

Nicollet County Ordinance

Providing for the Regulation of Food and Beverage Establishments

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Minnesota Statutes and Rules referenced in this Ordinance can be accessed to read or download at this website: <https://www.revisor.mn.gov/pubs/>

BE IT AND IT IS HEREBY RESOLVED by the Nicollet County Board of Commissioners, State of Minnesota, under the authority of Minnesota Statutes, Chapters 145A and 375, that:

An Ordinance providing for the licensing and inspection of Food and Beverage Establishments, regulating their design, construction, operation, and maintenance, and providing for the administration and enforcement thereof, be and hereby is established as follows:

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 Nicollet County pursuant to powers granted under Minnesota Statutes, Chapters 145A, 157, and 375. The general objectives include the following:
 - a. Prevent foodborne illness;
 - b. Correct and prevent conditions that may adversely affect persons utilizing Food and/or Beverage Establishments;
 - c. Provide a minimum standard for the design, construction, operation, and maintenance of Food and/or Beverage Establishments; and
 - d. Meet consumer expectations of the quality and safety of Food and/or Beverage Establishments.
- 1.2 This Ordinance establishes the minimum standards, as defined in the Minnesota Food Code, Minnesota Rules, Parts 4626.0010 to 4626.1855 (hereinafter “Minnesota Food Code”), except Certification of Food Protection Managers under Minnesota Statutes, Section 157.16, subdivision 2(a), and Minnesota Rules, Part 4626.0033, subparts G, H, I, J, K, L, M, N, and O, and this Ordinance, for the design, construction, operation, and maintenance of Food and/or Beverage Establishments in Nicollet 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 apply.
- 1.3 Minnesota Statutes, Chapter 157 and Minnesota Rules, Chapter 4626, as amended and all future revisions thereof, are hereby adopted by reference and made part of this Ordinance.

Section 2: Scope

This Ordinance shall be applicable to all Food and/or Beverage Establishments as defined in Minnesota Statutes, Section 157.15, Minnesota Rules, Part 4626.0020, and this Ordinance, and shall include all other businesses and establishments where meals, and/or drinks are served, except as exempted by Minnesota Statutes, Section 157.22, that are located in Nicollet County, Minnesota. In addition, this Ordinance shall serve as criteria for evaluation of Food and/or Beverage service facilities in Youth Camps as defined in Minnesota Statutes, Section 144.71, subdivision 2, that are located in Nicollet County, Minnesota.

Section 3: Administration

This Ordinance shall be administered by the Brown-Nicollet Environmental Health Department (hereinafter “Regulatory Authority”).

Section 4: Definitions

Words, phrases, and terms used in this Ordinance shall be given the same meaning as those set forth in Minnesota Statutes, Section 157.15, Minnesota Rules, Part 4626.0020, and this Ordinance. Additional definitions may be found in Minnesota Rules, Part 4626.0020, and Minnesota Statutes, Section 157.15, as amended. The following definitions shall apply in the interpretation and the enforcement of this

Ordinance:

- 4.1 **Additional Food Service** shall mean a location at a Food and/or Beverage Establishment, other than the primary food preparation and service area used to prepare or serve food and/or beverages to the public. Additional food service does not apply to school concession stands.
- 4.2 **Appeals Board** shall consist of the Chairperson and Vice Chairperson of the Regulatory Authority, or their designated appointee, and the Environmental Health Director or a designated agent.
- 4.3 **Approved** shall mean acceptable to the Regulatory Authority based on determination of conformity with principles, practices, and generally recognized standards that protect public health.
- 4.4 **Bed and Breakfast** shall mean an owner-occupied establishment that offers lodging and breakfast, without a limitation on the number of rooms offered.
- 4.5 **Beer or Wine Table Service** shall mean the only alcoholic beverage service is beer or wine served to customers seated at tables.
- 4.6 **Beverage Only Establishment** shall mean an establishment that serves only non-alcoholic beverages. No food, except popcorn and/or pre-packaged nuts or chips, is prepared or served.
- 4.7 **Board** shall mean the Brown-Nicollet Community Health Board acting under the provisions of Minnesota Statutes, Chapter 145A, as the Board of Health.
- 4.8 **Boarding Establishment** shall mean an establishment where food or beverages, or both, are furnished to five (5) or more regular boarders, with or without sleeping accommodations, for periods of one (1) week or more.
- 4.9 **Catering** shall mean the preparation, transportation, or service of food under contract by a licensed food establishment in support of an event such as a reception, party, luncheon, conference, ceremony, or trade show.
- 4.10 **Certified Food Protection Manager** shall mean an individual who has a valid Minnesota food manager's certification under Minnesota Rules, Part 4626.0033, or an individual who is certified under Minnesota Rules, Parts 4626.2005 to 4626.2020.
- 4.11 **Change or Transfer of Ownership** shall mean a legal transaction, whereby ownership of an establishment is changed from one person to another person. This transaction may occur by sale, exchange, repossession, or other legal means.
- 4.12 **Commissioner of Health** shall mean the Minnesota Commissioner of Health.
- 4.13 **County** shall mean Nicollet County.
- 4.14 **Critical Control Point** shall mean a point or procedure in a specific food system where loss of control may result in an unacceptable health risk.

- 4.15 **Daycare** shall be given the same meaning as provided by Minnesota Rules, Part 9502.0315, subpart 9, and where food preparation consists of at least one (1) meal daily, which is prepared on-site.
- 4.16 **Environmental Health Director** shall mean the Board's Environmental Health Director and any related staff acting under the Board's authority.
- 4.17 **Hazard** shall mean a biological, chemical, or physical property that may cause an unacceptable consumer health risk.
- 4.18 **Hazard Analysis and Critical Control Point (HACCP) Plan** shall mean a written document that delineates the formal procedures for following the HACCP principles developed by the National Advisory Committee on Microbiological Criteria for Foods.
- 4.19 **Imminent Health Hazard** shall mean a significant threat or danger to health that exists when there is evidence sufficient to show that a product, practice, circumstance, or event creates a situation that requires immediate correction or cessation of operation to prevent injury based on:
- a. the number of potential injuries; and
 - b. the nature, severity, and duration of the anticipated injury.
- 4.20 **Large Food Establishment** shall mean a Food Establishment that uses a range, oven, steam table, salad bar, more than one (1) deep fat fryer or grill, more than two (2) hot holding containers, serves a full menu selection an average of five (5) or more days per week, serves over one hundred (100) people daily, or caters over three hundred (300) meals per day.
- 4.21 **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 and/or Beverage Establishment; and
 - b. Possesses a valid license to operate a Food and/or Beverage Establishment according to Minnesota Statutes, Chapter 157, and/or this Ordinance.
- 4.22 **Limited Food Establishment** shall mean a Food Establishment that provides pre-packaged food that may or may not receive heat treatment and is served in the package; frozen pizza that is heated and served; continental breakfast such as rolls, coffee, juice, milk, and cold cereal; and/or washes and/or cuts fresh fruit for service.
- 4.23 **Medium Food Establishment** shall mean a Food Establishment that uses a range, oven, steam table, salad bar, more than two (2) hot holding containers, serves more than fifty (50) people daily, or caters.
- 4.24 **Minimal Handling Special Event Food Stand** shall mean a Food Establishment used in conjunction with a celebration or special event which offers only items that are pre-packaged and require no preparation, such as pop, water, ice cream treats, chips, or candy.

- 4.25 **One Day Special Event Food Stand** shall mean a Food Establishment that is used in conjunction with a one (1) day benefit or celebration and may be used only for that event.
- 4.26 **Person** shall mean an individual, firm, corporation, partnership, association, or other entity, including the United States government, any interstate body, the State, or any agency, department, or political subdivision of the State.
- 4.27 **Person In Charge** shall mean the individual present at a Food and/or Beverage Establishment who is responsible for the operation at the time of inspection.
- 4.28 **Risk Categories** shall mean as follows:
- a. **High Risk Food Establishment** shall mean 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, has a public swimming pool, or draws its drinking water from a surface water supply.
 - b. **Medium Risk Food Establishment** shall mean 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 Food Establishment** shall mean a Food Establishment that is not a High Risk or Medium Risk Establishment.
- 4.29 **School Food Service** shall mean learning institutions with full kitchens and/or commissaries categorized by the following risk levels:
- a. **Low Risk** shall mean a school food service where all food served is prepared off-site.
 - b. **Medium Risk** shall mean a school food service where the majority of food served is prepared off-site, but provides limited food on-site, such as a salad bar.
 - c. **High Risk < 100 students** shall mean a school food service where all food served is prepared on-site, and less than one hundred (100) students are served.
 - d. **High Risk > 100 students** shall mean a school food service where all food served is prepared on-site, and more than one hundred (100) students are served.
 - e. **High Risk Extended Hours** shall mean a school food service where all food is prepared on-site, and is open more than six (6) hours daily.
- 4.30 **Seasonal Establishment** shall mean a Food and/or Beverage Establishment which is closed five (5) consecutive months of the year or more.
- 4.31 **Service Kitchen** shall mean a Food Establishment that consists of a service distribution point that provides food for congregate meals, home delivered meals, and linkages to social service programs, such as assisted living facilities, senior dining sites, or daycare/pre-school facilities.

- 4.32 **Small Food Establishment** shall mean a Food Establishment with no salad bar, equipment not exceeding one (1) deep fat fryer, one (1) grill, two (2) hot holding containers, microwave oven(s), service of dipped ice cream or soft serve frozen desserts, no catering, and/or serves less than fifty (50) people per day.
- 4.33 **Transient Use** shall mean use which lasts for only a short time. Persons using the facility are not regular boarders, and for periods generally less than one (1) week.
- 4.34 **Youth Camp** shall mean living quarters where both food and/or beverage service and lodging is provided for ten (10) or more people, operated continuously for a period of five (5) days or more each year for education, recreation, or vacation purposes, and the use of the camp is offered to minors free of charge or for payment of a fee.

Section 5: Review of Construction Plans

- 5.1 Plans shall be submitted to the Regulatory Authority when a Food and/or Beverage establishment in the County, licensed or to be licensed, under the provisions of Minnesota Statutes, Chapter 157, is hereafter constructed or extensively remodeled, or when an existing structure is converted for use as a Food and/or Beverage Establishment. All required plans, specifications, and materials must comply with the requirements of Minnesota Rules, Part 4626.1720, subparts A, C, D, E, and F, to Part 4626.1750. Plans and the Plan Review Fee, which shall be specified by the Board, shall be submitted at least thirty (30) days before beginning construction or extensive remodeling.
- 5.2 The Regulatory Authority shall inspect the establishment prior to the start of the operation to determine compliance with the approved plans and specifications.

Section 6: Licensure

- 6.1 It shall be unlawful for any person to operate a Food and/or Beverage Establishment within the County who does not possess a valid license for the applicable type of establishment issued to them by the Regulatory Authority 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. Any change in license type, as defined in this Ordinance, must be approved by the Regulatory Authority. A valid license shall be posted in every Food and/or Beverage Establishment. All licenses expire as of December 31 each year, with the exception of licenses for temporary food stands at special events, which expire according to date of issuance.
- 6.2 Any person desiring to operate a Food and/or Beverage Establishment shall make written application for a license on forms provided by the Regulatory Authority. Such application shall include: the applicant's full name and address and whether such applicant is an individual, proprietorship, partnership, or corporation; the location and type of proposed Food and/or Beverage Establishment; the name of the Food and/or Beverage Establishment's Certified Food Protection Manager (if applicable); all additional information required by the State of Minnesota; and the signature of the applicant(s). If a partnership is applying for a license, the names of the partners, together with their addresses, shall be included on the application. Each application for a license, together with the appropriate license fee as determined by the Board, shall be submitted

to the Regulatory Authority no later than December 31 each year, or in the case of a new business, ten (10) days prior to the opening date of such a business. All outstanding fines and fees resulting from actions in the previous year must be paid in full prior to the issuance of the new license. Any person who operates a Food and/or Beverage Establishment without submitting a license application and appropriate fee shall be deemed to have violated this Ordinance and shall be subject to civil or criminal penalties as provided for in this Ordinance.

- 6.3 Proprietors of any Food and/or Beverage Establishment shall pay an annual license fee at a rate specified by the Board. This annual license fee may be adjusted as the Board deems appropriate. A penalty fee at a rate specified by the Board shall be added to the amount of the license fee and paid by the proprietor if the annual license fee is not received by the Regulatory Authority by December 31 of the current year. When opening after October 1, and before January 1, a new business or new operator is required only to pay one-half (1/2) of the normal annual fee.

Section 7: Requirements of Licensed Establishments

- 7.1 The licensee shall require food employees and conditional employees to report to the Person In Charge information about their health and activities as they relate to disease transmissible through food. A food employee or conditional food employee shall report to the Person In Charge the information specified in Minnesota Rules, Part 4626.0040, subpart A, and shall comply with exclusions and restrictions specified in Minnesota Rules, Part 4626.0045. A food employee or conditional employee shall report the information in a manner that allows the Person In Charge to reduce the risk of foodborne disease transmission, including providing necessary additional information, such as the date of onset of symptoms and an illness, or diagnosis without symptoms.
- 7.2 All establishments shall report to the Regulatory Authority within twenty-four (24) hours all incidences of employee gastrointestinal illness (to include vomiting and diarrhea), infected cuts or burns, and confirmed cases of norovirus, hepatitis A virus, Salmonella spp., Shigella spp., Shiga toxin-producing Escherichia coli, or other enteric bacterial, viral, or parasitic pathogens.
- 7.3 All establishments shall report all complaints of customer illness to the Regulatory Authority within one (1) hour.
- 7.4 All establishments shall be required to keep posted current food safety systems, materials, logs, and charts as directed by the Regulatory Authority.

Section 8: Inspection and Correction

- 8.1 The Regulatory Authority shall inspect Food and/or Beverage Establishments as frequently as necessary to ensure compliance with this Ordinance, but not less than the frequency established by Minnesota Statutes, Section 157.20.
- 8.2 The person operating a Food and/or Beverage Establishment shall, upon request of the Regulatory Authority, permit access to all parts of the establishment at any reasonable time for the purpose of inspection and shall exhibit and allow copying of any records necessary to ascertain sources of foods or other compliance with the provisions of this Ordinance. The Certified Food Protection Manager, or his/her designated Person In Charge, as defined in Minnesota Rules, Part 4626.0033, shall be available for discussion of HACCP with the Regulatory Authority.

- 8.3 Every person engaged in the operation of a Food and/or Beverage Establishment shall, upon request, furnish reasonable samples of food and beverage free of charge to the Regulatory Authority for laboratory analysis.
- 8.4 Whenever an inspection and review of a Food and/or Beverage Establishment is made, the findings shall be recorded on an Inspection Report. Inspection Reports shall be kept on record with the Regulatory Authority, with one (1) copy of the Inspection Report(s) furnished to the Person In Charge of the Food and/or Beverage Establishment. The completed Inspection Report is a public document that shall be made available to any person who requests it, except when Inspection Reports are part of an ongoing investigation or pending litigation.
- 8.5 The Inspection Report shall specify a specific, appropriate, and reasonable period of time for correction of any violations. Correction of any violations shall be accomplished within the period specified. Failure to make corrections within the period specified shall result in one (1) or more of the following enforcement actions, established in the Regulatory Authority's Program Policies, being taken by the Regulatory Authority:
- a. Re-inspection of the establishment, and required payment of a re-inspection fee, as set by the Board. Failure to pay the re-inspection fee within thirty (30) days of notification will result in an additional late payment fee.
 - b. In-Office Hearing to discuss violations, correction orders, and other compliance requirements. Location, time, and participants shall be determined by the Regulatory Authority. An In-Office Hearing Fee shall be set by the Board. Failure to pay the In-Office Hearing Fee within thirty (30) days of notification will result in an additional late payment fee.

Section 9: Embargo, Condemnation, and Tagging

The Environmental Health Director may condemn and cause to be removed, embargo, and/or tag any item deemed to be in violation of the Minnesota Food Code, in accordance with Minnesota Rules, Parts 4626.1805 to 4626.1815.

Section 10: Procedure When Infection is Suspected

When the Environmental Health Director has reasonable cause to suspect the possibility of disease transmission from a Food and/or Beverage Establishment employee, the Regulatory Authority 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 Director may require any or all of the following measures:

- 10.1 The immediate exclusion of the employee from all Food and/or Beverage Establishments;
- 10.2 The immediate closure of the Food and/or Beverage Establishment concerned until, in the opinion of the Environmental Health Director, no further danger of disease outbreak exists;
- 10.3 Restriction of the employee's services to an area of the Food and/or Beverage Establishment where there would be no danger of transmitting disease; and/or

- 10.4 Adequate medical and laboratory examinations of the employee, or other employees, and their bodily discharges.

Section 11: Suspension of License

- 11.1 Licenses may be suspended temporarily by the Environmental Health Director 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 shall be notified in writing that the license is immediately suspended upon service of the notice and that an opportunity for a hearing before the Appeals Board will be provided if the license holder or operator submits a written request for appeal, and that request for appeal is received by the Regulatory Authority within ten (10) business days from the receipt of the suspension notice.
- 11.2 Notwithstanding the other provisions of this Ordinance, whenever the Environmental Health Director finds unsanitary or other condition(s) in the operation of a Food and/or Beverage Establishment which, in the Director's judgment, may constitute a substantial hazard to the health of the public, the Director may, without warning, notice, or hearing, issue a 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. 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 as soon as the Appeals Board may be convened.
- 11.3 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) business days following receipt of a written request, including a statement signed by the applicant that in the applicant's opinion the condition(s) causing suspension of the license has/have been corrected, the Environmental Health Director shall make a re-inspection. If the applicant is in compliance with the requirements of this Ordinance and the Minnesota Food Code, the license shall be reinstated.

Section 12: Revocation of License

For serious or repeated violations of any of the requirements of this Ordinance and the Minnesota Food Code, which create an imminent health hazard, a license may be permanently revoked after an opportunity for a hearing before the Appeals Board has been provided. Prior to such action, the Environmental Health Director shall notify the license holder in writing, advising that the license shall be permanently revoked five (5) days from the date the written notice is received. Written notice shall be sent in the form of certified mail or by personal service to the petitioner(s)'s last known address.

Section 13: Appeals Procedure

Appeals shall be heard by the Appeals Board.

- 13.1 **Request for Hearing.** Any person affected by a notice of embargo, suspension, or revocation, upon filing of a written petition requesting a hearing on the matter and setting forth a brief

statement on the grounds therefore with the Regulatory Authority, shall be granted such a hearing before the Appeals Board. Said petition must be received by the Regulatory Authority within ten (10) business days after the notice was received.

- 13.2 Date of Hearing. The hearing shall be held not more than ten (10) business days after the date on which the petition was filed. The Chairperson of the Appeals Board may postpone the date of the hearing for a reasonable time beyond such ten (10) business day period, if in the Chairperson's judgment, a good and sufficient reason exists for such postponement.
- 13.3 Notice of Hearing. The Environmental Health Director shall provide written notice of the hearing to the petitioner(s) at least five (5) business days prior to the hearing date.
- 13.4 Proceedings. At such hearing the petitioner(s), 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.
- 13.5 Decisions of the Appeals Board. The Appeals Board, within three (3) business 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 to the petitioner(s). Any person aggrieved by the decision of the Appeals Board may seek relief therefrom, as provided by laws of the State of Minnesota.
- 13.6 Record of Proceedings. 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 recorded and reduced to writing and entered as a public record in the office of the Environmental Health Director. Such record shall include a copy of every notice, order, or writing issued in connection with the matter.
- 13.7 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 Regulatory Authority within ten (10) business days after the notice is received by the licensee.

Section 14: 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 15: Penalties

The Regulatory Authority may enforce the provisions of this Ordinance whether through criminal prosecution, civil remedy, or both. Utilization of a civil remedy shall not prevent a criminal prosecution for the same violation. A criminal prosecution shall not bar a civil remedy. Any person who violates any of the provisions hereof or who fails to comply with any of these provisions, or who makes any false statement in any document required to be submitted under these provisions, shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine not to exceed one thousand dollars (\$1,000) or by imprisonment not to exceed ninety (90) days, or both. Each day that a violation continues

shall constitute a separate offense. Civil penalties may include, but are not limited to, the provisions contained in Sections 9 and 12 of this Ordinance. Such persons may also be enjoined from continuing such violations.

Section 16: Variances

- 16.1 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 Regulatory Authority may permit a variance upon such conditions as it may prescribe for management consistent with the general purposes and intent of this Ordinance and of all other applicable state and local regulations and laws.
- 16.2 Variances shall be granted in accordance with the procedures described in the Brown-Nicollet Program Policies Variance Section and Minnesota Rules, Parts 4626.1690 to 4626.1715.

Section 17: Effective Date

This Ordinance, adopted February 12, 2019, hereby repeals and replaces in its entirety the Nicollet County Ordinance Providing for the Regulation of Food and Beverage Establishments of December 16, 2014. The adoption of this Ordinance, however, shall not effect nor prevent any pending or future prosecution of, or action to abate, any existing violation of the previous said Nicollet County Ordinance Providing for the Regulation of Food and Beverage Establishments, if the violation is also a violation of this Ordinance.

Signature: John Luepke 2-12-2019
Vice Chairperson, Nicollet County Board of Commissioners