

## Chapter ATCP 74

### RETAIL FOOD ESTABLISHMENT; LOCAL GOVERNMENT REGULATION

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**Note:** Chapter Ag 35 was renumbered ch. ATCP 74 under s. 13.93 (2m) (b) 1., Stats., Register, April, 1993, No. 448.

**ATCP 74.01 Definitions.** As used in this chapter:

(1) "Agency agreement" means a written agreement under this chapter between the department and a city or county, whereby the city or county is authorized to administer a food establishment licensing program.

(2) "Agent city or county" means a city or county which has entered into an agency agreement.

(2m) "City" means a city or village.

(3) "Department" means the state of Wisconsin department of agriculture, trade and consumer protection.

(4) "Food" means a substance or material as defined in s. 97.01 (2), Stats.

(5) "Food establishment" means a retail food establishment as defined under s. 97.30 (1) (c), Stats.

(6) "Food establishment licensing program" means a program administered by a city or county under this chapter, pursuant to an agency agreement.

(7) "Retail food sales operation" means an unlicensed business which is engaged in the sale of food, and which is subject to inspection by an agent city or county pursuant to s. ATCP 74.05 (2).

**History:** Cr. Register, May, 1985, No. 353, eff. 6-1-85; emerg. r. and recr. (5), eff. 7-1-88; cr. (2m), r. and recr. (5), Register, October, 1989, No. 406, eff. 11-1-89.

**ATCP 74.02 Food establishment licensing program; city or county agency agreement.** (1) **AUTHORITY.**

(a) Pursuant to s. 97.41, Stats., the department may enter into a written agreement with a city or county, whereby the city or county is authorized to administer a food establishment licensing program in the city or county as the agent of the department. A food establishment licensing program may include, but is not limited to:

1. Licensing of food establishments.
2. Inspection of food establishments.
3. Inspection of unlicensed retail food sales operations, as provided in s. ATCP 74.05 (2).
4. Investigation of food related consumer complaints involving a food establishment or retail food sales operation.
5. Enforcement of specified provisions of ch. 97, Stats., as provided in the agency agreement.
6. Enforcement of specified department rules, as provided in the agency agreement.

(b) Upon execution of an agency agreement, the department shall discontinue all licensing and enforcement activities which the agent city or county agrees to undertake under the agreement, except as provided in s. 97.41 (8), Stats. An agency agreement under this section shall continue in effect until terminated by the city or county, or by the department.

(2) **CITY OR COUNTY PROPOSAL.** A city or county wishing to enter into an agency agreement with the department under this section shall submit a written proposal to the department. The pro-

posal shall include a complete plan for the administration of the licensing program, including:

- (a) The proposed coverage of the licensing program.
- (b) The functions to be performed by the city or county under the licensing program.
- (c) Projected staffing and budget for the program, including staffing and budget for inspection and enforcement.
- (d) Approximate license fees to be charged by the city or county under the program.
- (e) A description of the proposed licensing and recordkeeping system to be maintained by the city or county under the program.
- (f) A description of the proposed inspection and enforcement program to be implemented by the city or county.
- (g) Procedures to assure coordination with appropriate federal, state and local agencies in the event of an emergency or disaster.
- (h) The time period within which the city or county will act upon license applications. Time periods may not exceed 60 days, except as otherwise provided by department rule.
- (i) A reasonable assurance of continuing adequate support for the food establishment licensing program by the city or county.
- (j) Any other information which the department may require, if the information is reasonably necessary or relevant to the department's review of a city or county proposal.

(3) **TERMS AND CONDITIONS.** Every agency agreement and every food establishment licensing program under this section shall provide for the full and adequate enforcement of those provisions of ch. 97, Stats., and those rules of the department which are specified in the agency agreement. Every agency agreement shall set forth the specific terms and conditions of the agreement.

(4) **REVIEW AND EVALUATION.** The department shall review and evaluate the food establishment licensing program of each city or county having an agency agreement with the department, as provided in s. ATCP 74.09.

(5) **TERMINATION BY CITY OR COUNTY.** An agency agreement under this section may be terminated by a city or county upon 90 days written notice to the department.

(6) **TERMINATION BY DEPARTMENT.** If the department finds that an agent city or county has failed to comply with this chapter, or with the terms and conditions of the agency agreement, the department may terminate the agency agreement. Notice of termination shall be in writing and shall specify the reasons for termination and the date of termination. An agency agreement may be terminated without prior notice, if the department finds that immediate termination is necessary in an emergency to protect the public health, safety or welfare. In lieu of an immediate termination, the department may notify the agent city or county of any deficiencies in the food establishment licensing program, and establish a deadline date for the correction of the deficiencies.

**History:** Cr. Register, May, 1985, No. 353, eff. 6-1-85; am. (4), Register, October, 1989, No. 406, eff. 11-1-89.

**ATCP 74.03 Personnel.** (1) A food establishment licensing program administered by a city or county under an agency agreement with the department shall be adequately staffed to permit compliance with this chapter, and with the terms and

conditions of the agreement. Food establishment inspections under the licensing program shall be made by a Wisconsin registered public health sanitarian, or under the supervision of a Wisconsin registered public health sanitarian. Personnel making food establishment inspections shall be provided with appropriate equipment by the city or county, as provided in the agency agreement with the department.

**(1m)** By June 30, 1991, at least one registered sanitarian employed by each city or county shall undergo standardization training and a standardization evaluation by the department.

**(2)** The department assumes no liability for the job safety or welfare of city or county employees, or for the actions or omissions of city or county employees under this chapter, except as otherwise provided by law.

**History:** Cr. Register, May, 1985, No. 353, eff. 6-1-85; cr. (1m), Register, October, 1989, No. 406, eff. 11-1-89.

**ATCP 74.04 Establishment plan review.** An applicant for, or a holder of a food establishment license within a city or county may submit proposed establishment plans, including construction or remodeling plans, to the agent city or county for review. The agent city or county shall review every submitted plan for compliance with applicable provisions of ch. 97, Stats. and applicable rules of the department, as specified in the agency agreement. The plan review shall include, but not be limited to a review of the following:

- (1) Food service equipment.
- (2) Floors, walls, and ceilings.
- (3) Water supply.
- (4) Sewage disposal.
- (5) Handwashing facilities.
- (6) Lighting.
- (7) Ventilation.
- (8) Toilet facilities.
- (9) Locker rooms.
- (10) Garbage storage and disposal.
- (11) Food storage areas.

**History:** Cr. Register, May, 1985, No. 353, eff. 6-1-85.

**ATCP 74.05 Inspections. (1)** An agent city or county shall conduct inspections of food establishments licensed by the city or county under an agency agreement. Inspections shall be made for the purpose of enforcing those provisions of ch. 97, Stats., and those rules of the department which are specified in the agency agreement. This does not prohibit an agent city or county from adopting and enforcing stricter requirements applicable to food establishments licensed by the city or county. An agent city or county shall conduct at least one unannounced inspection per year at each food establishment licensed by the city or county, unless the agency agreement with the department requires the city or county to conduct additional inspections.

**(2)** An agent city or county shall conduct inspections, as necessary, at retail food sales operations which are subject to inspection by the department, but which are not subject to licensing under ch. 97, Stats.

**(3)** Inspection of a licensed food establishment or retail food sales operation by an agent city or county shall include, but not be limited to a review of the following:

- (a) Food sources, transportation and storage.
- (b) Food preparation, including temperature control if applicable.
- (c) Equipment and utensils, including storage procedures.
- (d) Cleaning and sanitizing procedures.
- (e) Waste disposal.
- (f) Insect and rodent control.
- (g) Personal hygiene.
- (h) Lighting, ventilation, and water temperature.

(i) Other items specified in the agency contract between the city or county and the department.

**(4)** As part of a retail food establishment inspection, an agent city or county shall:

- (a) Collect food and water samples as necessary.
- (b) Prepare an inspection report which identifies violations of law, and specifies deadline dates for the correction of violations by the food establishment or retail food sales operations.
- (c) Provide a copy of the inspection report to the food establishment or retail food sales operation, and discuss the report with the owner or manager of the establishment or operation. Provision of the inspection report to the owner or manager shall be documented by a written acknowledgement of receipt.

(d) Conduct timely reinspections to determine compliance with requirements for the correction of violations.

**History:** Cr. Register, May, 1985, No. 353, eff. 6-1-85; emerg. am. (2), eff. 7-1-88; am. (2), Register, October, 1989, No. 406, eff. 11-1-89.

**ATCP 74.06 Investigations. (1)** An agent city or county shall investigate every food related complaint received by the city or county involving a food establishment or retail food sales operation licensed or inspected by the city or county under an agency agreement. Each complaint shall be assigned a relative priority according to an established priority system, and be investigated using established investigation procedures. The following types of complaints shall be treated in descending order of priority:

(a) If a complaint alleges facts, such as swollen food cans, a serious illness or an incidence of botulism, which indicate an imminent public health hazard, the complaint shall be investigated immediately.

(b) If a complaint alleges facts, such as food spoilage or extraneous matter in food, which indicate a potential public health problem but not an imminent public health hazard, the complaint shall be investigated as soon as practicable.

(c) If a complaint has no public health significance, the complaint may be investigated when time permits.

**(2)** Complaints concerning food establishments or retail food sales operations regulated by other federal, state or local government agencies shall be initially investigated by interviewing the complainant. Following initial investigation, the complaint shall be referred to the appropriate federal, state or local government agency.

**History:** Cr. Register, May, 1985, No. 353, eff. 6-1-85.

**ATCP 74.07 Records and reports. (1)** Every agent city or county shall license food establishments on forms approved by the department.

**(2)** By the 10th day of each month, every agent city or county shall file a report with the department identifying:

- (a) All food establishments newly licensed during the preceding month; and
- (b) All changes in license status, during the preceding month, of food establishments licensed by the agent city or county.

**(3)** All records related to a food establishment licensing program by an agent city or county, including all licensing, inspection, investigation and enforcement records, shall be kept by an agent city or county for at least 3 years. Upon termination of an agency agreement with the department, the agent city or county shall file copies of all significant licensing, inspection, investigation and enforcement records with the department.

**(4)** Within 10 days after filing any court complaint, or initiating any license suspension or license revocation proceeding against a food establishment or retail food sales operation, the agent city or county shall file a copy of the complaint, notice or order with the department. Upon request by an agent city or county, the department may assist the agent city or county in the pursuit of an enforcement action.

**History:** Cr. Register, May, 1985, No. 353, eff. 6-1-85.

**ATCP 74.08 Costs; reimbursement.** (1) The fiscal year under an agency agreement shall begin on July 1 and end on June 30, except as otherwise authorized by the department. Each agent city or county shall pay the department 10% of the license fee charged under s. ATCP 75.015 (2m), to reimburse the department for its costs as required under s. 97.41 (5), Stats. By September 30 of each year, the agent city or county shall file with the department all reimbursement required under this subsection for licenses issued during the previous fiscal year.

**Note:** The treatment of sub. (1) first applies to reimbursements payable to the department on September 30, 2000, for licenses issued by agent cities or counties during fiscal year 1999–2000.

**Note:** Section ATCP 75.015 was repealed effective 2–1–01.

(2) Every agent city or county shall maintain records to document the cost of the food establishment licensing program administered by the agent city or county under its agreement with the department. Costs may include costs for licensing, inspection, investigation, enforcement, and the provision of information and technical assistance to licensed food establishments. License fees collected and retained by an agent city or county may not exceed the reasonable costs incurred by the agent city or county under this subsection.

**History:** Cr. Register, May, 1985, No. 353, eff. 6–1–85; r. and recr. Register, October, 1989, No. 406, eff. 11–1–89; am. (1), Register, January, 1998, No. 505, eff. 2–1–98; emerg. am. (1), eff. 6–30–00; **CR 00–149: am. (1), Register August 2001 No. 548.**

**ATCP 74.09 Review and evaluation.** (1) At least once each year, the department shall review and evaluate the food establishment licensing and inspection program of each agent city or county. Review and evaluation may include:

(a) Review of the terms of the agency agreement, and renegotiation of terms if necessary.

(b) Review and evaluation of compliance with budget, staffing, training and other requirements under the agency agreement.

(c) Review and evaluation of records pertaining to inspections, food establishment plan reviews, licensing, enforcement actions and consumer complaint investigations by the agent city or county under the agency agreement.

(d) Review and evaluation of licensing, inspection, enforcement, recordkeeping and reporting procedures followed by the agent city or county under the agency agreement.

(e) Any other review and evaluation which the department may consider necessary.

(2) At least once every 3 years, the department shall perform a survey inspection at a representative sample of food establishments licensed by an agent city or county under the agency agreement, to evaluate compliance with ch. 97, Stats., and applicable rules of the department.

**History:** Cr. Register, May, 1985, No. 353, eff. 6–1–85; r. and recr. Register, October, 1989, No. 406, eff. 11–1–89.