

Washington County, Minnesota Ordinances

Ordinance No. 145 Food Code Ordinance

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Section 1 Purpose and Authority

1.1

The purpose of this Ordinance is to establish standards and authority to protect the public health, safety and general welfare of the people of Washington County pursuant to powers granted under Minnesota Statutes Chapters 145A, 157 and 375. These general objectives include the following:

- (1) Prevent foodborne illness;
- (2) Correct and prevent conditions that may adversely affect persons utilizing food establishments;
- (3) Provide a minimum standard for the design, construction, operation and maintenance of Food Establishments; and
- (4) Meet consumer expectations of the quality and safety of Food Establishments.

1.2

This Ordinance establishes the minimum standards, as defined in the Minnesota Food Code, Minnesota Rules Chapter 4626, and this Ordinance, for the design, construction, operation and maintenance of Food Establishments located in Washington County so that health and safety hazards are minimized. Whenever, and if, this Ordinance conflicts with other applicable laws, regulations and Ordinances, the most restrictive shall prevail.

Section 2 Scope

2.1

This Ordinance shall be applicable to all Food Establishments, as defined in Minnesota Statutes 157.15, Minnesota Rules Chapter 4626.0020 and this Ordinance, which are located in Washington County.

Section 3 Administration

3.1

This Ordinance shall be administered by the Washington County Department of Public Health and Environment hereinafter referred to as the "Department" or the "Health Authority."

3.2

All of the provisions of the Washington County Administrative Ordinance shall apply as if fully set forth herein.

Section 4 Definitions

4.1

For the purpose of this Ordinance, definitions of words, phrases, and terms used in this Ordinance shall be those set forth in Minnesota Rules Chapter 4626. The following words shall have the following meanings:

(1) Additional Facility

shall mean a location within a Food Establishment, other than the primary food preparation and service area, which is used to prepare or serve food or beverages to the public (e.g., bar facilities in a Food Establishment,

additional kitchen areas or an outdoor bar).

(2) Adult Day Care Center

shall mean a facility similar to a Child Care Center, except that care shall be provided for adults.

(3) Approved

shall mean acceptable to the Health Authority based on a determination of conformity with principles, practices and generally recognized standards that protect public health.

(4) Bed and Breakfast

shall mean a private home where sleeping accommodations are offered for one or more nights for Transient Use to no more than ten (10) persons; in addition, a breakfast meal is served on the premises.

(5) Board and Lodging Facility

shall mean every building, structure or enclosure, or any part thereof, used as, maintained as, or advertised as, or held out to be an enclosure where meals are furnished to five (5) or more regular boarders, whether with or without sleeping accommodations, for periods of one (1) week or more.

(6) Catering

shall mean the preparation, transportation or service of food to a location other than the Commissary for immediate consumption.

(7) Catering Food Vehicle

shall mean any Food Vehicle used only to transport any food, other than pizza, from its point of preparation to a point where the food is served to the consumer.

(8) Certified Food Manager

shall mean an individual who has a valid Minnesota food manager's certification under Minnesota Rules 4626.2015.

(9) Change or Transfer in Ownership

shall mean a legal transaction whereby the ownership of an establishment is changed from one Person to another Person. This transaction can occur by sale, exchange, repossession or other legal means.

(10) Child Care Center

shall mean any child care facility which meets the requirements for licensing by the Minnesota Department of Human Services under Minnesota Rules Chapter 9503.

(11) Clean

shall mean free from insects, vermin, and debris and free from physical, chemical and microbial substances discernable by ordinary sight or touch, by ultraviolet light, or by artificial light.

(12) Code

shall mean the Minnesota Food Code (Minnesota Rules, Chapter 4626).

(13) Commissary

shall mean a Food Establishment where food, containers, or supplies are kept, handled, prepared, packaged or stored.

(14) Congregate Dining

shall mean a place where prepared food has been delivered from a separate licensed Commissary and then reheated for immediate service.

(15) County

shall mean Washington County.

(16) County Board

shall mean the Washington County Board of Commissioners.

(17) Department

shall mean the Washington County Department of Public Health and Environment and shall be synonymous with the term "Health Authority."

(18) Extensive Remodeling

shall mean an addition or change to the physical facility, a major equipment addition, or an equipment installation that results from changes in the menu. Extensive Remodeling does not include redecorating, cosmetic refurbishing, altering seating design, or reducing seating capacity.

(19) Food Cart

shall mean a Food Establishment that is a non-motorized vehicle self-propelled by the operator. Food Cart shall be synonymous with "Push Cart."

(20) Food Establishment

shall mean an operation that:

- (A) stores, prepares, packages, serves, vends, or otherwise provides food and/or beverage for human consumption, including a restaurant, satellite or catered feeding location, Special Event Food Stand, school, Boarding and Lodging Establishment, and institution; or
- (B) relinquishes possession of food and/or beverage to a consumer directly or indirectly through a delivery service, including or restaurant takeout orders, and a delivery service that is provided by common carriers.

The definition of Food Establishment includes:

- (C) a transportation or Catering Food Vehicle or central preparation facility or Commissary that supplies a Satellite Feeding Location unless the feeding location is licensed by the regulatory authority.
- (D) an operation that is conducted in a mobile, stationary, temporary, or permanent facility, location, or cart, regardless of whether consumption is on or off the premises and regardless of whether there is a charge for the food; and
- (E) those food service operations within a hospital, nursing home, or boarding care home licensed under Minnesota Statutes, sections 144.50 to 144.56, that are not limited to patient or resident care.

The definition of Food Establishment does not include:

- (F) an establishment excluded from licensure under Minnesota Statutes, section 28A.15 or 31.56, or a wholesale food handler,

wholesale food processor or manufacturer, or food broker as defined in Minnesota Statutes, section 28A.05, paragraphs b to d;

(G) An establishment excluded under Minnesota Statutes, section 157.22;

(H) A food processing plant, wholesale food handler, or a custom operator as described in the Code of Federal Regulations, title 9, section 303.1, paragraph (a), subparagraph (2) except;

1. a custom processor as defined in Minnesota Statutes, section 28A.03, subdivision 8;
2. a person engaged in custom processing as defined in Minnesota Statutes, section 31A.02, subdivision 5;
3. An animal food manufacturer as defined in Minnesota Statutes section 31A.02, subdivision 8;

(I) A private home or other location that receives catered or home delivered food when only invited guests are present; or

(J) A food service limited to patient or resident care within a hospital, nursing home, boarding care home, or supervised living facility licensed under Minnesota Statutes, sections 144.50 to 144.56, except for those operations subject to the rules and laws administered by the Minnesota Department of Agriculture.

(21) Food Vehicle

shall mean any Food Establishment consisting of a mobile vehicle which hauls any food for the purpose of delivery or sale.

(22) HACCP

shall mean Hazard Analysis Critical Control Point.

(23) HACCP plan

shall mean a written document that delineates the formal procedures for following the Hazard Analysis Critical Control Point principles developed by the National Advisory Committee on Microbiological Criteria for Foods.

(24) Hazard

shall mean any biological, chemical or physical property that may cause an unacceptable consumer health risk.

(25) Health Authority shall mean the Washington County Department of Public Health and Environment, its Director or other designated agent. The term Health Authority is synonymous with "Department."

(26) Hotel or Motel

shall mean any building, structure or enclosure, or any part thereof, kept, used as, maintained as, or advertised as, or held out to the public to be an enclosure where sleeping accommodation are furnished to the public and furnishing accommodation for periods of less than one (1) week.

(27) Imminent Health Hazard shall mean a significant threat or danger to health that exists when there is evidence to show that a product, practice, circumstance, or event creates a situation that requires immediate correction or cessation of operation.

(28) Licensee

shall mean the Person licensed by the regulatory authority who:

(A) is the owner, the owner's agent, or other person legally responsible for the operation of the Food Establishment; and

(B) possesses a valid license to operate a Food Establishment according to Minnesota Statutes, chapter 23A or 157, or this Ordinance.

(29) Limited Food Service Establishment

shall mean a Food Establishment that provides one of more of the following:

(A) prepackaged food that receives heat treatment and is served in the package;

(B) frozen pizza that is heated and served;

(C) a continental breakfast such as rolls, coffee, juice, milk and cold cereal;

(D) any beverage such as soft drinks, coffee, alcoholic or nonalcoholic drinks; or

(E) cleaning for eating, drinking, or cooking utensils, when the only food served is prepared off site.

(30) Lodging Establishment

shall mean a Hotel, Motel, lodging house, Board and Lodging Facility, resort, or similar facility where sleeping facilities are offered to the public.

(31) Minor Equipment Remodeling

shall mean remodeling of, replacement of, or the addition of one (1) item (such as a walk-in cooler, dishwashing machine, flooring) that requires an on site inspection and/or submittal of plans.

(32) Mobile Food Unit

shall mean a Food Establishment that is a vehicle-mounted unit, either motorized or trailered, operating no more than twenty-one (21) consecutive days annually at any one (1) place.

(33) Person

shall mean an individual, firm, partnership, corporation, association, limited liability company, government agency, club or organization of any kind.

(34) Person in Charge

shall mean the individual present at a Food Establishment who is responsible for the operation at the time of inspection.

(35) Potentially Hazardous Food means:

(A) a food that is natural or synthetic and is in a form capable of supporting:

(1) the rapid and progressive growth of infectious or toxigenic microorganisms,

(2) the growth and toxic production of *Clostridium botulinum*; or

(3) in raw shell eggs, the growth of *Salmonella enteritidis*

(B) Potentially Hazardous Food includes 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 in item (A).

(C) Potentially Hazardous Food does not include:

- (1) an air-cooled hard-boiled egg with shell intact;
- (2) a food with an a_w value of 0.85 or less;
- (3) a food with a pH level of 4.6 or below when measured at 24 degrees C (75 degrees F);
- (4) a food, in an unopened hermetically sealed container, that is commercially processed to achieve and maintain commercial sterility under conditions of nonrefrigerated storage and distribution;
- (5) a food for which laboratory evidence demonstrates that the rapid and progressive growth of infectious and toxigenic microorganisms or the growth of *Salmonella enteritidis* in eggs or *Clostridium botulinum* cannot occur, including a food that has an a_w and a pH that are above the levels specified in subitem (2) or (3) and that may contain a preservative, other barrier to the growth of microorganisms, or a combination of barriers that inhibit the growth of microorganisms;
- or
- (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 in item (A).

(35) Risk Categories shall mean as follows:

(A) "High Risk Establishment" means any Food Establishment that serves Potentially Hazardous Foods that require extensive processing on the premises, including manual handling, cooling, reheating, or holding for service; prepares food several hours or days before service; serves menu items that epidemiologic experience has demonstrated to be common vehicles of food-borne illness; or draws its drinking water from a surface water supply.

(B) "Medium Risk Establishment" means a Food Establishment that serves Potentially Hazardous Foods but with minimal holding time between preparation and service; or serves food, such as pizza, that require extensive handling followed by heat treatment.

(C) "Low Risk Establishment" means a Food Establishment that is not a High Risk or Medium Risk Establishment.

(36) Satellite or Catered Feeding Location

shall mean a location, separate from the Food Establishment food preparation location, where food is only reheated and served or served cold. A Satellite or Catered Feeding Location must be under the direct management authority of the Person, owner or operator of a Food Establishment.

(37) Seasonal Establishment

shall mean a Food Establishment which is closed five (5) consecutive months of the year or more.

(38) Seasonal Permanent Food Stand

shall mean a Food Establishment which is a permanent food service stand or building, but which operates no more than 21 days annually.

(39) Seasonal Temporary Food Stand

shall mean a Food Establishment that is disassembled and moved from location to location, remaining no more than twenty-one (21) consecutive days in one place.

(40) Senior Nutrition Program

mean a program that consists of service distribution points that provide congregate meals, home-delivered meals, and linkages to social service programs for persons 60 years of age or older.

(41) Special Event Food Stand

shall mean a Food Establishment which is used in conjunction with celebrations and special events, and which operates no more than three times annually for no more than ten (10) total days.

(42) Transient Use

shall mean use which lasts for only a short time. Persons using the facility are not regular boarders and stays at the facility are generally less than one (1) week.

(43) Variance

shall mean a modification or variation to the requirements of this Ordinance where it is determined that, by reason of exceptional circumstances, the strict enforcement of the Minnesota Food Code and this Ordinance would cause unnecessary hardship.

Section 5 Licensing and Fees

5.1

No Person shall operate a Food Establishment, as defined in Minnesota Rules Chapter 4626.0020, subpart 35 and this Ordinance, unless a license for the current year of the applicable type shall have been obtained pursuant to this Ordinance from the Health Authority.

5.2

Only a Person who complies with the requirements of this Ordinance shall be entitled to receive a license. Licenses shall not be transferable as to Person or place. The original copy of all licenses obtained for a Food Establishment shall be conspicuously located for public inspection.

5.3

Fees for licenses, plan reviews and sampling services shall be those established by the County Board of Commissioners. Additional fees shall be charged for each additional service or operation which is separate, distinct, or unique from the central or main Food Establishment, as determined by the Health Authority.

5.4

Food Establishments that Change or Transfer Ownership or otherwise begin operations at various times during the year shall have their license fees prorated as follows:

- (1) Seventy-Five percent (75%) of the total required license fees for establishments beginning operations on or after April 1 but before July 1;
- (2) Fifty percent (50%) of the total required license fees for establishments beginning operations on or after July 1 but before October 1;
- (3) Twenty-five percent (25%) of the total required license fees for establishments beginning operations on or after October 1 but before December 31.

This proration of license fees is applicable only to the total required license fee. It does not include any required plan review fees or water sampling fees. This proration of fees does not apply to Food Establishments defined as Seasonal Establishments, Seasonal Temporary Food Stands or

Special Event Food Stands.

5.5

If the Health Authority receives plans and specifications for a Food Establishment less than thirty (30) calendar days before construction or Extensive Remodeling begins, fifty percent (50%) of the original plan review fee will be assessed for a late fee.

5.6

Licenses are valid through December 31, annually, except those establishments whose licensing period is defined on the license at time of issuance. License renewal applications shall be received by the Health Authority by December 1 of each year.

5.7

The application for licenses shall be made on forms furnished by the Health Authority and shall set forth the general nature of the business, the location, and other information as the Health Authority may require. The issuance of such licenses and their maintenance, termination and administration shall be in accordance with and subject to all conditions of the Washington County Administrative Ordinance relative to the general requirements for licenses in Washington County.

5.8

Late penalty fees for Food Establishment licenses, including Seasonal Establishments, shall be assessed as described in the Administrative Ordinance. Late fees for Special Event Food Stands, Mobile Food Unit, Seasonal Permanent Food Stand, and Seasonal Temporary Food Stands will be assessed as follows:

- (1) Ten dollars (\$10.00) if the Health Authority receives the license application less than fourteen (14) calendar days, but more than two (2) calendar days before the first day of the event;
- (2) Thirty dollars (\$30.00) if the Health Authority receives the license application two (2) calendar days or less before the first day of the event.

5.9

If the annual test of a private drinking water well that services a Food Establishment results in the need to retest due to the presence of coliform bacteria, a fee established annually by the County Board will be assessed to the establishment for each subsequent sample until the water is deemed safe to consume by the Health Authority.

5.10

An existing establishment that has been out of business more than thirty (30) calendar days or an existing Seasonal Establishment closed for one (1) season is considered a new establishment when re-opening with the same ownership and is subject to a pre-licensing inspection.

Section 6 Exemptions From This Ordinance

6.1

This Ordinance shall not apply to:

- (1) Any building constructed for and primarily used for religious worship;
- (2) Family day care homes and group family day care homes governed by MN Statute 245A to

245A.16;

(3) Non-profit senior citizen centers for the sale of home-baked goods; and

(4) Food not prepared at an establishment and brought in by members of an organization for consumption by members at a potluck event.

6.2

Upon request, the Health Authority may provide guidelines, recommendations, technical assistance and education to exempt organizations for the purpose of providing safe food. If an exempt organization requests a plan review from the Health Authority, appropriate fees will be assessed to the exempt organization.

Section 7 Inspections

7.1

The Health Authority shall inspect licensed Food Establishments as frequently as necessary to ensure compliance with this Ordinance, but not less than the minimum frequency established by Minnesota Statutes 157.20.

7.2

The Health Authority shall have the right to enter and have access to the establishment at any time during the conduct of business. No persons shall interfere with or hinder the Health Authority in the performance of its duties, or refuse to permit the Health Authority to make such inspections.

7.3

The Health Authority shall inspect each Food Establishment prior to issuing a license for a new establishment or Change of Ownership. A license shall not be issued until the corrections required by the Health Authority as a result of the pre-licensing inspection have been made to the satisfaction of the Health Authority.

7.4

Each inspection report may be posted by the Health Authority upon an inside wall of the food establishment, not in a public area, and such inspection report shall not be defaced or removed by any person, except the Health Authority. The posting of the inspection report on the inside wall of the food establishment shall constitute service of an official notification of the inspection by the Health Authority. The Health Authority may, in lieu of posting such reports, deliver it to the Licensee or its authorized agent in person, or by certified or registered mail. A copy of the inspection report shall be filed with the records of the Health Authority with the name of the operator and owner.

7.5

All Licensees, owners, or operators of Food Establishments having a report posted in the Food Establishment or having received a report giving notification of one or more violations of this Ordinance shall correct or remove each violation in a reasonable 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. The failure to remove or correct each such violation within the time period noted on the inspection report shall constitute a separate violation of this Ordinance.

Section 8 Standards for Health and Safety

8.1

Minnesota Rules 4626, the Minnesota Food Code, in effect on the effective date of this Ordinance, and all future revisions thereof, are hereby adopted by reference and made part of this Ordinance.

8.2

Whenever a Food Establishment is constructed or remodeled or whenever an existing structure is converted to use as an establishment which would be licensed under the provisions of this Ordinance, properly prepared plans and specifications for each construction, remodeling or conversion shall be submitted to the Health Authority for review and approval at least thirty (30) calendar days prior to the time that construction, remodeling or conversion is begun. The plans and specifications shall indicate the proposed layout; mechanical, plumbing, and electrical specifications; construction materials and location; and equipment specifications and menu. The plans and specifications, along with the plan review fee, shall be submitted in the form requested by the Department. The facility shall be constructed and finished in accordance with the approved plans.

8.3

Every licensed Food Establishment that is classified, by definition in Minnesota Statute 157, as a High Risk or Medium Risk Establishment shall maintain in employment at least one (1) full-time person who has completed an approved food service certification program and is registered with the Minnesota Department of Health as a Certified Food Manager.

8.4

The following shall be exempt from the requirements for a Certified Food Manager under Section 8.3:

(1) A Food Establishment where food preparation activities are solely limited to one or more of the following:

- (A) heating or serving precooked hot dog or sausage products, popcorn, nachos, pretzels, or frozen pizza;
- (B) preparing or serving a continental breakfast such as rolls, coffee, juice, milk, and cold cereal;
- (C) preparing or serving nonalcoholic or alcoholic beverages or ice;
- (D) grinding coffee beans;
- (E) packaging foods that are not Potentially Hazardous Foods;
- (F) serving bulk food as defined in Minnesota Statutes, section 31.80, subdivision 2;
- (G) processing raw meat, poultry, fish, or wild game intended for cooking after sale;
- (H) heating as the only preparation step for a bakery product;
- (I) providing prepackaged food in its original package; or
- (J) cleaning, sanitizing eating, drinking, or cooking utensils, when the only food served is prepared off site.

(2) The following establishments if food is prepared for 18 or fewer persons per mealtime: a Board and Lodging Facility; a Bed and Breakfast; a Child Care Center; or an Adult Day Care Center.

(3) A Food Cart, Mobile Food Unit, Seasonal Permanent Food Stand, Seasonal Temporary Food Stand, or Special Event Food Stand.

(4) A retail Food Vehicle, portable structure, cart or vending machine; and

(5) A Food Establishment that provides meals no more than one (1) day in a seven (7) day period and that is

owned and operated by a Person, business or nonprofit organization whose primary activity is not food service.

8.5

Identification of a Certified Food Manager is limited to one Satellite or Catered Feeding Location per Certified Food Manager, except for a Food Establishment owned or operated by a school, Adult Day Care Center, Child Care Center, or a Senior Nutrition Program, in which case up to ten (10) Satellite or Catered Feeding Locations per Certified Food Manager is allowed.

8.6

An "Employee Health" sign provided by the Health Authority relating to section 4626.0040 of the Code shall be posted in a location in the establishment where employees are required to report at the beginning of their shift.

Section 9 Variances

9.1

A Variance from this Ordinance may be granted if it is deemed that the strict enforcement of any provision of the standards of the Ordinance would cause unnecessary hardship or that strict conformity with the standards would be unreasonable and impractical, or not feasible under the circumstances. The Department may permit a Variance upon such conditions as it may prescribe for management consistent with the general purposes and intent of the applicable Ordinance and of all other applicable state and local regulations and laws.

9.2

Variances will be granted in accordance with the procedures defined in the Washington County Administrative Ordinance.

Section 10 Enforcement

10.1

Any person who violates a provision of this Ordinance shall be guilty of a misdemeanor and upon conviction shall be punished as provided by law. A separate offense shall be deemed committed upon each day during or on which a violation occurs or continues.

10.2

In the event of a violation or a threat of a violation of this Ordinance, the County Attorney may take appropriate action to enforce this Ordinance, including application of 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.

10.3

The Department of Public Health and Environment may, in lieu of, or in addition to issuance of a citation, order the Licensee, owner or operator to appear for an informal hearing at the Washington County Government Center, located at 14949 62nd Street North, Stillwater, Minnesota, at the time and date prescribed

by the Department. The Licensee, owner or operator must be given written notice at least 24 hours in advance of the informal hearing and such notice shall specify the Ordinance violations to be discussed. Failure to appear shall constitute a violation of this Ordinance.

10.4

Citations may be issued by the Department and the Department may suspend, summary suspend and revoke licenses in accordance with the Washington County Administrative Ordinance.

Section 11 Severability

11.1

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 12 Effective Date

12.1

This Ordinance shall be effective upon passage by the Washington County Board of Commissioners and publication according to law.

012000
