

# Section I: Purpose

## 1.1 Purpose

This Ordinance is enacted to establish standards for the regulation of food establishments to protect the health, safety, and general welfare of the people of Hennepin County pursuant to powers granted under the Local Public Health Act, Minnesota Statutes, Sections 145A.01 through 145A.11, Minnesota Statutes 28A.075, 28A.0752 and 375.51 through 375.55. For the purpose of prescribing regulations governing food establishments Hennepin County hereby incorporates by reference the following rules and statutes and subsequent recodifications and/or amendments and other applicable legislation, as may be adopted from time to time.

- (a) Minnesota Statutes Chapters 157, 17.04, 29.21, 29.23, 29.235, 29.236, 29.237, 29.24, 29.25, 29.26, 29.27, and 30.49, applicable sections of Minnesota Statutes, Chapters 28A, 31, and 34A,,
- (b) Minnesota Rules Chapter 4626, except 4626.0033 subparts G through O.
- (c) Applicable sections of Minnesota Rules parts 1520, 1545, 1550, and 1556.

## 1.2 Objectives

The principal objectives of this Ordinance are as follows:

- A. To prevent foodborne illness.
- B. To correct and prevent conditions that may adversely affect persons utilizing food establishments.
- C. To provide standards for the design, construction, operation, and maintenance of food establishments.
- D. To meet consumer expectations of the safety of food establishments.

# Section II: General provisions

## 2.1 Scope

This Ordinance shall be applicable to all food establishments except that where Hennepin County licenses, inspects or otherwise regulates an establishment pursuant to a delegation agreement with the Minnesota Department of Agriculture, the terms of that delegation agreement shall control if inconsistent with this Ordinance.

## 2.2 Licensing jurisdiction

Section 4.2 of this Ordinance shall not apply to a food establishment located in a statutory or home rule charter city that maintains a delegation of authority agreement with the Minnesota Department of Health or the Minnesota Department of Agriculture to regulate food establishments pursuant to Minnesota Statutes, Section 145A.07, 28A.0752 or 28A.075.

# Section III: Definitions

Definitions of words, phrases, and terms used in this Ordinance shall be those set forth in Minnesota Rules, Chapter 4626, Hennepin County Administrative Ordinance No. 1, and this section.

### **3.1 "Food establishment"**

Is defined in Minnesota Rules, Part 4626.0020, Subpart 35. Food establishments include, but are not limited to, restaurants, boarding houses, drive-ins, bars, taverns, brew pubs, cafeterias, delicatessens, snack bars, grocery stores, retail bakeries, micromarkets, convenience stores, caterers, cafes, charter boats, satellite or catered feeding locations, mobile food units, catering food vehicles, food delivery services, food delivery vehicles, carts, clubs, lodges, commissaries, youth camps, itinerant and other short term food operations, lodging facilities, resorts, public and private schools, public buildings, group child care centers, vending machines, and similar businesses and establishments.

### **3.2 "Health authority"**

Means the Hennepin County Public Health Department and its designated employees, agents, or contractors, as the Hennepin County Board may designate.

### **3.3 "Itinerant food establishment"**

A food establishment operating as a seasonal permanent food stand, seasonal temporary food stand, or special event food stand as those terms are defined in Minnesota Statutes, Section 157.15, Subdivisions 12.a, 13, and 14.

## **Section IV: Administration and Licensing**

### **4.1 Administrative ordinance**

Except where otherwise specified, this Ordinance is subject to all provisions of Hennepin County Administrative Ordinance No. 1.

### **4.2 License required**

No person shall operate a food establishment within Hennepin County or engage in any enterprises described in Section 2, unless a license has been obtained. Each license shall be obtained from the Health Authority as established by County Board resolution from time to time pursuant to this Ordinance and Hennepin County Administrative Ordinance 1.

### **4.3 General licensing**

The application for such licenses shall be made on forms furnished by the Health Authority and shall describe the general nature of the business, the location, and any other information deemed necessary by the Health Authority.

### **4.4 License expiration**

Licenses issued pursuant to this Ordinance shall commence and expire on the dates indicated on the license certificate. With the exception of itinerant food establishment licenses, all food establishment licenses shall be issued for the applicable license year. Itinerant food establishment licenses shall be issued for the specific days the itinerant food establishment is in operation.

### **4.5 Transfer and display of license**

Only a person who complies with the requirements of this Ordinance shall be entitled to hold a license. A license shall not be transferable as to person or place. A valid license shall be located onsite and posted so that it is clearly visible to the public.

# Section V: Administrative Hearing

## 5.1 Right of appeal

Where a license application or renewal is denied or a licensee receives a suspension, summary suspension, or revocation notice, the applicant or licensee may appeal the action to the Health Authority by requesting an administrative hearing within ten County working days of the date of the notice. The notice of the action shall state the right to an administrative hearing.

## 5.2 Administrative hearing

If any applicant or licensee makes a written request for an administrative hearing, such hearing shall be held before the Health Authority Division Manager or his/her designee.

## 5.3 Schedule

The administrative hearing shall be held no later than 45 calendar days after the date of service of the request for a hearing was received unless the appellant requests an extension of time. If an extension is requested, the hearing shall be held no later than 90 calendar days after the date of service of the request for a hearing.

## 5.4 Notice

The Health Authority shall mail notice of the administrative hearing to the appellant at least ten calendar days prior to the hearing. Such notice shall include:

- A. A statement of time, place, and nature of the hearing; and
- B. A reference to leave the particular section, of this Ordinance or the adopted statutes or rules that have been violated.

## 5.5 Witnesses and evidence

All parties shall have full opportunity to respond to and present evidence and witnesses.

## 5.6 Standard of proof

The appellant shall have the burden of proving its position by clear and convincing evidence. All findings of fact, conclusions of law, and decisions by the Health Authority Division Manager shall be based on evidence presented and matters officially noticed.

## 5.7 Rules of evidence

The Rules of Evidence, as applied in the District Court, shall not apply to the hearing, but irrelevant, immaterial, and unduly repetitious evidence shall be excluded. The hearing shall be confined to matters raised in the Health Authority's written notice of suspension, summary suspension, or revocation or in the appellant's written request for a hearing.

## 5.8 Record of hearing

The hearing shall be taped or videotaped and minutes shall be kept.

## 5.9 Notice of decision

The determination of the Health Authority Division Manager and a copy of the minutes of the administrative hearing shall be forwarded to the appellant within ten County working days of the conclusion of the administrative hearing. The determination will be effective on the sixth County working day following the date the notice is sent.

### **5.10 Request for reconsideration of hearing decision**

The written notice must state the effective date of the adverse action. The notice must state that the appellant has the right to request a reconsideration of the hearing decision within five County working days of receipt of the notice. The reconsideration shall consist of a review of the record by the Health Authority. The review shall be conducted within five County working days of the receipt for the request for reconsideration. A written notice of determination will be forwarded to the appellant within five County working days of the reconsideration decision. The determination will become effective after three working days after the notice of decision is mailed.

## **Section VI: Inspections and plan review**

### **6.1 Inspection required**

The Health Authority shall inspect each food establishment prior to issuing a license for an establishment and as deemed necessary by the Health Authority. The Health Authority shall not issue a license until the food establishment complies with the standards of this Ordinance as demonstrated by a satisfactory inspection.

### **6.2 Plan submission**

The license applicant or licensee shall submit properly prepared plans to the Health Authority under the provisions of Minnesota Rules, Part 4626.1720. The plans, specifications, application, and plan review fee shall be submitted to the Health Authority at least 30 business days before beginning construction or remodeling.

### **6.3 Approval required**

The food establishment shall be constructed in conformance with plans approved by the Health Authority. A statutory or home rule charter city shall not issue a building permit for a food establishment or remodeling or alteration permit for such establishment until the Health Authority has approved such plans.

### **6.4 Construction inspections**

The Health Authority shall inspect the food establishment as frequently as necessary during construction to ensure that construction occurs in conformance with this Ordinance. The licensee shall not begin operations until the Health Authority has conducted a final inspection and approved issuance of the food license.

### **6.5 Access to premises and records**

The person in charge of the food establishment shall, upon request of the Health Authority and after proper Hennepin County identification, permit access to all parts of the establishment at any reasonable time for the purpose of inspection as often as deemed necessary by the Health Authority. The person in charge shall make available and allow copying of any and all records necessary to ascertain sources of food and compliance with this Ordinance.

### **6.6 Interference with health authority**

No person shall interfere with or hinder the Health Authority in the performance of its duties, or refuse to permit the Health Authority to make inspections of a food establishment.

## **6.7 Removal and correction of violations**

The licensee, owner, or operator of a food establishment, upon receipt of a report giving notification of one or more violations of this Ordinance, shall correct or remove each violation in the length of time determined by the Health Authority. The length of time for the correction or removal of each such violation shall be noted on the inspection report. Failure to remove or correct each violation within the specified time period shall constitute a separate violation of this Ordinance. The Health Authority may issue orders to halt construction or remodeling, or to take corrective measures to ensure compliance with this Ordinance.

# **Section VII: Grounds for emergency closure**

## **7.1 Single violations**

If any of the following conditions exist, the operator may be ordered to discontinue all operations of the food establishment until such time as the Health Authority confirms the correction of the violation:

- A. Failure to possess a license required by this Ordinance;
- B. Evidence of a sewage backup in a food preparation, food storage, or utensil washing area;
- C. Lack of potable, plumbed, hot or cold water to the extent that hand washing, utensil washing, food preparation, or toilet facilities are not operational;
- D. Lack of electricity or gas service to the extent that hand washing, utensil washing, food preparation, lighting, or toilet facilities are not operational;
- E. Evidence of an ongoing illness associated with the operation of the establishment;
- F. Significant damage to the food establishment due to tornado, fire, flood, or other disaster;
- G. Evidence of an infestation of rodents or other vermin;
- H. Evidence of cross contamination, filthy conditions, untrained staff, or poor personal hygiene;
- I. Lack of an effective means of sanitizing dishes or utensils;
- J. Misuse of poisonous or toxic materials; or
- K. Anytime a public health nuisance, as defined in Minnesota Statutes, Section 145A.02 subdivision 17, exists.

# **Section VIII: Standards for health, safety and nuisance prevention**

## **8.1 Standards adopted**

This Ordinance incorporates by reference the provisions of Minnesota Rules, Parts 4626.0010 through 4626.1855, excluding Parts 4626.1715 Subpart B, 4626.1720 Subpart B, and 4626.1755 through 4626.1777, and all subsequent recodifications and amendments, and specifically adopts the following additional standards pursuant to Minnesota Statute, Section 145A.05, Subdivision 1:

**A.** Minnesota Rules, Chapter 4626.0225, Subpart D, PREVENTING CONTAMINATION FROM HANDS. The food establishment must submit written notification to the Health Authority of his/her intention to use the procedures as contemplated under Subpart D of Part 4626.0225 and receive approval from the Health Authority prior to implementing any such written procedures.

**B.** Minnesota Rules, Part 4626.1050, Subpart A HANDWASHING SINKS; NUMBERS AND CAPACITY. A hand washing sink must be equipped to provide water to the user through a mixing valve or combination faucet for at least 15 seconds, at a temperature of at least 43 degrees C (110 degrees F), but not more than 54 degrees C (130 degrees F) in a food establishment and not more than 48 degrees C (120 degrees F), in a sink that is used by children such as a school, day care, or preschool.

**C.** Minnesota Rules, Part 4626.1465 TOILET TISSUE, AVAILABILITY. A supply of toilet tissue in a mounted dispenser shall be available at each toilet.

**D.** Minnesota Rules, Part 4626.1470 LIGHTING INTENSITY. The light intensity shall be:

1. At least 215 lux (20 foot candles) at a distance of 30 inches (75 cm) above the floor:
  - a. In walk-in refrigeration units, dry food storage areas and in other areas during periods of cleaning.

**E.** Minnesota Rules, Part 4626.0033, Subpart B (4) CERTIFIED FOOD MANAGER REQUIREMENTS FOR FOOD ESTABLISHMENTS. These exempted food establishments are not required to have a certified food manager, but the person in charge required by 4626.0025 in these food establishments must be trained in basic food sanitation as determined by the Health Authority.

## Section IX: Fees

### 9.1 License fees

Fees for licenses and service fees as shown in the fee schedule, issued hereunder shall be those established by resolution of the Hennepin County Board of Commissioners. An additional fee shall be charged for each additional service or operation that is separate, distinct or unique from the primary or main food establishment, as determined by the Health Authority.

### 9.2 Failure to submit plan

If work has commenced prior to approval of construction or remodeling plans, late fees may be assessed in accordance with the fee schedule.

### 9.3 License late fees

If a food establishment does not return the license application and required fee by the date required on the invoice, an additional late fee may be assessed in accordance with the fee schedule.

## **9.4 Operating without a license**

A food establishment found operating without a valid license may be assessed a fee of double the applicable license fee, or as determined by the fee schedule.

## **9.5 Prorating**

If a food establishment begins operation in the last quarter of a licensing year, the license fee due shall be prorated to one half of the annual license fee for that year.

# **Section X: Variances**

## **10.1 Determination**

When a licensee or applicant requests a variance under Minnesota Rules, Part 4626.1690 to 4626.1715, on the form provided by the Health Authority, from a provision of this Ordinance or Minnesota Rules, Chapter 4626, the Health Authority will issue a written determination regarding that variance request.

## **10.2 Variance reconsideration**

A licensee or applicant may request reconsideration of the denial, revocation, or failure to renew a variance request by the Health Authority. When such a request is received, the Health Authority will conduct an administrative review.

## **10.3 Variance appeal request**

The request for an administrative review shall be in writing specifically stating the grounds for appeal. The request must be received by the Health Authority no later than the close of business on the tenth County working day following the service of notice of the Health Authority action.

## **10.4 Review process**

The reconsideration shall consist of a review of the variance request file. The Health Authority shall review the file within ten County working days of the receipt of the review request.

## **10.5 Notice of determination**

A written notice of the determination resulting from the administrative review will be issued to the licensee or applicant within ten County working days of the completion of the review.

# **Section XI: Separability**

If any provision or application of any provision of this Ordinance is held invalid, that invalidity shall not affect other provisions or applications of this Ordinance.

# **Section XII: Penalty**

## **12.1 Misdemeanor**

Any person who violates this Ordinance, or who permits a violation to exist on the premises under his/her control, or fails to take action to abate the existence of the violation(s) within a specified time period, when ordered or notified to do so by the Health Authority, shall be guilty of a misdemeanor,

and upon conviction thereof shall be punished as provided by law. Each day of violation constitutes a separate offense.

### **12.2 Adverse license action**

Violation of any provision of this Ordinance by a licensee or other person in charge shall be adequate grounds for denial, refusal to renew, revocation, or suspension of a license to operate a food establishment as determined by the Health Authority.

### **12.3 Civil remedies**

In the event of a violation or a threat of violation of this Ordinance, the City Attorney or County Attorney may take appropriate action to enforce this Ordinance, including application for injunctive relief, action to compel performance, or other appropriate action in court, if necessary, to prevent, restrain, correct, or abate such violations or threatened violations. The City Attorney or County Attorney enforcing provisions of this Ordinance may seek costs and disbursement, including attorneys' fees.

### **12.4 Citations**

Whenever the Health Authority discovers a violation of this Ordinance, a citation may be issued to the person alleged to have committed the violation. The citation shall be issued to the person charged with the violation, or in the case of a corporation or municipality, to any officer or agent expressly or impliedly authorized to accept such issuance.

## **Section XIII: Captions**

The captions printed in boldfaced type before sections of this Ordinance are mere catch words to indicate the content of the section.

## **Section XIV: Effective date**

After passage by the Hennepin County Board of Commissioners, this Ordinance shall be effective on <Date of signing>.