

Washington County, Minnesota Ordinances

Ordinance No. 149 Administrative Ordinance

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Section 1 Purpose and Title

1.1

This ordinance shall regulate the administration of Department licensing procedures and the imposition of Administrative Sanctions.

1.2

This ordinance is cited as "The Washington County Administrative Ordinance".

Section 2 Application of Ordinance

2.1

This ordinance shall apply to any Washington County ordinance which has a provision establishing an Administrative Remedy or which imposes any License fee. This ordinance shall apply whether or not it is specifically incorporated by reference in any Washington County ordinance.

2.2

Where provisions of a Washington County ordinance expressly establish a procedure for an Administrative Remedy or for imposing a License fee, such provisions shall prevail over this ordinance, but this ordinance shall be effective to the extent that it does not conflict with such provision.

Section 3 Definitions

3.1

For the purpose of this Ordinance, definitions of words, phrases and terms used in this Ordinance shall be those set forth as follows:

(1) Administrative Remedy

shall mean any sanction imposed by the Department, including but not limited to, administrative or civil penalty or License denial, suspension or revocation, but shall not mean the issuance of a citation.

(2) County

shall mean the County of Washington.

(3) County Board

shall mean the Washington County Board of Commissioners and their authorized representatives.

(4) Department

shall mean a separate part, division, bureau, subunit, or branch of Washington County authorized by the County Board to carry out or enforce any provision of a County ordinance.

(5) Hearing de novo

shall mean a new hearing or a hearing for the second time, contemplating an entire hearing in the same manner in which the matter was originally heard and a review of previous hearing.

(6) License

shall mean the whole or part of any Permit, certificate, approval, registration, or similar form of permission or renewal required by County ordinance or State law administered by the County for the operation of any business, service or facility.

(7) Licensee

shall mean any Person who has been given the authority by the issuance of a License by the County to establish, operate, manage and/or maintain a facility or activity regulated by County ordinances or as the term may be otherwise defined in a County ordinance.

(8) Permit

shall have the same definition as License.

(9) Permittee

shall have the same definition as Licensee.

(10) Person

shall mean any individual, firm, partnership, public or private corporation, municipality or other organization, receiver, trustee, assignee or agent, and with respect to acts prohibited or required herein, shall include Licensees and employees of Licensees.

Section 4 Unlawful Activities

4.1

It is unlawful for any Person:

- (1) To engage in any activity, trade, profession, business or privilege to operate any site, facility or establishment for which a License is required by any provision of a County ordinance unless such Person has first obtained such License.
- (2) To engage in any activity, trade, profession, business or privilege to operate any site, facility or establishment in the County for which a License is required by any provision of a County ordinance when any License granted for the conduct of such activity, trade, profession, business or privilege or operation of such site, facility or establishment has been revoked or suspended.
- (3) Who possesses a valid License issued pursuant to County ordinance to engage in any activity, or operate any such Licensed facility, establishment, profession, business or privilege in such a way as to knowingly violate any requirement or any County ordinance applicable to such activity, trade, profession, business, privilege, site, facility or establishment.
- (4) To fail or refuse to correct any condition or method of operation which violates any County ordinance applicable to the conduct of any Licensed activity, trade, profession, business, privilege, site, facility or establishment after being ordered to do so by the County.

Section 5 Enforcement

5.1 Misdemeanor.

Any Person who violates the provision of this County ordinance shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished therefore as provided by law. A separate offense shall be deemed committed upon each day during or on which a violation occurs or continues.

5.2 Citation.

The Department, or any of its duly authorized representatives, charged with the responsibility of administration and enforcement of any County ordinance shall have the power to issue citations for violations of this ordinance or other applicable County ordinances, but this shall not Permit such representatives to physically arrest to take into custody any violators except on warrant duly issued.

(1) Citations shall contain at least the following:

- A. The name and address of the Person charged with violation or the owner or Person in charge of the premises at which the violation occurs;
- B. The date and place of the violation;
- C. A short description of the violation followed by the section of the ordinance violated;
- D. The date and place at which the Person receiving the citation shall appear and a notice that if such Person does not respond, a warrant may be issued for such Person's arrest;
- E. Such other information as the courts may specify.

(2) Whenever any representative of the Department discovers any violation of this ordinance, he may issue a citation to the Person alleged to have committed the violation.

(3) The citation shall be issued to the Persons charged with the violation, or in the case of a corporation or municipality, to any officer or agent expressly or implied authorized to accept such issuance.

5.3 Equitable Relief.

In the event of a violation or threat of violation of this ordinance, the County Attorney may take appropriate action to enforce this ordinance, including application for injunctive relief, action to compel performance, or other appropriate action in court in order to prevent, restrain, correct or abate such violations or threatened violations.

Section 6 Licensing Procedures

6.1

Unless provided for by another specific County ordinance, the procedures for application for, issuance of, denial of, suspension of or revocation of any License required by the ordinance of the County shall be set forth herein.

(1) Application for a License or License renewal shall be made to the County Department charged with enforcement of the County ordinance requiring the applicant to be Licensed and shall be on forms furnished by the Department. The applicant shall state the location of the proposed activity and such other facts as are required by the Department for the granting of the License.

(2) Required bonds, if any, shall be executed by a surety company, and be subject to approval of the County Risk Manager. Satisfactory evidence of coverage by bond or insurance shall be filed with the Department to which the application is made.

(3) The fees required for a License shall be paid at the office of the Department to which application is made. No License fee shall be prorated for a portion of a year, and no License fee shall be refunded unless specific provision for such proration or refund is made in the applicable County ordinance. No License shall be issued until the fees therefor have been paid in full.

(4) Every Person whose Licensed activity, trade, profession, business, privilege, site, facility, or establishment is Licensed by the County, other than one which has been closed down or which has not been operated in the County after the expiration of the licensing year, shall pay to the Department the regular License fee and, in addition thereto, the following penalty for late application for a renewal License:

- A. One (1) to seven (7) days late, a fifteen percent (15%) penalty.
- B. Eight (8) to thirty (30) days late, a twenty-five percent (25%) penalty.
- C. After expiration of thirty (30) days from the due date, the activity for which a License is required shall cease. If a new License or Permit is approved, the fee shall consist of the amount set forth for new Licenses and Permits, plus twenty-five percent (25%) penalty.

(5) The late payment of the License fee, along with the penalty set forth herein, is no bar to any prosecution by the County for operating any Licensed activity, trade, profession, business, privilege, site, facility or establishment within the County without a License therefore.

(6) Unless otherwise provided in the ordinance under which a License is issued, the Department shall have sixty (60) days to issue or deny the License or renewal; otherwise the License shall be deemed to have been issued.

(7) Once the Department has decided on the disposition of the License application or renewal application, the applicant shall be notified in writing of its decision.

(8) A License obtained pursuant to a County ordinance shall not be transferable.

Section 7 Inspections

7.1

Routine inspection and evaluation of activities, trades, professions, businesses, privileges, sites, facilities and establishments shall be made by the Department charged with enforcement of the particular ordinance in such frequency as to insure consistent compliance by the applicant or Licensee with the provisions of the County ordinance.

7.2

The Licensee shall be provided with written and documented notice of any deficiencies, recommendations for their correction and the date when the corrections shall be accomplished.

7.3

The Licensee shall be required to allow free access to authorized representatives of the Department, County Board, or to authorized representatives of any other governmental agency at any reasonable time for the purpose of making such inspections as may be necessary to determine compliance with the requirements of this ordinance or any other applicable statute, ordinance or regulation. Failure of applicant or Licensee to Permit such inspection shall be grounds for summary suspension, suspension, revocation or denial of License.

7.4

The County shall have the right to inspect private property to determine if applicant or Licensee is in compliance with the provisions of this ordinance. Refusal by the applicant or Licensee to allow the Department to inspect the private property shall be grounds for summary suspension, suspension, revocation or denial of a License.

Section 8 Denial, Suspension or Revocation of a License

8.1 Denial of License.

(1) Where a License is denied, the Department shall state the factual basis for its decision, and notice of its decision shall be Personally served on the applicant or shall be served by registered or certified mail to said applicant at the address designated in the License application.

(2) The applicant shall have ten (10) working days, exclusive of the day of service, to request a hearing before the Department pursuant to Section 10.1 of this ordinance. The request shall be in writing, stating the grounds for appeal, and served Personally or by registered or certified mail on the Department by midnight of the tenth (10th) County working day following service of the notice of denial. If the applicant fails to request an appeal within the specified time period, any opportunity for a hearing is forfeited and the Department's decision is final.

(3) After receipt of an appeal request, the Department shall set a time and place for the hearing. If after this hearing, the Department still denies the License, the applicant may appeal to the County Board pursuant to Section 10.3 of this ordinance.

8.2 Suspension of License.

(1) Any License required under County ordinance may be suspended by the Department for violation of any provision of this ordinance or of the ordinance under which the License was issued. Upon written notice to the Licensee, said License may be suspended by the Department for a period not longer than sixty (60) days or until the violation is corrected.

(2) Written notice of Departmental suspension shall contain the effective date of the suspension, the nature of the violation or violations constituting the basis for suspension, the facts which support the conclusion that a violation or violations have occurred, and a statement that if the Licensee desires to appeal, he must, within the (10) County working days, exclusive of the date of service, file a request for a hearing.

(3) Such Departmental suspension shall not occur earlier than ten (10) working days after written notice of suspension has been serviced on the Licensee except if a hearing pursuant to Section 10.1 of this ordinance is requested, suspension shall not occur until written notice of the Department's decision has been served on the Licensee. Notice to the Licensee of Departmental suspension shall be served Personally or by registered or certified mail at the address designed in the License application.

(4) The request for an Administrative Hearing shall be in writing, stating the grounds for appeal, and served Personally or by registered or certified mail on the Department by midnight of the tenth (10th) County working day following service of Notice. If the Licensee fails to request an appeal within the specified time period, any opportunity for a hearing is forfeited and the Department's decision is final.

(5) After receipt of a request for a hearing the Department shall set a time and place for the hearing. If after this hearing, the Department still suspends the License, the applicant may appeal to the County Board pursuant to Section 10.3 of this ordinance. In the event that the Licensee appeals the Department decision to the County Board, the suspension will not become effective until the County Board has rendered its decision. The hearing before the County Board shall be on the record from the Administrative Hearing.

(6) A suspension shall not exceed sixty (60) days in duration except that if the Licensee has not demonstrated

within the sixty (60) day period that the provisions of the ordinance have been complied with, the Department may serve notice of continued suspension for up to sixty (60) days or initiate revocation procedures. The Licensee may appeal any extension of the suspension using the procedures set forth in 8.2 (4) above, except that the suspension shall remain in effect pending final hearing determination.

(7) Upon written notification from the Licensee that all the violations for which a suspension was invoked have been corrected, the Department shall reinspect the facility or activity within a reasonable length of time, but in no case more than ten (10) County working days after receipt of the notice from the Licensee. If the Department finds upon such reinspection that the violations constituting the grounds for suspension have been corrected, the Department shall immediately lift the suspension by giving written notice to the Licensee, served Personally or by registered or certified mail at the address designated in the License application.

8.3 Summary Suspension of License.

(1) If the Department finds that the public health, safety or welfare requires emergency action and incorporates a finding to that effect in its order, summary suspension of a License may be ordered by the Department Head or designee upon notification to the County Attorney's Office. Written notice of such summary suspension shall be Personally served on the Licensee, or shall be served by registered or certified mail to said Licensee at the address designated in the License application. In addition, the Department may post copies of the notice of summary suspension of the Licensee on the Licensed facility or property being used for the Licensed activity. Said posting shall constitute the notice required under this section.

(2) The written notice in a summary suspension shall state the effective date of the suspension and the nature of the violation requiring emergency action, the facts which support the conclusion that a violation or violations have occurred and a statement that if the Licensee desires to appeal, he must, within ten (10) County working days, exclusive of the day of service, file a request for an Administrative Hearing.

(3) The request for an Administrative Hearing shall be in writing stating the grounds for appeal and served Personally or by registered or certified mail on the Department by the tenth (10th) County working day following service. If the Licensee fails to request an appeal within the specified time period, any opportunity for a hearing is forfeited and the Department decision is final.

(4) Following receipt of a request for an appeal, the Department shall set a time and place for a hearing. The Department head shall render a decision within ten (10) days. The decision of the Department Head may be appealed to the County Board pursuant to Section 10.3 of this ordinance. The Hearing before the County Board shall be on the record from the Administrative Hearing.

(5) The summary suspension shall remain in effect during the duration of any hearing or review by the Department Head and/or the County Board.

(6) Upon written notification from the Licensee that all the violations for which a summary suspension was invoked have been corrected, the Department shall reinspect the facility or activity within a reasonable length of time, but in no case more than ten (10) County working days after receipt of the notice from the Licensee. If the Department finds upon such reinspection that the violations constituting the grounds for the summary suspension have been corrected, the Department shall immediately lift the summary suspension by giving written notice to the Licensee, served Personally or by registered or certified mail at the address designated in the License application.

8.4 Revocation of License.

- (1) Any License granted pursuant to County ordinance may be revoked by the Department for violation of any provision of said ordinance or this ordinance.
- (2) Revocation by the Department Head shall not occur earlier than ten (10) County working days from the time that written notice of revocation is served on the Licensee, except if an Administrative Hearing pursuant to Section 10.2 of this ordinance is requested, revocation shall not occur until written notice of the decision has been served on the Licensee. Notice of Departmental revocation to the Licensee shall be served Personally or by registered or certified mail at the address designated in the License application.
- (3) Written notice of Departmental revocation shall contain the effective date of the revocation, the nature of the violation or violations constituting the basis for revocation, the facts which support the conclusion that a violation or violations have occurred and a statement that if the Licensee desires to appeal, he must, within ten (10) County working days, exclusive of the day of service, file a request for a hearing. If the Licensee fails to request a hearing within the specified time period, any opportunity for a hearing is forfeited and the Department's decision is final.
- (4) The request for Administrative Hearing shall be in writing stating the grounds for appeal and served Personally or by registered or certified mail on the Department by midnight of the tenth (10th) County working day following service.
- (5) Following the receipt of a request for a hearing, the Department shall set a time and place for the hearing. If after this hearing, the Department still revokes the License, the Licensee may appeal to the County Board pursuant to Section 10.3 of this ordinance. In the event that the Licensee appeals to the County Board, the revocation shall not become effective until the County Board has rendered its decision. The hearing before the County Board shall be on the record from the Administrative Hearing.

Section 9 Variances

9.1

In any case where, upon application to the Department, it appears by reason of exceptional circumstance that the strict enforcement of any provision of the standards of a County 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 therefrom upon such conditions as it may prescribe for management consistent with the general purposes and intent of the applicable ordinance and of all other applicable state and local regulations and laws.

9.2

In no case shall a variance be granted unless the following findings are made:

- (1) The conditions causing the hardship are unique to the property, applicant or Licensee; and
- (2) The granting of the variance will not be contrary to public interest or damaging to the rights of other Persons or properties in the same area or district; and
- (3) The granting of the variance will not be contrary to the policy and intent of the ordinance or detrimental to the public health, safety and welfare.

9.3

No variance shall be granted simply because there are no objections, because those who do not object outnumber those who do, or for any reason other than a proven hardship.

9.4

No variance shall be granted without at least an administrative hearing pursuant to Section 10.2 of this ordinance.

9.5

In the event that the Department denies the request for a variance, the applicant may request a hearing before the County Board on said variance. The request shall be in writing stating the grounds upon which the request is based and served Personally or by registered or certified mail on the Department by midnight of the tenth (10th) County working day following the Department's denial of the variance. If the applicant/Licensee fails to request a hearing within the specified time period, any opportunity for a hearing is forfeited and the Department's decision is final.

9.6

Following receipt of a request for a formal hearing the Department shall notify the County Board and the hearing shall be conducted on the record from the Administrative Hearing pursuant to Section 10.3 (3) of this ordinance.

Section 10 Hearings

10.1

Any Person may appeal the imposition of an Administrative Remedy or the denial of a variance by requesting a hearing. Hearings shall be conducted as provided in this Section.

10.2 Administrative Hearing.

(1) Unless otherwise provided, the Department shall conduct an administrative hearing before the Department Head and/or designees within thirty (30) County working days of receipt of request for a hearing or variance.

(2) The applicant or his/her designated representative shall attend the hearing and present the facts or conditions upon which the application for a hearing or variance is based.

(3) All evidence which possesses probative value, including hearsay, may be admitted if it is the type of evidence on which prudent Persons are accustomed to rely in the conduct of their serious affairs. Evidence which is incompetent, irrelevant, immaterial, or unduly repetitious may be excluded.

(4) The hearing shall be confined to matters raised in the Department's written notice of administrative penalty notice of suspension, summary suspension or revocation or in the petitioner's written request for a hearing.

(5) The Department shall prepare written findings, conclusion and decision and serve it Personally or by registered or certified mail on the applicant/Licensee by midnight of the thirtieth (30th) County working day following the hearing. Failure of the Department to act within the time frame set forth in this subsection shall be deemed an approval of a variance and/or the rendering of a decision in the favor of the applicant/Licensee

except that the Department may appeal such automatic approval to the County Board as provided for in Section 10.3 of this ordinance. Any hearing before the County Board shall be decided on the merits of the variance request and/or request for a hearing and not on the reasons for the lateness of the administrative decision.

10.3 Formal Board Hearing

(1) In the event that an applicant and/or Licensee is not satisfied with the Decision rendered by the Department, the applicant/Licensee may request an appeal of the Department's decision and a hearing before the County Board.

(2) The request shall be in writing stating the grounds upon which the request is based and served Personally or by registered or certified mail on the Department by midnight of the tenth (10th) County working day following said Departmental decision. If the applicant fails to request an appeal within the specified time period, any opportunity for a hearing is forfeited and the Department's decision is final.

(3) The County Board may appoint, by resolution, an individual and/or hearing panel to be known as the hearing examiner(s), to conduct the hearing and to make findings of fact, conclusions and recommendations to the County Board. The hearing examiner(s) shall submit findings of fact, conclusions and recommendations to the County Board in written report and the County Board may adopt modify or reject the report.

(4) If the appeal before the County Board is from an Administrative Hearing, the hearing before the County Board shall be on the record established at the Administrative Hearing. None of the parties shall be allowed to present new evidence except at the discretion of the County Board or hearing examiner(s). The parties may submit written memoranda of law not less than seven (7) days prior to the hearing and may present oral argument at the hearing.

(5) If the appeal before the County Board does not follow an Administrative Hearing or the County Board grants a Hearing de novo following an Administrative Hearing, the hearing will be conducted as follows:

A. The petitioner may be represented by counsel

B. The order of proceeding shall be: the Department, the petitioner, and additional parties.

C. All parties shall have full opportunity to respond to and present evidence, cross-examine witnesses, and present argument.

D. All testimony shall be under sworn oath.

E. The County Board or hearing examiner may also examine witnesses.

F. The Department shall have the burden of proving its position by a preponderance of the evidence, unless a different burden is provided by substantive law, and all findings of fact, conclusions of law, and decisions by the County Board shall be based on evidence presented and matters officially noticed.

G. All evidence which possesses probative value, including hearsay, may be admitted if it is the type of evidence Persons are accustomed to rely in the conduct of their serious affairs. Evidence which is incompetent irrelevant, immaterial or unduly repetitious may be excluded.

H. The hearing shall be confined to matters raised in the Department's written notice of administrative penalty, suspension, summary suspension or revocation or in the petitioner's written request for a hearing.

I. A pre-hearing conference may be held at the request of any party, or upon motion of the County Board or hearing examiner(s). The pre-hearing conference shall be conducted by the hearing examiner(s), if the Board has chosen to use this method, or by a designated representative of the County Board. The pre-hearing conference shall be held no later than five (5) County working days before the hearing. The purpose of the pre-hearing conference is to:

- i. Clarify the issues to be determined at the hearing.
- ii. Provide an opportunity for discovery of all relevant documentary, photographic or other demonstrative evidence in the possession of each party. The hearing examiner(s) or Board's representative may require each party to supply a reasonable number of copies of relevant evidence capable of reproduction.
- iii. Provide an opportunity for discovery of the full name and address of all witnesses who will be called at the hearing and a brief description of the facts and opinions to which each is expected to testify. If the names and addresses are not know, the party shall describe them thoroughly by job duties and involvement with the facts in issues.

J. If a pre-hearing conference is held, evidence not divulged as provided above shall be excluded at the hearing unless the party advancing the evidence took all reasonable steps to divulge it to the adverse party prior to the hearing and:

- i. The evidence was not known to the party at the time of the pre-hearing conference; or
- ii. The evidence is rebuttal to matters raised for the first time at or subsequent to the pre-hearing conference.

(6) Unless an extension of time is requested by and granted to the petitioner by the Chair of the County Board, a formal board hearing will be held no later than forty-five (45) calendar days after the date of service of request for a hearing, exclusive of the date of such service. In any event, such hearing shall be held no later than ninety (90) days after the date of service of request for a hearing, exclusive of the date of such service.

(7) The County Board shall mail notice of the hearing to the petitioner and to the Department at least fifteen (15) County working days prior to the hearing. Such notice shall include:

- A. A statement of time, place and nature of the hearing.
- B. A statement of the legal authority and jurisdiction under which the hearing is to be held.
- C. A reference to the particular section of the ordinance and rules involved.

(8) If the petitioner fails to appear at the hearing, the right to a hearing under this ordinance shall be forfeited.

Section 11 Severability

11.1

If any provision of this ordinance or the application thereof to any Person or circumstance is held invalid, said invalidity does not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and for this purpose the provisions of the ordinance are severable.

Section 12 Provisions Accumulative

12.1

The provisions of this ordinance are cumulative and are additional limitations upon all other laws and ordinances heretofore passed covering any subject matter.

Section 13 No Consent

13.1

Nothing contained in this ordinance shall be deemed to be consent, License, or Permit to locate, construct, or maintain any site, facility, or establishment, or to carry on any activity, trade, profession or privilege.

Section 14 Effective Date

14.1

This ordinance shall be effective upon passage by the County Board and publication according to law.
