; and to provide for the administration and enforcement of the ordinance and to provide penalties for its violation.

**C. Applicability:**

This ordinance applies to the entire unincorporated areas of Waupaca County.

**D. Interpretations:**

1. In their interpretation and application, the provisions of this ordinance shall be held to the minimum requirements and shall be liberally construed in favor of Waupaca County and shall not be deemed a limitation or repeal of any other power granted by the Wisconsin Statutes.
2. Severability Clause. If any section, provision, or portion of this ordinance is ruled invalid by any court, the remainder of the ordinance shall not for that reason be rendered ineffective, but rather shall be enforced, to whatever degree possible, as if the provision which was declared invalid had not been enacted.

**E. Definitions:**

1. “Abandoned Storage Facility” means a facility where manure has not been added or removed for a period of twenty-four (24) months.
2. “Manure” means livestock excreta. “Manure” includes livestock bedding, water, soil, hair, feathers, and other debris that becomes intermingled with livestock excreta in normal manure handling operations.
3. “Manure Storage Facility” means an impoundment made by constructing an embankment or excavating a pit or dug out or by fabricating a structure to contain manure and other animal or agricultural wastes.
4. “Applicant” means any person who applies for a permit under this ordinance.
5. “Approved Engineer” means an agricultural or civil engineer that is registered by the State of Wisconsin or an engineering practitioner with the proper certification for the Department of Agriculture Trade and Consumer Protection or job approval from USDA.
6. “Department” means the Waupaca County Land and Water Conservation Department.

7. “Permit” means the signed, written statement issued by the Waupaca County Land and Water Conservation Department under this ordinance authorizing the applicant to construct, install, reconstruct, enlarge, or substantially alter a manure storage facility.
8. “Permittee” means any person to whom a permit is issued under this ordinance.
9. “Person” means any individual, corporation, partnership, joint venture, agency, unincorporated association, municipal corporation, county, or state agency within Wisconsin, the Federal Government, or any combination thereof.
10. “Technical Guide” means the United States Department of Agriculture (USDA) Natural Resource Conservation Service (NRCS) Technical Guide as adopted by the Waupaca County Land and Water Conservation Committee.
11. “Water Pollution” means contaminating or rendering unclean or impure the ground or surface waters of the state, or making the same injurious to public health, harmful for commercial or recreational use, or deleterious to fish, bird, animal, or plant life.
12. “Substantially Alter” means a change initiated by an owner or operator that results in a relocation of a structure or facility or changes to the size, depth or configuration of a structure or facility including:
  - a. Replacement of a liner of any type in a manure storage structure.
  - b. An increase in the volumetric capacity or area of a structure or facility by greater than 20%.
  - c. A change in a structure or facility related to a change in livestock management from one species of livestock to another such as cattle to poultry. [NR151.015]

## **10.51 ACTIVITIES SUBJECT TO REGULATION**

### **A. General Requirement:**

Any person who designs and constructs a new manure storage facility or alters an existing manure storage facility or has an abandoned manure storage facility on property under their ownership; or who employs another person to do the same, on land subject to this ordinance, after the effective date of this ordinance, shall be subject to the provision of this ordinance.

### **B. Compliance with Permit Requirements:**

A person is in compliance with this ordinance if he or she follows the procedures of this ordinance, receives a permit from the Land and Water Conservation Department before beginning activities subject to regulation under this ordinance, and complies with the requirements of the permit.

### **C. Closure of a Manure Storage Facility:**

The owner of land that has a manure storage facility must close the facility if the livestock operations where the facility is located ceases operation, or manure has not been added or removed from the facility for a period of 24 months unless the landowner demonstrates the following to satisfaction of the Waupaca County Land and Water Conservation Department. A landowner who chooses to voluntarily close a manure storage facility must complete a closure permit 10.51E application.

1. The facility is designed, constructed and maintained to prevent water pollution.
2. The facility is designed to store manure for a period of time longer than 24 months.
3. The retention of the facility is warranted based on anticipated future use. If the Land and Water Conservation Department determines that the facility must be closed, the owner shall obtain a permit for closure of the facility as provided in sec. 10.53 and comply with the USDA-NRCS Technical Guide, Standard 360, Closure of Waste Impoundments.

## **10.52 STANDARDS FOR MANURE STORAGE FACILITIES**

- A.** The standards for design and construction of manure storage facilities are those in Standard 313 (Waste Storage Structure) and Standard 634 (Manure Transfer Standard) of the Technical Guide. The Standards for

abandonment of manure storage are those in Standard 360 (Manure Storage Abandonment)

- B.** An nutrient management plan meeting USDA-NRCS Standard 590 (Nutrient Management) (March, 1999).
- C.** Subsequent Modification of Standards: The standards of the Technical Guide are adopted and by reference made a part of this Article as if fully set forth herein. Any proposed future amendment, revision or modification of the standards incorporated herein will be acted upon by the Land and Water Conservation Committee.
- D.** Additional Conditions: The Waupaca County Land and Water Conservation Department staff may impose additional conditions before issuing a permit if in their judgment such conditions are necessary to protect groundwater or surface water due to questionable soil or site conditions. Additional conditions required, must comply with requirements of S.92.15, Stats. Compliance with this article does not eliminate or change the applicants' duty to comply with any other restrictions, rules or regulations imposed by other entities, including but not limited to town, state, city or village requirements.
- E.** Copies of amended, revised or modified standards that have been incorporated into the ordinance will be maintained and made available by the Land and Water Conservation Department.

### **10.53 APPLICATION FOR AND ISSUANCE OF PERMITS**

**A. Permit Required:**

No person may construct or substantially alter a manure storage facility or close any abandoned or unused storage facility without obtaining a permit from the Land and Water Conservation Department prior to beginning the proposed activity.

**B. Exception to Permit Requirement:**

Emergency repairs such as repairing a broken pipe or equipment, leaking dikes, or the removal of obstructions may be performed without a permit. If repairs will alter the original design and construction of the facility, a report shall be made to the Land and Water Conservation Department within one (1) day of the emergency for a determination by the Land and Water Conservation Department on whether a permit will be required for any additional alteration or repair to the facility.

**C. Fee:**

The fee for a permit under this ordinance shall be \$200.00.

**D. Manure Storage Facility Plan Required:**

Each application for a construction permit under this section shall include a manure storage facility plan developed in accordance with standards. Technical assistance for plan development shall be made available to applicants upon request through the Land and Water Conservation Committee or its staff. The plan shall specify:

1. The number and kinds of animals for which storage is provided.
2. A sketch of the facility and its location in relation to buildings within 250 feet and homes within 500 feet of the proposed facility. The sketch shall be drawn to scale, with a scale no smaller than 1 inch = 100 feet.
3. The structural details, including dimensions, cross sections, and concrete thickness.
4. The location of any private wells within 500 feet of the facility or public wells within 1000 feet of the proposed facility.
5. The soil test pit locations and soil descriptions to depth of at least three (3) feet below the planned bottom of the facility.
6. The elevation of ground water or bedrock if encountered in the soil profile and the date of any such determinations.
7. Provisions for adequate drainage and control of runoff to prevent pollution of surface water and ground water. If a navigable body of water lies within 1000 feet of the facility, the location and distance to the body of water shall be shown.
8. The scale of the drawing and the north arrow.
9. A time schedule for construction of the facility.
10. A nutrient management plan that complies with ATCP 50.04 and a written statement that the manure from the storage facility will be distributed consistent with the 590 Plan.
11. An approved construction site erosion control plan.

**E. Closure Permit Application:**

Each application for a closure permit under this ordinance shall include a closure plan prepared in accordance with Technical Standard 360. The plan shall specify:

1. A sketch of the facility and its location to buildings within 250 feet. The sketch shall be drawn to scale with a scale no smaller than 1 inch = 100 feet. Include a north arrow.
2. The amount and type of waste in the facility.
3. The type of facility and construction materials, i.e. concrete, earthen, synthetic liner.
4. The type of transfer system present.
5. A plan for application of the manure that is present in the facility (if any) that complies with USDA-NRCS Standard 590. (Nutrient Management)

**F. Review of Application:**

The Land and Water Conservation Department shall receive and review all permit applications. The Land and Water Conservation Department shall then determine if the proposed application meets required standards set forth in this ordinance. Within 30 days after receiving the completed application and fee, the Land and Water Conservation Department shall inform the applicant in writing whether the permit application is approved or disapproved. If additional information is required, the Land and Water Conservation Department has 15 days from the receipt of the additional information in which to approve or disapprove the application. If the Land and Water Conservation Department fails to approve or disapprove the permit application in writing within 45 days of the receipt of the permit application or additional information, as appropriate, the application shall be deemed approved and the applicant may proceed as if a permit had been issued.

**G. Permit Conditions:**

All permits issued under this ordinance shall be subject to the following conditions and requirements.

1. A manure storage facility construction shall be carried out in accordance with the manure storage waste facility plans and applicable standards specified in this ordinance.
2. The permittee shall give two (2) working days notice to the Land and Water Conservation Department before starting any construction activity authorized by the permit.
3. Approval in writing must be obtained from the Land and Water Conservation Department prior to any modifications to the approved manure storage facility plan.
4. If the permittee does not utilize the Land and Water Conservation Department to design and inspect construction of the facility, the permittee shall submit a certification from a professional engineer or a person with appropriate engineering job approval according to NRCS standards, that the facility was installed or closed as planned. A copy of the signed certification sheet shall be given to the Land and Water Conservation Department within 1 month of completion of installation or closure. Any approved changes made to the Manure Storage Facility Plan or closure design shall be specified in the certification. Land and Water Conservation Department personnel may conduct site inspections during and following construction to determine that the facility was installed or closed as planned and designed.
5. Activities authorized by permit must be completed within two (2) years from the date of issuance after which such permit shall be void.

**H. Permit Revocation:**

The Land and Water Conservation Department may revoke any permit issued under this ordinance if the holder of the permit has misrepresented any material fact in the permit application or manure facility plan, or if the holder of the permit violates any of the conditions of the permit.

**I. Manure Management Prohibitions:**

1. All livestock producers shall comply with this section.
2. A livestock operation shall have no overflow of manure storage facilities.
3. A livestock operation shall have no unconfined manure pile in a water quality management area.

4. A livestock operation shall have no direct runoff from a feedlot or stored manure into the waters of the state.
5. A livestock operation may not allow unlimited access by livestock to waters of the state in a location where high concentrations of animals prevent the maintenance of adequate sod or self-sustaining vegetative cover.
6. This prohibition does not apply to properly designed, installed and maintained livestock or farm equipment crossings.

#### **10.54 ADMINISTRATION, INSPECTION AND ENFORCEMENT**

##### **A. Administrative Duties:**

In the administration of this ordinance, the Land and Water Conservation Department shall:

1. Keep an accurate record of all permit applications, manure facility plans, permits issued, inspections made, and other official actions.
2. Review permit applications and issue permits in accordance with this ordinance.
3. Inspect manure facility construction to insure the facility is being constructed according to plan specifications.
4. Investigate complaints relating to compliance with the ordinance.
5. Perform other duties as specified in this ordinance.

##### **B. Inspection Authority:**

The Land and Water Conservation Department is authorized to enter upon any lands affected by this ordinance to inspect the land prior to or after permit issuance to determine compliance with this ordinance. If permission cannot be received from the applicant or permittee, entry by the Land and Water Conservation Department shall be according the §66.0119 Wisconsin Statutes.

##### **C. Enforcement Authority:**

1. The Land and Water Conservation Department is authorized to post an order stopping work upon land which has had a permit revoked or on land currently undergoing activity in violation of this

ordinance. Notice is given by both posting upon the land where the violation occurs, one or more copies of a poster stating the violation, and by mailing a copy of the order by certified mail to the person whose activity is in violation of this ordinance. The order shall specify that the activity must cease immediately and be brought into compliance within thirty (30) days.

2. Any permit revocation or order stopping work shall remain in effect unless retracted by the Board of Adjustment, the Land and Water Conservation Department, or by a court of general jurisdiction; or until the activity is brought into compliance with the ordinance. The Land and Water Conservation Department is authorized to refer any violation of this ordinance or of an order stopping work issued pursuant to this ordinance to the corporation counsel for commencement of further legal proceedings.

**D. Penalties:**

1. Any person who violates, neglects, or refuses to comply with or resists the enforcement of any of the provisions of this ordinance shall be subject to a forfeiture of not less than \$100.00, plus cost of prosecution for each violation of this ordinance or with any condition or qualification attached to the permit. Each day that a violation exists shall be a separate offense.
2. As a substitute for or as an addition to forfeiture actions, Waupaca County may seek enforcement of any part of this ordinance by court actions seeking injunctions or restraining orders.

**E. Appeals:**

1. Under authority of Chapter 59.964, Wisconsin Statutes, the Waupaca County Board of Adjustment, created under §59.694(4)(7), Wisconsin Statutes, and under Chapter 10, Sec. 10.50 of the General Code of Waupaca County, and acting as an appeal authority under §59.694(7), Wisconsin Statutes, is authorized to hear and decide appeals where it is alleged that there is error in any order, requirement, decision or determination by the Land and Water Conservation Department in administering this ordinance.
2. The rules, procedures, duties and powers of the Board of Adjustment and Chapter 59, Wisconsin Statutes, shall apply to this ordinance.

3. Appeals may be taken by any person having a substantial interest which is adversely affected by the order, requirement, decision or determination made by the Land and Water Conservation Department.
4. Application for appeals may be obtained through the Waupaca County Zoning office.

#### **10.55 INTERPRETATION**

If any section or provision of this ordinance is ruled invalid by any court, the remainder of the ordinance shall not be rendered ineffective.

#### **10.56 EFFECTIVE DATE**

This ordinance shall become effective upon its adoption and publication as required by law.