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Sponsors: Kathy Lantry

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5/22/2013	1	City Council	Laid Over to Second Reading	

Amending Chapter 331A of the Saint Paul Legislative Code pertaining to the licensing and regulating of food establishments.

THE COUNCIL OF THE CITY OF SAINT PAUL DOES ORDAIN:

SECTION 1

Chapter 331A of the Saint Paul Legislative Code is hereby amended to read as follows:

Sec. 331A .01. - Purpose.

(a) ~~The purpose of This chapter is to licenses and regulates food establishments establishes standards to protect the health, safety and the general welfare of the people of Saint Paul pursuant to powers granted under the Saint Paul City Charter and Minnesota Statutes Chapters 145A, 157 and § 28A.075.~~

(b) These general objectives include the following:

- (1) Prevent food-borne illness;
- (2) Correct and prevent conditions that may adversely affect persons utilizing food establishments;
- (3) Provide minimum standards for the design, construction, operation and maintenance of food establishments; and
- (4) Meet consumer expectations of the quality and safety of food establishments.

Sec. 331A .02. - Scope.

(a) This chapter ~~shall be applicable~~ applies to all Saint Paul food establishments as defined in Minnesota

Rules 4626.0020, subpart 35, such as, including but not limited to, restaurants, bakeries, butcher shops, pastry shops, boarding houses, drive-ins, bars, taverns, cafeterias, delicatessens, snack bars, grocery stores, convenience stores, caterers, cafes, clubs, lodges, commissaries, youth camps, lodging facilities, resorts, public and private schools, public buildings, group day care facilities, vending machines, mobile food vehicles, food carts, special events, food stands, farmers' markets and similar businesses and establishments.

(b) In the event of a conflict between the provisions of this chapter and the provisions of any other ordinances, statutes, rules and/or or regulations to which a food establishment is subject, the most restrictive ordinance, statute, rule or regulation shall will apply.

(c) This chapter shall does not apply to wholesale food processors, manufacturers or distributors ~~that are~~ licensed by the Minnesota Department of Agriculture or establishments that are exempt under Minnesota Statutes section 157.22.

Sec. 331A .03. - Definitions.

Definitions of words, phrases, and terms used in this chapter shall be those set forth in Minn. Stat. Chapter 28A, Minnesota Rules Chapter 4626, and this section, ~~as well as any other state statutes or rules relating to food safety and inspection.~~

(a) Animal products shall means the portions of animals used as food, such as, but not limited to, the dressed flesh of cattle, swine, sheep, goats, wild game, poultry, fish, shellfish, shellstock and other edible animals or similar types of foods ~~that are~~ offered for human consumption.

(b) Bakery shall means a food establishment that manufactures, processes, prepares, stores, handles or sells bakery products.

(c) Bakery products shall means food items such as, but not limited to, bread, rolls, buns, cakes, cookies, crackers, doughnuts, pies, pastries, pretzels and potato chips.

(d) Butcher shall means a food establishment that manufactures, processes, prepares, stores, handles or sells animal products.

(e) Caterer shall means a food establishment providing, preparing, and/or or serving meals to persons or groups where all food and service expenses are paid by a person or group. Retail sale of individual meals is prohibited. The preparation and Delivery of individual meals box lunches from a licensed restaurant is not considered a catering function.

(f) Change of ownership shall means a licensed business is sold or transferred to another person, business or corporation. A change of ownership, as it relates to an environmental plan review, does not include the changing or adding of officers to an existing partnership or corporation or change of a mailing address. A change of ownership requires application for a new license. Licenses are not transferable.

(g) City shall means Saint Paul, Minnesota.

(h) City council shall means the Saint Paul city council.

(i) Commissary shall means a food establishment that provides equipment, utensils, supplies or storage facilities for use by a caterer or mobile food vehicle operator.

(j) Department shall means the department of safety and inspections.

- (k) Director ~~shall~~ means the director of department of safety and inspections or his/her designated agent.
- (l) Full inspection ~~shall~~ means any inspection of the licensed premises where a review of the majority of the premises and operations is conducted and all previously documented and uncorrected violations are reviewed.
- (m) Grocery products ~~shall~~ means food items including, but not limited to, packaged or bulk foods such as candy, snacks or chips, refrigerated and frozen foods, dairy products, canned foods, dry goods (i.e. tea, coffee, spices, sugar, flour, etc.), fruits and vegetables, bakery products, and animal products.
- (n) Person ~~shall~~ means an individual, firm, corporation, association or partnership.
- (o) Remodel ~~shall~~ means any reconstruction, alteration or repair that requires structural, plumbing, mechanical ~~and/or~~ or electrical permits; changing the location of walls; expanding the area of the facility; substantially changing or expanding the character of the business. "Remodel" does not include replacing a piece of equipment with a like piece of equipment; replacing wall, floor or ceiling finishes; repositioning equipment; or providing new equipment that does not significantly alter the menu or the character of the business. The director shall have discretion in determining when this section applies.
- (p) Retail ~~shall~~ means the sale of food products directly to ~~the~~ a consumer, usually in small quantities and not usually intended for resale.
- (q) Salvage ~~shall~~ means to recover or process damaged or deteriorated food ~~and/or~~ or pet products for resale.
- (r) Self-contained ~~shall~~ means a food establishment that, within its confines, contains all the facilities, equipment, utensils and space necessary for its operation.
- ~~(s) Snacks shall means foods that require limited, on-site food handling or service including but not limited to fruits, cereals, prepackaged bakery products, candy and chips.~~
- (s) Special event ~~shall~~ means a fair, festival, carnival, circus, public exhibition, or community celebration, and includes an event permitted as a block party under Chapter 366.02 of the Saint Paul Legislative Code.
- (t) Special event food establishment means a food establishment operating in a temporary structure at a temporary location in conjunction with a special event. ~~The f~~ Food operations ~~shall~~ must be restricted to the menu items, food preparation methods and equipment submitted in the application and approved by the director. Special event food applications must be submitted a minimum of seven (7) business days prior to the first day of the special event. Applications received less than seven (7) business days prior to the event shall incur are subject to a late fee equal to fifty (50) percent of the license fee. The City may not issue a special event food license or combination of special event food licenses that exceed three special events and ten cumulative days of operation within a twelve (12)-month licensure period.
- (u) Unwholesome ~~shall~~ means anything adulterated, unsound, unhealthful, unclean or unfit for human consumption.
- (v) Wholesale food processor, manufacturer or distributor ~~shall~~ means a food establishment that processes, reprocesses, manufactures ~~and/or~~ or distributes raw materials, food ingredients or food products, packages food for sale to others for resale, commercially slaughters animals or poultry and where the total gross sales from the wholesale processing, manufacturing, ~~and/or~~ or distributing operations exceed fifty (50) percent of the establishment's gross sales.

Sec. 331A .04. - License administration.

(a) License required. Except for those establishments excluded in section 331A.02(c), no person shall may operate a food establishment without a valid license. ~~within the city unless a license for the current year of the applicable type shall have been obtained from the department pursuant to this chapter and the Saint Paul Legislative Code.~~

(b) License application. ~~The application for such licenses shall be~~ License applications must be made on forms furnished by the department and shall must provide information required by state law and set forth such information as may be reasonably required by the department. ~~The issuance of such licenses and their maintenance, termination, and administration shall be in accordance with and subject to all conditions of the Saint Paul Legislative Code, unless otherwise provided herein.~~

(c) License fee; retail food establishment. The license fee for a retail food establishment ~~shall be~~ is determined by the total area used for the display, preparation, processing, storage and sale of foods such as, grocery, bakery and butcher products. Support areas such as offices, bathrooms, hallways, and similar spaces ~~shall~~ are also be included. Basements are not ~~to be~~ included as part of the retail food establishments except for areas used for food preparation or processing.

(d) License fees. Fees for licenses, ~~issued hereunder along with the fees for an environmental plan review, and change of ownership review shall be~~ are set forth in section 310.09(b) and 310.18 of the Saint Paul Legislative Code. An additional fee may be charged for each additional service or operation ~~which that is~~ separate, distinct or unique from the central or main food establishment, as determined ~~and approved by the director.~~

(e) License types.

(1) Catering - Limited: A caterer who prepares and serves food in a licensed food establishment and does not transport ~~and/or or~~ serve food at a satellite location(s). A food vehicle license is not permitted.

(2) Catering - Full: A caterer who transports and serves food at a satellite location(s). A food vehicle license is required. Licensee must use approved food transport containers. ~~shall be provided.~~

(3) Catering - Add-on: A caterer who is licensed in conjunction with a restaurant. A food vehicle license is required to transport and serve food at a satellite location(s). Licensee must use approved food transport containers. ~~shall be provided.~~

(4) Customer appreciation - Food sales: A license to sell food in conjunction with a business customer appreciation event. ~~, where the Food operations shall~~ must be restricted to the menu items, food preparation methods and equipment that have been submitted with the application and approved by the director. Any change in menu items, food preparation methods ~~and/or or~~ equipment ~~shall require approval~~ must be approved by the director prior to the event. Food sales ~~shall~~ must be limited to the building in which the business is located ~~or~~ and exterior areas contiguous to the building. This license ~~shall be~~ is valid for only one event that ~~shall~~ may not exceed three (3) consecutive days. ~~A business shall be~~ Licensees are limited to not more than two (2) such events within a twelve-month period.

(5) Day care food - Limited: A day care facility where food preparation ~~shall be~~ is limited to snacks. On-site preparation of potentially hazardous foods ~~shall~~ is not be permitted.

(5) Day care food: A day care facility where food is prepared ~~and~~ or served on-site.

(6) Food give-away: An individual or organization distributing food products at no charge. Food operations shall must be restricted to the items, food preparation methods and equipment that have been submitted with the application and approved by the director. Any change in menu items, food preparation methods ~~and/or or~~ equipment ~~shall require approval~~ must be approved by the director prior to the give-away. This license ~~shall be~~ is valid for only one give-away that shall may not exceed three (3) consecutive days.

(7) Food processing/packaging/distributing: An additional operation within a restaurant or other food establishment that is not a wholesale food processor, manufacturer, or distributor but involves the processing ~~and/or or~~ packaging of food products that are distributed to ~~and/or or~~ sold at another location. A licensed food vehicle ~~shall be~~ is required to transport food products.

(8) Food vehicle: ~~A~~ Vehicle used for transporting food products.

(9) Food vending machine: A currency-operated machine that dispenses food products. Vending machines that dispense only canned and bottled pop, gum balls, hard candy, unsorted candy, or ice manufactured or packaged by another do not require a city license.

(10) Food vending machine operator: An individual or business that owns and operates food vending machines. An operator's license is not required if the vending machine(s) is owned and located within the operator's own building(s).

(11) Food - Boarding facility: An establishment where food is prepared ~~and/or or~~ served to occupants of a licensed bed and breakfast, rooming ~~and/or or~~ boardinghouse or supervised rooming ~~and/or or~~ boardinghouse.

~~(12) Food - Institutional facility: An establishment where food is prepared and served in a nonprofit place of worship, or nursing home.~~

(12) K-12 school food service: A public or private school through grade twelve with a food service facility that receives and prepares meals requiring extensive food preparation or handling.

(13) K-12 school food service - limited: A public or private school through grade twelve with a food service facility that receives and prepares meals from another licensed food establishment. Only limited on-site food preparation or handling is allowed.

(14) Mobile food cart - Full: A non-motorized human powered cart ~~vehicle~~, such as a pushcart, that is not self-contained and must be returned daily to a commissary for supply and cleaning. These carts may serve potentially and non-potentially hazardous prepackaged or unpackaged preassembled foods such as soups, chili, hotdogs, sandwiches, shaved ice. Foods prepared or served shall be limited to those approved by the director, based on the equipment being used and the design and construction of the cart.

(15) Mobile food cart - Limited: A non-motorized human powered cart used to prepare ~~and/or or~~ serve food products that is not self-contained. These carts may serve only non-potentially hazardous prepackaged foods such as chips, cookies, bottled or canned drinks and prepackaged frozen ice cream products. Cart shall be returned daily to a commissary for resupply and cleaning. Foods prepared ~~and/or or~~ served shall be limited to those approved by the director, based on the equipment

being used and the design and construction of the cart.

(16) Mobile food vehicle: A food establishment preparing ~~and/or~~ or serving foods from a self-contained vehicle, either motorized or within a trailer. Foods prepared ~~and/or~~ or served shall be limited to those approved by the director, based on the equipment being used and the design and construction of the vehicle. A separate commissary may be required for daily resupply and cleaning.

~~(18) Mobile food cart/vehicle – Nonprofit: A mobile food cart/vehicle that is licensed by, or for, a nonprofit organization.~~

(17) Restaurant - (1): A food establishment with food preparation and service for carry-out, delivery or on-site dining with no seats.

(18) Restaurant - (2): A food establishment with food preparation and service for carry-out, delivery, or on-site dining with a seating capacity between one(1) and twelve (12) seats.

(19) Restaurant - (3): A food establishment with food preparation and service for carry-out, delivery or on-site dining with a seating capacity between thirteen (13) and fifty (50) seats.

(20) Restaurant - (4): A food establishment with food preparation and service for carry-out, delivery or on-site dining with a seating capacity between fifty-one (51) and one hundred fifty (150) seats.

(21) Restaurant - (5): A food establishment with food preparation and service for carry-out, delivery or on-site dining with a seating capacity of one hundred fifty-one (151) seats or more.

(22) Restaurant - (D) - Add on: A license for a food preparation or bar area that is in addition to a licensed primary restaurant - 1, 2, 3, 4, or 5 location and that is operated within a licensed facility. The primary restaurant shall be the food preparation/bar area that is at or qualifies for, the highest restaurant license category.

(23) Restaurant - (E) - Extension: A license to extend food preparation ~~and/or~~ or food holding, during normal business hours, to exterior areas contiguous to the building in which the restaurant is located, such as a patio or parking lot. Permitted foods shall be limited to those allowed by the current restaurant license. Restaurant - (E) - Extension licenses may not be issued until the applicant obtains all required written variances to Minnesota Rules Chapter 4626.

(24) Restaurant - (L) - Limited: A food establishment that does not prepare or serve potentially hazardous foods. Service is limited to beverages, bakery products or prepackaged foods.

(25) Retail food establishment: An establishment or that portion of any location or business that is dedicated to the retail serving, preparation, processing or sale of grocery, bakery or animal products.

(26) Retail food establishment - Farmers' market: An establishment operated in accordance with and subject to the regulations and provisions of Chapters ~~11 (City Market)~~ and 331A (Food Protection Standards) of the Saint Paul Legislative Code. Exclusions: Minnesota Consolidated Food License Law, Section 28A.15, Subd. 2 - Persons selling products of the farm or garden occupied and cultivated by them do not require a city license; but they shall be required to comply with all applicable food regulations.

(27) Retail food establishment - Temporary: A temporary establishment where food sales shall be restricted to prepackaged non-potentially hazardous food or nonalcoholic beverages; operating no

more than fourteen (14) days annually at any one location.

(28) Retail food establishment - Nonprofit: An establishment operated by a nonprofit organization, such as a food shelf, that provides food without charge, for humanitarian purposes.

(29) Retail food establishment - Secondary facility: A service or operation which is separate, distinct or unique from the central or main food area, within a licensed retail food establishment, used for the sale, serving, preparation, processing or salvaging of foods. Examples of a secondary facility include a bakery, butcher or salvage operation within a grocery type of establishment or a grocery operation within a butcher or bakery type of establishment. This license shall also allow the serving of foods that shall be restricted to coffee, popcorn, bakery products or nonalcoholic beverages. Each secondary facility requires a separate license.

(30) Retail food establishment - Restricted Food Service: A food service operation which is separate, distinct or unique from the central or main food area within a licensed retail food establishment. This license shall allow the serving of foods that shall be restricted to coffee, popcorn, bakery products and/or or non-alcoholic beverages. Licensees shall have a retail food establishment license but shall not have a retail food establishment - secondary facility license.

(31) Special event food sales - 1 to 3 days: A license for a special event food establishment that shall be valid for only one (1) event and shall not exceed three (3) consecutive days. Any change in menu items, food preparation methods and/or or equipment shall require approval must be approved by the director prior to the event. This license shall only be issued in conjunction with a special event.

(32) Special event food sales - 4 to 14 10 days: A license for a special event food establishment that shall be valid for only one (1) event and shall not be issued for less than four (4) consecutive days nor shall exceed ~~fourteen (14)~~ ten (10) consecutive days. Any change in menu items, food preparation methods and/or or equipment shall require approval must be approved by the director prior to the event. This license shall only be issued in conjunction with a special event.

(33) Special event food sales - up to three events: A license for a special event food establishment that is valid for up to three (3) events with no more than ten (10) cumulative days within a twelve (12) month licensure period. Any change in menu items, food preparation methods or equipment must be approved by the director prior to the event. This license will only be issued in conjunction with a special event.

~~(35) Special event food sales – Annual: A license for a special event food establishment participating in an unlimited number of special events within a twelve-month period. At the time of application, all events to be participated in during the upcoming twelve (12) months must be listed. Any change in the events listed in the application shall be submitted in writing, to the director for approval, a minimum of seven (7) business days prior to the event. Any change in menu during the twelve-month license period shall require submission of a new license application and payment of a new fee. This license shall only be issued in conjunction with a special event.~~

(34) Special event food sales - Extension: A special event food establishment license for a restaurant to extend food sales in conjunction with a special event to areas contiguous to the restaurant, and where the food operations shall be restricted to the menu items, food preparation methods and equipment that have been submitted with the application and approved by the director. Any change in menu items, food preparation methods and/or or equipment shall require approval must be approved by the director prior to the event. This license ~~shall be~~ is valid for only one (1) event that shall not exceed ~~fourteen (14)~~ ten (10) consecutive days.

(35) Nonprofit One (1) Day Special Event - Multiple Food Stands. A special event license issued to a nonprofit organization, valid for one day. Nonprofit organizations operating a special event with multiple food stands at one location will be issued only one license. Only one Nonprofit One (1) Day Special Event - Multiple Food Stands license may be issued in a 12-month period. License fees must be established in 310.18 based on the number of individual food stands at the special event.

(36) Special event food sales - Nonprofit: A special event food establishment license issued to a registered nonprofit organization or other entity donating profits from special event food sales to a registered nonprofit organization. Any change in menu items, food preparation methods and/or or equipment shall require approval must be approved by the director prior to the event. This license shall be valid for only one event that shall not exceed fourteen (14) ten (10) consecutive days.

(37) Seasonal temporary food stand. "Seasonal temporary food stand" means a food and beverage service establishment that is a food stand which is disassembled and moved from location to location, but which operates no more than 21 days within a twelve (12)-month licensure period at any one location. Licensees must meet Minnesota Food Code safety and equipment standards. This license will only be issued for special event operations.

(e f) License fee; special event food establishment. The license fee for a special event food establishment shall be determined by the total area used for the display, preparation, processing, storage and sale of foods. The base size for a special event food establishment shall be one hundred fifty (150) square feet. Each one hundred fifty (150) square foot area or portion thereof in excess shall incur a separate license fee. Larger and/or or additional food establishment sizes require additional review and inspection by the department of safety and inspections (DSI). Multiple locations by an operator at a single event will require a separate special event license for each location.

(f g) License expiration. Licenses issued pursuant to this chapter shall expire in accordance with section 310.18(a) 310.08(a) of the Saint Paul Legislative Code.

(g h) Transfer and display of license.

(1) A license may only be issued if all of the requirements of this chapter have been met by the applicant. Only a person who complies with the requirements of this chapter shall be entitled to receive a license. A license shall is not be transferable as to person or place. A license obtained for a food establishment shall must be conspicuously displayed to the public.

(2) A catering food vehicle operating in the city shall must be identified with the name, city and telephone number of the licensee displayed on both sides of the vehicle in a conspicuous place as designated by the department. The name shall be in letters of four (4) inches minimum height and of a color contrasting with the background.

(i) Food safety training. The department may require a license applicant or licensee an applicant for a license to participate in food safety training. a meeting or training. session provided by the department, including the use of videotape or other alternative training methods, for the purpose of providing information in the factors that cause and prevent foodborne illness if the applicant is not required to employ a certified food manager.

(j) The department of safety and inspections may require a licensee to maintain, on the premises, up-to-date written policies or guidelines for food preparation and handling, including proper temperature maintenance of potentially hazardous food; sanitation practices and techniques; employee training in food handling procedures and personal hygiene; monitoring of all activities listed above; and a facility, equipment and utensil cleaning schedule.

Sec. 331A .05. - Inspections and plan review.

(a) Inspection and plan review required. The department shall inspect each food establishment and conduct environmental and change of ownership plan reviews, as applicable, prior to issuing a license. ~~for a new establishment or change of ownership. The department may not issue a license under this chapter until all required corrections resulting from the inspection and plan review have been made to the department's satisfaction. A license shall not be issued until the corrections required by the department, as a result of the environmental plan review or change of ownership review inspections have been made, to the satisfaction of the department.~~

(b) Inspection of food establishments. The department shall inspect every food establishment as frequently as it ~~may~~ deems necessary to ~~insure~~ ensure compliance with this chapter, but not less than the minimum frequency for establishments established by Minnesota Statutes § 157.20 or other applicable statutes or rules.

(c) Inspection report. The department ~~shall mail~~ must issue an inspection report to the licensee or his/her authorized agent ~~by regular mail. A copy of the~~ The inspection report will be maintained by the department. ~~shall be filed with the records of the department.~~

(d) Access to premises and records; interference with health authority. ~~The~~ A person operating the a food establishment shall, upon request and after proper identification by the department, permit access to all parts of the establishment at any reasonable time for the purpose of inspection, and shall exhibit and allow copying of any records necessary to ascertain sources of foods and methods of food preparation. No persons shall may interfere with or hinder the department in the performance of its duties, or refuse to permit the department to make such inspections.

(e) Removal and correction of violations. After receiving a report giving notification of one (1) or more violations of this chapter, a licensee shall correct each violation in a reasonable length of time as determined by the department. The length of time for the correction of each such violation shall must be noted on the inspection report. ~~The f~~ Failure to correct each such violation within the time period noted on the inspection report shall constitute is a separate violation of this chapter.

(f) Environmental plan review required. A person shall may not begin to construct, remodel, or alter a food establishment until the director has reviewed and approved the plans and specifications required by this subsection. The food establishment shall must be constructed and finished in conformance with the approved plans. The director may inspect the food establishments as frequently as deemed necessary during construction to ensure that construction occurs in conformance with this chapter. The director shall conduct a final inspection prior to the start of operations and issuance of an approved license. If work has commenced prior to approval of plans when required, the director may issue orders to halt the construction, extensive remodeling, expansion, or alteration, or may issue orders, including demolition or removal, if reasonably necessary to ~~determine~~ ensure compliance with the standards of this chapter.

(g) Change of ownership review required. Upon a change of ownership of a food establishment, the director shall conduct a change of ownership review of the premises to determine compliance with the requirements of this chapter.

Sec. 331A .06. - Grounds for emergency closure.

(a) Single violations. The department may issue orders to summarily close any food establishment for any of the following reasons:

- (1) Failure to possess a license required by this chapter;
- (2) Evidence of a sewage backup in a food preparation, food storage, or utensil washing area;
- (3) Lack of potable, hot or cold water under pressure to the extent that handwashing, utensil washing, food preparation, or toilet facilities are not operational;

- (4) Lack of electricity or gas service to the extent that handwashing, utensil washing, food preparation, lighting, or toilet facilities are not operational;
- (5) Evidence of an ongoing foodborne illness caused by the operation of the establishment; or
- (6) The presence of any condition that poses an imminent risk of substantial harm to the public health, safety or welfare.

(b) Procedure for emergency closure.

(1) If, following an on-site inspection, the department determines that closure of a food establishment is required in order to protect public health as provided in this section, the director shall order the immediate closure of the establishment in writing. The order shall identify the food establishment, describe the specific grounds upon which closure is based, direct the immediate closure of the establishment and vacating of the premises by consumers, list the corrective actions necessary to re-open the establishment, and state that a hearing on the emergency closure may be requested by the licensee. The order shall be served in person on the owner, manager, or person in charge of operations of the premises.

(2) The person receiving the order shall close the establishment and request all persons to vacate. The establishment shall remain closed until the department rescinds the order for emergency closure. Failure to close the establishment is a misdemeanor. In the event the person receiving the order fails to close the establishment, the department may order all persons to vacate the premises. Failure to leave upon said orders is a misdemeanor. Where a person fails to vacate the premises as ordered by the department, the police may be summoned to assist in vacating the premises and issuing such citations or making such arrests as may be necessary to comply with this subsection.

(3) The licensee may request, in writing, a hearing on the emergency closure, and the conditions, if any, to be imposed for reopening the food establishment. The hearing shall must be held within two (2) business days before an independent hearing examiner, except that the licensee may waive the foregoing time restrictions and consent to scheduling the hearing at a later date. The independent hearing examiner shall render a written decision within two (2) business days after the conclusion of the hearing, and shall either sustain the grounds set forth in the order of emergency closure, in which case the order shall remain in full force and effect pending further orders of the department, or find that the evidence does not support the emergency closure, in which case the order shall be deemed dismissed and the establishment may reopen forthwith, subject to any further proceedings for adverse action.

(4) Any person aggrieved by the findings and conclusions of the independent hearing examiner may appeal to the city council by filing a notice with the city clerk, who shall note the matter for hearing at the city council meeting next following the date of such appeal. The council may modify the findings and conclusion of the independent hearing examiner as it deems appropriate on the record, or continue the closure order pending the further orders of the department.

Sec. 331A .07. - Standards for health, safety, and nuisance.

(a) Standards adopted. Minnesota Rules, Chapter 4626 (Minnesota Food Code) in effect on the effective date of this chapter, as it may be amended from time to time, is hereby adopted by reference and made a part of this chapter except as otherwise expressly provided in this chapter.

(b) Standards amended. The standards imposed by the above adopted rules, as incorporated herein by reference, are hereby modified as follows:

- (1) The standard imposed by Minnesota Rules 4626.0130, paragraph B is modified as follows: Except as allowed by Minnesota Statutes, sections 28A.15 and 157.22, clauses (6) and (7), food used or offered for human consumption ~~in a food establishment or at a special event~~ shall not be prepared or

stored in a private home or any other location that is not licensed to prepare or store food.

(2) The standard imposed by Minnesota Rules 4626.1050, paragraph A is modified as follows: A handwashing lavatory shall be equipped to provide water at a temperature of at least 43 degrees C (110 degrees F), but not more than 54 degrees C (130 degrees F), through a mixing valve or combination faucet, except that the maximum temperature in a food establishment utilizing a hot water sanitizing dishwashing machine that was installed prior to August 29, 1993 shall not exceed 140 degrees F (60 degrees C) from the faucet.

~~(3) Except for food establishments licensed under the authority of Minn. Stat. Chapter 28A, the standard imposed by Minnesota Rules 4626.1325, paragraph A, subparagraph (3) is modified as follows: nonabsorbent and constructed of material which resists the wear and abuse to which they are subjected such as quarry tile, ceramic tile, or terrazzo, for food preparation, food serving, wait station, kitchen, bar, walk-in refrigeration, warewashing, toilet, mobile food establishment servicing, handwashing, janitorial, and interior garbage and refuse storage areas; areas subject to flushing or spray cleaning methods; and other areas subject to moisture.~~

(3) The standard imposed by Minnesota Rules 4626.1440 is modified as follows: Each handwashing lavatory or group of two (2) adjacent lavatories shall have available:

- a. A supply of liquid, powder or bar soap;
- b. A nailbrush at the handwashing lavatory used by employees; and
- c. A sign directing food service employees to wash their hands.

~~(5) The standard imposed by Minnesota Rules 4626.1715, paragraph B, is modified as follows: A party may appeal the denial, revocation, or refusal to renew a variance in accordance with and subject to all conditions of the Saint Paul Legislative Code, unless otherwise provided herein.~~

~~(c) Food manager certification. A licensee shall maintain in employment at each licensed establishment at least one (1) owner, manager, or supervisor who spends a substantial amount of his or her working hours at the food establishment, has completed an approved food service manager certification program, and is registered with the Minnesota Department of Health as a Certified Food Manager in accordance with Minnesota Rules 4626.2000 thru 4626.2025.~~

~~Sec. 331A .08. Industry self-survey and training responsibility.~~

~~(a) Self-inspection program.~~

~~(1) Every licensee of a food establishment shall arrange for and maintain a program of sanitation self-inspection conducted by the owner, manager, sanitation supervisor, or designated agent. The self-inspection program shall must be approved by the department.~~

~~(2) The licensee shall maintain, on the premises, up-to-date written policies or guidelines for food preparation and handling, including proper temperature maintenance of potentially hazardous food; sanitation practices and techniques; employee training in food handling procedures and personal hygiene; monitoring of all activities listed above; and a facility, equipment and utensil cleaning schedule.; and other means as required by the department.~~

Sec. 331A .08. - Separability. Severability.

If any provision or application of any provision of this chapter is held invalid, that invalidity shall not affect other provisions or applications of this chapter.

Sec. 331A .09. - Penalty.

Any person who violates this chapter, or who permits a violation to exist on the premises under his/her control,

or fails to take action to abate the existence of the a violation within the specified time period when ordered or notified to do so by the department, shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished as provided.

Sec. 331A .10. - Administrative enforcement.

~~Violation of the state food code or related regulations of the state or city shall be~~ the Minnesota Food Code or Saint Paul Legislative Code is grounds for adverse action against licenses issued under this chapter. Any violation shall be categorized into one (1) of two (2) categories.

(1) ~~Critical violations have the definition found in the state food code. These violations refer to food-related conditions that are more likely than other conditions to contribute to food contamination, illness, or environmental degradation. Critical Violations~~ pose an imminent public health risk and require correction immediately in some cases, or in less severe cases require correction by a date determined by the department of safety and inspections. These violations shall be penalized according to the penalty matrix found in chapter 310.05 of this Code. Any critical violation as defined above may require a reinspection. Failure to correct upon reinspection ~~shall be considered~~ is an aggravating factor in determining the appropriate penalty. Critical violations are further categorized as follows:

a. Critical violation - Major: A critical violation that is egregious and should have been known by ownership ~~and/or~~ or management to contribute to food contamination, illness or environmental degradation that places consumers at a high risk for food-borne illness. A violation of this nature ~~shall~~ may result in re-inspection and ~~may result in~~ immediate adverse action.

b. Critical violation - Minor: A critical violation that should have been known by ownership ~~and/or~~ or management to have an impact on business or food service practices that are vital to the support of food safety within an establishment and that are of a lesser risk than a critical major violation to contribute to food contamination, illness or environmental degradation.

~~A violation of this nature may result in adverse action under the following conditions:~~

i. ~~Continuous Repeated critical minor violation:~~ A ~~minor repeated critical minor~~ violation shall be treated as a major critical violation under chapter 310.05 if the violation is documented and uncorrected at two (2) consecutive inspections.

i. ~~Recurring critical minor violation:~~ A ~~minor critical minor~~ shall be treated as a major critical violation if the same violation is documented at three (3) or more inspections over the course of four (4) years.

(2) ~~Non-critical violations are all violations of the State food code Minnesota Food Code or related regulations of the state or the city other than those defined as critical violations under the state food code. Non-critical violations are aggravating factors that may result in increased penalties for critical violations at the same establishment.~~ may result in adverse action under the following conditions:

a. ~~Continuous non-critical violation:~~ The same non-critical violation is documented and uncorrected at ~~three (3) consecutive full inspections.~~

b. ~~Recurring non-critical violation:~~ The same non-critical violation is documented at ~~four (4) inspections within five (5) years.~~

c. ~~Numerous non-critical violations:~~ Ten (10) or more non-critical violations of any kind documented at ~~two (2) consecutive full inspections. The number of violations, rather than the type of non-critical violation is the important factor. The non-critical violations at the first and second inspection are not required to be identical violations.~~

(3) Department of safety and inspections fine recommendation. The department of safety and inspections shall

make a penalty recommendation for all adverse licensing action as outlined in this section. That recommendation shall be determined by the department of safety and inspections after consideration of the food code penalty guideline which is published on the website of the department of ~~public safety~~ safety and inspections and available upon request. The department of safety and inspections shall also consider mitigating ~~and/or~~ and aggravating factors including but not limited to:

- a. The potential for harm or imminent threat to public health;
- b. The extent of deviation from statutory or regulatory requirements;
- c. The degree of willfulness or negligence;
- d. The history of noncompliance or compliance;
- e. The demonstration of good faith efforts to correct a violation;
- f. The type of operation including the methods and extent of food storage, preparation, and service;
- g. The existence of any non-critical violations.

(4) Nothing in this chapter limits the authority of the state department of safety and inspections or the city to impose additional sanctions for the described violations.

Sec. 331A .11. - Allergen awareness.

(a) Allergen awareness poster: Every establishment holding a restaurant license under this chapter shall must prominently display in the staff area a poster approved by the department of ~~safety and inspections~~ relative to food allergy awareness. Such poster shall must be at least eight and one-half (8½) inches by eleven (11) inches. ~~The poster shall be made available for free download and approved by the department of safety and inspections.~~

(b) Violation of this section: ~~A violation of any part~~ Violation of this section shall be considered is a "Critical violation - Major" and subject to the enforcement actions outlined in section 331A.11.

SECTION 2

This Ordinance shall take effect and be in force thirty (30) days following its passage, approval and publication.