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3 **GENERAL CODE OF ONEIDA COUNTY, WISCONSIN**  
4 **ORDINANCE AMENDMENT # 17-2017**  
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6 **Ordinance Amendment offered by the Health & Aging Committee**  
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8 **WHEREAS**, Oneida County, by contract, acts as an agent for the State of  
9 Wisconsin Department of Agriculture, Trade and Consumer Protection and the  
10 Department of Safety and Professional Services in regulating the industries listed below  
11 in section 11.16(2); and

12 **WHEREAS**, the Code was required to be updated to include all the duties and  
13 responsibilities of the Oneida County Health Department;

14 **WHEREAS,**  
15 **NOW, THEREFORE, THE ONEIDA COUNTY BOARD OF SUPERVISORS**  
16 **DOES ORDAIN AS FOLLOWS:**

17 Section 1. Any existing ordinances, codes, resolutions, or portions thereof in  
18 conflict with this ordinance shall be and hereby are repealed as far as any conflict exists.

19 Section 2. This ordinance shall take effect the day after passage and publication  
20 as required by law.

21 Section 3. If any claims, provisions or portions of this ordinance are adjudged  
22 unconstitutional or invalid by a court of competent jurisdiction, the  
23 remainder of this ordinance shall not be affected thereby.

24 Section 4. Section 11.16 of the General Code of Oneida County, Wisconsin, is  
25 repealed and recreated as follows [additions noted by underline]:  
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27 **11.16 LODGING, FOOD PROTECTION, RECREATIONAL FACILITIES, AND TATTOO AND**  
28 **BODY PIERCING. (Cr. #12-99; Am. #85-2005)**  
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30 (1) AUTHORITY. This section is adopted pursuant to that authority provided  
31 by Section 97.41(restaurant food), Wisconsin Statutes, Section  
32 125.68(5)(restaurant sanitation rules), (child care facilities), Wis. Stats.,  
33 Section 254 (Environmental Health), Wisconsin Statutes, and Section  
34 326.09(enforcement), Wisconsin Statutes; and by Wisconsin  
35 Administrative Chapters ATCP 72 (Hotels, Motels, and Tourist Rooming  
36 Houses), ATCP 73 (Bed & Breakfasts), ATCP 74 (Retail Food Rules and  
37 Regulations-Enforcement) and ATCP 75 (Retail Food Establishments and  
38 Vending), ATCP 76 (Swimming Pools), ATCP 78 (Recreational Educational  
39 Camps), ATCP 79 (Campgrounds), and DSPS 390 (Manufactured Home  
40 Communities), DSPS 221 (Tattooing and Body Piercing), DSPS 463 (Body  
41 Art and Tanning Facilities).  
42

43 (2) PURPOSE. The purpose of this ordinance is to protect and improve the  
44 health of the public and to authorize the Oneida County Health  
45 Department (OCHD) to be the designated agent of the State of Wisconsin  
46 Department of Agriculture, Trade, and Consumer Protection (DATCP) for  
47 the purpose of establishing permit fees; issuing permits; and

48 investigating or inspecting hotels, motels, tourist rooming houses,  
49 restaurants, bed and breakfast establishments, campgrounds,  
50 recreational and educational camps, public swimming pools, and  
51 establishments possessing permanent Class B and Class C alcoholic  
52 beverage licenses with the exception of those licenses serving beverages  
53 solely, directly from cans or bottles and those licenses selling beverages  
54 at a retail level, and investigating and inspecting food vending machines,  
55 operators of vending machines and vending machine commissaries. ;  
56 and authorizing the OCHD to be the designated agent of the State of  
57 Wisconsin Department of Safety and Professional Services (DSPS) for the  
58 purpose of establishing permit fees; issuing permits and investigating or  
59 inspecting Manufactured Home Communities, and Tattooing and Body  
60 Piercing Facilities; and for the purpose of enacting local regulations  
61 governing these establishments which may be more strict than state law.

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63 (3) APPLICABILITY. The provisions of this section shall apply to the owner and  
64 operator of any retail food establishment, tattoo and body piercing  
65 establishment, hotel, motel, tourist rooming house, restaurant, bed and  
66 breakfast , campground , recreational and educational camp, public  
67 swimming pool, establishments possessing Class B or Class C alcoholic  
68 beverage licenses, vending machine commissary or vending machine in  
69 all areas of Oneida County.

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71 (4) DEFINITIONS. In addition to those definitions set forth expressly  
72 hereinafter, all definitions set forth in Chapters 97, 125, 254, Wis. Stats.,  
73 and Wis. Admin. Code Chapters ATPC 72, 73, 74 75, 76, 78, and 79, and  
74 DSPS 390, DSPS 221, and DSPS 463 are incorporated herein by reference  
75 and shall be construed, read and interpreted as if set forth herein until  
76 amended and then shall apply as amended. In addition the following  
77 terms and phrases have meaning ascribed to them in this section, except  
78 where the context clearly indicates a different meaning:

79  
80 (a) "Annual Permit Fee" shall mean a fee for on-site inspection of the  
81 entire facility, and one follow-up inspection to determine that  
82 establishments identified in the ordinance are compliant with the  
83 statutes and administrative codes that govern their operation.

84  
85 (b) "Body pierce", as a verb, means to perforate any human body part  
86 or tissue, except an ear, and to place a foreign object in the  
87 perforation to prevent the perforation from closing.

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89 (c) "Body piercer" means a person who performs body piercing on  
90 another person at that person's request.

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- 92 (d) "Body piercing" means perforating any human body part or tissue,  
93 except an ear, and placing a foreign object in the perforation to  
94 prevent the perforation from closing.  
95  
96 (e) "Body-piercing establishment" means the premises where a body  
97 piercer performs body piercing.  
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99 (f) "Duplicate permit fee" shall mean a fee for the replacement of an  
100 original permit.  
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102 (g) "Health Department" shall mean the Oneida County Public Health  
103 Department.  
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105 (h) "Inspection fee" shall mean a fee for on-site visits to determine  
106 that establishments identified in the ordinance are compliant with  
107 the statutes and administrative codes that govern their operation.  
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109 (i) "Late fee" shall mean a fee that is charged for failure to comply  
110 with the application time frame specified in the applicable statute  
111 and administrative code for completion and submission of the  
112 required application for permit to the Health Department.  
113  
114 (j) "Limited food service" shall mean the serving of food which is  
115 prepared and packaged off the premises with preparation on the  
116 premises limited to heating and serving with single-service  
117 articles, i.e. hermetically wrapped sandwiches or frozen pizza.  
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119 (k) "Local Health Officer" shall mean the health officer who is in  
120 charge of the Oneida County Health Department.  
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122 (l) "Mobile restaurant" shall mean a restaurant operating from a  
123 movable vehicle, pushcart, trailer or boat which periodically or  
124 continuously changes location and wherein meals or lunches are  
125 prepared or served or sold to the general public, excepting those  
126 vehicles used in delivery of preordered meals or lunches prepared  
127 in a licensed restaurant.  
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129 (m) "Operator" shall mean the owner or person responsible to the  
130 owner for the operations of the hotel, motel, bed and breakfast  
131 establishment, food service establishment or beverage  
132 establishment, vending machine commissary and/or vending  
133 machine, campground, camping resort, recreational/educational  
134 camps, public swimming pools or tattoo and body piercing  
135 establishment.

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(n) "Outdoor Grilling" shall mean the cooking of food on an outdoor grill on the premises of a licensed food service facility. The purpose for outdoor cooking shall not increase the production capability of the restaurant kitchen by circumventing codes applicable to indoor cooking facilities. Hot holding shall be limited to what can be held on the cooking unit.

(o) "Penalty Fee" shall mean a fee for failure to pay established or assessed fees in a timely manner.

(p) a. "Potentially Hazardous Food" or "Time and Temperature Control for Safety" (TCS) shall mean a FOOD that is natural or synthetic and that requires temperature control because it is in a form capable of supporting:

1. The rapid and progressive growth of infectious or toxigenic microorganisms.
2. The growth and toxin production of Clostridium botulinum; or
3. In raw shell eggs, the growth of Salmonella enteritidis.

b. "Potentially hazardous food" or "Time and Temperature Control for Safety" (TCS) food 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.

c. "Potentially hazardous food" or "Time and Temperature Control for Safety (TCS)" does not include:

1. An air-cooled hard -boiled egg with shell intact;
2. A FOOD with an aw value of 0.85 or less;
3. A FOOD with a pH level of 4.6 or below when measured at 24C (75F);

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4. 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; and
  
5. 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 aw 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.
  
6. 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.

- (q) "Pre-inspection fee" shall mean a fee for consultative services offered within a 6-month period from the date of permit application to a change in operator or new business. .
- (r) "Re-inspection fee" shall mean a fee for any subsequent inspections required to address compliance issues with the statutes and administrative codes that govern their operation. Re-inspections are conducted due to one or more of the following: Uncorrected critical violations, more than ten total violations, repeat violations from previous inspections, major non-critical violations and when a complaint investigation identifies unsatisfactory conditions. The fee for a re-inspection will be a set fee, determined by DATCP.
- (s) "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:

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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;
5. A private individual selling food from a movable or temporary stand at a public farm sale;
6. Any center as defined in §36.05(4), institution as defined in §36.51(1)(b), or technical college that serves meals only to the students enrolled in the center, institution or school or to authorized elderly persons under §36.51 or §38.36;
7. A concession stand as defined in §196.03(22)(g) at a locally sponsored sporting event, such as a little league game; or
8. Any public or private school lunchroom for which food service is directly provided by the school.

(t) "Retail Food Establishment" shall mean any of the following, but does not include a restaurant or other establishment holding a permit to the extent that the activities of the establishment are covered by that permit:

1. A permanent or mobile food processing facility where food is processed primarily for direct retail sale to consumers at the facility.
2. A mobile facility from which potentially hazardous/TCS food is sold to customers at retail.
3. A permanent facility from which food is sold to consumers at retail, whether that facility sells potentially hazardous food or is engaged in food processing.

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- (u) "Tattoo", as a verb, means to insert pigment under the surface of the skin of a person, by pricking with a needle or otherwise, so as to produce an indelible mark or figure through the skin.
- (v) "Tattoo establishment" means the premises where a tattooist applies a tattoo to another person.
- (w) "Temporary restaurant" or "temporary Retail Food Establishment" shall mean a restaurant or retail food establishment 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 for a period of no more than fourteen consecutive days or less. Mobile Establishments of this type which conduct business in Oneida County, that are licensed outside of Oneida County, will be inspected and charged a nominal fee to cover the inspection cost.
- (x) "Temporary suspension" shall mean the revocation of a permit for a time period set for no less than 24 hours and no greater than one week as determined by the Health Officer and/or his or her designee.
- (y) "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, prepackaged or canned soft drinks, a vending machine dispensing only candy, gum, nuts, nut meats, cookies or crackers, or a vending machine dispensing only prepackaged grade A pasteurized milk or milk products.
- (z) "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 Chapter 97, Wis. Stats.

(5) ENFORCEMENT.

- (a) The provisions of this section shall be administered by or under the direction of the Health Officer of the OCHD, who in person, or

312 by duly authorized representatives, shall have the right to enter,  
313 at reasonable hours, premises effected by this regulation to  
314 inspect the premises, secure samples or specimens, examine and  
315 copy relevant documents and records or obtain photographic or  
316 other evidence needed to enforce this section.

317  
318 (b) Each of the following county officials may issue citations for the  
319 violation of ordinances directly related to his or her official  
320 responsibilities: Oneida County Health Officer, Oneida County  
321 Assistant Health Officer, Environmental Health Specialist,  
322 Environmental Health Technician, Solid Waste Administrator and  
323 Planning and Zoning Administrator. In the event the position of  
324 Health Department Director is vacant, his/her authority under this  
325 chapter may be assumed by personnel designated by the Board of  
326 Health.

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328 (6) LICENSE AND PERMIT.

329  
330 (a) No person shall operate a tattoo and body piercing establishment,  
331 retail food establishment, bed and breakfast establishment, hotel,  
332 motel, tourist rooming house, restaurant, campground ,  
333 recreational and educational camp or public swimming pool, or a  
334 Class B or Class C alcoholic beverage licensure establishment  
335 without first obtaining a non-prorated permit from the Health  
336 Department. Permits shall be issued on an annual basis,  
337 commencing with July 1 and ending on the following June 30.  
338 Each such permit shall expire on June 30 of each year following  
339 issuance except that permits initially issued during the period  
340 beginning on April 1 and ending June 30 shall expire June 30 of  
341 the following year. The issuance of a permit may be conditioned  
342 upon the Permit licensee correcting a violation of this section  
343 within a specified period of time. If the condition is not met within  
344 the specified period of time, the permit shall be voided. The  
345 permit shall not be transferable to a location other than the one  
346 for which it was issued. A permit shall not be transferred from one  
347 operator to another subject to the express exception of:

- 348  
349 1. As to location, temporary permits may be transferred;  
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351 2. As to operator, a permit of a restaurant operator may be  
352 transferred to an individual who is an immediate family  
353 member of the operator if the operator is transferring  
354 operation of the establishment or vending machine to that  
355 immediate family member. A parent, child, stepchild,



356 spouse, grandparent, grandchild, sibling or stepsibling shall  
357 be considered an immediate family member for purposes  
358 of this section.

359  
360 (b) Operators or Permit licensees of temporary restaurants whom the  
361 Health Department has found to be uncooperative or habitual  
362 violators of this section may be denied a permit to operate.  
363 Temporary permits may be transferred to a premises other than  
364 that for which it was issued, provided that the approval of the  
365 new premises is secured from the Health Department prior to  
366 operating at the new premises.

367  
368 (c) With the exception of those establishments defined herein as  
369 "temporary", no permits shall be granted to any person under this  
370 section without a pre-inspection by the Health Department of the  
371 premises for which the permit shall be granted.

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

374  
375 (7) APPLICATION. Application for permits shall be made in writing to the  
376 Health Department on forms developed and provided by the Health  
377 Department, stating the name and address of the proposed applicant and  
378 operator, and the address and location of the proposed establishment,  
379 together with any such other information as may be required. The Health  
380 Department shall either approve the application or deny the permit  
381 within 30 days after receipt of a complete application.

382  
383 (8) FEES. Fees for the issuance of permits, the making of investigations,  
384 inspections, training and technical assistance to establishments covered  
385 pursuant to this section are hereby established pursuant to this section,  
386 subject to amendment, from time to time, upon the recommendation of  
387 the Oneida County Board of Health and approval of the County Board of  
388 Supervisors. In addition, separate pre-inspection fees are hereby  
389 established with respect to new establishments or existing  
390 establishments that have been transferred to a new owner. Said fee  
391 schedule may be amended from time to time by the Oneida County  
392 Board of Health. Permit fees shall be no lower than the fees established  
393 and used by the State of Wisconsin Department of Agriculture, Trade,  
394 and Consumer Protection (DATCP) to implement these respective  
395 Wisconsin administrative Codes and are hereby adopted by reference.

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397 (9) PERMIT, PUBLIC DISPLAY. Every licensed establishment shall be required  
398 to obtain a permit pursuant to this section and shall display said permit,  
399 at all times, in a conspicuous public place.

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(10) PERMIT, SUSPENSION AND REVOCATION. Permits issued by the Health Department pursuant to this section may be temporarily suspended for a violation of any provisions hereof or the State Statutes or Administrative Code provisions adopted by reference herein, if the Health Department determines that an immediate danger to health exists. After repeated violations of this section or violations which have already created a serious public health hazard, permits may be permanently revoked. Decisions of the Health Department shall be subject to review in the manner provided in Chapter 227(Administrative Procedure and Review), Wis. Stats.

(11) REGULATIONS, RULES AND LAWS ADOPTED BY REFERENCE. The applicable laws, rules and regulations as set forth in Chapters 97, 125, 254, Wis. Stats., Chapters ATCP 72, 73, 74 75, 76, 78, and 79 and DSPS 390, 221, and 463 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 express provisions of this section shall control where more restrictive.

(12) VIOLATION; PENALTIES. Any person who violates or refuses to comply with any provisions of this section shall be subject to a forfeiture of not less than \$100 and not more than \$1,000, together with the costs of the action and in default of payment thereof to imprisonment in the County Jail for a period of not less than one day nor more than 6 months, or until such forfeiture and costs are paid, for each offense and/or revocation or amendment of their applicable permit. Each day a violation exists or continues shall be considered a separate and distinct offense. Where appropriate, injunctive relief may be sought by the Health Department against continuing violations. In the alternative, the Health Department may pursue enforcement of such section of these regulations as are prosecutable.

Approved by the Health and Aging Committee this 10<sup>th</sup> day of January, 2017.

Consent Agenda Item:  YES  NO

Vote Required: Majority = \_\_\_\_\_ 2/3 Majority = \_\_\_\_\_ 3/4 Majority = \_\_\_\_\_

The County Board has the legal authority to adopt: Yes  No  as reviewed by the Corporation Counsel, [Signature], Date: 1/12/17

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Offered and passage moved by:

Bob Mott  
Supervisor  
C. A. Pederson  
Supervisor  
Tom Kelly  
Supervisor  
Jackie Cody  
Supervisor  
Cam H. Orsini  
Supervisor  
[Signature]

Ayes  
 Nays  
 Absent  
 Abstain  
 Enacted

by the County Board of Supervisors this \_\_\_\_ day of \_\_\_\_\_, 2017.

Defeated

\_\_\_\_\_  
Tracy Hartman, County Clerk

David Hintz  
David Hintz, County Board Chair

