

CHAPTER IV
HEALTH

4.01 ADMINISTRATOR OF HEALTH

Administrator of Health, Health Department Administrator, or similar term when used in this Chapter or anywhere in the Code of General, Charter or Zoning Ordinances shall mean the Director of the Kenosha County Health Department, or designee(s) thereof, acting as the City enforcing agent under the provisions of a contract between the City and County of Kenosha.

4.02 MANURE

No manure shall be stored in the City, except in a fly proof and impervious container or covered with 6 inches of earth, except in the A-1 and A-2 Zoning Districts where manure may be stored in the open, conditioned upon it being intended for use as a fertilizer upon the land upon which stored, it being stored for no more than six (6) months, and it being stored in such manner so as to not constitute a public nuisance or a health hazard.

4.03 MOBILE HOMES AND PARKS

A. Additional Regulations on Mobile Homes and Mobile Home Parks. Wrecked, damaged or dilapidated mobile homes shall not be kept or stored in a Mobile Home Park or upon any premises in the City. The Inspector shall determine if a mobile home is damaged or dilapidated to a point which makes it unfit for human occupancy. Such mobile homes are hereby declared to be a public nuisance. Whenever the Inspector so determines, he shall notify the licensee or landowners and owner of the mobile home in writing that such public nuisance exists within the park or on lands owned by him giving the findings upon which his determination is based and shall order such home removed from the park or site or repaired to a safe, sanitary and wholesome condition of occupancy within a reasonable time.

B. Enforcement Of COMM 95. Section COMM 95 of the Wisconsin Administrative Code shall be enforced by the Kenosha County Health Department under authority of Chapter 16 of the Kenosha County Environmental Health/Food Ordinance.

4.05 SMOKING REGULATED IN RESTAURANTS AND GROCERY STORES

A. Purpose. This Ordinance is adopted for the purpose of regulating smoking in restaurants and grocery stores to protect the health, safety, and welfare of the public.

B. Finding By Kenosha County Board of Health. The Kenosha County Board of Health, at a duly noticed and convened meeting held on the 2nd day of March, 2000, recommended the adoption of this Ordinance to the Common Council of the City.

C. Findings of Common Council. The Common Council of the City finds that secondhand smoke from the smoking of tobacco affects frequenters and employees of grocery stores and restaurants as follows:

1. It is a health hazard.
2. It is a public nuisance, annoyance, inconvenience and discomfort.

D. Definitions. For purposes of this Ordinance, the following words and phrases shall have the meanings provided.

1. **"Full Service Bar"** shall mean a counterlike object with accessory seating for customers, over which fermented malt beverages or intoxicating liquors are sold for consumption on the premises. A service bar without accessory seating for customers shall not be considered a full service bar.

2. **"Full Service Bar Customer Seating Area"** shall mean the Customer Seating Area at the Full Service Bar in which the service of food is incidental to the consumption of fermented malt beverages or intoxicating liquors.

3. **"Grocery Store"** means a retail store whose primary business is the sale of food and a retail store that sells gasoline and oil in addition to food.

4. **"Restaurant"** means any building or room where, as the establishment's primary business, meals are prepared, or served or sold to transients or the general public, and all places used in connection with it, and includes any public or private school lunchroom. **"Restaurant"** also means a separate dining facility meeting the foregoing criteria located within an establishment, such as, but not limited to, a hotel, motel, hospital, retail store, or office building, whose primary business is not food service. **"Transient"** means a person who travels from place to place away from his/her permanent residence for vacation, pleasure, recreation, culture, business or employment.

5. **"Smoking"** means to smoke, carry, possess or control any lighted tobacco, including, but not limited to, cigars, cigarettes or pipes.

6. **"Separately ventilated"** means that the area is ventilated to a standard specified in the State

Building Code, Wisconsin Administrative Code, § Comm. 64.05, and that there is a ventilation system for the smoking area which is separate and distinct from the ventilation system for the nonsmoking area or areas so that there is no mixing of air from the smoking and nonsmoking areas.

7. "Tavern" means any establishment having a full service bar in which fermented malt beverages and/or intoxicating liquors are sold for consumption upon said premises and whose sale accounts for more than fifty (50%) percent of the establishment's gross receipts during the past City license year, verified under oath in a statement provided by an accountant or bookkeeper, filed with the City Clerk/Treasurer at the time of license renewal. New licensees shall estimate gross receipts for the first license year at the time of license application.

E. Prohibited Conduct.

1. No person shall engage in smoking within the enclosed indoor area of any grocery store or restaurant. These prohibitions also apply to restaurants within a mall, and include adjacent seating areas. These prohibitions do not apply to a room or hall in a restaurant or grocery store that is separately ventilated and separated by a total physical barrier, such as, but not limited to, a full wall without openings other than doors. The door to this room or hall may be opened and closed only for ingress and egress and shall be and remain closed at all other times. No person under the age of eighteen (18) years shall be permitted in such room or hall, unless a customer accompanied by their parent or legal guardian, or unless an employee having the written permission of their parent or legal guardian to work in a room or hall where smoking is permitted. These prohibitions do not apply to restaurants holding a "Class B" Intoxicating Liquor or Class "B" Fermented Malt Beverage License if the sale of intoxicating liquors and/or fermented malt beverages accounted for between thirty-three (33%) percent and fifty (50%) percent of the establishment's gross receipts during the past City license year, verified under oath in a statement provided by an accountant or bookkeeper, filed with the City Clerk/Treasurer at the time of license renewal, and having a Full Service Bar. New licensees shall estimate gross receipts for the first license year at the time of license application. The exemption shall not be in effect until this statement is filed. This exemption only applies to the Full Service Bar Customer Seating Area and not to the general seating area of the establishment.

These prohibitions do not apply to private functions within restaurants conducted in a separate room or hall which is not open to the general public

and where the sponsor of the event has elected to permit smoking and has notified invitees that smoking at the event will be permitted.

These prohibitions also do not apply to taverns where the licensee has filed the required verified statement of the establishment's gross receipts with the City Clerk/Treasurer.

2. No proprietor or other person in charge of a grocery store or restaurant shall place, provide or make available any ashtray or similar device used to facilitate smoking in an area where smoking is prohibited.

3. No proprietor or other person in charge of a grocery store or restaurant shall fail to display signs required by this Ordinance.

4. No person shall remove, deface or destroy any sign required by this Ordinance, except for purposes of prompt sign replacement by a proprietor or other person in charge of a grocery store or restaurant.

F. Signs Required. Signs prohibiting smoking shall be posted conspicuously at every entrance used by members of the public by the proprietor or other person in charge of each grocery store and restaurant. The signs shall be no smaller than 8-1/2" by 5-1/2", legibly reading "**No Smoking By City Ordinance**".

G. Duties of Proprietors Or Other Person in Charge of a Grocery Store or Restaurant.

1. The proprietor or other person in charge of a grocery store or restaurant shall post and maintain signs required by this Ordinance.

2. The proprietor or other person in charge of a grocery store or restaurant shall make reasonable efforts to ensure compliance with this Ordinance by patrons and employees by approaching persons who fail to voluntarily comply with this Ordinance and request that they extinguish their smoking material and refrain from smoking upon witnessing the person smoking or upon complaint from a person who witnessed the person smoking.

3. The proprietor or other person in charge of a grocery store or restaurant shall refuse service to a person smoking.

H. Notice To Person Smoking. Any person smoking in violation of this Section shall immediately cease and desist from so doing upon the request of the proprietor or person in charge of the grocery store or restaurant. Such person shall be subject to

prosecution under this Ordinance upon failure to immediately cease and desist from smoking.

I. Hardship Exemption. Any grocery store or restaurant that proves the loss of gross receipts of more than ten (10%) percent as a result of compliance with this Ordinance for the period of December 14, 2000, through March 13, 2001, as compared to the period of December 14, 1999, through March 13, 2000, may apply to the Common Council for an exemption not to exceed two (2) years provided the application is filed with the office of the City Clerk/Treasurer on or before July 13, 2001. Any person seeking such exemption shall furnish to the City Clerk/Treasurer sufficient information to substantiate its request for an exception. If such exemption is granted, the proprietor or other person in charge of the grocery store or restaurant granted such exemption shall post conspicuously at every entrance used by members of the public, signs reading, "WARNING: SMOKING PERMITTED", which shall be at least 8-1/2" by 5-1/2".

J. Inspections. The County Health Department and City Departments of Neighborhood Services and Inspections, Police Department and Fire Department shall have the power to enter grocery stores and restaurants for inspection to ensure compliance with this Ordinance. The proprietor or other person in charge of the grocery store or restaurant shall cooperate with any such inspector/inspection.

K. Penalties. Any proprietor or person in charge of a restaurant or grocery store, or person smoking, or other person who violates any provision of this Ordinance shall, upon conviction, forfeit not less than Fifty (\$50.00) Dollars, nor more than Five Hundred (\$500.00) Dollars for the first violation, and not less than One Hundred (\$100.00) Dollars, nor more than One Thousand (\$1,000.00) Dollars for the second and subsequent violations, plus the costs of prosecution and assessment. Each day of violation shall constitute a separate offense. In default of payment, the violator may be imprisoned in the County Jail for not more than sixty (60) days or until such forfeiture, plus costs and assessments, shall be paid.

4.06 RENDERING PLANTS

The provisions of Chapter ATCP, §57.09 of the Wisconsin Administrative Code are hereby adopted and made a part of this Chapter as if set forth in detail herein.

4.07 PENALTIES

Unless otherwise provided in this Chapter, any person, party, firm or corporation violating any

provision of this Chapter shall, upon conviction thereof, be punished by payment of a forfeiture not less than Twenty-five (\$25.00) Dollars, nor more than Five Hundred (\$500.00) Dollars, and in default of such payment of forfeiture and costs, shall be committed to the County Jail for a period of not more than sixty (60) days.