

**SPECIAL MEETING
PIERCE COUNTY BOARD OF SUPERVISORS**

Tuesday, July 14, 2020 – 6:00 p.m.
River Falls High School – Auditorium
818 Cemetery Rd., River Falls, WI 54022

Please note change in venue! Meeting at River Falls High School Auditorium for all County Board members & public. Address: 818 Cemetery Rd, River Falls.

1.	Call to order
2.	Call of the roll by the Clerk 2a) Establish Quorum 2b) Adopt Agenda
3.	Pledge of Allegiance to the flag
4.	Public Comment: County Board will receive public comments on any issue not related to agenda items, discussion by board members may take place but no action will be taken on any item raised.
5.	Ordinances for consideration: First reading: Ordinance No. 20-01 To Amend Ch. 1, Art. IV Sections 1-29 & 1-31 of, and to Create Ch. 120 "Communicable Diseases - Authority and Duties of Local Health Officer" in the Pierce County Code
6.	Next meeting: July 28, 2020; 7 p.m.; EOC Room, Law Enforcement Facility
7.	Adjourn
Questions regarding this agenda may be made to Jamie Feuerhelm at 715-273-6744. Upon reasonable notice, efforts will be made to accommodate the needs of individuals with disabilities requiring special accommodations for attendance at the meeting. For additional information or to make a request, contact the Administrative Coordinator at 715-273-6851.	

jrf 07/01/2020

County Board of Supervisors – Meeting Date: July 14, 2020

Agenda Item: Ordinance No. 20-01 To Amend Ch. 1, Art. IV Sections 1-29 & 1-31 of, and to Create Ch. 120 "Communicable Diseases - Authority and Duties of Local Health Officer" in the Pierce County Code

Requesting Agency: Public Health Department

Background:

- Pierce County is considering whether to adopt a communicable disease ordinance.
- On May 13, 2020, the Wisconsin Supreme Court decided the *Legislature vs. Palm* case, finding that the State Department of Health Services did not have authority to issue the Stay at Home Order. This meant the State DHS was not able to issue any orders relating to the COVID-19 pandemic without going through a rulemaking procedure and working with the legislature. This did not occur, and therefore it was up to each local health department to deal with the situation in their jurisdiction.
- One of the primary concerns of the Supreme Court decision, was with the criminal penalty involved. Therefore, it is recommended to have a civil penalty, not a criminal penalty, with any local ordinance. To have an applicable civil penalty, Pierce County needs to adopt a local ordinance.
- Absent having an ordinance in place with the civil penalty, there has been no local health order in place, but rather, a health advisory.
- A public health order would not be issued without fully considering all of the issues and existing circumstances, only after consulting with necessary individuals and entities (e.g. public officials, law enforcement, corporation counsel, etc.), and would be utilized only if specific circumstances warrant it. Should the need arise to issue a public health order, it is necessary to have a civil penalty, which provides the basis for enforcement of the health order. Without the ability to enforce, a public health order is meaningless.
- Given that the State DHS is unable to issue orders from a statewide perspective, the only means for addressing communicable diseases is through the Public Health Department via a local ordinance. Without the enforceability of a local ordinance, there is little ability for the Pierce County Public Health Department to take any substantive and meaningful measures to prevent, suppress, and control communicable diseases, beyond a simple advisory.
- The substance of the proposed ordinance mirrors §252.03 Wis. Stats., with the sole exception that the penalty is civil, not criminal.
- The origins of §252.03 go back to 1883, and the language of the statute in its current form has been in place since May, 1982.
- The adoption of this ordinance is not tied to any funding mechanism; there are no grant funds or any other funds tied to adopting this ordinance. Pierce County does not stand to gain financially by putting in place this ordinance.
- There are also no new personnel positions tied to this ordinance. In other words, it is not necessary to hire anyone if this ordinance is adopted.
- The Public Health Director / Local Health Officer is an appointive position, and is the person appointed to oversee and administer the local health department under §251.06 Wis. Stats. The Pierce County Public Health Director is the appointed local health officer.

- There are various methods of oversight tied to the local health officer, including but not limited to, the following:
 - Reporting Obligation: The local health officer, under §252.03 Wis. Stats., and the proposed ordinance, has the obligation to make full reports to the appropriate governing body (Pierce County Board of Health and/or the County Board of Supervisors), as well as the State of Wisconsin Department of Health Services.
 - Appointment Authority:
 - The Personnel Policy, which can only be amended by Resolution, in Articles III(B) and V(G) require that non-elected department head appointments and department administrators need to be confirmed by the full County Board
 - §13-1 of the Pierce County Code regarding Appointive Positions states that all appointments to county positions shall be subject to approval of the full body of the County Board of Supervisors.
 - §251.06(4) Wis. Stats. (and §251.03(2) Wis. Stats.) states that a county's local health officer shall be appointed by the chairperson of the Board of Supervisors, subject to confirmation by the Board of Supervisors.
 - The ability of the County Board to appoint a local health officer would also include the ability to rescind that appointment.
 - The Public Health Director / Local Health Officer is further directly supervised by the Board of Health pursuant to §4-16 of the Pierce County Code regarding the Board of Health: The Board of Health shall have supervision of the Public Health Department and jurisdiction over all matters relating to public health.
 - Any civil forfeiture citations issued or civil injunctive relief sought as part of enforcement of the ordinance would be prosecuted by the Corporation Counsel Office pursuant to §59.43 Wis. Stats.; the prosecutor has broad prosecutorial discretion in the enforcement of ordinances. *Locklear v. State*, 86 Wis.2d 603, 273 N.W.2d 334 (1979). Further, a prosecutor has great discretion in determining whether or not to prosecute. *State ex rel. Kurkierewicz v. Cannon*, 42 Wis.2d 368, 378, 166 N.W.2d 255 (1969).
 - The Circuit Court would be a check and balance to any forfeiture citation or injunctive relief sought, which only the court could grant.

The proposed ordinance was considered by the Pierce County Board of Health on June 10, 2020, and the Pierce County Finance & Personnel Committee on June 23, 2020, and recommended for approval by the County Board.

Staff Recommendation: To adopt Ordinance 20-01 as presented.

Recommended Motion: Motion by ____, seconded by ____, to adopt Ordinance 20-01.

ORDINANCE NO. 20-01
Amend Chapter 1, Article IV Sections 1-29 and 1-31 of, and
Create Chapter 120 “Communicable Diseases – Authority and
Duties of Local Health Officer” in, the Pierce County Code

PIERCE COUNTY BOARD OF SUPERVISORS DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1: That Chapter 1, Section 1-29 of the Pierce County Code is hereby revised as follows:

§ 1-29. Cash deposits and assessments.

[Amended by Ord. No. 95-2; Ord. No. 98-11; 4-17-2001 by Ord. No. 00-15]

The following schedule of cash deposits is established for use with citations issued under this article. The total of each deposit shall include a forfeiture, the penalty assessment under § 757.05, Wis. Stats., the jail assessment under § 302.46(1), Wis. Stats., any applicable domestic abuse assessment imposed under § 973.055(1), Wis. Stats., the crime laboratories and drug law enforcement assessment imposed under § 165.755, Wis. Stats., and any applicable consumer information assessment imposed under § 100.261, Wis. Stats.

Code Chapter or Section	Subject Matter	Amount of Cash Forfeiture
Ch. 97	Alarm Systems	\$100
Ch. 101	Animals	
Art. I	Animal Control	\$10 capture fee \$2 day
Art. III	Beekeeping	\$200
Art. IV	Animal Waste Management	\$200
Ch. 105	Assemblies, Mass Public	\$10,000
Ch. 111	Boating	
	First offense	\$50
	Second offense	\$100
Ch. 115	Buildings and Roads, Numbering of	\$500
<u>Ch. 120</u>	<u>Communicable Diseases – Authority and Duties of Local Health Officer</u>	<u>\$500</u>
Ch. 129	Fraudulent Checks	\$500
Ch. 142	Intoxicating Liquor and Fermented Malt Beverages	
Art. I	Sale of Intoxicating Beverages	\$500
Art. II	Intoxicating Liquor in Vehicles	\$100
Art. III	Alcohol Offenses Involving Underage Persons	
§ 142-12	Presence of underage person in places of sale	

Code Chapter or Section	Subject Matter	Amount of Cash Forfeiture
	Licensee or permittee	\$500
	Underage person	\$25
§ 142-13	Sale to underage person	\$500
§ 142-14	Misrepresentation of age to procure alcohol	\$25
§ 142-15	Possession or consumption in public by underage person	\$25
§ 142-16	Possession of alcoholic beverage on school grounds	\$200
§ 142-18	Procuring alcoholic beverage by underage person	\$25
Ch. 155	Minors	
Art. I	Curfew	\$25
Art. II	Truancy	
	First offense	\$50
	Second offense	\$100
	Habitual truancy	\$500
Ch. 158	Misuse of Public Assistance	\$500
Ch. 172	Parks and Recreation	\$200
Ch. 176	Peace and Good Order	
Art. I	Disorderly Conduct	\$200
Art. II	Marijuana	\$500
Art. III	Theft	\$500
Art. IV	Littering	\$200
Art. V	Damage to Property	\$500
Art. VI	Loitering	
§ 176-16	Loitering or prowling	\$300
§ 176-17	Obstruction of traffic by loitering	\$300
§ 176-18	Obstruction of entryways by loitering	\$300
§ 176-19	Loitering in places of public assembly or use	\$300
§ 176-20	Loitering on private premises	\$300
Art. VII	Trespassing	\$500
Art. VIII	Obstructing an Officer	\$500
Art. IX	Causing Bodily Harm	\$500
Art. X	Concealed Weapons	\$500
Ch. 180	Public Health Nuisances and Human Health Hazards	\$500
Ch. 184	Retail Food Establishments and Public Accommodations	\$1,000
Ch. 191	Sewage Disposal	
Art. II	Holding tanks for private domestic sewage systems	\$200

Code Chapter or Section	Subject Matter	Amount of Cash Forfeiture
Art. III	Private sewage system	\$100
Ch. 195	Shooting Range	\$200
Ch. 201	Solid Waste Collection and Transportation	
§ 201-2	General provisions	\$2,000
§ 201-4	Solid waste storage	\$2,000
§ 201-5	Solid waste collection and transportation of solid waste	\$2,000
§ 201-6	Intermediate solid waste facilities	\$2,000
§ 201-7	Incineration	\$2,000
§ 201-8	Solid waste land disposal facility	\$2,000
§ 201-9	Recycling and composting facility	\$2,000
§ 201-10	Separation and processing of recyclables	\$2,000
§ 201-11	White goods, waste tires and/or lead acid battery collection; interim storage, processing, salvage and disposal facilities	\$2,000
§ 201-13	Disposal of solid waste on private property	\$2,000
§ 201-16	Unlawful disposal of solid waste	\$2,000
Ch. 212	Tatooning and Body Piercing	\$500
Ch. 221	Vehicles and Traffic	
Art. I	Traffic Regulations	
§ 221-6B	First offense	\$200
	Second offense	\$500
§ 221-6C	Drinking in motor vehicle on highway	\$500
	Negligent operation of vehicle off highway	\$500
Art. IV	Snowmobile Trails	\$50
Art. V	Harmful Operation of Motor Vehicles	\$200
Art. VI	Abandonment of Vehicles	\$300
Ch. 225	Disposal of vehicles	\$100
Ch. 237	Subdivision of land	\$500
Ch. 238	Floodplain Zoning	
Art. III	General standards applicable to all floodplain districts	\$200
Art. IV	Floodway district	\$200
Art. V	Flood-fringe district	\$200
Art. VI	General floodplain district	\$200
Art. VII	Nonconforming uses	\$200
Ch. 239	St. Croix Riverway Zoning	
Art. I	General provisions	\$200

Code Chapter or Section	Subject Matter	Amount of Cash Forfeiture
Art. III	Zoning permit	\$200
Art. IV	Performance standards	\$200
Art. V	Permitted and conditional uses	\$200
Art. VI	Substandard lots and nonconforming uses and structures	\$200
Ch. 240	Zoning .	\$500

SECTION 2: That Chapter 1, Section 1-31 of the Pierce County Code is hereby revised as follows:

§ 1-31. Persons authorized to issue citations.

[Amended by Ord. No. 90-2; Ord. No. 93-8; Ord. No. 95-12; Ord. No. 98-11; 10-22-2002 by Ord. No. 02-13]

A. Any law enforcement officials employed by Pierce County may issue citations for the enforcement of any ordinances authorized under this article.

B. In addition, each of the following County officials may issue citations for the violation of ordinances directly related to his or her official responsibilities: Pierce County Solid Waste Administrator, Pierce County Zoning Administrator, Assistant Zoning Administrator, Pierce County Land Management Director/Land Use Coordinator, Zoning Specialist, the Pierce County Public Health Director, Local Health Officer, Environmental Health Specialist, Land Conservation Supervisor, Conservation Engineering Technician, Soil Conservationist, Pierce County Parks Superintendent and park personnel delegated authority by the Pierce County Parks Superintendent.

[Amended 6-26-2012 by Ord. No. 12-06]

(1) In the event that the position of Solid Waste Administrator, Zoning Administrator, Assistant Zoning Administrator, Land Management Director/Land Use Coordinator, or Zoning Specialist is vacant, his or her authority under this article may be assumed by the Land Management Department and/or solid waste management personnel designated by the Land Management Committee and/or Solid Waste Management Board.

(2) In the event that the position of Public Health Director or Environmental Health Specialist is vacant, his or her authority under this article may be assumed by personnel designated by the Board of Health.

(3) In the event that the position of Land Conservation Supervisor, Conservation Engineering Technician, or Soil Conservationist is vacant, his or her authority under this article may be assumed by Land Management Department personnel designated by the Land Management Committee and the Land Conservation Committee.

C. The official named in Subsection B may submit to the County Board written nominations of employees within his office who should be delegated authority to issue citations for

violations of ordinances related to his official responsibilities. If the nominations are affirmatively approved by vote of the County Board, the persons so named shall have authority to issue citations with respect to ordinances directly related to their responsibilities.

D. Citation issuance authority may be revoked in the same manner in which it was conferred.

SECTION 3: That Chapter 120, Communicable Diseases – Authority and Duties of Local Health Officer, of the Pierce County Code is hereby created as follows:

§ 120-1. Local Health Officer's Duties and Authority [Sec. 252.03, Wis. Stats.]

A. Sec. 252.03, Wis. Stats. (as it currently exists or is hereafter revised) is incorporated herein by reference as if fully set forth.

- (1) The Pierce County health officer, upon the appearance of any communicable disease in Pierce County, shall immediately investigate all the circumstances and make a full report to the appropriate governing body and Wisconsin Department of Health Services.
- (2) The Pierce County health officer shall promptly take all measures necessary to prevent, suppress and control communicable diseases, and shall report to the appropriate governing body the progress of the communicable diseases and the measures used against them, as needed to keep the appropriate governing body fully informed, or at such intervals as the Wisconsin Secretary of Health may direct.
- (3) The Pierce County health officer may inspect schools and other public buildings within his or her jurisdiction as needed to determine whether the buildings are kept in a sanitary condition.
- (4) The Pierce County health officer may do what is reasonable and necessary for the prevention and suppression of disease; may forbid public gatherings when deemed necessary to control outbreaks or epidemics and shall advise the Wisconsin Department of Health Services of measures taken.
- (5) No person may interfere with the investigation under this chapter of any place or its occupants by the Pierce County health officer or their assistants.

§ 120-2. Violation, Penalty and Enforcement Procedures

A. Any person who violates or obstructs this chapter or an order of the Pierce County Health Officer under §120-1(A)(2) or (4) above is subject to:

- (1) The issuance of a citation pursuant to Ch. 1 of the Pierce County Code and Sec. 66.0113, Wis. Stats. A citation may be issued by the local health officer or law enforcement officers.
- (2) A forfeiture of not more than \$500 for each violation.

- (3) The issuance of a summons and complaint, and entry of a civil judgment for a forfeiture and (temporary or permanent) injunctive relief.
- B. A separate offense shall be deemed committed each day during or on which a violation occurs or continues.
- C. The initiation of one action or penalty under this section does not exempt the apparent violator from any additional actions and/or penalties.
- D. Proceeding under any other ordinance or law relating to the same or any other matter shall not preclude enforcement under this ordinance.

§ 120-3. **Severability.**

- A. Should any portion of this ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, the remainder of this ordinance shall not be affected.

§ 120-4. **Purpose.**

- A. The purpose and intent of this chapter is to promote the public health, safety, convenience, and general welfare and to prevent, suppress, and control communicable diseases.

SECTION 4: That this Ordinance shall become effective upon its adoption and publication as required by law.

Dated: June 23, 2020.

Jeffrey A. Holst, Chair
Pierce County Board of Supervisors

ATTESTED TO BY:

APPROVED AS TO FORM AND LEGALITY BY:

Jamie Feuerhelm, County Clerk

Bradley D. Lawrence, Corp. Counsel

Adopted: _____

BDC