

Section 440 - Food Establishments

Section 440:00. Purpose. The purpose of this ordinance is to establish rules, regulations and standards for Food and Beverage Establishments, Catering, Retail Food Establishments, and Vending Machines.

Section 440:01. Findings of City Council. The City Council finds that the regulation, licensure and inspection of food establishments provides for the following:

- (1) Protection and promotion of public health, safety and general welfare for the people of St. Cloud.
- (2) Prevention of food-borne illness.
- (3) Correction and prevention of conditions that may adversely affect persons utilizing food, beverage and retail food service establishments.
- (4) Provides minimum standards for the design, construction, operation, and maintenance of food, beverage and retail food establishments as defined in Minnesota Statute 157 & Minnesota Rule 4626.
- (5) Meets consumer expectations for the quality and safety of food, beverage and retail food service establishments.

Subd. 1. Standards Adopted. The following statutes and rules are adopted, to include subsequent recodifications and/or amendments: Minnesota Statute Sections 17.04, 29.21, 29.23, 29.235, 29.236, 29.237, 29.24, 29.25, 29.26, 29.27, and 30.49, and applicable sections of Minnesota Statutes, Chapters 28A (except 28A.08), 31, 34A, and 157 (except 157.16). Applicable sections of Minnesota Rules parts 1520, 1545, 1550, 1556 and 4626.

Subd. 2. Jurisdiction. These ordinances will be applicable to all food and beverage establishments within the legal boundaries of the City of St. Cloud. Food, beverage and retail food establishments as defined in Minnesota Statutes Chapters 17.04, 28A, 31, 34A, 145A, 157.15 and 4626.0020, will include but not be limited to restaurants, temporary food stands and push carts, commissaries, drive-ins, bars, taverns, drive-in cafes, sidewalk cafes, clubs, lodges, caterers, schools, public buildings, places of worship, retail food stores, grocery stores and convenience stores and all other businesses and establishments where meals, lunches or drinks are served. Private school food services located in any building constructed and primarily used for religious worship will be included in this regulation.

Section 440:02. Food Code. The City adopts and incorporates by reference the food code adopted by the state departments of health and agriculture, and set forth in Minnesota Statutes Chapters 28A, 31, 34A, 145A, 157 and 327 and Minnesota Rules Chapters 1520, 1545, 1550, 1556, and 4626 (Minnesota Food Code) excluding 4626.0033 subparts G through O, 4626.1720 paragraph B, and 4626.1760, as amended. One copy of which is on file in the Office of the City Clerk, is adopted as the Uniform Food Code of the City of St. Cloud and is incorporated in this ordinance as completely as if set forth in full.

Section 440:03. Definitions.

Subd. 1. *Caterer*. Prepares food in a licensed commissary, transports and serves food to a location other than the commissary for immediate consumption.

Subd. 2. *Catering Food Vehicle*. Any vehicle used only to transport any food, other than pizza, from its point of preparation to a point where the food is served to the consumer.

Subd. 3. *Commissary*. A food establishment where food, containers, or supplies are kept, handled, prepared, packaged and stored.

Subd. 4. *Deli*. A medium or high risk food service establishment located in a grocery or meat market.

Subd. 5. *Delivery*. The transport of food which is prepared in a licensed restaurant/kitchen and delivered to customer, at which time the customer assumes responsibility for the food (ex: pizza, box lunches, etc.).

Subd. 6. *Food cart*. A food and beverage service establishment that is a nonmotorized vehicle self-propelled by the operator.

Subd. 7. *Food establishment*. Defined in Minnesota Rules Chapter 4626, food establishments include, but are not limited to, restaurants, cafeterias, bars, brew pubs, clubs, cafés, coffee shops, grocery stores, delicatessens, convenience stores, lodges, resorts, retail bakeries, retail meat markets, produce stands, group childcare centers, group adult care centers, institutions, public and private schools, satellite or catered serving locations, mobile food units, catering food vehicles, carts, packaged retail food sales, micro markets, vending machines, mobile food units, special event food stands or other short-term food operations, and similar businesses established for the service or retail distribution of food and beverages where consumption is on or off the premises and regardless of whether there is a charge for the food or beverages.

Subd. 8. *Food service establishment*. A food establishment that includes any 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.

Subd. 9. *Grocery*. A food establishment with the majority of food sales comprising both time/temperature control for safety and non-time/temperature control for safety food products sold in the original packaging.

Subd. 10. *Mobile food unit*. A food establishment preparing and/or serving foods from a self-contained vehicle, either motorized or within a trailer, on public sidewalks, curbside on the public streets, or on private property that is readily movable, without disassembling, for transport to another location.

Subd. 11. *Mobile food unit, limited.* A food establishment serving only prepackaged, nonperishable or packaged confections from a self-contained motorized vehicle.

Subd. 12. *Retail Food Establishment.* A food establishment that includes grocery, meat markets, commissaries, retail bakeries and micromarkets. All areas used for food and food related sales, processing, packaging, serving, and storage at the premises.

Section 440:04. Plan review.

Subd. 1. A person shall not begin to construct, remodel, or alter a food establishment until an application, plans, specifications and fee are submitted and approved by the Health & Inspections Department.

Subd 2. Reciprocity Exemption. A plan review is not required for a mobile food unit if all of the following are satisfied:

- (a) The mobile food unit has completed a plan review and possesses a current license from the Minnesota Department of Health, Minnesota Department of Agriculture or a delegated agency; and
- (b) The mobile food unit utilizes a licensed and inspected commissary kitchen to support its facilities; and
- (c) There have been no major alterations, menu changes, renovations and/or equipment changes to the mobile food unit, without a plan review conducted.

Subd. 3. Plans and specifications shall be drawn to scale and be legible and complete in all details. The plans and specifications shall indicate the following:

- (a) Proposed equipment layout
- (b) Room finish materials
- (c) Plumbing specifications
- (d) Kitchen exhaust ventilation and make-up air specifications
- (e) Construction materials of work areas
- (f) Manufacturers name and model number of proposed equipment and facilities
- (g) Proposed menu
- (h) Copy of current commissary agreement, if applicable

Subd. 4. Plans, specifications, application form and fee, must be submitted at least 30 days before beginning construction, remodeling, or conversion of a food establishment. If work has commenced prior to approval of plans when required, the Health & Inspections Department may issue orders to halt the construction, extensive remodeling, expansion, or alteration until approved plans and specifications are obtained.

Subd. 5. The plans will be approved only if they meet the requirements of all applicable federal, state and local regulations.

Subd. 6. The Health & Inspections Department may inspect the establishment as frequently as necessary during the construction to ensure that the construction occurs in conformance with City Ordinance and the plan review submitted.

Subd. 7. The licensee must obtain an inspection and subsequent approval from the Health & Inspections Department prior to the start of the operation. The food establishment shall be constructed, finished and operated in conformance with the approved plans.

Section 440:05. Mobile Food Units.

Subd. 1. Exemption. This ordinance section will not apply to those vehicles used exclusively for the regular delivery of food products to homes and businesses.

Subd. 2. Sound Devices. No person operating a mobile food unit will shout, make any cryout, blow a horn, or use any sound device, including any loud speaking radio or sound amplifying system upon any of the streets, alleys, parks or other public places in the City or upon any private premises in the City for the purpose of attracting attention to any goods, wares or merchandise which the permittee proposes to sell. Notwithstanding any other provision to the contrary, food/beverage vehicles may sound a manually operated bell between noon and 9:00 p.m. daily which produces a noise level measured at a distance of 50 feet from the source no greater than 65 decibels.

Subd. 3. Sales While in Motion. At no time will any sales be made from a mobile food vehicle while it is in motion.

Subd. 4. Mandatory Safety.

(a) Flashing Warning Lights. The vehicle's flashing warning lights will be activated whenever the vehicle is parked adjacent to the curb line on any City street. The flashing warning lights will be used for the purpose of warning operators of other vehicles to approach, overtake or pass with care. Warning lights will be visible from a distance of not less than 500 feet under normal atmospheric conditions at night. Use of the vehicle's factory equipped emergency or warning lights will satisfy the requirements of this subdivision.

(b) No mobile food unit will be located at a place that would impair the movement of pedestrians or vehicles or pose a hazard to public safety.

Section 440:06. Food carts.

Subd. 1. Location. Each food cart which operates in a public right-of-way will be separately licensed and may operate only at the location specified in the license. No cart will be located at a place that would impair the movement of pedestrians or vehicles or pose a hazard to public safety.

Subd. 2. Application Procedure.

(a) Each applicant will include in the application a proposed operating location. The proposed location will be referred to the Director of Public Works for their approval or

disapproval. If the applicant's proposed location is disapproved, they will be notified and they may select an alternate location which will also be referred to the Director of Public Works for approval or disapproval. Public locations for each licensed cart will be determined by lot and all applicants will be informed.

- (b) No location which has been chosen in a previous application will be available for selection.

Subd. 3. Construction.

- (a) Food carts will not have dimensions exceeding four feet in width, eight feet in length, and eight feet in height.
- (b) The cart may be equipped with a self-supporting awning on each of two sides of the cart, which awning will not project more than 24 inches from either side. In the alternative, the cart may be equipped with an umbrella not to exceed six feet in diameter.
- (c) Each food cart will be self-propelled and must be capable of being moved and kept under control by one person traveling on foot. The City Council may grant a special license to a handicapped person to operate a sidewalk cart propelled by electric motor, provided that the applicant will meet all other conditions for a license.
- (d) Signing will be limited to four square feet of copy area on each of two sides of the cart. The signing may be lettered directly on the body of the cart or securely attached to the surface of the cart. Signs may not project from the cart. Lettering may be integrated into the awning of any cart so equipped. Signing will be limited to advertising the cart and the products offered for sale.
- (e) The design and construction of the cart will be in keeping with the design, development, and use of the Central Business District, all in accordance with Minnesota Statutes Section 430.011 as well as other applicable laws and ordinances. The design and construction will be subject to the approval of the Health and Inspection Department.

Subd. 4. A food cart license will not be transferable from person to person nor place to place.

Subd. 5. Every licensee will maintain a permanent location for the storage and preparation of food and beverages carried by the licensee's food carts and for the cleaning and servicing of those carts. The permanent location will comply in all respects with the requirements of this ordinance. Each cart will return to the permanent location at least once daily for cleaning and servicing.

Subd. 6. Toilet facilities will be required at the permanent location but not on each cart.

Subd. 7. All waste liquids, garbage, litter, and refuse will be kept in leak-proof, nonabsorbent containers which will be kept covered with tight fitting lids and properly disposed of at the permanent location. No waste liquids, garbage, litter or refuse will be dumped or drained into sidewalks, streets, gutters, drains, trash receptacles or any other place except at the permanent location. When leaving the sales area, the licensee or the licensee's employees will pick up litter resulting from business and will deposit such litter in an approved container located on the cart.

Subd 8. Approved Food. No items of any kind, other than approved food and beverage items, will be sold and dispensed from sidewalk carts.

Subd. 9. Fixed permanently and prominently to each sidewalk cart will be a sign no smaller than twelve inches by twelve inches displaying the name, address and telephone number of the cart owner.

Subd. 10. Each licensee which operates in a public right-of-way will provide proof of liability insurance in the minimum amounts of \$100,000 for individuals, \$300,000 for any single incident, and \$50,000 for property damage. A Certificate of Insurance will be delivered to the City Clerk prior to issuance of a license. The City will be named an additional insured.

Subd. 11. Noise Makers. No food cart which operates in a public right-of-way will use lights or noise makers, such as bells, horns or whistles to attract customers.

Subd. 12. No food cart which operates in a public right-of-way will operate before 8:00 a.m. or after 2:30 a.m. on any day. Hours may be extended for special events on approval of the City Council.

Subd. 13. No food cart which operates in a public right-of-way will operate, park, stand or stop at any street or alley except to cross at designated street crossings.

Section 440:07. Vending machines.

Subd. 1. Vending Machines. The applicant for a license to sell food by vending machines will furnish the address where the applicant proposes to install and operate vending machines, the type and number of machines, and a general description of the food to be vended. After a license has been issued upon written application to the Health and Inspections Department and payment to the City the established license fee as set forth in Section 512 for each additional machine, the licensee may receive from the Health and Inspections Department written permits for additional machines over and above the number stated in the original application. The application for an additional permit will state the desired number of machines, the date and the number of the original license, and the street address of the property or place where the applicant proposes to install the additional machines.

Subd. 2. Vending Machine Owner's Label. No licensee will install, use or operate a greater number of vending machines than the owner is licensed and has paid the fees. The Health and Inspections Department will have the right to inspect the licensee's books and records to determine compliance with this section. Each licensee will clearly identify each vending machine or bank of interconnected vending machines operated by the owner. The label will clearly identify the owners name and telephone number displayed in such a manner that the information can be easily read without moving the machine or machines. The absence of such an owner's label will constitute a violation of this ordinance.

Subd. 3. Vending Machine Location. Each vending machine will be located in a room, area or space that can be maintained in a clean condition and that is protected from overhead leakage or from condensation from water, waste or sewer piping. The immediate area in which the machine is located will be well lighted. Each vending machine will be located so that the space around the machine can be easily cleaned and maintained, and so that insect and rodent waste is not created. The floor area where vending machines are located will be reasonably smooth, of cleanable construction, and be capable of withstanding repeated washing and scrubbing. The space and the immediate surroundings of each vending machine will be maintained in a clean condition.

Section 440:08. Compliance Procedures.

Subd. 1. Licenses Needed. It will be unlawful for any person to operate a food establishment within the City of St. Cloud who does not possess a valid license issued by the Health and Inspections Department as required by this ordinance. Only a person who complies with the requirements of this ordinance will be entitled to receive and retain such a license. Licenses will not be transferable from one establishment or person to another establishment or person. A valid license will be posted in every food service establishment that is conspicuous to consumers. The license year will be valid from January 1 to December 31 of the year of its issuance or other such time frame as specified.

Subd. 2. Application for License.

- (a) Any person desiring to operate a food service establishment will make written application for a license in such form and manner as the Health Director prescribes. Each application for a license, together with the appropriate license fee as described in Section 512 will be submitted to the Health and Inspections Department not later than one month prior to the expiration of the previous license; or in the case of a new or seasonal business, one month prior to the opening date of such a business. A penalty will be added to the amount of the license fee and paid by the applicant if the application has not reached the Health and Inspections Department by the dates designated. Any person who operates a food service operation without submitting an application and appropriate fee will be deemed to have violated this ordinance and will be subject to prosecution as provided in this ordinance.
- (b) Any food and/or beverage establishment will pay an annual license fee as specified in Section 512.
- (c) Fee Exemptions. Food services owned and operated by government subdivisions, member groups of the St. Cloud Neighborhood Coalition and places of worship, will not be required to pay a license fee, but will be subject to all other requirements of this ordinance.
- (d) Home Occupation. It will be unlawful to open, operate or conduct a food establishment in any private living quarters in the City of St. Cloud with the exception of licensed Bed and Breakfast Facilities as defined in the City of St. Cloud Zoning Ordinance
- (e) Enforcement. This ordinance will be enforced by the Health Director of the City of St. Cloud or their designee.
- (f) Penalty for Late Payment of License Renewal Fee for Food Establishments. The penalty for late payment of license renewal fee will be set forth in Section 500 of this code.
- (g) Sidewalk cafes. Service is permitted upon the public sidewalk lying immediately adjacent to a licensed food and beverage establishment within the Central Business District pursuant to Section 635.

Section 440:09. Inspections.

Subd. 1. The person operating a food establishment will, upon request of the Health and Inspections Department, permit access to all parts of the establishment at any reasonable time for the purpose of inspection and will exhibit and allow copying of any records necessary to ascertain sources of foods or other compliance with this ordinance.

Subd. 2. Whenever an inspection of a food service establishment is made, the findings will be recorded on the inspection report form. One copy of the inspection report form will be furnished to the person in charge of the establishment. The completed inspection report is a public document that will be made available for public disclosure to any person who requests it.

Subd. 3. The inspection report form will specify a specific and reasonable period of time for the correction of the violations found and correction of the violations will be accomplished within the period specified.

Section 440:10. Suspension of License.

Subd. 1. Licenses may be suspended temporarily by the Health Director or their designee 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, the license holder or operator will be notified in writing that the license, upon service of the notice, is immediately suspended, and the licensed establishment must discontinue operation immediately. An opportunity for a hearing before an independent hearing officer will be provided if a written request for appeal is filed with the Health and Inspections Department by the license holder upon form provided by the Health Department within ten days of the date of the notice of suspension.

Subd. 2. Whenever the Health Director finds unsanitary or other conditions in the operation of a food establishment which in the Director's judgment constitutes a substantial hazard to the public health, the Director may without warning, notice or hearing issue a written notice to the license holder or operator citing such condition, specifying the corrective action to be taken, and specifying the time period with which such action will be taken; The Director may, if deemed necessary, order that the license is immediately suspended, and all food operations to be immediately discontinued. The licensee will comply immediately with the order.

Subd. 3. Whenever the Health Director has suspended a food establishment license, the establishment must post a notice of closure on the front entrance or other conspicuous location. The notice of closure shall state the business is closed, be a minimum of 8.5" x 11" in size, with clear and legible font a minimum of 1.5" high and remain in place until approval to reopen is granted.

Subd. 4. Any person whose license has been suspended may at any time make application to the Health and Inspections Department for a reinspection for the purpose of reinstatement of the license. Within five days following receipt of a written request, including a statement signed by the applicant that in their opinion the conditions causing the suspension of the license have been corrected, the Health and Inspections Department will make a reinspection. If the applicant is complying with the requirements of this ordinance, the license will be reinstated.

Section 440:11. Revocation of License. For serious or repeated violations of any of the requirements of this ordinance, the license may be revoked after an opportunity for a hearing before an independent hearing officer has been provided. Prior to such action, the Health Director will notify the license holder in writing and advised that the license will be permanently revoked at the end of a ten day period. A license may be suspended pending a hearing on the license revocation.

Section 447:12. Appeal and Hearing Procedure. To appeal the revocation, suspension, denial or non-renewal, the applicant or owner/licensee must submit a request for appeal in writing within 10 days of receiving the notice. The appeal will be before an independent hearing officer selected from the list of independent hearing officers maintained by the City of St. Cloud. At the hearing, the applicant/licensee may speak on his or her behalf and may present witnesses and other evidence he or she deems necessary. Upon the conclusion of the hearing, the hearing officer, on behalf of the City Council, shall issue a written decision that includes findings of fact. The applicant/licensee may appeal the hearing officer's decision to the Minnesota Court of Appeals by writ of certiorari.

Section 440:13. Minnesota Department of Health and Minnesota Department of Agriculture. The requirements contained in this ordinance are intended to be comparable to the Minnesota Department of Health standards for food service and delicatessen licenses and the Minnesota Department of Agriculture standards for all other food establishments. Whenever the Minnesota Department of Health or the Minnesota Department of Agriculture amends regulations or adopts new regulations setting higher sanitary standards than the ones established in this ordinance, the standards set by the Minnesota Department of Health or the Minnesota Department of Agriculture will govern and will be considered in the enforcement procedure as part of this ordinance.

History: Ord. 2471 8-9-10; Ord. 2507 9-26-11; Ord. 2541 12-3-12; Ord. 2675 9-12-16; Ord. 2770 2-11-19; Ord. 2869 4-25-2022