

Wilkin County Administrative Ordinance

The County Board of Wilkin County ordains:

SECTION 1 APPLICATION OF ORDINANCE

- A. **APPLICATION:** Where a provision of a Wilkin County ordinance requiring a permit or license contains no procedure for issuance, denial, variance, revocation, suspension, renewal, fee, compliance meeting, 10-day letter, administrative penalty order, administrative hearings, or other enforcement options, the provisions of this ordinance shall apply.
- B. **OTHER PROVISIONS:** Where provisions of a Wilkin county ordinance requiring a permit or license contains procedures for its issuance, denial, variance, revocation, suspension, renewal, or fee, such provisions prevail over this ordinance, and this ordinance shall not to the extent, and only to the extent, that it does not conflict with such provisions. The enforcement provisions found in Section IV of this ordinance apply to violations or threatened violations of any Wilkin County Ordinance.

SECTION II DEFINITIONS

- A. **COUNTY:** Shall mean the County of Wilkin.
- B. **COUNTY BOARD:** Shall mean the Wilkin County Board of Commissioners.
- C. **DEPARTMENT:** Shall mean a separate part, division, bureau, sub-unit or branch of Wilkin County authorized by the County Board to carry out or enforce any provision of a County Ordinance.
- D. **LICENSE:** Includes the whole or part of any permit, certificate, approval, registration, or similar form of permission or renewal required by County ordinance or State law administered by the County for the operation of any business, service or facility.
- E. **LICENSEE:** Shall mean 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 ordinances.
- F. **PERSON:** Shall mean any individual, firm, partnership, public or private corporation, municipality, or other organization, receiver, trustee, assignee or agent, and with respect to acts prohibited or required herein, shall include employees or licensees.

SECTION III UNLAWFUL ACTIVITIES

It is unlawful for any person:

- A. To engage in any activity, trade, profession, business or privilege to operate any size facility or establishment for which a license is required by any provision of a County ordinance unless such person has first obtained such license.
- B. To engage in any activity, trade, profession, business or privilege to operate any size facility or establishment for which a license is required by any provision of a County ordinance

when any license granted for the conduct of the activity, trade, profession, business or privilege of operation of such site, facility, or establishment has been revoked or suspended.

- C. Who possesses a valid license pursuant to County ordinance to engage in any activity, or operate any such licensed facility, establishment, profession, business, or privilege in such a way as to violate any requirement of any County Ordinance applicable to such activity, trade, profession, business, privilege, site, facility, or establishment.
- D. To fail or refuse to correct any condition or method of operation which violates any County ordinance applicable to the conduct of any licensed activity, trade, profession, business, privilege, site, facility or establishment after being ordered to do so by the County.

SECTION IV ENFORCEMENT

- A. MISDEAMENOR: Any person who violates the provision of this County ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be punished therefor as provided by law. A separate offense shall be deemed committed upon each day during or on which a violation occurs or continues.
- B. CITATION: The Department or any of its duly authorized representatives charged with the responsibility of administration and enforcement of any County ordinance shall have the power to issue citations for violations of this ordinance or other applicable County ordinances.
 - 1. Form of Citations: Citations shall contain at least the following:
 - a. 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.
 - b. The date and place of the violation.
 - c. A short description of the violation followed by the section of the ordinance violated.
 - d. The date and place at which the person receiving the citation shall appear and a notice that if there is a failure to appear an arrest warrant may be issued.
 - e. Such other information as the courts may specify.
 - 2. Issue of Citations: Whenever any representative of the Department discovers any violation of this ordinance, he may issue a citation to the person alleged to have committed the violation.
 - 3. 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.

- C. **EQUITABLE RELIEF:** In the event of a violation or threat of violation of this ordinance, the County Attorney may take appropriate action to enforce this ordinance, including application of 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.
- D. **ADMINISTRATIVE ENFORCEMENT ACTIONS:**
1. The Department shall:
 - a. Issue orders of correction for violations of state statutes, laws, rules and regulations governing the ordinance for which the license has been issued.
 2. The Department may issue additional orders to:
 - a. require additional education for licensees or their operators
 - b. require standard operating procedures
 - c. require maintenance schedules by facility staff to ensure proper sanitation and routine cleaning, or
 - d. otherwise needed to come into compliance.
 3. Re-inspections will be performed in accordance with criteria established by the Department in consideration of rules and regulations governing the ordinance for which the license has been issued. Re-inspections will occur in a timely manner as determined by the nature of the violation or violations. A re-inspection fee shall be established by the County Board. A re-inspection fee will be assessed on the day of the re-inspection.
 4. The Department may re-inspect more frequently than required by law at his discretion for continuing violations.
 - a. During re-inspection, if critical violations are repeated and new critical violations are found or if the Department determines that adequate progress is not being made on issued orders, another re-inspection may be scheduled and an additional fee assessed.
 - b. On the third inspection, if the critical orders are not complied with or if the Department determines that adequate progress is not being made on issued orders, the facility may be closed or an administrative hearing may be scheduled.
 5. A licensee which fails to comply with health or safety violations or has repeated occurrences of violation(s) and terms of compliance with the Department may be issued a 10-Day letter from the Health Authority. The letter will contain the violation(s) issued, detailed descriptions for each violation, and terms of compliance.
 6. A licensee which fails to comply with requirements of a 10-Day letter the Department will issue an Administrative Penalty Order and begin the process for suspension or revocation of the license.

SECTION V LICENSING PROCEDURES

Unless provided by other County ordinances, the procedure for application for, issuance, denial, suspension or revocation of any license required by the ordinance of the County shall be set forth herein.

A. Application: Application for a license or license renewal shall be made to the County Department charged with enforcement of the County ordinance requiring the applicant to be licensed, and shall be on forms furnished by the Department. The applicant shall state the location of the proposed activity and such other facts as are required by the Department for the granting of the license.

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

2. Payment of Fee: The fees required for a license shall be established in a fee schedule maintained by the office administering that licensing function and set by the Wilkin County Board on an annual basis. The fees required for a license shall be paid at the office of the Department to which application is made. A license fee may be prorated for a portion of a year for a new business or owner operating after October 1 but before January 1 by reducing the fee to one-half of the normal annual fee. No license shall be refunded. No license shall be issued until the fees therefor have been paid in full.

3. Penalty for Late Payment: Every person whose license activity, trade, profession, business, privilege, site, facility or establishment is licensed by the County, 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, the following penalty for late application for a renewal license.

a. One (1) to thirty (30) days the annual late fee penalty set by the County Board.

b. After thirty (30) days the annual late fee penalty set by the County Board.

c. After expiration of thirty (30) days from the due date, the activity for which a license is required shall cease. If a new license or permit is approved, the fee shall consist of the amount set forth for new licenses and permits, plus the annual late penalty fee.

4. No Bar to Prosecution: The late payment of the license fee, along with the penalty set forth herein, is no bar to any prosecution by the County for operating any licensed activity, trade, profession, business, privilege, site, facility or establishment within the County without a license therefor.

5. Issuance or Denial of License:

a. Action by the Department: Unless otherwise provided in the ordinance under which a license is issued, the Department shall have sixty (60) days to issue or deny the license or renewal.

b. Notice of Action: 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.

c. Denial of Application:

(1) Notice of Denial: 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 serviced by certified mail to said applicant at the address designated in the license application

(2) Request For Hearing: The applicant shall also be given written notice that it 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 mail on the Department by midnight of the tenth (10th) County working day following the service of the notice of denial.

(3) Failure to Request Hearing: 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.

(4) Appeal: After receipt of an appeal request, the Department shall set a time and place for the hearing.

6. License Non-transferable. A license pursuant to a County Ordinance shall not be transferrable to a new owner or establishment.

B. Suspension of License:

1. Suspension:

a. Power to Suspend; Duration: Any license required under any County ordinance may be suspended by the Department for violation of any provision of this ordinance or of the ordinance under which the license was issued. Upon written notice to the licensee said license may be suspended for a period not longer than sixty (60) days or until the violation is corrected.

b. Effective Date of Suspension: Notice:

(1) Effective Date: 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 County Board action has been served on the licensee.

(2) Service of Notice: Notice to the licensee shall be served personally or by certified mail at the address designated in the license application.

(3) Contents of Notice: Request for Hearing: Such written notice of Departmental suspension shall contain the effective date of the suspension, the nature of the violation or violations constituting the bases 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 must, within ten (10) County working days, exclusive of the day of the service, file a request for a hearing.

(4) Request for Hearing: The hearing request shall be in writing stating the grounds for appeal and served personally or by mail on the Department by 12:00 midnight of the tenth (10) County working day following service. Following receipt of a request for a hearing, the Department shall set a time and place for the hearing.

c. Notice of Continued Suspension: If said suspension is upheld and the licensee has not demonstrated within the sixty (60) day period that the provisions of the ordinance have been complied with, the Department may serve notice of continued suspension for up to sixty (6) days or initiate revocation procedures.

2. Summary Suspension:

a. Emergency Action:

(1) Find of Emergency: 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 by the Department upon notification of the County Attorney's office and the County Board.

(2) Service of Notice: Written notice of such summary suspension shall be served by registered or certified mail to said licensee at the address designated on the license application.

(3) Copies of Notice Posted: 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 for this section.

b. Contents of Notice:

(1) Written Notice: The written notice shall state the effective date of the suspension and the nature of the violation requiring emergency action, the facts which support the conclusion that a violation or violations have occurred and a statement that if the licensee desired to appeal, he must, within ten (10) County working days, exclusive of the day of service, file a request for a hearing.

(2) Request for a hearing: The hearing request shall be in writing stating the grounds for appeal and served personally or by mail on the Department by 12:00 midnight of the tenth (10) County working day following service. Following receipt of a request for a hearing, the Department shall set a time and place for the hearing.

c. Appeal: Informal Review: 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.

3. Re-inspections:

a. Notice of Correction: 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) working days after receipt of notice from the licensee.

b. Dismissal of Suspension: 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 certified mail at the address designated in the license application.

C. Revocation:

1. Power to Revoke: Any license granted pursuant to any County ordinance may be revoked for violation of any provision of that ordinance or this ordinance.

2. Effective Date of Revocation: Revocation shall not occur earlier than ten (1) 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 County Board action has been served on the licensee.

3. Notice of Revocation:

a. Service: Notice to the licensee shall be served personally or by certified, mail at the address designated in the license application.

b. Content: 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 revocation, the facts which support the conclusion that a violation or violations have occurred and a statement that if the licensee desires to appeal, he must, within ten (10) working days exclusive of the day of service, file a request for a hearing.

4. Request for Hearing: The hearing request shall be in writing stating the grounds for appeal and served personally or by mail on the Department by 12:00 midnight of the tenth (10) County working day following service. Following receipt of a request for a hearing, the Department shall set a time and place for the hearing.

D. Variance Procedure: (The following procedure shall be used except in proceedings to obtain a variance from any ordinance adopted pursuant to the provisions of Minnesota Statutes Chapter 394).

1. Variance Permitted: In any case upon application to the Department, it appears by reason of exceptional circumstance that the strict enforcement of any provision of the standards of a County Ordinance would cause unnecessary hardship, or that strict conformity with the standards would be unreasonable and impractical, or not feasible under the circumstances, the Department may permit a variance therefrom upon such conditions as it may prescribe for management consistent with the general purposes and intent of the applicable ordinance and of all other applicable State and local regulations and laws.

2. Variance Conditions: A variance may be granted provided that:

- a. The conditions causing the hardship are unique to the property, applicant, or licensee.
- b. 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.
- c. Granting the variance will not be contrary to public interest or damaging to the rights of other persons or properties in the same area or district.
- d. The granting of the variance will not be contrary to the policy and intent of the ordinance or detrimental to the public health, safety, and welfare.
- e. 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.

3. 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 designated representative shall attend the hearing and present the facts or conditions upon which the application for variance is based. The Department shall prepare a written decision, with its reasons therefor, and serve it personally or by certified mail on the applicant by (12:00) midnight of the tenth (10th) County working day following the hearing.

4. Request for Formal Hearing: In the event that the Department decides to deny the application for 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 mail on the Department by (12:00) 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 County Board, and the hearing shall be conducted by the Wilkin County Board pursuant to its rules and procedures.

E. Compliance Meeting:

1. Compliance meetings may be scheduled for violations not corrected, over subsequent inspections, the licensee demonstrates unwillingness to correct violations, or to establish a dialogue with an operator for clarity or rule interpretation for establishment operation.
2. The Department and the licensee will provide facts and concerns and will mutually agree to ensuing corrective actions and timelines.
3. Compliance meetings will be scheduled in a timely manner not to compromise public health or safety. The compliance meeting will be confirmed in writing, including a list of specific violations, requirements, concerns, or conditions. The outcome will be documented in writing and filed for future reference. Copies of the letter will be annotated and sent to other parties as deemed appropriate.

SECTION VI HEARINGS

- A. Hearing Before County Board or Hearing Examiner: If any applicant or licensee properly requests a hearing on a Department denial, suspension, or revocation of license, such hearing shall be held before the County Board or hearing examiner and shall be open to the public.
- B. Hearing Date: Unless an extension of time is requested in writing directed to the Chair of the County Board and is granted, the hearing will be held no later than forty-five (45) calendar days after the date of service of request for a hearing, exclusive of the date of such service. In any event, such hearing shall be held no later than ninety (9) days after the date of service or request for a hearing, exclusive of the date of such service.
- C. Notice of Hearing: The County Board shall mail a notice of hearing to the applicant or licensee and to the Department at least fifteen (15) working days prior to the hearing. Such notice shall include:
 1. A statement of time, place, and nature of the hearing.
 2. A statement of the legal authority and jurisdiction under which the hearing is to be held.
 3. A reference to the particular section of the ordinance and rules involved.
- D. Hearing Examiner: The County 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 County Board. The hearing examiner shall submit the findings of fact, conclusions, and recommendations to the County Board in written report and the County Board may adopt, modify, or reject the report.
- E. 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 County Board, or hearing examiner, in that order shall present evidence. All testimony shall be

sworn under oath. All parties shall have full opportunity to respond to and present evidence, cross-examine witnesses, and present argument. The County Board may also examine witnesses.

- F. Burden of Proof: The Department shall have the burden of proving its position by a preponderance of evidence, unless a different burden is provided by substantive law and all findings of fact, conclusions and decisions by the County Board shall be based on evidence presented and matters officially noted.
- G. Evidence: All evidence which possesses probative value, including hearsay, may be admitted if it is the type of evidence on which prudent persons are accustomed to rely in the conduct of their serious affairs. Evidence, which is incompetent, irrelevant, immaterial, or unduly repetitious, may be excluded. The hearing shall be confined to the matters raised in the Department's written notice of suspension, summary suspension, or termination or in the appellant's written request for a hearing.
- H. Pre-hearing conference: At the request of any party or upon motion of the County Board or hearing examiner, a pre-hearing conference shall be held. The pre-hearing conference shall be conducted by the hearing examiner if the Board has chosen to use one, or by a designated representative of the County Board. The pre-hearing conference shall be held no later than five (5) County working days before the hearing. The purpose of the pre-hearing conference is to:
 - 1. Issues: Clarify the issues to be determined at the hearing.
 - 2. Evidence: Provide an opportunity for discovery of all relevant documentary, photographic, or other demonstrative evidence in the possession of each party. The hearing examiner or Board's representative may require each party to supply a reasonable number of copies of relevant evidence capable of reproduction.
 - 3. Witnesses: 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 address are not known, the party shall describe them thoroughly by job duties and involvement with the facts in issue.
- I. Evidence Not Divulged at Prehearing: If a pre-hearing conference is held, evidence not divulged as provided above shall be excluded at the hearing unless the party advancing the evidence took all reasonable steps to divulge it to the adverse party prior to the hearing and:
 - 1. The evidence was not known to the party at the time of the pre-hearing conference; or
 - 2. The evidence is in rebuttal to matters raised for the first time at or subsequent to the pre-hearing conference.
- J. Failure to Appear: If the applicant or licensee fails to appear at the hearing, the shall forfeit any right to a public hearing before the County Board.

SECTION VII INSPECTION

A. Routine Inspection and Evaluation:

1. Required: 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 necessary to insure consistent compliance by the applicant or licensee with the provisions of the County Ordinance.
2. Notice of Deficiencies, Recommendations: 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.
3. Access: The licensee shall allow free access to authorized representatives of the Department, County Board, or to authorized representatives of any other governmental agency at any reasonable time for the purpose of making such inspections as may be necessary to determine compliance with the requirements of this ordinance, or any other applicable statute, ordinance or regulation. Failure of applicant or licensee to permit such inspection shall be grounds for revocation, suspension, or denial of license.

- B. Right to Inspect: The County shall have the right to inspect private property to determine if an applicant or licensee is in compliance with the provisions of this ordinance.

SECTION VIII. SEVERABILITY

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

SECTION IX PROVISIONS SUPPLEMENTAL

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

SECTION X NO CONSENT

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 XI EFFECTIVE DATE

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

Repealed, revised Administrative Ordinance, effective February, 2017.

Adopted by the Wilkin County Board of Commissioners on February 21, 2017.



Stephanie Miranowski, Chair

Attested:



Janelle Krump, Auditor-Treasurer