

HUMAN HEALTH HAZARDS ORDINANCE

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1.0 General Provisions.

- A. Purpose. The purpose of this Ordinance shall be to protect the health, safety, and welfare of the public and communities in Shawano-Menominee Counties from environmental exposures that may contribute to communicable disease, acute or chronic illness, or endanger life. This Ordinance shall provide guidance for the administration and enforcement in the event of a human health hazard.
- B. Title. This Ordinance shall be referred to as the “Shawano-Menominee Counties Human Health Hazards Ordinance.”
- C. Statutory Authority. This Ordinance is adopted pursuant to the authority granted by Wis. Stat Ch. 251 and 254.
- D. Administration. This Ordinance shall be administered by the Health Officer, or authorized agent of such Health Officer. The Health Officer, or authorized agent, shall have the power to ensure compliance with the intent and purpose of this Chapter by any appropriate means under the law.
- E. Interpretation. The provisions of this Chapter shall be interpreted to be minimum requirements and shall be liberally construed in favor of Shawano-Menominee Counties and shall not be deemed a limitation of any power granted by the Wisconsin Statutes.
- F. Jurisdiction. This Ordinance applies in all municipalities within Shawano-Menominee Counties, provided, however, that any section of the Ordinance shall not be enforced by the Health Officer in said municipality that has adopted a similar Ordinance, or designated a Health Officer other than the Shawano-Menominee Counties Public Health Director.

2.0 Applicability.

The determination of a human health hazard is made using a variety of criteria, including but not limited to: duration of exposure, quantity and nature of exposure, type and number of individuals exposed, and known or expected health risk.

When Shawano-Menominee Counties Health Department finds a child, an adult determined to be incompetent, or tenant (i.e. person not in control of their living environment) is impacted by a Human Health Hazard, the role of Shawano-Menominee Counties Health Department is to provide education, referral services and enforcement as necessary. When a competent adult(s) is involved, the role of Shawano-Menominee Counties Health Department may be limited to providing education and referral services.

This ordinance shall be enforced in a manner that is consistent with, and in recognition that, tenants do not possess property rights and typically do not possess financial resources to make necessary repairs, changes, or alterations to the physical structure which they occupy such that they may be subject to financial exploitation for attempting to break a rental agreement even in the face of human health hazards.

This ordinance is a tool to address identified human health hazards risks, which may be regulated by other town, municipal and county regulations and ordinances. The Shawano-Menominee Counties Health Department will work closely with towns, municipalities and county departments to determine proper agency jurisdiction when multiple agencies are involved. Where jurisdiction is determined to be held by another agency, municipality, or where regulation is pre-empted by other State or Federal authorities, that agency's authority shall supersede this ordinance.

3.0 Definitions.

- A. General. For purposes of this Chapter, words or phrases, unless specifically defined as follows, shall be interpreted as having the same meaning as they have in Wisconsin Statutes, Wisconsin Administrative Codes and/or judicially interpreted by Wisconsin Case Law. The following definitions apply throughout the entire Ordinance:
1. "**Board**" means the Shawano-Menominee Counties Joint Board of Health and Veteran Services (BOH/VS).
 2. "**Child**" means a person who is less than 18 years of age, if used without further qualification.
 3. "**County**" means Shawano County or Menominee County, or both, collectively.
 4. "**Contamination**" means any physical, chemical, biological, or radiological substance or matter in air, land, or waters of the state such that the contaminant poses an actual or potential threat to human health.
 5. "**Department**" means the Shawano-Menominee Counties Public Health Department (SMCHD) and its employees.
 6. "**Dwelling**" means a permanent building or structure having walls and a roof, whether or not it is erected or set upon an individual foundation or slab constructed base, which is designed or used for the housing, shelter, enclosure, or support of persons. This definition includes mobile homes and manufactured homes.
 7. "**Groundwater**" means all water found beneath the surface of Shawano-Menominee Counties located in sand, gravel, lime rock, or sandstone geological formations or any combination of these formations.
 8. "**Health Officer**" means the legally appointed Health Officer of Shawano-Menominee Counties, or authorized agent of such Health Officer. Health Officer also means "the position of a local health officer in a single county health department" as defined in Wis. Stat. § 251.01(3).

9. **“Human Health Hazard”** means a substance, activity or condition that is known to have the potential to cause acute or chronic illness, to endanger life, to generate or spread infectious diseases, or otherwise injuriously to affect the health of the public as defined in Wis. Stat. § 254.01(2). Health hazards include conditions that meet the definitions of “Public Nuisance”, “Waster” and/or “Toxic and Hazardous Materials” in this Ordinance. This definition also includes any substance, activity or condition defined by State or Federal law as a health hazard.
10. **“Immediate Human Health Hazard”** means a condition that exists or has the potential to exist which should, in the opinion of the Health Officer, be abated or corrected immediately (or at a minimum within 24-hour period) to prevent imminent or ongoing danger of serious damage to human health and/or the environment.
11. **“Incompetence”** is a court-determined finding involving a physician or psychologist. An individual is incompetent only if the court finds by clear and convincing evidence that all of the following are true:
 - a. The individual is aged at least 17 years and 9 months.
 - b. Because of an impairment, the individual is unable effectively to receive and evaluate information or to make or communicate decisions to such an extent that the individual is unable to meet the essential requirements for his or her physical health and safety.
 - c. Because of an impairment, the individual is unable effectively to receive and evaluate information or to make or communicate decisions related to management of his or her property or financial affairs, to the extent that any of the following applies:
 - i. The individual has property that will be dissipated in whole or in part.
 - ii. The individual is unable to provide for his or her support.
 - iii. The individual is unable to prevent financial exploitation.
12. **“Owner”** means (1) A person who has legal title to a dwelling; and (2) A person who has charge, care, or control of a dwelling or unit of a dwelling as an agent of or as a personal representative, trustee, or guardian of estate under sub. (1).
13. **“Pollution”** means the contaminating or rendering unclean or impure the air, land or waters of the Counties, or making the same injurious to public health, harmful for commercial or recreational use or deleterious to fish, bird, animal or plant life.
14. **“Person”** means any individual, firm, corporation, society, association, institution, public body or other entity.
15. **“Potable”** means water supplied for human consumption, sanitary use or for the preparation of food that bacteriologically or chemically exceeds State drinking water standards.
16. **“Public”** means affecting or having the potential to affect the people and/or environment inside and outside the limits of one's personally owned and/or occupied structure.
17. **“Rental Agreement”** means an oral, or written agreement, for the rental or lease of a specific dwelling unit or premises, in which the landlord and tenant agree on essential terms of tenancy such as rent. *See Admin Code ATCP 134.02.*
18. **“Rental Housing”** means a dwelling occupied by one or more tenants pursuant to a rental agreement.
19. **“Solid Waste”** means garbage, refuse, and all other discarded or salvageable solid materials, including solid waste materials resulting from industrial, commercial, and agricultural operation and from domestic use and public service activities, but does not include solids or dissolved material in waste water effluent or other common water pollutants.
20. **“Tenant”** means a person occupying, or entitled to present or future occupancy of a dwelling unit under a rental agreement, and includes persons occupying dwelling units under periodic tenancies and tenancies at will. *See Admin. Code ATCP 134.02.*

21. **“Toxic or Hazardous Materials”** means any chemical and/or biological material that is or has the potential to create a public health hazard.
22. **“Unfit for Human Habitation, Occupancy, or Use”** refers to a dwelling which because of condition or situation is dilapidated or out of repair or otherwise contains Human Health Hazard(s) which render it dangerous, unsafe, or unsanitary to engage in activities including, but not limited to cooking, eating, and/or sleeping, until necessary repairs have been made.

4.0 Compliance.

- A. Responsibility of Property Owner and/or Occupant. It shall be the responsibility of the property owner to maintain property in a hazard-free manner and to be responsible for the abatement and/or correction of any human health hazard, immediate health hazard, or pest infestation that has been determined to exist on his or her property. In the event that the property is occupied by a tenant who fails or refuses to abate or correct a human or immediate health hazard for which the tenant is responsible, the responsibility for abatement and/or correction will be that of the property owner.
- B. Written Orders. Compliance with this Ordinance shall include compliance to written orders issued under this Ordinance or Wisconsin Statutes by the Shawano-Menominee Counties Health Officer or authorized agent to abate and/or correct a human health hazard to bring any other situation or condition in non-compliance with this Ordinance into compliance.
- C. Non-compliance. Non-compliance with the Ordinance and/or with a written order from the Health Officer or authorized agent shall be cause for enforcement action under **Section 8.0** of this Ordinance.

5.0 Administration.

- A. General Provisions. This Ordinance shall be interpreted, administered, and enforced by the Health Officer, or authorized agent of such Health Officer.
- B. Powers. The Health Officer shall have all the powers necessary to enforce the provisions of this code without limitation by reason of enumeration including the following:
 1. To enter any structure or premise at a reasonable time for the purpose of performing duties under this Ordinance and to secure court orders to accomplish this purpose, if necessary.
 2. To order stop work, abatement, and/or correction of any human health hazard not in compliance with this Ordinance or Wisconsin Statutes.
 3. To delegate the responsibilities of administration and enforcement of this Ordinance to a registered environmental health sanitarian or another person qualified in the field of public health.
 4. To declare any dwelling or dwelling unit used for human occupancy found to be Unfit for Human Habitation, Occupancy or Use pursuant to this regulation and to placard said dwelling or dwelling unit accordingly. The Health Officer shall remove such placard whenever the defect or defects, upon which the declaration and placarding were based, have been eliminated.
 5. To initiate any other action authorized under the law or this Ordinance to ensure compliance with the purpose and intent of this Ordinance and the requirements of this Ordinance.

6.0 Human Health Hazards.

- A. Human Health Hazards Prohibited. No person shall erect, create, cause, continue, maintain or permit any Human Health Hazard within the Shawano-Menominee Counties. Any person who shall cause, create or maintain a Human Health Hazard, or who shall, in any way, aid or contribute to the causing, creating or maintenance thereof, shall be guilty of a violation of this Ordinance and shall be liable for all costs and expenses attendant upon the removal and correction of such a health hazard, and be subject to the penalties provided in **Section 8.0**.
- B. Responsibility of Property Owner. It shall be the responsibility of the property owner to maintain such owner's property in a manner that is free from human health hazards and also to be responsible for the abatement and/or correction of any human health hazard that has been determined to exist on their property.
- C. Human Health Hazards Enumerated. Specifically, but not limited by enumeration, the following are human health hazards if determined to meet the definition of Human Health Hazard as defined in **Section 3.0**:
1. 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 the time period specified by the Health Officer, or as required under Wis. Stat. § 95.50.
 2. Animal Waste. Accumulation of bodily waste from all domestic animals and fowl that are handled, stored, or disposed of in a manner that creates a human health hazard. This provision shall not apply to animal waste stored and spread in the normal course of farming operations.
 3. Food or Breeding Places for Vermin, Insects, etc. Accumulation of decayed animal or vegetable matter, trash, rubbish, garbage, rotting lumber, bedding, packing material, scrap metal, solid waste, abandoned structures, animal and human fecal matter, or any substance or condition in which flies, mosquitoes, disease carrying insects, rats or other vermin can breed, live, nest or seek shelter, including stagnant water and/or solid waste.
 4. Garbage. Failure to keep waste, refuse, or garbage in an enclosed building or properly contained in a closed container designed or reasonably adapted for such purposes.
 5. Toxic or Hazardous Substances. Any chemical and/or biological material that is stored, used, or disposed of in such quantity or manner that it is, or has, the potential to create a pollution risk or a human health hazard. This provision shall not apply to chemical and/or biological material that is properly managed, stored, used or disposed of in the normal course of farming operations.
 6. Surface Water Pollution. The pollution of any stream, lake, or other body of surface water within the County that creates noncompliance with Wisconsin Administrative Code Ch. NR 102 and NR 103.
 7. Wastewater. The presence of waste water or sewage effluent from buildings on the ground surface, backing up into the building and/or running into a surface water body caused by a damaged malfunctioning, improperly constructed, or inadequately maintained private sewage system, or private sewage lateral. Also, any waste water or sewage effluent that is not handled and disposed of in compliance with all applicable County and State codes.
 8. Groundwater Pollution. Addition of any chemical or biological substance that would cause groundwater to be unpalatable or unfit for human consumption. These substances include, but are

not limited to, the chemical and/or biological substances listed in Ch. NR 809, Wisconsin Administrative Code, titled, "Safe Drinking Water".

9. Water Supply. Any private or public well producing a chemically or bacteriologically unsafe water.
 10. Holes or Openings. Any hole or opening caused by an improperly abandoned cistern, septic tank, dug well, foundation, mine shaft, or tunnel and any other improperly abandoned or covered up excavation for which no appropriate precautions (i.e. posting and fencing) to prevent entry have been taken.
 11. Abandoned Refrigerators and Other Air-Tight Containers. Any abandoned, unattended or discharged icebox, refrigerator or other container which has an airtight door or lid, snap lock or other locking device which may not be released from the inside of said container and which is in a place that is accessible to children regardless of the location of said container.
 12. Unsafe occupied dwelling. A structure which is so damaged, decayed, dilapidated, structurally unsafe, or of faulty construction or unstable foundation, that partial or complete collapse is possible and for which no appropriate precautions (i.e., posting, fencing, or closure of entryways) to prevent admittance have been taken.
 13. Other. Any other act or omission, situation or condition defined by Wisconsin Statutes to be a Human Health Hazard, or which in fact meets the definition of Human Health Hazard set forth in this Chapter.
- D. Investigation of Possible Human Health Hazard. The Health Officer or authorized agent of such Health Officer shall investigate all potential human health hazards and shall determine whether or not a human health hazard exists.
- E. Abatement, Correction and Enforcement. Abatement, correction, and enforcement of a human health hazard will be according to the provisions set forth in this Ordinance.

7.0 Designation of Unfit Dwelling.

- A. Any occupied dwelling or occupied dwelling unit found to have any of the following defects shall be designated as unfit for human habitation:
1. One which is so decayed, dilapidated, unsanitary, unsafe, infested and/or structurally damaged that it creates a serious hazard to the health or safety of the occupants.
 2. One in which water, sewer, heating, electrical or septic system facilities fail to adequately protect the health or safety of the occupants.
 3. One in which doors and/or windows fail to exclude rain, snow, low temperatures and wind (inclement weather) or one in which windows/screens fail to prevent an infestation of flies and/or other disease-carrying insects and fail to allow adequate air circulation.
 4. One which is not free of accumulation of solid waste, garbage, animal waste and other debris, which results in an unhealthy and unsanitary condition and presents a potential danger to the occupants.
 5. One which is not maintained in a manner so as to prevent excess damage, decay, dilapidation and vermin infestation which could result in a serious hazard to the health and safety of the occupants.

6. One which contains significant structural damage to the extent that it is a physical hazard to the occupant.
- B. **Any occupied dwelling** or dwelling unit found to have an immediate health hazard shall be condemned as unfit for human habitation and shall be so designated as a health hazard and shall be placarded by the Local Health Officer or authorized agent of such Health Officer.
- C. **Any occupied dwelling or occupied dwelling unit** condemned as unfit for human habitation and so designated and placarded by the Health Officer or authorized agent of such Health Officer shall be vacated within a reasonable time as specified by the Health Officer. No dwelling or dwelling unit which has been condemned and placarded as unfit for human habitation shall again be used for human habitation until written approval is secured by the Health Officer upon re-inspecting the dwelling or dwelling unit. The Health Officer at this time shall remove such placard whenever the hazardous condition or situation upon which the condemnation and placarding were based has been eliminated.
- D. No person shall continue to occupy, rent or lease quarters for human habitation which are declared unfit for human habitation by the Health Officer or authorized agent of such Health Officer.
- E. No person shall deface or remove the placard from any dwelling or dwelling unit which has been condemned as unfit for human habitation.
- F. Any person affected by any notice or order relating to the condemning or placarding of a dwelling or dwelling unit as unfit for human habitation may request and shall be granted a hearing in the matter before the Shawano-Menominee County Board of Health/Veteran Services.
- G. Whenever the Health Officer determines that a violation exists or has reasonable grounds to believe that there has been a violation of any provision of this Section, or any rule or regulation adopted pursuant thereto, he or she shall give or cause to be given, notice of such violation to the person or persons responsible therefore, such notice shall be in writing including a description of the real estate involved, a statement of violations and corrective actions required, and allowing a reasonable time for the performance of any act required. Such notice shall be served upon the owner, operator or occupant as the case may require, and may be served by certified mail or in the manner provided by Chapter 801, Wisconsin Statutes for service of summons. If the whereabouts of the owner is unknown and cannot be determined with due diligence, service on the owner may be accomplished by posting a copy of the order of abatement in a prominent place on the premises.

8.0 Enforcement and Penalties.

- A. **Written Order.** When the Health Officer or authorized agent of such Health Officer has conducted or caused an inspection to occur and determines that a Human Health Hazard exists, the Health Officer or authorized agent of such Health Officer may issue a written order for its abatement or removal. The Order shall specify the following:
 1. Identify name and address of owner and/or occupant, including description of real estate involved.
 2. Nature of the violation(s) and steps needed to abate and/or correct violation(s), including any required licensed or certified professional necessary to abate or remove a Human Health Hazard.
 3. Whether Stop Work is required because activities are resulting in hazardous or unsafe work and/or conditions.

4. Time period in which the violation must be abated and/or corrected. Usually, 5 to 30 days. However, depending on nature of the violation, allowance for limited extension of this time period may be permitted if warranted by extenuating circumstances, as determined by the Health Officer or authorized agent of such Health Officer.
 5. Penalty or penalties the violator shall be subject to if the violation is not abated and/or corrected within the specified timeframe. *See subsection 8.3. and 8.4 below.*
- B. Exceptions to Written Order. In extreme cases where a violation poses an immediate health hazard as determined by the Health Officer or authorized agent of such Health Officer or in the case of repeated occurrences of the same violation by the same person, the actions(s) specified in subsection 8.3. below can be initiated immediately.
- C. Non-Compliance with Order. If a person does not comply with a written order from the Health Officer, or authorized agent of such Health Officer, the violator may be subject to one or more of the following actions and/or penalties:
1. Issuance of a citation with penalties, as set forth in subsection 8.6 below.
 2. Commencement of legal action against the person seeking an injunction to abate the violation and/or correct the damage created by the violation.
 2. Commencement of legal action against the person seeking a court-imposed forfeiture, and/or the costs of abatement.
 4. Any other action authorized by this Chapter or by other applicable laws as deemed necessary by the Health Officer or authorized agent of such Health Officer.
 5. The initiation of one action or penalty under this Section does not exempt the violator from any additional actions and/or penalties prescribed by law.
- D. Abatement of Removal of Human Health Hazards. Where human health hazards as defined in this ordinance and/or the Wisconsin Statutes are encountered which may require ordered abatement and/or correction, the Health Officer or authorized agent of such Health Officer shall serve upon the responsible person a written order as per **Section 8.0**. The Health Officer or authorized agent shall forward a copy of all orders to the local governing body having jurisdiction over the property on which the Human Health Hazard is found. If the Human Health Hazard is not abated or removed within the time period specified in the order, the local governing body may enter upon the property for the purpose of abatement or removal or cause such other action to be taken as permitted by applicable law. If the local governing body fails to abate or remove the Human Health Hazard, the County may enter the property for the purpose of abatement or removal as set forth in Wis. Stat. § 254.59.
- E. Cost of Abatement or Removal. The cost of the abatement or removal may be recovered from the person permitting the violation, or as a special assessment on the property, consistent with Wis. Stat. § 254.59(2).
- F. Penalties. All violations of this Ordinance shall be subject to a forfeiture of not less than Fifty Dollars (\$50.00) nor more than Five Hundred Dollars (\$500.00) per offense, together with applicable surcharges and penalty assessment and the taxable costs of prosecution. The Court may also grant injunctive relief. Failure to comply with an order of abatement issued under this Ordinance shall constitute a violation of this Ordinance and may result in imprisonment as authorized by State Statute. Each day of continued violation shall constitute a separate offense.

- G. Initiation of Legal Action. Legal action shall be initiated against a violator, as requested by the Health Officer or authorized agent, in accordance with the following:
1. Corporation Counsel Office shall be responsible for all cases where an injunction to correct and/or abate a violation is being sought.
 2. Corporation Counsel Office shall be responsible for all cases where a court-imposed forfeiture and/or penalty is being sought.

9.0 Severability.

If any provision of this ordinance is held to be invalid or unconstitutional, or if the application of this ordinance to any person or circumstances is held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the provision or application of this ordinance which can be given effect without the invalid or unconstitutional provision or application.

10.0 Amendments.

Any future amendments, revisions, or modifications of Wisconsin Statute Chapters 251 and 254, or any other statutes or administrative code sections referred to in this ordinance are intended to be made part of this ordinance as such amendments, revisions, or modifications are made to said statutes or administrative codes.

11.0 Effective Date.

This Ordinance shall be effective the day after its publication.