

# Best Practices Manual for Administering Consistent, Uniform, and Safe Food, Pools, and Lodging Programs in Minnesota

## *Section One: Regulatory Foundation*



Minnesota Department of Health  
Environmental Health Division  
Food, Pools, and Lodging Services Section

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Minnesota Department of Health  
Environmental Health Division  
Food, Pools, and Lodging Services Section  
P.O. Box 64975  
St. Paul, Minnesota 55164-0975

Phone: 651-201-4500

Email: [health.foodlodging@state.mn.us](mailto:health.foodlodging@state.mn.us)

Website: <http://www.health.state.mn.us/divs/eh/fpls/>

*To request this document in another format, contact 651-201-4500.*

# Section One: Regulatory Foundation

## Introduction

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*The success or failure of any government in the final analysis must be measured by the well-being of its citizens. Nothing can be more important to a state than its public health; the state's paramount concern should be the health of its people. – Franklin Delano Roosevelt*

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A strong regulatory foundation is important for establishing accountability, credibility and consistency to ensure that retail food and beverage, lodging (i.e., hotels, motels, manufactured home parks (MHP), recreational camping areas (RCA), and youth camps) and public swimming pool programs protect, maintain and improve the health of all Minnesotans. Regulatory foundation includes any statute, regulation, rule, ordinance, or other governing foundation that directs the operation of retail food and beverage, lodging and public swimming pool establishments.

Minnesota statutes grant authority to the commissioners of health and agriculture to adopt and enforce rules. In turn, Minnesota Department of Health (MDH) may enter into formal agreements with Community Health Boards (CHB) to delegate authority for regulation (e.g., licensure, inspection and enforcement) of retail food and beverage establishments, lodging, or public swimming pools. Minnesota Department of Agriculture (MDA) shares regulatory oversight of the food supply with MDH and may also delegate their duties.

Regulatory foundation recommendations in this Best Practices Manual are based on [United States Food and Drug Administration Voluntary National Retail Food Regulatory Program Standards, Standard Number 1 – Regulatory Foundation](#) (FDA Program Standard 1), and have been expanded to include references to all program areas covered under the MDH Delegation Agreement.

## Delegation Agreement

Local CHBs and MDH may enter into agreements under Minnesota Statutes, chapter 145A to delegate duties and responsibilities for licensing, inspecting, and regulating retail food and beverage establishments, lodging establishments, and public swimming pools. An effective partnership established through delegation ensures a regulatory foundation which maintains consistent, uniform, and safe retail food and beverage, lodging, and public swimming pool programs. Delegated duties and responsibilities include establishing and maintaining local ordinances that are in compliance with applicable statutes.

Duties and responsibilities of administrators, directors, managers, supervisors, and staff include communication with MDH upon amending, enacting and promulgating ordinances. A complete list of regulatory foundation requirements are addressed in [Section 3.2, A., \(1\) through \(3\), page 5](#) of the MDH Delegation Agreement.

## **Basis for Regulatory Authority and Duties**

In Minnesota, the authority for licensure, inspection and enforcement of establishments under the purview of Food, Pool, and Lodging Services (FPLS) section is reserved for the commissioner of health and is carried out by MDH and delegated local partners. Minnesota Statutes, chapters 144, 157, and 327 grant authority to the commissioner of health to adopt and enforce rules. Minnesota Statutes, chapters 145A, 375 and 412 grant authority to cities and counties to adopt ordinances to protect public health or adopt ordinances in general.

The executive branch of state government directs the activities of MDH under Minnesota Statutes, chapter 14. The purposes of this Administrative Procedure Act are to:

- Provide oversight of powers and duties delegated to administrative agencies.
- Increase public accountability of administrative agencies.
- Ensure a uniform minimum procedure.
- Increase public access to governmental information.
- Increase public participation in the formulation of administrative rules.
- Increase the fairness of agencies in their conduct of contested case proceedings.
- Simplify the process of judicial review of agency action as well as increase its ease and availability.

### ***Minnesota County and City Governments***

Only local cities and counties with an FPLS delegation agreement have the authority to adopt ordinances and to collect fees related to the regulation of food, pools, and lodging establishments. Local governments establish this authority in one of two ways; either by state statute or by home rule charter. County boards are granted authority under Minnesota Statutes, chapter 375, while city councils' statutory authority comes from Minnesota Statutes, chapter 412.

### ***Community Health Boards in Minnesota***

According to Minnesota Statutes, section 145A.02, a Community Health Board (CHB) "means the governing body for local public health in Minnesota. The community health board may be comprised of a single county, multiple contiguous counties, or in a limited number of cases, a single city as specified in section 145A.03, subdivision 1." The CHB is the legally recognized governing body for local public health in Minnesota. CHBs may include a city, county or multiple counties. CHBs work with MDH in partnership to prevent diseases, protect against

environmental hazards, promote healthy behaviors and healthy communities, respond to disasters, ensure access to health services, and ensure an adequate public health infrastructure. Information on CHBs can be found at <http://www.health.state.mn.us/divs/opi/gov/maps/>. The Community Health Services Administration Handbook can be found at [www.health.state.mn.us/divs/opi/gov/chsadmin/docs/chsadminhb\\_2014.pdf](http://www.health.state.mn.us/divs/opi/gov/chsadmin/docs/chsadminhb_2014.pdf)

## Laws, Statutes, Rules and Ordinances

All Minnesota statutes and rules can be accessed at the [Minnesota State Legislature website](#). Table 1 lists some of the statutes and rules enforced by MDH and local delegated health agencies.

**Table 1. Minnesota laws regarding retail food and beverage, lodging, and public swimming pools**

Description	Statutes	Rules	Comment
Board and Lodging with Special Services	<a href="#">157.17</a>	None	
Delegation Agreement	<a href="#">145A</a>	None	
Disease Investigation & Control	<a href="#">144.05</a> Subd. 1 <a href="#">144.053</a>	<a href="#">4605.7500</a>	State epidemiologist and staff are authorized to collect private data. Investigation data are disseminated within MDH and local public health agencies on a need-to-know basis. Private data will be protected from discovery under Minnesota Statutes, section <a href="#">144.658</a> .
Enforcement	<a href="#">144.99</a>	None	
Food and Beverage	<a href="#">157</a>	<a href="#">4626</a>	Includes food manager certification.
Injunctive Relief	<a href="#">145.075</a>		
Lodging	<a href="#">157</a> <a href="#">327.10</a> <a href="#">327.70</a>	<a href="#">4625</a>	Includes hotel and motel. May apply to youth camps if services for adults are provided.

Description	Statutes	Rules	Comment
Manufactured Home Parks/Recreational Camping Areas	<a href="#">327.14</a>	<a href="#">4630</a>	See also Building Code (Minnesota Rules, chapter <a href="#">1350</a> ) and Code of Federal Regulations, title 24, subtitle B, chapter XX, part <a href="#">3280</a> . Storm shelter requirements are in Minnesota Rules, chapter <a href="#">1370</a> .
Mass Gatherings	<a href="#">144.12</a> , Subd. 2	<a href="#">4626.1840</a> <a href="#">4626.1865</a>	
Registration as Environmental Health Specialist/Sanitarian (EHS/Sanitarian)	<a href="#">214.02</a> <a href="#">15.059</a> <a href="#">214.13</a>	<a href="#">4695.2500</a> – 4695.3200	
Public Swimming Pools	<a href="#">157</a> <a href="#">144.1222</a>	<a href="#">4717</a>	
Variances	<a href="#">14</a>	<a href="#">4625.2355</a> <a href="#">4626.1690</a> – 4626.1715 <a href="#">4630.1801</a> <a href="#">4630.4750</a> <a href="#">4717.3975</a>	Variances cannot be granted to a statute.  Specific requirements for variance requests are contained in the parts listed in the previous column.
Youth Camps	<a href="#">144.71</a> <a href="#">144.72</a> <a href="#">144.73</a> <a href="#">144.74</a> <a href="#">157</a>	<a href="#">4630</a>	Food and Beverage and/or Lodging statutes and rules apply when youth camps provide services to adults.

Other related Minnesota Statutes and Rules:

- Minnesota Department of Agriculture (MDA) Consolidated Food License Law (Minnesota Statutes, chapter [28A](#)).
- Food Donation - Liability of food donors (Minnesota Statutes, chapter [604A](#), section [10](#)).
- Individual Sewage Treatment Systems (Minnesota Rules, chapter [7080](#)).
- Liquor and Wine (Minnesota Statutes, chapter [340A](#), section [315](#)).
- Minnesota Clean Indoor Air Act (Minnesota Rules, chapter [4665](#), section [9090](#)).
- Plumbing Code (Minnesota Rules, chapter [4715](#), Minnesota Rules, chapter [4716](#)).

- Well Code (Minnesota Rules, chapter [4725](#)).
- Fire Code (Minnesota Rules, chapter [7511](#)).
- Government Data Practices (Minnesota Statutes, chapter [13](#)).

### ***What is a law?***

A law is an idea, placed in bill form that has passed both the House of Representatives and the Senate and has not been vetoed by the Governor.

[Laws of Minnesota](#) is an annual compilation and are often referred to as the "session laws." It contains all the acts of the Legislature as passed in each year's legislative session.

### ***What are statutes?***

[Minnesota Statutes](#) is a compilation of the general and permanent laws of the state, incorporating all new laws, amendments, or repeals of old law. It is printed every two years by the Revisor of Statutes Office. Statutes are laws that apply to all citizens and cover a variety of topics, including the following: the Legislature, the executive branch, state departments, the judiciary and courts, tax policy, public safety and police authority, towns, cities, counties, commerce and trade, private property and private rights, civil injuries and remedies, and crimes against people and property and the penalties associated with them.

### ***What is a rule?***

An administrative rule is a general statement adopted by an agency to make the law it enforces or administers more specific or to govern the agency's organization or procedure. [Minnesota Administrative Rules](#) are not actually enacted by the Legislature. Rather, the Legislature merely gives the state agency or unit the authority to establish its own rules.

### **Minnesota Rulemaking Basics**

The rulemaking process is governed by Minnesota Statutes, chapter 14, and Minnesota Rules, chapter 1400. MDH follows this process when adopting rules for retail food and beverage, lodging and public swimming pools. For rules that are jointly adopted, such as the Minnesota food code, MDH collaborates with MDA, local governments, industry, academia and the public.

FPLS provides a summary of [Rulemaking Basics](#) on the [Minnesota Food Code Rule Revision](#) website. Following is a list of the main parts of the process and important documents for developing and adopting rules.

- Request for Comments
- Proposed Rules
- Statement of Need and Reasonableness (SONAR)
- Notice of Intent to Adopt Rules
- 30-Day Comment Period

- Rules Hearing
- Review by Administrative Law Judge
- Governor Veto
- Notice of Adoption

### ***What is an ordinance?***

An ordinance is a municipal statute, which is a law passed by a city or village. Minnesota Statutes, section 365.125 provides the minimum requirements for the content and format of all ordinances.

Ordinances have the force and effect of law; their form is important. It is helpful to collect and study other local ordinances before beginning the ordinance development process. Language from these sources can be inserted into the local government’s ordinance template or layout format. The Minnesota towns, cities and counties have made some of their ordinances available at <http://mn.gov/lawlib/ordinance.html>

A team approach with multiple layers of review is recommended as a best practice when developing ordinances. Input from the following may be useful:

- Administrators, directors, managers, supervisors and staff who develop ordinances for retail food and beverage, lodging and public swimming pool programs.
- Attorney to help prepare and review ordinances.
- Agency staff from other departments (e.g., city and county building inspections or zoning) that may be affected.
- Industry and general public.

The [League of Minnesota Cities Handbook](#), Part II, Chapter 7 Meetings, Motions, Resolutions, and Ordinances provide information about:

- Form, content, and adoption of ordinances.
- Ordinance book.
- Publication of ordinances.
- Recording.
- Adoption by reference.
- Alteration of ordinances.
- Codification procedures.
- Prosecution responsibilities.

### **Retail Food and Beverage, Lodging and Public Swimming Pool Ordinances**

The CHB or other jurisdiction must have ordinances that incorporate the requirements of the Minnesota Statutes and Rules for licensing, inspection and enforcement authority. Ordinances



must refer to applicable Minnesota Statutes or Rules by number. Ordinances may not conflict with or be less restrictive than the relevant Minnesota Statutes or Rules.

Administrators, directors, managers, supervisors and staff must ensure ordinances are consistent with Minnesota Statutes or Rules by:

- Including authority to license, inspect, and collect license fees.
- Including authority to grant variances, except as prohibited.
- Including authority to take enforcement action.
- Defining terms used in ordinances which are specific to your agency.
- Defining establishment risk categories and including minimum inspection frequency requirements.
- Providing a mechanism for setting license fees.
- Defining the license period and referencing your licensing procedure.
- Prohibiting operation without a license.
- Referencing plan review requirements. Authority for public swimming pool plan review is not delegated
- Describing enforcement procedures and tools.

If applicable ordinances were changed since the previous program evaluation, send to MDH for review prior to their passage. Revise ordinances as needed to be consistent with current Minnesota Statutes or Rules by:

- Including process to regularly update ordinances so they are current with Minnesota Statutes and Rules.
- Including a provision for adoption of amendments and updates, if Rules are adopted by reference.
- Including repeal of previous ordinance language.

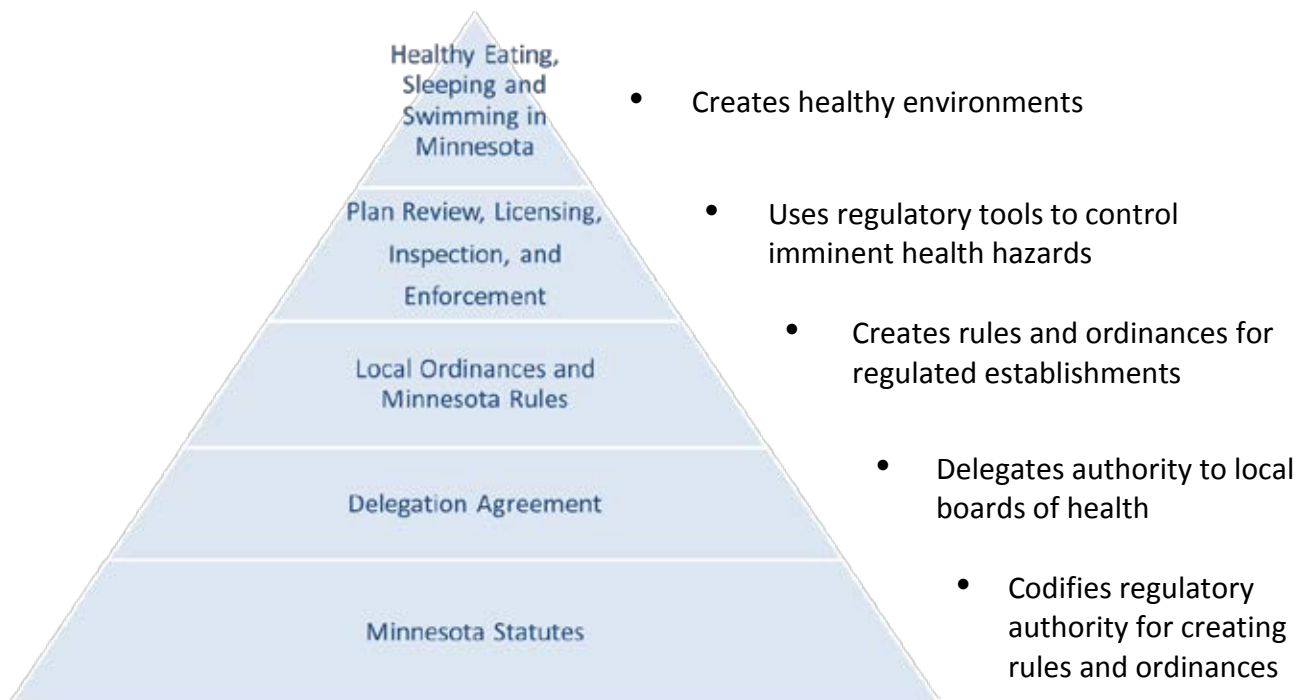
In addition, ordinances must include severability clause, the correct effective date, signature, and the provisions must be reasonable and specific.

## Summary

Administrators, directors, managers, supervisors and staff must develop, refine and sustain a regulatory foundation in order to maintain consistent, uniform and safe retail food and beverage, lodging and public swimming pool programs in Minnesota.

The following diagram illustrates how Minnesota's regulatory foundation supports and protects the public health.

Minnesota's regulatory foundation:



Following the best practices outlined in this section is one way of achieving program goals for a sound, science based regulatory foundation.