

Cottonwood County Ordinance #39

Providing for the Regulation of Food and Beverage Establishments

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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 Cottonwood 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 Cottonwood 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 4626.1750, Parts 4626.1785 to 4626.1870; Food Manager Certification requirements for food establishments, as defined and governed by Minnesota Rules, Parts 4626.2000 to 4626.2010; and this Ordinance for the design, construction, operation, and maintenance of Food and/or Beverage Establishments in Cottonwood 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 Rules, Chapter 4626, the Minnesota Food Code, and Minnesota Statutes, Chapter 157, 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.

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, lunches, and/or drinks are served except as exempted by Minnesota Statutes, Section 157.22, which are located in Cottonwood 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 which are located in Cottonwood County, Minnesota.

Section 3: Administration

This Ordinance shall be administered by the Brown-Nicollet Environmental Health Department, hereinafter referred to as the "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 Rules, Part 4626.0020; Minnesota Statutes, Section 157.15; and this Ordinance. The following definitions shall apply in the interpretation and the enforcement of this Ordinance:

- 4.1 **Additional School Food Service/Concessions** shall mean school food service/concessions that are in addition to the primary food service at the educational facility. The educational facility ownership shall take responsibility for the food service at the concession stand(s).
- 4.2 **Alcohol Beverage Service** shall mean other than beer or wine table service, where alcoholic mixed drinks are served or where beer or wine is served from a bar.
- 4.3 **Appeals Board** shall consist of the Chairperson and Vice Chairperson of the Brown-Nicollet Community Health Board or their designated appointee, and the Environmental Health Director or a designated agent.
- 4.4 **Approved** shall mean acceptable to the Regulatory Authority based on determination of conformity with principals, practices, and generally recognized standards that protect public health.
- 4.5 **Bed and Breakfast** shall mean an owner occupied establishment which offers lodging and breakfast, without a limitation on the number of rooms offered. If breakfast is offered to more than (ten) 10 persons, a commercial kitchen is required.
- 4.6 **Beer or Wine Table Service** shall mean the only alcoholic beverage service is beer or wine served to customers seated at tables.
- 4.7 **Beverage Only Establishment** shall mean an establishment that serves only non-alcoholic beverages. No food except popcorn and /or pre-packaged nuts or chips are prepared or served.
- 4.8 **Board** shall mean the Brown-Nicollet Community Health Board acting under the provisions of Minnesota Statutes, Section 145A, as the Board of Health.
- 4.9 **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.
- 4.10 **Catering** shall mean the preparation, transportation, or service of food to a location for immediate consumption other than the location where the food is prepared.
- 4.11 **Certified Food Manager** shall mean an individual who holds a valid Minnesota Food Manager's Certification under Minnesota Rules, Parts 4626.2000 to 4626.2010.
- 4.12 **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 can occur by sale, exchange, repossession, or other legal means.
- 4.13 **Code** shall mean the Minnesota Food Code (Minnesota Rules, Chapter 4626).
- 4.14 **Commissioner of Health** shall mean the Minnesota Commissioner of Health.
- 4.15 **County** shall mean Cottonwood County.
- 4.16 **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.

- 4.17 **Day Care** 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.
- 4.18 **Environmental Health Department** shall mean the Brown-Nicollet Community Health Board and its environmental health staff.
- 4.19 **Environmental Health Director** shall mean the Brown-Nicollet Community Health Board's Environmental Health Director and any related staff acting under the Board's authority.
- 4.20 **Extensive Remodeling** shall mean an addition or change to the physical facility, a major equipment addition, and/or equipment installation made as a result of changes or additions to menu items offered at the facility.
- 4.21 **Hazard** shall mean a biological, chemical, or physical property that may cause an unacceptable consumer health risk.
- 4.22 **Hazard Analysis and Critical Control Point (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.
- 4.23 **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.
- 4.24 **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, or serves a full menu selection an average of five (5) or more days per week or serves over one hundred (100) people daily or caters over three hundred (300) meals per day.
- 4.25 **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/or Beverage Establishment; and
 - b. Possesses a valid license to operate a Food Establishment and/or Beverage Establishment according to Minnesota Statutes, Chapter 157, and/or this Ordinance.
- 4.26 **Limited Food Establishment** shall mean a Food Establishment that provides one of the following:
- a. Pre-packaged food that may or may not receive heat treatment and is served in the package;
 - b. Frozen pizza that is heated and served;
 - c. Continental breakfast such as rolls, coffee, juice, milk, and cold cereal;
 - d. Washes and/or cuts fresh fruit for service.
- 4.27 **Medium Food Establishment** shall mean a Food Establishment that uses a range, oven, steam table, salad bar, more than two (2) hot holding containers, and serves more than fifty (50) people daily, or caters.

- 4.28 **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 (e.g. pop, water, ice cream treats, chips, or candy).
- 4.29 **One Day Special Event Food Stand** shall mean a Food Establishment which is used in conjunction with a one (1) day benefit or celebration and may be used only for that event.
- 4.30 **Person** shall mean an individual, firm, corporation, partnership, association, or other entity including the United States government, any interstate body, the state, and any agency, department, or political subdivision of the state.
- 4.31 **Person In Charge** shall mean the individual present at a Food Establishment who is responsible for the operation at the time of inspection.
- 4.32 **Regulatory Authority** shall mean the Brown-Nicollet Environmental Health Department, its Director or other designated agent.
- 4.33 **Risk Categories** shall mean as follows:
- a. **High Risk Food 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; has a public swimming pool or draws its drinking water from a surface water supply.
 - b. **Medium Risk Food 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 Food Establishment** means a Food Establishment that is not a High Risk or Medium Risk Establishment.
- 4.34 **School Food Service** shall mean learning institutions with full kitchens and/or commissaries categorized by the following risk levels:
- a. **Low Risk** means a school food service where all food served is prepared off-site.
 - b. **Medium Risk** means a school food service where the majority of food served is prepared off-site, but provides limited food on-site (e.g. salad bar).
 - c. **High Risk < 100 students** means a school food service where all food served is prepared on-site, less than one hundred (100) students served.
 - d. **High Risk > 100 students** means a school food service where all food served is prepared on-site, more than 100 students served.
 - e. **High Risk Extended Hours** means a school food service where all food is prepared on-site, open more than six (6) hours daily.

- 4.35 **Seasonal Establishment** shall mean a Food and/or Beverage Establishment which is closed five (5) consecutive months of the year or more.
- 4.36 **Seasonal Limited Food Establishment** shall mean any Limited Food Establishment which is closed five (5) or more consecutive months of the year.
- 4.37 **Seasonal Small Establishment** shall mean any Small Food Establishment which is closed five (5) or more consecutive months of the year.
- 4.38 **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 (e.g. assisted living facilities, senior dining sites, day care/pre-school facilities).
- 4.39 **Small Food Establishment** shall mean a Food Establishment with no salad bar, equipment not exceeding one deep fat fryer, one (1) grill, two (2) hot holding containers, microwave oven(s), or service of dipped ice cream or soft serve frozen desserts. No catering and serving less than fifty (50) people per day.
- 4.40 **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.
- 4.41 **Variance** shall mean any 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.
- 4.42 **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 when an establishment in Cottonwood 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 to the Environmental Health Department. All required plans, specifications, and materials must comply with the requirements of Minnesota Rules, Parts 4626.1720, Subparts A, C, and D to Part 4626.1750. Plans and Plan Review Fee, specified by the Board, shall be submitted at least thirty (30) days before beginning construction or extensive remodeling.
- 5.2 The Environmental Health Department 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 Cottonwood County who does not possess a valid license issued to them by the Environmental Health 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, 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 Environmental Health Department. 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 Establishment's Certified Food Manager (if applicable); all additional information required by the State of Minnesota; and the signature of the applicant or applicants. If a partnership; the names of the partners, together with their addresses shall be included. Each application for a license, together with the appropriate license fee as determined by the Board, shall be submitted to the Brown-Nicollet Community Health Office no later than December 31, each year, following expiration of the previous year's license, 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 prosecution 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 shall deem 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 has not reached the Brown-Nicollet Community Health Office 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 (½) of the normal annual fee.

Section 7: Requirements of Licensed Establishments

- 7.1 All employees of licensed establishments shall report to supervisory staff any incidences of gastrointestinal illness (to include vomiting and diarrhea), infected cuts or burns, and confirmed cases of Salmonella, Shigella, E Coli O157.H7, and Hepatitis A.
- 7.2 All establishments shall report to the Environmental Health Department within twenty-four (24) hours, all incidences of employee gastrointestinal illness (to include vomiting and diarrhea), infected cuts or burns, and confirmed cases of Salmonella, Shigella, E Coli O157.H7, and Hepatitis A.
- 7.3 All establishments shall report all complaints of customer illness to the Environmental Health Department or to a County Law Enforcement Department, 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 Environmental Health Department.

Section 8: Inspection and Correction

- 8.1 The Environmental Health Department shall inspect food and beverage 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 Environmental Health Department, 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 Manager, or his/her designated Person In Charge, as defined in Minnesota Rules, Parts 4626.2000 to 4626.2010, shall be available for discussion of Hazard Analysis and Critical Control Points with the Environmental Health Department.
- 8.3 Every person engaged in the operation of a Food and/or Beverage Establishment, as herein defined, shall upon request furnish reasonable samples of food and beverage free of charge to the Environmental Health Department 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/review form. Correction orders shall be recorded, with one copy of the correction order(s) 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 disclosure to any person who requests it, except when report forms are part of on-going investigations or pending litigations.
- 8.5 The inspection report form shall specify a specific, appropriate, and reasonable period of time for correction of any violations. Correction of the 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 policy, being taken by the Environmental Health Department:
- a. Re-inspection of the establishment, and required payment of a re-inspection fee, as set by the Brown-Nicollet Community Health 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 Environmental Health Board. An In-Office Hearing Fee shall be set by the Brown-Nicollet Community Health 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 Minnesota Rules, Chapter 4626, 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 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 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 some area of the Food and/or Beverage Establishment where there would be no danger of transmitting disease; and
- 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 may 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 a written request for appeal is filed within five (5) business days with the Environmental Health Director by the license holder.
- 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 his/her judgment, may constitute a substantial hazard to the public health, they can 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; 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 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 his/her 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 Minnesota Rules, Chapter 4626, the license shall be reinstated.

Section 12: Revocation of License

For serious or repeated violations of any of the requirements of this Ordinance or Minnesota Rules, Chapter 4626, 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 at the end of a five (5) day period.

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 shall be granted a hearing on 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 of the grounds therefore. Said petition shall be filed within ten (10) business days after the notice was served.
- 13.2 **Date of Hearing.** The hearing requested 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 cause five (5) business days written notice of the hearing to be given to the petitioner(s) by personal service or by mailing said notice to the petitioner(s)'s last known address.
- 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 in any court of competent jurisdiction as provided by the 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 Environmental Health Department within ten (10) business days after the notice is served.

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

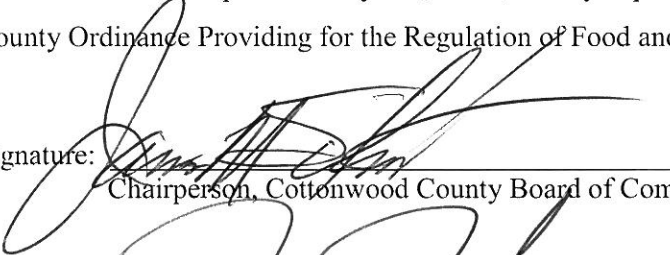
Any person, firm, or corporation who violates any of the provisions hereof or who fails to comply with any of the provisions hereof or who shall make any false statement in any document required to be submitted under the provisions hereof, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed 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. 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 Department 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 will 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 January 1st, 2015, hereby repeals and replaces in its entirety the Cottonwood County Ordinance Providing for the Regulation of Food and Beverage Establishments of June 22, 2010.

Signature: 
Chairperson, Cottonwood County Board of Commissioners

Attest: 
Cottonwood County, Auditor/Treasurer