

CHAPTER 2. FOOD & BEVERAGE ORDINANCE

SECTION 1. PURPOSE

Countryside Public Health: Big Stone, Chippewa, Lac qui Parle, Swift and Yellow Medicine Counties have agreed to perform the functions assigned to the State by Minnesota Statutes, Chapter 157, regarding an Ordinance for the licensing and inspection of hotels, motels, boarding houses, lodging houses, restaurants, places of refreshment, temporary and push cart commissaries, drive-ins, bars, taverns, drive-in cafes, clubs, lodges, eating facilities at resorts, schools, public buildings and churches and resorts located in Big Stone, Chippewa, Lac qui Parle, Swift and Yellow Medicine Counties and has agreed to enforce all applicable statutes, rules, and ordinances pertaining thereto Minnesota Rules, parts 4626.0010 to 4626.1870.

Countryside Public Health Service, Board of Health pursuant to Minnesota Statutes 145A.07, shall become effective upon adoption of the amended Minnesota Food Code (Minnesota Rules, parts 4626.0010 – 4626.1870).

SECTION 2. DEFINITIONS

The following definitions shall apply in the interpretation and the enforcement of this Ordinance.

- A. **Board:** Countryside Public Health (CPH) Community Health Board acting under the provisions of Minnesota Statute 145A.07, as the Board of Health.
- B. **Environmental Health Department:** Countryside Public Health (CPH) Community Health Board and its Environmental Health Staff.
- C. **Environmental Health Director:** Countryside Public Health (CPH) Community Health Board's Environmental Health Director and any related staff acting under the Board's authority.

SECTION 3. ADOPTION OF FOOD & BEVERAGE ESTABLISHMENT STANDARDS

The standards for Food & Beverage Establishments outlined in Minnesota Rules Chapter 4626.0010 to 4626.1870 and all amendments or additions thereto are hereby incorporated in and made part of this Ordinance and those authorities which are the responsibility of the Minnesota Department of Agriculture. Wherein Minnesota Rules Chapter 4626 refers to the Commissioner, Commissioner shall mean the Countryside Public Health (CPH) Community Health Board and its designated agents.

SECTION 4. EMBARGO, CONDEMNATION, & TAGGING

Subsection 4.1: General

The Environmental Health Director may condemn and cause to be removed, embargo, and/or tag any item deemed to be in violation of Minnesota Rules Chapter 4626 in accordance with Section 4626.1805 through 4626.1815.

SECTION 5. PLAN REVIEW OF FUTURE CONSTRUCTION

Subsection 5.1: General

When an establishment, in Big Stone, Chippewa, Lac Qui Parle, Swift and Yellow Medicine counties licensed or to be licensed under the provisions of Minnesota Statutes 157 is hereafter constructed or remodeled, or when an existing structure is converted for use as a licensed establishment, it shall submit

to the Environmental Health Department all required plans, specifications and materials, and comply with the requirements of Minnesota Rules 4626. Plans and the fee specified by the Community Health Board shall be submitted at least 30 days before beginning construction, extensive remodeling or conversion of a food establishment.

SECTION 6. PROCEDURE WHEN INFECTION IS SUSPECTED

Subsection 6.1: General

- A. When the Environmental Health Director, or staff, has reasonable cause to suspect the possibility of disease transmission from a food or beverage service establishment employee, the Environmental Health Department shall secure an illness or morbidity history of the suspected employee, and/or make other investigations as may be required, and take appropriate action. The Environmental Health Department may require any or all of the following measures:
1. The immediate exclusion of the employee(s) from all food service establishments;
 2. The immediate closure of the food service establishment concerned until, in the opinion of the Environmental Health Director, no further danger of disease outbreak exists;
 3. Restriction of the employee's services to some area of the establishment where there would be no danger of transmitting disease, and;
 4. Adequate medical and laboratory examinations of the employee, or other employees, and their body discharges;
 5. Collection of samples of food(s) and beverage(s) from the establishment for laboratory examination.

SECTION 7. COMPLIANCE PROCEDURES

Subsection 7.1: Licenses Needed

It shall be unlawful for any person to operate a food and/or beverage service establishment within Big Stone, Chippewa, Lac Qui Parle, Swift or Yellow Medicine counties who does not possess a valid license issued to them by the Environmental Services Department as required by this Ordinance. Only a person who complies with the requirements of this Ordinance shall be entitled to receive and retain such a license. Licenses shall not be transferable from one establishment, person or location to another establishment, person or location. A valid license shall be posted in every food service establishment. All licenses expire as of December 31 each year.

Subsection 7.2: Application for License

- A. Any person desiring to operate a food service establishment shall make written application for a license on forms provide by the Environmental Health Department. Such application shall include: the applicant's full name and address and whether such applicant is an individual, firm, partnership or corporation, the location and type of proposed food service establishment, as well as the signature of the applicant or applicants. If a partnership, the names of the partners, together with the appropriate license fee as described herein shall be submitted to the Environmental Health Department on or before December 31st, prior to the expiration of the current year's license, or in the case of a new business, ten (10) days prior to the opening date of such a business. Any person who operates a food service establishment

without submitting a license application and appropriate fee shall be deemed to have violated this Ordinance and shall be subject to prosecution as provided for in this Ordinance.

- B. Proprietors of any food and/or beverage establishment shall pay an annual license fee at a rate specified by resolution of the Countryside Community Health Board. This annual license fee may be adjusted from time to time as the Board shall deem appropriate. A penalty fee at a rate specified by Community Health Board resolution shall be added to the amount of the license fee and paid by the proprietor if the annual license fee has not reached the Environmental Health Department office by the date specified in section 6.2A.

Subsection 7.3: Inspection & Correction

- A. The Environmental Health Department shall inspect food, beverage, and lodging establishments according to Minnesota Statute 157 and rules adopted under Minnesota Statute 157.
- B. The person operating a food establishment shall, upon request of the Environmental Health Department and after proper identification, permit access to all parts of the establishment at any reasonable time for purpose of inspection and shall exhibit and allow copying of any records necessary to ascertain sources of food or other compliance with the provisions of this Ordinance.
- C. Every person engaged in the operation of a food establishment, as herein defined, shall upon request; furnish reasonable samples free of charge to the Environmental Health Department for laboratory analysis.
- D. Whenever an inspection of a food establishment is made, the findings shall be recorded on the inspection report form. One copy of the inspection report form shall be furnished to the person in charge of the establishment. The completed inspection report form is a public document that shall be made available for public discourse to any person who requests it, except when report forms are a part of pending litigations or are scheduled for follow-up inspections.
- E. The inspection report shall specify a specific and reasonable period of time for the correction of the violations. Correction of the violations shall be accomplished within the period specified.

Subsection 7.4: Suspension of License

- A. Licenses may be suspended temporarily by the Environmental Health Director, or staff, at any time for failure by the holder to comply with the requirements of this Ordinance. Whenever a license holder or operator has failed to comply with any notice requiring corrective action, issued under the provisions of this Ordinance, that license holder or operator may be notified in writing that the license upon service of notice is immediately suspended and that an opportunity for a hearing before the Appeals Board will be provided if a written request for appeal is filed with the Environmental Health Director by the license holder.

- B. Notwithstanding the other provisions of this Ordinance, whenever the Environmental Health Director or Registered Sanitarian finds unsanitary or other condition(s) in the operation of a food establishment which, in their judgment, may constitute a substantial hazard to the public health, they can without warning, notice or hearing, issue written notice to the license holder or operator citing such condition(s), specifying the corrective action to be taken, and specifying the time period within which such action shall be taken; and if deemed necessary, such order shall state that the license is immediately suspended, and all food and/or beverage operations are to be immediately discontinued. Any person to whom such an order is issued shall comply immediately therewith, but upon written petition to the Environmental Health Director, shall be afforded an appeal before the Appeals Board.
- C. Any person whose license or permit has been suspended may at any time make application for a re-inspection for the purpose of reinstatement of the license. Within ten (10) days following receipt of a written request, including a statement signed by the applicant that in their opinion the condition(s) causing suspension of the license has/have been corrected, the Environmental Health Director or Registered Sanitarian shall make a re-inspection. If the applicant is in compliance with the requirements of this Ordinance and Minnesota Rules Chapter 4626, the license shall be reinstated.

Subsection 7.5: Revocation of License

For serious or repeated violations of any of the requirements of this Ordinance or Minnesota Rules Chapter 4626, the license may be permanently revoked. Prior to such action, the Environmental Health Director shall notify the license holder in writing, advising that the license shall be permanently revoked at the end of a five (5) day period. The license holder shall be advised of the same time than an opportunity for hearing before the Appeals Board will be provided if a written request for appeal is filed with the Environmental Health Director by the license holder.

Subsection 7.6: Appeals Board

- A. The Appeals Board shall consist of the Chairperson of the Countryside Community Health Board or a designated appointee, Community Health Services Administrator or designated agent and one Community Health Services Committee representative or a designated agent.
1. **Request for Hearing.** Any person affected by a notice of embargo, suspension, or revocation shall be granted a hearing of the matter before the Appeals Board upon filing in the office of the Environmental Health Director, a written petition requesting such a hearing and setting forth a brief statement on the grounds therefore. Said petition shall be filed within ten (10) days after the notice was served;
 2. **Date of Hearing.** The hearing requested shall be held not more than ten (10) days after the date on which the petition was filed. The Chairman of the Appeals Board may postpone the date of the hearing for a reasonable time beyond such ten (10) day period, if in the Chairman's judgment a good and sufficient reason exists for such postponement;
 3. **Notice of Hearing.** The Environmental Health Director shall cause five (5) days written notice of the hearing to be given to the petitioner or petitioners by personal service or by mailing by certified mail to the petitioner or petitioner's last known address;
 4. **Proceedings.** At such hearing the petitioner, their agent or attorney shall be given an opportunity to be heard and to show cause why the notice of embargo, suspension, or revocation issued by the Environmental Health Director should be modified or

- withdrawn. The Environmental Health Director shall present a detailed written statement of their findings and recommendation(s) to the Appeals Board at the time of the hearing;
5. **Decisions of the Appeals Board.** The Appeals Board, within three (3) days after such hearing shall sustain, modify or withdraw the notice of embargo, suspension, or revocation depending upon its findings. A copy of the decision of the Appeals Board shall be served by mail on the petitioner or petitioners. Any person aggrieved by the decision of the Appeals Board may seek relief there from in any court of competent jurisdiction as provided by the laws of the state;
 6. **Record of Proceedings.** A summary record of the proceedings of each hearing held before the Appeals Board pursuant to petition, including the findings and the recommendation(s) of the Environmental Health Director shall be kept as a public record in the office of the Environmental Health Director. Such a record shall include a copy of every notice or order or writing issued in connection with the matter;
 7. **Notices not appealed.** Any notice served pursuant to the provisions of this Ordinance shall automatically become final if a written petition for a hearing is not filed with the Environmental Health Director within ten (10) days after the notice is served.

Subsection 7.7: Minnesota Department of Health

The requirements contained in this Ordinance are intended to be comparable to the Minnesota Department of Health Rules and are intended to meet the minimum requirements set forth by the Minnesota Department of Health. Whenever the Minnesota Department of Health amends rules or adopts new rules setting more restrictive sanitary standards than the ones established in this Ordinance, the rules set by the Minnesota Department of Health shall govern and will be considered in the enforcement procedure as part of this Ordinance.

Subsection 7.8: Penalties

Any person, firm, or corporation who shall violate any of the provisions hereof or who shall fail to comply with any of the provisions hereof or who shall make any false statement in any document required to be submitted under the provisions hereof, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed seven hundred dollars (\$700) or by imprisonment not to exceed ninety (90) days or both. Each day that a violation continues shall constitute a separate offense. Such persons may be enjoined from continuing such violations.

SECTION 8: SEVERABILITY

The provisions of this Ordinance shall be severable. Should any section, paragraph, sentence, clause, phrase or portion of this Ordinance be declared invalid for any reason, the remainder of said Ordinance shall not be affected thereby.

SECTION 9: REPEAL & EFFECTIVE DATE

This Ordinance repeals and replaces in its entirety the Food and Beverage Ordinance provided by Countryside Public Health and passed May 3, 1990 and the Amendment to the Ordinance passed on May 4, 1999. This Ordinance shall be in full force and effect upon publication and passage as provided by law.

Passed by the Swift County Board of Commissioners on February 15, 2011.

(Seal)

Chairperson

Attest:

County Auditor

Approved as to form and execution:

County Attorney