



# Board of County Commissioners Agenda Request

4A

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Agenda Item #

**Requested Meeting Date:** September 14, 2021

**Title of Item:** Adopt Resolution - Termination of Delegation Agreement

<input checked="" type="checkbox"/> REGULAR AGENDA <input type="checkbox"/> CONSENT AGENDA <input type="checkbox"/> INFORMATION ONLY	<b>Action Requested:</b> <input type="checkbox"/> Approve/Deny Motion <input checked="" type="checkbox"/> Adopt Resolution (attach draft) <i>*provide copy of hearing notice that was published</i>	<input type="checkbox"/> Direction Requested <input type="checkbox"/> Discussion Item <input type="checkbox"/> Hold Public Hearing*
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<b>Submitted by:</b> Cynthia Bennett	<b>Department:</b> HHS
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<b>Presenter (Name and Title):</b> Cynthia Bennett	<b>Estimated Time Needed:</b> 5 minutes
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**Summary of Issue:**

This agenda item is a request to adopt a resolution for the termination of the delegation agreement for the Food, Pool, and Lodging program between the Minnesota Department of Health and Aitkin County. After much due diligence and efforts to find a solution to continue with this agreement major barriers have been encountered:

1. The lack of viable candidates to fill this open position
2. The lack of support from the MDH.

At this time our county departments are not able to assure implementation of the requirements in the delegation agreement and therefore are seeking approval to return the responsibility of the Food Pool and Lodging program to the Minnesota Department of Health.

**Alternatives, Options, Effects on Others/Comments:**

**Recommended Action/Motion:**  
 Requesting County Commissioner adoption of resolution for termination of the Food, Pool and Lodging program delegation agreement.

**Financial Impact:**

*Is there a cost associated with this request?*       Yes       No

*What is the total cost, with tax and shipping? \$*

*Is this budgeted?*       Yes       No      *Please Explain:*

The cost will be a savings of \$98,423 per year in the HHS budget for the Environmental Specialist/Registered Sanitarian position

CERTIFIED COPY OF RESOLUTION OF COUNTY BOARD OF AITKIN COUNTY, MINNESOTA

ADOPTED September 14, 2021

By Commissioner:

20210914-xxx

**Termination of Food, Pool, and Lodging Delegation Agreement**

**WHEREAS**, Aitkin County currently has a delegation agreement with the Minnesota Department of Health to administer the Food, Pool, and Lodging Program; and

**WHEREAS**, Aitkin County has been unable to find a qualified Registered Sanitarian to fill the current open position for an Environmental Health Specialist; and

**WHEREAS**, all requested variances, waivers, extensions, and assistance from the Minnesota Department of Health have been denied; and

**WHEREAS**, Aitkin County can no longer fulfill the duties outlined in the current Delegation Agreement;

**NOW, THEREFORE BE IT RESOLVED**, that the Aitkin County Board of Commissioners does hereby authorize the termination of the Food, Pool, and Lodging Delegation Agreement with the Minnesota Department of Health.

Commissioner Napstad moved for adoption of the resolution and it was declared adopted upon the following vote

FIVE MEMBERS PRESENT

All Members Voting

STATE OF MINNESOTA}  
COUNTY OF AITKIN}

I, Jessica Seibert, County Administrator, Aitkin County, Minnesota do hereby certify that I have compared the foregoing with the original resolution filed in the Administration Office of Aitkin County in Aitkin, Minnesota as stated in the minutes of the proceedings of said Board on the 14<sup>th</sup> day of September, 2021 and that the same is a true and correct copy of the whole thereof.

Witness my hand and seal this 14<sup>th</sup> day of September, 2021

\_\_\_\_\_  
Jessica Seibert  
County Administrator

**Delegation Agreement Between Aitkin County and  
Minnesota Department of Health**

This Agreement, effective on the first day of \_\_\_\_\_, 20\_\_\_, is between the State of Minnesota acting through its Commissioner of Health (“Minnesota Department of Health” or “MDH”) and the Aitkin County Board <sup>of Commissioners</sup> [board of health or other jurisdiction] (“Board”).

**1. AUTHORITY AND DELEGATION**

- 1.1 MDH, charged with protecting the public health under Minnesota Statutes, Chapters 144, 157, and 327, has the duty to inspect, license, and regulate: food, beverage, and lodging establishments; public pools and related facilities; youth camps; manufactured home parks and recreational camping areas.
- 1.2 Minnesota Statutes, Section 145A.07, Subd. 1 authorizes MDH to enter into an agreement to delegate these duties to the Board. MDH delegates its authority to the Board according to this Agreement but nevertheless remains ultimately responsible for the performance of these duties under Minnesota Statutes, Section 145A.07, Subd. 3(h).
- 1.3 The Board, having jurisdiction over Aitkin County [description of jurisdiction], accepts this delegation and agrees to the terms of this Agreement regarding inspection and licensing of regulated establishments and enforcement of the applicable laws for the purpose of preventing and abating public health risks.

2. SCOPE

2.1 Delegated Responsibilities: This delegation applies to the following regulated areas as indicated by the checked boxes:

- A. Food, Beverage, and Lodging Establishments, as defined in and governed by Minnesota Statutes, Chapter 157 and Minnesota Statutes, Chapter 327, Minnesota Rules, parts 4626.0010 to 4626.1870, and Minnesota Rules, parts 4625.0100 to 4625.2300;
- B. Food Manager Certification requirements for food establishments, as defined in and governed by Minnesota Rules, parts 4626.2000 to 4626.2010;
- C. Manufactured Home Parks and Recreational Camping Areas, as defined in and governed by Minnesota Statutes, Sections 327.14 to 327.28, and Minnesota Rules, parts 4630.0200 to 4630.2210;
- D. Youth Camps, as defined in and governed by Minnesota Statutes, Sections 144.71 to 144.74, and Minnesota Rules, parts 4630.2300 to 4630.4700;
- E. Public Pools, as defined and governed by Minnesota Statutes, Section 144.1222, and Minnesota Rules, parts 4717.0150 to 4717.3970.
- F. Variances to Minnesota Rules for:
  - (1) Lodging, as specified in Minnesota Rules, part 4717.7000, subpart 1 (D);
  - (2) Manufactured home parks and recreational camping areas, as specified in Minnesota Rules, part 4717.7000, subpart 1 (E);
  - (3) Youth camps, as specified in Minnesota Rules, part 4717.7000, subpart 1 (F); and

- ✓ (4) Food establishments, as specified in Minnesota Rules, parts 4626.1690 to 4626.1715.

2.2 Responsibilities not delegated: MDH retains exclusive authority for the following areas:

- A. License renewal under Minnesota Statutes, Section 157.16, Subd 2, except as specified in paragraph 3.2(C) 1 of this agreement;
- B. Certification of food managers under Minnesota Statutes, Section 157.16, Subd. 2(a) and Minnesota Rules, parts 4626.2015 to 4626.2025;
- C. Establishment fees under Minnesota Statutes, Section 157.16, Subd 3, except as specified in paragraph 3.2(C) 1 of this agreement;
- D. Collection of the Statewide Hospitality Fee, under Minnesota Statutes, Section 157.16, Subd. 3(a).
- E. Public swimming pool plan review and approval under Minnesota Rules, parts 4717.0310 and 4717.0450; and
- F. Variances for public swimming pools, as defined in Minnesota Rules, part 4717.7000, subpart 1 (F).

### 3. TERMS OF THE AGREEMENT

#### 3.1 MDH's Responsibilities:

##### A. General

- (1) Beginning on \_\_\_\_\_, and through the duration of this Agreement, MDH will not enforce the statutes and rules stated in paragraph 2.1 in the Board's jurisdiction, except as stated in this Agreement or at the request of the Board.

- (2) To ensure consistent regulation and enforcement statewide, MDH will review the Board's ordinances or proposed changes to existing ordinances and provide a written response. MDH will review and provide comments within 30 days of receipt of the proposed ordinance language being submitted to MDH.
- (3) MDH will coordinate a review of the Minnesota Food Code (Minnesota Rules, part 4626) following the release of each new Food and Drug Administration Model Food Code or Supplement.
- (4) MDH will evaluate the Board's compliance with the delegation agreement to ensure that its programs are adequate to assure compliance by regulated parties with the standards and requirements established in the statutes and rules stated in paragraph 2.1.
- (5) MDH staff will be available to advise the Board regarding issues covered under this Agreement.
- (6) MDH will refer to the Board any complaints that MDH receives concerning matters under the Board's jurisdiction.

B. Illness Investigation and Response

- (1) MDH will maintain an emergency communication system for notifying and communicating with the Board, local boards of health, industry, and others about serious threats to food safety and public health.
- (2) MDH will lead epidemiological surveillance and investigations and will consult with the Board as necessary during investigations.

- (3) MDH will summarize and report the results of epidemiological investigations.

C. Training and Technical Assistance

MDH will offer to the Board training and consultation for program areas listed under the SCOPE throughout the duration of this Agreement.

3.2 Board's Responsibilities:

A. Regulatory Authority

- (1) The Board must have ordinances that incorporate the requirements of the statutes and rules stated in paragraph 2.1, items (A), (B), (C), (D), and (E) for licensing, inspection and enforcement authority. As stated in Minnesota Statutes, Section 145A.05, Subd. 1, ordinances may not conflict with or be less restrictive than the relevant Minnesota Statutes or Rules.
- (2) Ordinances must establish authority for enforcement and describe actions to ensure compliance.
- (3) The Board may not enact or amend any ordinance related to the statutes and rules stated in paragraph 2.1 (except fee provisions) without MDH's prior review of and comment on the proposed ordinance language. Within 30 days of promulgation of any new or amended ordinance that is within the scope of this Agreement, the Board will provide MDH with a copy of the new or amended ordinance.

B. Trained Regulatory Staff

- (1) The Board will maintain qualified inspection personnel, as defined in this section, to enforce the statutes, rules, and local ordinances encompassed in this Agreement.
- (2) Inspections required in Minnesota Statutes, Chapter 157 and Minnesota Rules, parts 4630.2210 and 4630.1900 must be performed by Environmental Health Specialist/Sanitarians who possess the qualifications stated in Minnesota Rules, parts 4695.2500 to 4695.2800. These qualifications include:
  - (a) Current registration with the State as Environmental Health Specialist/Sanitarian; or
  - (b) Possession of a baccalaureate or post baccalaureate degree in environmental health, sanitary science, sanitary engineering, or other related environmental health field that includes at least 30 semester or 45 quarter hour credits in the physical or biological sciences; and registration as an Environmental Health Specialist/Sanitarian within 2 years from the date of appointment.
- (3) Inspections in excess of those required in Minnesota Statutes, Chapter 157 and Minnesota Rules, parts 4630.2210 and 4630.1900 may be performed by less qualified staff who must:
  - (a) be enrolled in a baccalaureate or post baccalaureate degree program in environmental health, sanitary science, sanitary engineering, or other related environmental field; and

- (b) be supervised by a registered Environmental Health Specialist/Sanitarian.
- (4) If the Board's inspection staff consists of a single person, that person must be a fully qualified Registered Environmental Health Specialist/Sanitarian.
- (5) The Board will prepare and submit to MDH on an annual basis, a staffing plan to assure adequate program coverage. The staffing plan may include mutual aid agreements, cooperative agreements or other tools to address staffing shortages, or the need for additional staff during emergencies or special circumstances.
- (6) The Board will notify MDH in the event of unexpected staff changes leading to inadequate or unqualified staffing. MDH may perform a program evaluation under the following circumstances.
  - (a) If the Board has inadequate or unqualified staffing, the Board remains responsible for providing both routine and emergency services covered by this Agreement.
  - (b) If the Board has inadequate or unqualified staffing:
    - (i) Within 10 business days of the staff's departure, the Board must submit a written plan for providing routine and emergency services until qualified staff are hired. This plan must include the name, credentials and contact information for staff performing

delegated duties. MDH will provide written approval or rejection of the plan within 10 business days of receipt.

(ii) While the Board has inadequate or unqualified staffing, the Board must submit to MDH on a monthly basis, inspection reports for all inspections conducted during the previous 30 days.

(iii) The Board will have 180 days from the time of the staff's departure to hire qualified staff. If qualified staff cannot be hired within 180 days, MDH will terminate the Agreement and immediately begin providing routine and emergency services in the Board's jurisdiction.

(7) If the Board is a Community Health Board, the Board may enter into agreements with other qualified persons to carry out its delegated duties, as stated in Minnesota Statutes, Section 145A.04 subd. 5 and Minnesota Statutes 145A.07 subd. 3(d). Before the parties enter into such an agreement, the Board must obtain MDH's written approval.

C. Risk-Based Inspections and a Uniform Inspection Program:

- (1) The Board must license each establishment on an annual basis. The Board will establish reasonable license fees in accordance with Minnesota Statutes, Section 145A.04, Subd. 4(c).
- (2) The Board must classify and inspect each:
  - (a) food, beverage, lodging, and pool establishment according to the inspection frequency and risk category as stated in Minnesota Statutes, Section 157.20; and
  - (b) manufactured home park and recreational camping areas according to Minnesota Rules, parts 4630.2210 and 4630.1900.
- (3) The Board will conduct inspections, respond to complaints, and document follow-up activities. The Board must:
  - (a) identify and address hazards;
  - (b) incorporate education into the inspection process; and
  - (c) promote active managerial control concepts in food establishments.
- (4) The Board may submit to MDH a written proposal for alternative inspection methods and practices, in accordance with Minnesota Statutes, Section 157.20, Subd. 4, for use in the Board's jurisdiction.
- (5) The Board's inspection staff must maintain inspection reports that include, at a minimum, the following elements: identification of health and safety violations, corrective actions, enforcement actions, follow-up activities, and complaint response.

- (6) For every licensed establishment, the Board must provide, at a minimum, the following information to MDH by March 31 of each calendar year in a format to be negotiated:
  - (a) Type of facility (e.g., food establishment, MHP, etc), establishment name, establishment address, and risk category of each licensed establishment;
  - (b) All hazards emergency contact name and information for each licensed establishment; and
  - (c) Establishment owner name and/or establishment operator name for each establishment.
- (7) The Board must review plans for new construction, renovation, or conversion of licensed establishments.
- (8) The Board may grant variances as stated in paragraph 2.1, item (F) of the SCOPE, and must submit to MDH a copy of each variance within 30 days of the variance being granted.
- (9) The Board agrees that MDH may accompany the Board's staff in their work, make independent assessments of risk factors or hazards, and perform program activities in consultation with the Board as circumstances warrant.

D. Illness Investigation and Response:

- (1) The Board will investigate and document illness and injury reports according to Minnesota Statutes, Section 145A.04, Subd. 6, using a protocol approved by MDH.

- (2) The Board will record and transmit all foodborne illness complaints to MDH within one business day via fax, phone, or an approved electronic method. The report must contain the contact information for both the complainant and the establishment.
- (3) The Board will have qualified staff available for emergency coverage on a 24-hour a day basis and provide an after-hours contact number to MDH.

E. Compliance and Enforcement:

- (1) The Board will seek compliance by using the enforcement tools specified in ordinance and written policies and procedures. If the Board's initial enforcement actions fail to achieve compliance, the Board will exert its enforcement authority by undertaking one or more of the following significant actions:
  - (a) Seeking injunctions under Minnesota Statutes, Section 145A.04, Subd. 9;
  - (b) Referring the matter to the Board's legal counsel to initiate criminal or administrative actions against noncompliant parties; and
  - (c) Pursuing other enforcement mechanisms such as license revocation.
- (2) The Board will document each violation it investigates including the date of discovery, nature of the violation, any enforcement action taken, and the resolution of the violation. The Board will retain this data according to the Board's record retention policy.

Upon request, the Board must forward to MDH a written summary of such significant enforcement actions as those referenced in paragraph 3.2 E (1)(a – c). This summary will be forwarded to MDH within 30 days of receipt of MDH’s request.

F. Industry and Community Relations:

The Board must actively participate in work groups, advisory boards, or committees that foster communication and information sharing to improve public health outcomes in the program areas as stated in paragraph 2.1.

G. Program Support, Resources, and Assessment:

- (1) The Board will conduct a self-assessment using the materials known as the “Program Evaluation Protocol and Tools” at least once every three years. The Board will provide MDH with the written results of the program self-assessment at least 30 days prior to MDH’s regularly scheduled, program evaluation conducted under Section 4 below.
- (2) The Board must make its program records available to MDH upon request.
- (3) The Board must maintain all licensing and inspection information in an electronic format and make it available to MDH upon request. The Board will cooperate with MDH to establish a compatible system that allows efficient sharing of electronic licensing and inspection data.

4. MDH ASSESSMENT OF BOARD’S PERFORMANCE

4.1 Program Evaluation:

- A. MDH will evaluate the Board's performance for compliance with this Agreement using the materials known as the "Program Evaluation Protocol and Tools". MDH will limit its evaluations to no more than one formal evaluation per year, and no less than one formal evaluation every five (5) years, except when the performance of the Board warrants more frequent evaluation.
- B. MDH will use the following criteria for evaluating the Board's performance:
- (1) Whether the Board has exercised the regulatory authority delegated to it under this Agreement by adopting ordinances covering the duties of licensing, inspection, reporting and enforcement of the statutes and rules stated in paragraph 2.1.
  - (2) Whether the Board has established a written procedure for licensing, inspecting, and enforcement for all establishments in the jurisdiction regulated by the statutes and rules stated in paragraph 2.1(A), (C), and (D).
  - (3) Whether the Board has inspected, licensed or permitted all such establishments according to requirements in statute, rule, or ordinance.
  - (4) Whether the Board has enforced the statutes, rules and ordinances to remove the risk to the public in a manner that corresponds to the circumstances of the risk involved. MDH will evaluate this factor according to the following criteria:

- (a) Whether the Board has identified and documented violations of statutes, rules, and ordinances; and
  - (b) Whether the Board has determined a reasonable and appropriate time period for a violator to remove a hazard, has taken appropriate enforcement measures, and can assure MDH that the hazard has been removed.
- C. MDH will report its evaluation findings in writing to the Board within 60 days after completion of the evaluation. MDH's report will assess the Board's performance to be one of the following:
- (1) *Acceptable*, which may take one of two forms: *Acceptable*; or *Acceptable With Improvements Needed*, meaning the Board must make specific improvements that are enumerated in the report, within a timeframe that is mutually agreed upon by the Board and MDH;
  - (2) *Conditionally Acceptable*, meaning that immediate, priority improvements are required. The Board must submit a written plan of correction within 30 days. The plan must include a timetable for correction and must be approved by MDH. *Conditionally Acceptable* status may be resolved in one of two ways:
    - (a) The Board may be reassigned to *Acceptable* status if the Board makes needed improvements according to its written plan; or

- (b) The Board may be reassigned to *Unacceptable* status if the Board fails to provide a written plan of correction, or fails to make corrections according to the written plan.
  - (3) *Unacceptable*, meaning that the program evaluation has identified certain specified problems of a critical nature that make the program unacceptable. The Board must submit a written plan of correction within 30 days. The plan must include a timetable for correction and must be approved by MDH. *Unacceptable* status may be resolved in one of two ways:
    - (a) The Board may be reassigned to an *Acceptable* or *Conditionally Acceptable* status if the Board makes needed improvements according to its written plan; or
    - (b) The Board may be subject to *Termination* if the Board fails to provide a written plan of correction, or fails to make corrections according to the written plan.
  - (4) *Termination*, meaning that the situation requires MDH to terminate the delegation immediately, and that all delegated duties immediately revert to MDH.
- D. If there are disputes concerning the evaluation findings that cannot be resolved through an informal process, the Board will have an opportunity to appeal its position to the Commissioner of Health.
- E. While the Board's status is designated as *Conditionally Acceptable*, or *Unacceptable*, MDH may conduct the plan reviews for new and remodeled construction of establishments under the Board's jurisdiction.

When MDH conducts plan reviews under this condition, the Board will pay service fees of \$100/hour per inspector to MDH.

- F. While the Board's status is *Unacceptable*, MDH will conduct the Board's inspections and plan reviews. Until the Board's status is no longer *Unacceptable*, the Board will pay service fees of \$100/hour per inspector to MDH for all inspections and plan reviews conducted by MDH.

4.2 Termination:

- A. MDH may terminate this Agreement for the following reasons:
  - (1) The Board is unable or unwilling to carry out the terms of this Agreement; or
  - (2) The Board fails to demonstrate that it has carried out license, inspection, reporting and enforcement activities under this Agreement; or
  - (3) MDH has evidence to establish that the Board's failure to act poses an immediate threat to public health.
- B. MDH will provide to the Board, in writing, the reasons for immediate termination.

5. **OTHER TERMS**

- 5.1 Voluntary Termination: Either party may voluntarily terminate this Agreement by written notice to the other no later than January 1 of the year before the calendar year in which the termination will be effective. If either party terminates this agreement, a minimum of five (5) years must pass before the parties begin a new agreement.

- 5.2 Merger: The parties' entire Agreement is contained in this document. This Agreement supersedes any other agreements between the parties, either verbal or written, about the terms of this Agreement. MDH retains all functions and duties not included in this Agreement.
- 5.3 Amendment: The parties may amend this Agreement only by written agreement signed by the parties.
- 5.4 Liaison: Both MDH and the Board will assign a person to be liaison with the other party.
- 5.5 Statutory or Rule Changes: Successor or amended statutes and rules apply to this Agreement and are automatically incorporated into this Agreement upon their effective date.
- 5.6 Exclusion: Actions under the Emergency Health Powers Act (Minnesota Statutes, Chapter 12) are excluded from this Agreement.
- 5.7 Severability: A determination that any provision of this Agreement is invalid, illegal, or unenforceable does not affect the enforceability of any other provision.
- 5.8 Each party agrees that it will be responsible for its own acts and the results thereof to the extent authorized by law and will not be responsible for the acts of the other party and the results thereof. The State's liability will be governed by the Minnesota Tort Claims Act, Minnesota Statutes, Section 3.736 and other applicable law. The Board's liability will be governed by the Municipal Tort Claims Act, Minnesota Statutes, Chapter 466 and other applicable law.

The parties' duly authorized officers have executed this Agreement on the date shown.

**MINNESOTA DEPARTMENT OF HEALTH**

Dated: 12/14/10

By: *James Mag*  
Commissioner of Health

**BOARD**

Dated: 8/11/09

By: *MARK W. F.*  
Its: County Board Chair

Dated: 8-11-09

By: *John H. [Signature]*  
Its: County Auditor

Dated: 8-11-09

By: *[Signature]*  
Its: Environmental Services Director