ROCK COUNTY

PUBLIC HEALTH ADMINISTRATIVE ORDINANCE

ADOPTED 06/19/12

ROCK COUNTY - PUBLIC HEALTH ADMINISTRATIVE ORDINANCE

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ROCK COUNTY - PUBLIC HEALTH ADMINISTRATIVE ORDINANCE

The County Board of Rock County ordains:

SECTION I -- APPLICATION OF ORDINANCE

1.1 APPLICATION: Where a provision of the Rock County Public Health Ordinance requires a permit or license, or procedure for revocation, suspension, renewal or fee, the provisions contained herein shall apply.

SECTION II -- AUTHORITY

2.1 This ordinance is enacted pursuant to Minnesota Statutes Chapter 145A, Section 145A.05, which authorizes the Commissioner of Health to enter into an agreement with counties or cities organized under the provisions of Section 145A.05 to perform all or part of the licensing, inspection and enforcement duties authorized under the provisions of these sections.

SECTION III -- DEFINITIONS:

3.1 COMMUNITY HEALTH BOARD: Means the Southwest Health and Human Services (SWHHS) Community Health Board or designee authorized by the County Board to carry out or enforce any provision of a County Public Health Ordinance; acting under provisions of Minnesota Statute 145A.10, as the Board of Health.

3.2 COUNTY: Means the County of Rock.

3.3 COUNTY BOARD: Means the Rock County Board of Commissioners and their authorized representatives.

3.4 DEPARTMENT: Means the Southwest Health and Human Service (SWHHS) Agency and its Environmental Health Services Staff.

3.5 LICENSE: Includes the whole or part of any permit, certificate, approval, registration or similar form of permission or renewal required by County Public Health Ordinance or State law administered by the County for the operation of any business, service or facility.

3.6 LICENSEE: Means the person who has been given the authority by the issuance of a license by the County to establish, operate and/or maintain a facility or activity regulated by County Public Health Ordinances.

3.7 PERSON: Means 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 employees or licensees.

SECTION IV -- UNLAWFUL ACTIVITIES

It is unlawful for any person:

4.1 To engage in any activity, trade, profession, business or privilege or to operate any site, facility or establishment for which a license is required by any provision of a County Public Health Ordinance unless such person has first obtained such license.

4.2 To engage in any activity, trade, profession, business or privilege or to operate any site, facility or establishment in the County for which a license is required by any provision of a County Public Health 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.

4.3 Who possesses a valid license issued pursuant to County Public Health 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 of any County Public Health Ordinance applicable to such activity, trade, profession, business, privilege, site, facility or establishment.

4.4 To fail or refuse to correct any condition or method of operation which violates any County Public Health 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 department.

SECTION V -- ENFORCEMENT

5.1 ADMINISTRATION: The Department shall administer and interpret the provisions of this Ordinance. The Department shall have all powers necessary to administer and enforce the provisions of this Ordinance.

5.2 MISDEMEANOR: Any person who violates the provision of this County Public Health 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.

5.3 CITATION: The Department or any of its duly authorized representatives charged with the responsibility of administration and enforcement of any County Public Health Ordinance, shall have the power to issue citations for violations of this Ordinance or other applicable County Public Health Ordinances, but this shall not permit such representatives to physically arrest, to take into custody, any violators except on warrant duly issued.

A. Form of Citations: Citations shall contain at least the following:
   1. The name and address of the person charged with the violation, or the owner or person in charge of the premises at which the violation occurs.
   2. The date and place of the violation.
   3. A short description of the violation followed by the section of the ordinance violated.
   4. 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.
   5. Such other information as the courts may specify.

B. Issue of Citations: Whenever any representative of the Department discovers any violation of this Ordinance or other applicable County Public Health Ordinances, he/she may issue a citation to the person alleged to have committed the violation.

C. Issuance: The citation shall be issued to the person 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.

5.4 EQUITABLE RELIEF: In the event of a violation of this Ordinance or other applicable County Public Health Ordinances, the County Attorney may take appropriate action to enforce, including application for 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.

SECTION VI -- LICENSING PROCEDURES

The procedure for application, issuance, denial, suspension, and revocation of any license required by the applicable County Public Health Ordinance shall be set forth herein.

6.1 APPLICATION: Application for a license or license renewal shall be made to the Department as charged with enforcement of the County Public Health Ordinances 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. The license shall be posted in a conspicuous place on the premises of the establishment. Initial and renewal license applications for all licensed sites, facilities or establishments shall be accompanied by the applicable fees as prescribed by the Community Health Board.

A. Bond and Insurance: Required bonds if any, shall be executed by a surety company and be subject to approval of the Community Health Board. Satisfactory evidence of coverage by bond or insurance shall be filed with the Department to which application is made.

B. The Community Health Board, by resolution, may establish reasonable fees for the administration of all Rock County Public Health Ordinances. Such fees may be changed by resolution of the Community Health Board from time to time as they deem appropriate. The fees submitted for the primary license shall be retained by the department, even though the proposed project is not approved and a license is denied.

C. Payment of Fee: The fees required for a license shall be paid at the office of the Department to which application is made. New businesses or new owners opening after October 1st but before January 1st are required to pay half of the normal fee amount. No license fee shall be refunded. No license shall be issued until the fees therefore have been paid in full.

D. Penalty for Late Payment: Every person whose licensed activity, trade, profession, business, privilege, site, facility or establishment is licensed by the Department, other than one who has been closed down or who has not operated such activity in the County after the expiration of the licensing year, shall pay to the Department the regular license fee and, in addition thereto, a penalty fee, at a rate specified by Community Health Board action, shall be added to the amount of the license fee and paid by the proprietor if the annual license fee has not reached the Department by January 31 of the licensing year.

E. Late payment of the License Fee without Penalty No Bar to Prosecution for Operating Without a License: The late payment of the license fee, along with the penalty set forth herein, is no bar to any prosecution by the Community Health Board for operating any licensed activity, trade, profession, business, privilege, site, facility or establishment within the County without a license therefore.

F. Issuance or Denial of License:
   1. Unless otherwise provided in the applicable County Public Health Ordinance, under which a license is issued, the Department shall have sixty (60) days to issue or deny the license or renewal.
   2. 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.
   3. 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. The applicant shall have ten (10) working days, exclusive of the day of service, to request a hearing. 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. After receipt of an appeal request, the Department shall set a time and place for the hearing.

G. License Non-transferable: A license obtained pursuant to a County Public Health Ordinance shall not be transferable.

6.2 SUSPENSION OF LICENSE:

A. Suspension:

1. Any license required under any County Public Health 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. Such suspension shall not occur earlier than ten (10) working days after written notice of suspension has been served on the licensee or, if a hearing is requested, until written notice of the Department action has been served on the licensee. Notice to licensee shall be served personally or by registered or certified mail at the address designated in the license application. Such written notice of Departmental suspension shall contain the effective date of the suspension, the nature of the violation or violations constituting the basis for the 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/she must, within ten (10) County working days, exclusive of the day of service, file a request for a hearing. The hearing request shall be in writing stating the grounds for appeal and serviced personally or by registered or certified mail on the Department by midnight of the tenth (10th) County working day following service. Following receipt of a request for a hearing, the Department shall set a time and place for the hearing.
3. If said suspension is upheld and the licensee has not demonstrated, within the sixty (60) day period, that the provisions of the applicable County Public Health Ordinance and this Ordinance have been complied with, the Department may serve notice of continued suspension for up to sixty (60) days, or initiate revocation procedures.

B. Summary Suspension:

1. If the Department finds that the public health, safety or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered by the Department upon notification of the County Attorney's office and the Community Health Board. Written notice of such summary suspension 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 license 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 of such cases shall state the effective date of the suspension and the nature of the violation or violations 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/she must, within ten (10) County working days, exclusive of the day of service, file a request for a hearing. The hearing 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. Following receipt of a request for an appeal, the Department shall set a time and a place for the hearing.

3. The summary suspension shall not be stayed pending an appeal or informal review by the Department head, but shall be subject to dismissal or re-inspection by the Department.

C. Re-inspections: Upon written notification from the licensee that all the violations for which a suspension or summary suspension was invoked have been corrected, the Department shall re-inspect 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 re-inspection, that the violations constituting the grounds for the suspension have been corrected, the Department shall immediately dismiss the suspension by written notice to the licensee served personally or by registered or certified mail at the address designated by the license application.

6.3 REVOCATION:

A. Any license granted pursuant to any applicable County Public Health Ordinance may be revoked by the Department for violation of any provision of said Ordinance or this Ordinance.

B. Revocation shall not occur earlier than ten (10) County working days from the time that written notice of revocation is served on the licensee or, if a hearing is requested, until written notice of the Community Health Board action has been served on the licensee. Notice to the licensee shall be served personally or by registered or certified mail at the address designated in the license application. Such written notice of Departmental revocation shall contain the effective date of the revocation, the nature of the violation or violations constituting the basis for the 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/she must, within ten (10) working days, exclusive of the day of service, file a request for a hearing. The hearing 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. Following the receipt of a request for a hearing, the Department shall set a time and a place for the hearing.

6.4 VARIANCE:

A. Variance Request: A party may ask the Department to grant a variance based on the applicable parts of MN Rules 4717.7000 to 4717.7040 and 4626.1690 to 4626.1715. A party may request a variance from the applicable MN Rules listed in 4717.7000 Subpart 1. Variances for public swimming pools are issued by the Minnesota Department of Health. This Department will not grant variance requests for MN Rule 4717.7000 Subpart 1J. Also a variance shall not be requested nor shall one be granted from the parts of MN Rules listed in 4626.1690A. The party requesting the variance must submit the variance request in writing to the Department along with any applicable fee. A request must contain:

1. The specific language in the rule or rules from which the variance is requested;
2. The reason why the rule cannot be met;
3. The alternative measures that will be taken to assure a comparable degree of protection to health or the environment if a variance is granted;
4. The length of time for which the variance is requested;
5. A statement that the party applying for the variance will comply with the terms of the variance, if granted;
6. Other relevant information the commissioner determines necessary to properly evaluate the request for the variance.

B. Criteria for Decision: A variance may be granted provided that:
1. The conditions causing the hardships are unique to the property, applicant or licensee.
2. The variance is proved necessary in order to secure for the applicant a right or rights enjoyed by other persons in the same area or district.
3. Granting of the variance will not be contrary to public interest or damaging to the rights of other persons or of properties in the same area or district.
4. The granting of the variance will not be contrary to the policy and intent of the applicable County Public Health Ordinance, or detrimental to the public health, safety and welfare.
5. 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 proved hardship.

C. Informal Administrative Hearing: Unless otherwise provided, the Department shall conduct an informal administrative hearing within thirty (30) days of receipt of an application for variance. The applicant or his/her designated representative shall attend the hearing and present the facts or conditions upon which the application for the variance is based. The Department shall prepare a written decision with its reasons therefore, and serve it personally or by registered or certified mail on the applicant by midnight of the tenth (10th) County working day following the hearing.

D. Request for Formal Hearing: In the event that the Department decides to deny the application for the variance, the applicant may request a formal hearing 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 said Departmental decision. Following receipt of a request for a formal hearing, the Department shall notify the Community Health Board, and the hearing shall be conducted pursuant to Section VII of this Ordinance.

SECTION VII – HEARINGS

7.1 If any applicant or licensee properly requests a hearing on a Departmental denial, suspension or revocation of license or written Departmental denial of a variance, such

hearing shall be held before the Community Health Board or a Hearing Examiner, as provided below, and shall be open to the public.

7.2 Unless an extension of time is requested by the appellant in writing directed to the Chair of the Community Health Board and is granted, the hearing will be held no later than forty-five (45) calendar days after the date of service or 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.

7.3 The Community Health Board shall mail notice of the hearing to the appellant and to the Department at least fifteen (15) 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 applicable County Public Health Ordinance and rules involved.

7.4 Hearing Examiner: The Community Health Board may by resolution appoint an individual, to be known as the Hearing Examiner, to conduct the hearing and to make findings of fact, conclusions and recommendations to the Community Health Board. The Hearing Examiner shall submit the findings of fact, conclusions and recommendations to the Community Health Board in a written report, and the Community Health Board may adopt, modify or reject the report.

7.5 Conduct of the Hearing: The applicant or licensee may be represented by counsel. The Department, the licensee or applicant, and additional parties, as determined by the Community Health Board or Hearing Examiner, in that order, shall present evidence. All testimony shall be sworn under oath. All parties shall have opportunity to respond to and present evidence, cross-examine witnesses, and present argument. The Community Health Board or Hearing Examiner may also examine witnesses.

7.6 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. All findings of fact, conclusions, and decisions by the Community Health Board shall be based on evidence presented and matters officially noticed.

7.7 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 relay in the conduct of their serious affairs. Evidence which is incompetent, irrelevant, immaterial, or unduly repetitious, may be excluded. The hearing shall be confined to matters raised in the Department's written notice of suspension, summary suspension or termination, or in the appellant's written request for a hearing.

7.8 The Community Health Board and/or Hearing Examiner, within 3 (three) days after such hearing, shall sustain, modify, or withdraw the notice of closure, suspension, or revocation depending on its findings. A copy of the decision shall be served by mail to the petitioner or petitioners. Any person aggrieved by the decision by the Community Health Board and/or Hearing Examiner may seek relief there from in any court of competent jurisdiction as provided by the laws of the state.

7.9 At the request of any party or upon motion of the Community Health Board or Hearing Examiner, a pre-hearing conference shall be held. The pre-hearing conference shall be conducted by the Hearing Examiner, if the Community Health Board has chosen to use one, or by a designated representative of the Community Health 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:

A. Clarify the issues to be determined at the hearing.

B. Provide an opportunity for discovery of all relevant documents, photographic or other demonstrative evidence in the possession of each party. The Hearing Examiner or the Community Health Board Representative may require each party to supply a reasonable number of copies of relevant evidence capable of reproduction.

C. 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 known, the party shall describe them thoroughly by job duties and involvement with the facts in issue.

7.10 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 other adverse party prior to the hearing and:

A. The evidence was not known to the party at the time of the pre-hearing conference; or

B. The evidence is in rebuttal to matter raised for the first time at or subsequent to the pre-hearing conference.

7.11 If the applicant or licensee fails to appear at the hearing, he shall forfeit any right to a public hearing before the Community Health Board or Hearing Examiner.

SECTION VIII -- INSPECTION

8.1 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 Public Health Ordinances. 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. The licensee shall be required to allow free access to authorized

representatives of the Department, Community Health Board, or to authorized representatives of any other governmental agency at any reasonable time for the purpose of making inspections as may be necessary to determine compliance with the requirements of this Ordinance or any other applicable ordinance or regulation. Failure of applicant or licensee to permit such inspection shall be grounds for revocation, suspension, or denial of license.

8.2 The Department shall have the right to inspect private property to determine if applicant or licensee is in compliance with the provisions of this Ordinance or any other applicable County Public Health Ordinance.

SECTION IX – SEVERABILITY

9.1 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 this Ordinance which can be given effect without the invalid provision or application and for this purpose the provisions of the Ordinance are severable.

SECTION X -- PROVISIONS ACCUMULATIVE

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

SECTION XI -- NO CONSENT

11.1 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 XII - - REPEAL OF PREVIOUS ORDINANCE

12.1 This Ordinance, adopted 06/19/12, hereby repeals and replaces in its entirety, the Rock County Environmental Licensing Ordinance of July 6, 2010.

SECTION XIII -- EFFECTIVE DATE

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

Adopted this 19 **day of** June, 2012.

Chairman
Rock County Board of Commissioners

Attest:

Kyle Olare
Rock County Administrator