

BIG STONE COUNTY
FOOD AND BEVERAGE ORDINANCE



AN ENVIRONMENTAL HEALTH ORDINANCE PROVIDING FOR THE REGULATION
OF FOOD AND BEVERAGE WITHIN BIG STONE COUNTY IN CONSORTIUM WITH
CHIPPEWA, LAC QUI PARLE, SWIFT AND YELLOW MEDICINE COUNTIES AS
COUNTRYSIDE PUBLIC HEALTH

Effective: July 1, 2022

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THE COUNTY BOARD OF COMMISSIONERS OF BIG STONE COUNTY DOES
HEREBY ORDAIN AS FOLLOWS:

SECTION I – GENERAL PROVISIONS

1.1 Purpose. To protect and provide for the public health, safety, and general welfare of the county of Big Stone by licensing and inspecting restaurants and places of refreshment and similar food service; regulating their design, construction, operation and maintenance; and providing for the enforcement of the regulations herein throughout said county.

1.2 Legal Authority. Countryside Public Health is a joint powers board of health organized under Minnesota Statute Chapter 145A.03 and Minnesota Statute Chapter 471.59 by Big Stone, Chippewa, Lac qui Parle, Swift and Yellow Medicine Counties. This ordinance is enacted pursuant to Minnesota Statute Chapter 145A.05 and Minnesota Statute Chapter 471.59 under which county boards may adopt ordinances to

regulate actual or potential threats to the public health and is related to a delegation of authority by the Minnesota Commissioner of Health to Countryside Public Health under Minnesota Statute Chapter 145A.07, Subd. 1, for the licensing, inspection, reporting, and enforcement duties authorized under Minnesota Laws, Chapter 157 relating to rules and standards for food and beverage service establishments, hotels, motels, lodging establishments, and resorts.

1.3 Jurisdiction. This ordinance shall be applicable in Big Stone County to all food and beverage establishments such as restaurants, boarding houses, and places of refreshment as defined in Minnesota Statutes 157.15, Subd. 5, and all amendments or additions thereto, and shall also 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. 157.22 and all amendments or additions thereto. This ordinance shall also apply to youth camps in Big Stone County as defined in Minn. Stat. 144.71.

1.4 Compatibility. Where the conditions imposed by any provision of this ordinance are less restrictive than comparable conditions imposed by any other provision of this ordinance, or any other applicable law, ordinance, rule, or regulation, the provision which establishes the higher standards for the promotion of the public health, safety, and general welfare shall prevail.

1.5 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 II – DEFINITIONS

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

2.1 Board means Countryside Public Health (CPH) Community Health Board acting

as the Board of Health under the provisions of Minnesota Statute Chapter 145A, and all amendments or additions thereto.

- 2.2 Environmental Health Department means the Countryside Public Health (CPH) Environmental Health staff or their designee.
- 2.3 Notice means a written instrument delivered personally or mailed to the last known address of the person entitled to notice or posting the notice at the entry to the establishment.
- 2.4 Mail means a mailing by United States First Class Mail with return receipt requested directed to the recipient's last known address. A return of such mailing for any reason shall not void the notice.

SECTION III

ADOPTION OF FOOD & BEVERAGE ESTABLISHMENT STANDARDS

- 3.1 The standards for Food & Beverage Establishments set forth in Minnesota Rules Chapter 4626 and all amendments or additions thereto are hereby incorporated in and made part of this ordinance; except Minnesota Statutes 157.16, Subd. 2a and Minnesota Rules part 4626.0033, Subparts G, H, I, J, K, L, M, N and O. In such rules as are a part of this ordinance, the references to the Commissioner shall mean the Countryside Public Health (CPH) Community Health Board and its designated agents.

SECTION IV – EMBARGO, CONDEMNATION, AND TAGGING

- 4.1 The Environmental Health Department staff or their designee may condemn and cause to be removed, embargo, and/or tag any item deemed to be in violation of this ordinance.

SECTION V – PLAN REVIEW OF FUTURE CONSTRUCTION

- 5.1 When an establishment in Big Stone County, licensed or to be licensed under the provisions of this ordinance, 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 this ordinance. Plans and the fee specified by the Community Health Board shall be submitted at least thirty (30) days before beginning construction, extensive remodeling, or conversion of a food establishment. All plumbing plans and specifications must be submitted to the Minnesota Department of Labor and Industry for approval prior to beginning construction.
- 5.2 If an existing structure that is on an individual sewage treatment system is to be converted or expanded for use as a food or beverage service establishment, the individual sewage treatment system must have a compliance inspection and the change of use must be approved by the county of residence Zoning Department. Submit the required compliance inspection report and letter of approval from the Zoning department with the plans.

SECTION VI – PROCEDURE WHEN INFECTION IS SUSPECTED

- 6.1 When the Environmental Health Department 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 Department staff, 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;
- 4) Adequate medical and laboratory examinations of the employee, or other employees, and their body discharges; and
- 5) Collection of samples of food(s) and beverage(s) from the establishment for laboratory examination.

SECTION VII – COMPLIANCE PROCEDURES

7.1 Licenses Needed. It shall be unlawful for any person to operate a food and/or beverage service establishment within Big Stone County without a valid license issued by the Environmental Health Department. Issuance and retention of a license is dependent upon compliance with the requirements of this ordinance. Licenses are not transferable between establishments, persons or locations. The license must be posted in the establishment. The regular license year shall run from January 1 to the next December 31. The seasonal license year shall run from May 1 to the next April 30. The school license year shall run from July 1 to the next June 30. Licenses expire at 11:59 p.m., on the last day the license is in effect.

7.2 Application for License.

- A. Any person desiring to operate a food service establishment shall make

written application for a license on forms provided by the Environmental Health Department.

- B. 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. The Environmental Health Department may require such additional information as it may find necessary.
- C. Applications for a new business and the appropriate license fee shall be submitted to the Environmental Health Department ten (10) days prior to the proposed opening date of the business.
- D. Renewal applications and the appropriate license fee shall be submitted to the Environmental Health Department on or before the expiration date of the current year's license. Penalties shall not accrue until after expiration of the current year's license.
- E. Operation of a food service establishment without a license is a violation of this ordinance.
- F. The amount of the annual license fee to be paid by proprietors of food and/or beverage establishments shall be specified by resolution of the Countryside Community Health Board. This fee may be adjusted from time to time as the Board deems appropriate.
- G. The Community Health Board shall set a civil penalty fee to be paid by any proprietor who fails to file the application and pay the annual license fee by the due date.

- H. All fees paid shall be retained by the Community Health Board regardless of whether there is approval or denial of the license.

- I. If an application is made for the calendar year whereby the license begins on or after October 1st of that year, the license fee for new applicants or new operators shall be one-half of the appropriate annual license fees, plus any penalty which may be required. The provision for one-half of the license fee shall apply to any new applicant or licensee on or after February 1st for the seasonal licenses or on or after April 1st for the school year licenses.

7.3 Inspection and Correction.

- A. The Environmental Health Department shall classify establishments by risk category and inspect food, beverage, and lodging establishments to assure compliance with the requirements of this ordinance at a frequency as specified in Minnesota Statute 157.20 and all amendments or additions thereto.

- 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 foods 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 service establishment is made, the

findings shall be recorded on an inspection report form. One copy of the inspection report form shall be furnished to the person in charge of the establishment. The inspection report is a public document and shall be available to the public unless the report is a part of a pending litigation or unless there are scheduled follow-up inspections.

- 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.

7.4 Suspension of License.

- A. Licenses may be suspended temporarily by the Environmental Health staff or their designee, at any time for:
 - i. failure by the holder to comply with the requirements of this ordinance;
 - ii. failure to timely comply with any notice requiring corrective action;
 - iii. failure to comply with any provision of Minnesota Rules Chapter 4626.
- B. A license holder or operator shall be provided notice that the license has been 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 Department.
- C. Notwithstanding the other provisions of this ordinance, whenever the Environmental Health Department staff or their designee finds unsanitary or other condition(s) in the operation of a food establishment which, in

their judgement, may constitute a substantial hazard to the public health, a written notice to the license holder or operator may be issued citing such condition(s), specifying corrective action to be taken, and specifying the time period within which such action must be completed. If deemed necessary, such order shall state that the license is immediately suspended and may require that all food and/or beverage operations be immediately discontinued. Any person affected by such action may obtain a review of this action by filing a written petition for appeal with the Environmental Health Department.

- D. Any person whose license or permit has been suspended may at any time make application for a reinspection for the purpose of reinstatement of the license. The request for reinspection shall be made in writing and shall include a summary of the applicant's remedial action and a statement by the applicant that the condition(s) causing suspension of the license has/have been corrected. Within ten (10) days following receipt of a request for reinspection, the Environmental Health Department staff or their designee shall make a reinspection. If the applicant is in compliance with the requirements of this ordinance and Minnesota Rules Chapter 4626 the license shall be reinstated

7.5 Revocation of License. For serious or repeated violations of any of the requirements of this ordinance, the license may be permanently revoked. Prior to such action, the Environmental Health Department staff or their designee shall notify the license holder in writing, advising that the license shall be permanently revoked five (5) days after the issuance of said notice. The license holder shall be advised at the same time that a hearing before the Appeals Board will be provided if a written request for appeal is filed with the Environmental Health Department.

7.6 Appeals.

- A. An appeal may be brought under the provisions of this section to address any objection to the enforcement of this ordinance.
- B. Any affected person may pursue an appeal where the enforcement of a provision of this ordinance causes undue hardship or is believed to be unreasonable, impractical or not feasible.
- C. Appeals shall be presided over by an Appeals Board.
- D. The membership of the Appeals Board shall consist of the Chairperson of the Countryside Public Health Board, a County Commissioner, the Countryside Public Health Administrator, and the Environmental Health Department staff for Countryside Public Health. Any of these members may designate an alternative to serve on the Appeals Board.
- E. The Appeals Board shall be chaired by the Chairperson of the Countryside Public Health Board.
- F. The Appeals Board shall have the power to affirm, reverse, or modify the enforcement action of Countryside Public Health, its departments and its agents.
- G. An appeal shall be commenced by a request to the Appeals Board for a hearing. Such requests shall be filed with the Countryside Public Health Office in Benson, Minnesota. The request shall be in the form of a written petition and shall set forth a statement of the issues. Said petition shall be filed within thirty (30) days after the enforcement issue arises.
- H. A hearing shall be held within ten (10) days after the date on which the

appeal was filed. The Chairperson of the Appeals Board may postpone the date of the hearing for a reasonable time if, in the chairperson's judgement, a good and sufficient reason exists for such postponement.

- I. Countryside Public Health shall provide five (5) days written notice of the hearing to the appellant.
- J. At the hearing Countryside Public Health shall present a detailed, written statement of findings supporting the decision of Countryside Public Health. The appellant, their agent, or attorney shall then be given an opportunity to show cause why the enforcement action taken by Countryside Public Health should be reversed or modified. The hearing may be continued if, in the chairperson's judgement, due process requires or other good and sufficient reason exists for such continuance.
- K. The Appeals Board shall render its decision in the form of findings and conclusions set forth in writing within three (3) days after the close of the hearing. A copy of the decision of the Appeals Board shall be served by mail on the appellant. 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 this State.
- L. A recording may be made of any hearing before the Appeals Board and if so it shall be retained in the office of Countryside Public Health for a period of not less than one (1) year after the close of the hearing. All written records relating to an appeal shall likewise be retained in the office of Countryside Public Health for a period of not less than one (1) year after the close of the hearing.
- M. The terms of any notice served pursuant to the provision of this ordinance shall become final if a written petition for a hearing is not filed with the

Environmental Health Department with ten (10) days after the date of mailing.

7.7 Enforcement.

- A. Nothing herein shall limit the ability to seek release in district court in an action to enjoin violations of this ordinance.
- B. Injunctive actions shall be conducted by the county attorney for the county where the enforcement is to take place.
- C. No person shall make a false statement in a document required to be submitted under the provisions hereof.
- D. Each day that a violation exists shall constitute a separate offense.
- E. Administrative Enforcement.
 - 1. The use of administrative citations and the imposition of civil penalties is a legitimate and necessary alternative method of enforcement. This method of enforcement is in addition to any other legal remedy that may be pursued for ordinance violations.
 - 2. A violation of a provision of this ordinance may be subject to an administrative citation and civil penalties.
 - 3. The Countryside Public Health Community Health Board may adopt by resolution a schedule of fines for offenses initiated by administrative citation. Said schedule shall be modified by said Board as it deems appropriate.

4. The Environmental Health Department may issue a written administrative citation upon belief that a violation of this ordinance has occurred. The citation must be delivered in person or by mail to the person responsible for the violation. The citation must state the nature of the offense, the name of the issuing officer, the amount of the fine, and the manner for paying the fine.

5. The person responsible for the violation shall pay the fine within thirty (30) days after issuance of the citation. Payment of the fine constitutes admission of the violation. A late payment fee of 10 percent of the fine amount may be imposed.

6. Administrative enforcement shall be conducted by the Environmental Health Department or its designee.

7. Appeal from a citation shall be made in accordance with the appeal provisions provided hereinabove.

8. Upon a failure to pay an administrative fine noted above within the above said 30 days, the citation may be dismissed and Countryside Public Health may refer the violation to law enforcement for criminal prosecution.

F. Criminal Enforcement.

1. Criminal prosecution shall be conducted by the county attorney for the county where the enforcement is to take place.

2. Whoever fails to comply with any of the provisions hereof shall be guilty of a misdemeanor.

3. Upon conviction of any violation of this ordinance a person shall be

subject to the statutory penalties for misdemeanors.

SECTION VIII – REPEAL OF PREVIOUS ORDINANCE

8.1 This ordinance repeals and replaces in its entirety all prior food and beverage ordinances.

SECTION IX – EFFECTIVE DATE

9.1 This Ordinance shall be in full force and effect from and after its passage and publication according to law.

Passed by the Board of Commissioners of Big Stone County, Minnesota the _____ day of _____, 2022.

Jeff Klages, Chairman Date
Big Stone County Board of Commissioners

Attest: _____
Pam Rud, Coordinator Date
Big Stone County