

# LAKE COUNTY FOOD AND BEVERAGE SERVICE ORDINANCE #7

2011

Revised 11/05/2012

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OFFICE OF THE  
REGISTRAR OF TITLES  
LAKE COUNTY, MINNESOTA

PAGES: 12  
REC FEES: \$0.00  
CERTIFICATE#S: 0  
ADDL CERT#S:  
BOOK #: General  
PAGE #: Index  
ADDL PAGE #'S:

CERTIFIED, FILED, AND  
RECORDED ON  
12/10/2012 10:40AM

ERICA KOSKI  
REGISTRAR OF TITLES  
BY *Yvonne Ekstrom* Deputy

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OFFICE OF THE  
COUNTY RECORDER  
LAKE COUNTY, MINNESOTA

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ERICA KOSKI  
LAKE COUNTY RECORDER  
BY *Rogee Mae* Deputy

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An Ordinance Providing for the Licensing and Inspection of Restaurants and Places of Refreshment and Similar Food Service; Regulating Their Design, Construction, Operation and Maintenance and Providing for the Enforcement of this Ordinance and the Fixing of Penalties Throughout the Entirety of Lake County Thereof be and thereby is established as follows:

This ordinance shall be applicable to all food and beverage service establishments such as restaurants, boarding houses, and places of refreshment as defined in Minnesota Statutes Chapter 157, and shall include temporary and push cart commissaries, drive-ins, bars, taverns, drive-in cafes, clubs, lodges, eating facilities at resorts, schools, public buildings and churches, except as exempted by Minn. Stat. 157 and all other businesses and establishments where meals, lunches, or drinks are served. In addition, this ordinance shall serve as the criteria for evaluation of food and beverage service facilities in youth camps as defined in Minn. Stat. 144.71 to 144.74, Subdivision 2.

The Lake County Board of Commissioners, pursuant to Minn. Stat. 145A.05, Subd. 8 ordain:

### **SECTION I – PURPOSE**

The purpose of this ordinance is to establish standards for all food service establishments and to protect the health, safety and general welfare of the people of Lake County, including the following general objectives:

- 1) Prevent food borne illness.
- 2) Provide a minimum standard for the design, construction, operation and maintenance of food and beverage service establishments.
- 3) Correct and prevent conditions that may adversely affect persons utilizing food and beverage service establishments.
- 4) Meet consumer expectations for the quality and safety of food and beverage service establishments.
- 5) Establish inspection requirements and associated procedures involved with administering and enforcing this Ordinance.

### **SECTION II – SCOPE**

This ordinance shall provide for the licensing and inspection of all food and beverage service establishments; regulation of the design, construction, operation and maintenance of such establishments; and the enforcement of violations of this ordinance.

This ordinance shall be applicable to all food and beverage service establishments in Minnesota Statutes, Chapter 157, and this Lake County ordinances # 7.

### **SECTION III – AUTHORITY**

This ordinance is enacted pursuant to Minnesota Statute Chapter 157A.05, which establishes the authority for the State to license Food and Beverage Service establishments, Minnesota Statute, Section 145A.07, which authorizes the Commissioner of Health to enter into an agreement with counties or

cities organized to perform all or part of the licensing, inspection and enforcement duties authorized under the provisions of these sections.

#### SECTION IV - DEFINITIONS

The following definitions shall apply in the interpretation and the enforcement of this ordinance:

- 4.1 Board shall mean the Lake County Board of Commissioners acting under the provisions of Minn. Stat. 145A.10, as the Board of Health.
- 4.2 Approved shall mean acceptable to the Environmental Health Department following its determination as to conformity with departmental standards and established public health practices.
- 4.3 Authority shall mean the Lake County Board of Commissioner and Lake County Environmental Health Department or its agent.
- 4.4 Environmental Health Department shall mean the Lake County Environmental Health Department or its agent.
- 4.5 "Person" shall mean any individual, firm, partnership, corporation, trustee, or an officer of the legal ownership or association
- 4.6 Employee shall mean and include any person whose duties include the cleaning, maintenance, or food preparation in or of any part of the building or buildings, the rendering of service to guests or performing duties of any type in connection with the operation of a food service establishment.
- 4.7 Appeals Board shall mean a representative from the Lake County Board of Commissioners or designated appointee, Human Services Director, and Public Health Supervisor
- 4.8 License shall mean a new or renewal license issued to the person, firm or corporation operating the food and beverage service.
- 4.9 Hazard means any biological, chemical, or physical property that may cause an unacceptable consumer health risk.
- 4.10 Food and beverage service establishment means a building, structure, enclosure, or any part of a building, structure, or enclosure used as, maintained as, advertised as, or held out to be an operation that prepares, serves, or otherwise provides food or beverages, or both, for human consumption.
- 4.11 Food cart means a food and beverage service establishment that is a nonmotorized vehicle self-propelled by the operator.
- 4.12 Mobile food unit means a food and beverage service establishment that is a vehicle mounted unit, either:
  - 1) motorized or trailered, operating no more than 21 days annually at any one place, or

operating more than 21 days annually at any one place. with the approval of the regulatory authority.; or

(2) operated in conjunction with a permanent business licensed under this chapter or chapter 28A at the site of the permanent business by the same individual or company, and readily movable, without disassembling, for transport to another location.

- 4.13 Restaurant means a food and beverage service establishment, whether the establishment serves alcoholic or nonalcoholic beverages, which operates from a location for more than 21 days annually. Restaurant does not include a food cart or a mobile food unit.
- 4.14 Seasonal permanent food stand means a food and beverage service establishment which is a permanent food service stand or building, but which operates no more than 21 days annually.
- 4.15 School concession stand means a food and beverage service establishment located in a school, on school grounds, or within a school-owned athletic complex, that is operated in conjunction with school-sponsored events.
- 4.16 Seasonal temporary food stand means a food and beverage service establishment that is a food stand which is disassembled and moved from location to location, but which operates no more than 21 days annually at any one location.
- 4.17 Special event food stand means a food and beverage service 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 total days.
- 4.18 Additional food service means a location at a food service establishment, other than the primary food preparation and service area, used to prepare or serve food to the public. Additional food service does not apply to school concession stands.
- 4.19 Food Preparation /Risk levels shall mean the level of significant risk to the health and safety of the public when preparing potentially hazardous food and temperature-time control for public food service.

**High Risk (Level 3) – Any food & beverage service establishment that:**

Serves potentially hazardous foods that require extensive processing on the premises, including manual handling, cooling, reheating, or holding for service. Prepares foods several hours or days before service. Serves menu items that epidemiologic experience has demonstrated to be common vehicles of foodborne illness. (*Examples: food service establishments that cool or thaw any food product, food establishments that have hot holding of food (i.e. soups, meat, side dishes), food service establishment with a salad bar, fast food restaurants, large full service restaurant*)

**Medium-Risk (Level 2) - Any food and beverage establishment that:**

Serves potentially hazardous foods but with minimal holding between prep and service.  
Serves foods, such as pizza, that require extensive handling followed by heat treatment.

*(Examples: beverage service establishments that serve only frozen pizzas made to order, lodging establishments with continental breakfasts that do not have hot-holding items such as eggs or breakfast meats.)*

**Low-Risk (Level 1)** - A food and beverage service establishment that is not a high-risk or medium risk establishment. *(Examples: coffee shops with pre-packaged foods only)*

## SECTION V – ADMINISTRATION

The Environmental Health Department shall administer and interpret the provisions of this Ordinance. In addition to the duties set forth herein, the Environmental Health Department shall maintain adequate files and records relating to all licenses or permits issued, inspections made, work approved and other official actions.

The Environmental Health Department shall have all powers necessary to administer and enforce the provisions of this Ordinance. In addition to the other powers set forth herein, and without limitation, the Environmental Health Department shall be empowered to do the following:

- A. Prepare reports and recommendations regarding any additional measures that he/she deems necessary to affect the purpose of this Ordinance.
- B. Obtain assistance and cooperation from other State and local health, legal and law enforcement officials in the administration and enforcement of this Ordinance.
- C. Cooperate with local and State personnel in the enforcement of this Ordinance and State regulations, rules and requirements relating to food and beverage service establishments.
- D. Arrange for the enforcement of any and all rules, orders, permits and other requirements established herein or issued pursuant to this Ordinance.
- E. Enter upon the premises of any food and beverage service establishment at any reasonable time for the purpose of administering and enforcing this Ordinance.
- F. The Environmental Health Department may impose additional requirements to protect against health hazards related to the conduct of their operation, and may prohibit the sale or distribution of any or all foods.
- G. Interpret the provisions and intent of this Ordinance as may be necessary from time to time

## **SECTION VI - ADOPTION OF FOOD & BEVERAGE SERVICE ESTABLISHMENT STANDARDS**

The standards for Food & Beverage Service Establishments outlined in Minnesota Rules Chapter 4626.0010 to 4626.1870 and Certified Food Manager Requirements for Food Establishments Minnesota Rules 4626.2000 to 4626.2025 are hereby incorporated in and made part of this ordinance except 4626.1720, Subpart B, 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 Lake County Board of Commissioners and its designated agents.

## **SECTION VII - EMBARGO, CONDEMNATION, AND TAGGING**

Environmental Health Department 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 VIII - PLAN REVIEW OF FUTURE CONSTRUCTION**

Whenever a food and beverage service establishment is constructed or remodeled, or whenever an existing structure is converted to use as a food and beverage service establishment, properly prepared plans and specifications for such food service area construction, remodeling, or conversion shall be submitted to the Environmental Health Department with applicable fees for review and approval before construction, remodeling, or conversion is begun. The plans and specifications shall indicate the proposed equipment layout, room finish materials, plumbing specifications, kitchen exhaust ventilation and make-up air specifications, construction materials of work areas, and the manufacturer's name and model number of proposed equipment and facilities. The plans and specifications shall be drawn to scale and shall be legible and complete in all details, and must be submitted to the Department for review and approval prior to the start of construction.

- A. The Environmental Health Department shall approve the plans and specifications only if they meet the requirements of this Ordinance, the Minnesota Food Code, Minnesota Rules, Chapter 4626.0010 to 4626.1870 and any other applicable Federal, State or Local laws and regulations.
- B. The establishment shall be constructed and finished in conformance with the approved plans.
- C. The licensee must obtain an inspection from the Environmental Health Department prior to the start of the operation. Construction must be completed and approved before operation can begin.
- D. The licensee is responsible for obtaining written approval for the proposed construction from any other agency or official that may have authority over elements of such proposed construction, including, but not limited to; the Minnesota State Fire Marshall, the Minnesota Department of Labor and Industry Plumbing Division, or the appropriate County, City or Township officials.

## **SECTION IX - PROCEDURE WHEN INFECTION IS SUSPECTED**

When Environmental Health Department has reasonable cause to suspect the possibility of disease transmission from a food or beverage service establishment employee, the Environmental Health Department shall under the direction and/or guidance of the Minnesota Department of Health, 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 from all food service establishments;
- 2) The immediate closure of the food service establishment concerned until, in the opinion of the Environmental Health Department 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.

### SECTION X - COMPLIANCE PROCEDURES

10.1 Licenses Needed. It shall be unlawful for any person to operate a food and beverage service establishment within Lake 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<sup>st</sup> of each year.

#### 10.2 Application for License

- A. Any person desiring to operate a food and beverage service 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, 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 their addresses shall be included. Each application for a license, together with the appropriate license fee and required documentation as described herein shall be submitted to the Environmental Health Department.
- B. Proprietors of any food and beverage service establishment shall pay an annual license fee at a rate specified by resolution of the Lake County Board of Commissioners. 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 the 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 dates specified in the License application. Refer to Appendix A.
- C. Any person who operates a food and beverage 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.

#### 10.3 Inspection and Correction



- A. The Environmental Health Department shall inspect food and beverage service establishments according to Minn. Stat. 157 and rules adopted under Minnesota Statutes 157.
- B. The person operating a food and beverage service establishment shall, upon request of the Environmental Health Department and after proper identification, permit access to all parts of the food and beverage service establishment at any reasonable time for 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.
- C. Every person engaged in the operation of a food and beverage service establishment, shall upon request; furnish reasonable samples free of charge to the Environmental Health Department for laboratory analysis.
- D. Whenever an inspection of a food and beverage service 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 disclosure to any person who requests it, except when report forms are a part of pending litigations.
- E. The inspection report form 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.
- F. The inspection frequency of a food and beverage service establishment will depend on the Level of food preparation. At a minimum, a Level 3 or High risk inspected every 12 months; Level 2 or Medium risk, inspected every 18 months; Level 1 or Low risk inspected 24 months. Refer to Appendix A.

#### 10.4 Suspension of License

- A. Licenses may be suspended temporarily by the Environmental Health Department, 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 with a form of suspension 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 within ten (10) days with the Environmental Health Department by the license holder.
- B. Notwithstanding the other provisions of this ordinance, whenever the Environmental Health Department finds unsanitary or other condition(s) in the operation of a food and beverage service establishment which, in their 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 beverage service 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, 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 Department shall make a re-inspection. If the applicant is in compliance with the requirements of this ordinance and MN Rules Chapter 4626, the license shall be reinstated.

10.5 Revocation of License. For serious or repeated violations of any of the requirements of this ordinance or MN Rules Chapter 4626, the 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 Department shall notify the license holder in writing, advising that the license shall be permanently revoked at the end of a five (5) day period.

#### 10.6 Appeals Board

- A. 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 Department, written petition requesting such a hearing and a brief statement. The petition shall be filed within ten (10) days after the notice was served.
- B. 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 Appeals Board may postpone the date of the hearing for a reasonable time beyond such ten (10) day period, if in the judgment a good and sufficient reason exists for such postponement.
- C. Notice of Hearing. The Environmental Health Department shall have give five (5) days written notice of the hearing to the petitioner or petitioners by personal service or by mailing to the petitioner or petitioner's last known address.
- D. Proceedings. At the hearing the petitioner, their agent or attorney shall be given an opportunity to be heard and to show why the notice of embargo, suspension, or revocation issued by the Environmental Health Department should be modified or withdrawn. The Environmental Health Department shall present a detailed written statement of their findings of fact and recommendation(s) to the Appeals Board at the time of the hearing.
- E. 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 of fact. A copy of the decision of the Appeals Board shall be served by mail to the petitioner or petitioners. Any person aggrieved by the decision of the Appeals Board may seek relief therein from any court as provided by the laws of the state.

- F. Record of Proceedings. The proceedings of each hearing held before the Appeals Board pursuant to petition, including the findings of fact and the recommendation(s) of the Environmental Health Department shall be recorded and reduced to writing and entered as a public record in the office of the County Attorney .Such record shall include a copy of every notice or order or writing issued in connection with the matter.
- G. 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) days after the notice is served.

#### **SECTION XI - 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.

#### **SECTION XII - 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 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.

#### **SECTION XIII - PENALTIES**

Any person, firm, or corporation who shall violate any of the provisions or who shall fail to comply with any of the provisions or who shall make any false statement in any document required to be submitted under the provisions, shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine not to exceed one thousand dollars (\$1000) 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.

In the event of a violation, or a threat of a violation, of this Ordinance, the County Attorney also may take other appropriate action to enforce this Ordinance, including but not limited to, 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.

EFFECTUATION OF REVISED ORDINANCE # 7

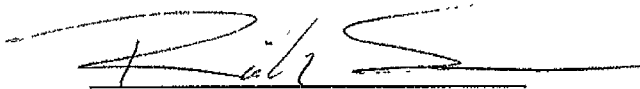
Section XIV            This ordinance revision of Section IV, Subsection 4.19 replaces in its entirety the Lake County Food and Beverage Service Ordinance #7, Section IV, Subsection 4.19 adopted August 19, 2011.

Section XV            This Revision Amendment shall take effect and be in full force on November 5, 2012.

Recommended by the Lake County Public Health Department after a public hearing on October 9, 2012 and passed by the Lake County Board of Commissioners this 9<sup>th</sup> day of October, 2012.

October 9, 2012

DATE



Rich Sve, Chairman

Lake County Board of Commissioners

October 9, 2012

DATE



Laurel Buchanan, Clerk of the Board



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