



Date: August 26, 2024  
To: General Public  
From: Sagar Chowdhury, Associate Director of Public Health, Olmsted County  
Re: Middle Eastern Restaurant Report for Appeal of Food and Beverage License No. 11185

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**Date, Time, Place of Hearing:**

- **Date: September 24, 25, 2024**
- **Time: 9:00 am**
- **Location: Olmsted County Government Center 151 4<sup>th</sup> St. SE Rochester, MN. 55904**

**Nature of Appeal Request:**

Olmsted County Public Health staff revoked the food and beverage license for Licensee Middle Eastern Restaurant effective August 5, 2024, following serious and repeated violations of the Minnesota Food Code by Licensee over an extended period of time. Licensee has provided the following reasons for appeal of the August 5, 2024, revocation of their food and beverage establishment license issued by Olmsted County Public Health Services (OCPHS). Anwar Sandoqah, in his role as owner and operator of Middle Eastern Restaurant, has indicated he believes that “each failed inspection was either immediately following a search warrant that disturbed the restaurant area or not during regular hours of operation”. Mr. Sandoqah argues that this is not a reflection of the restaurant’s conditions when serving the public. Mr. Sandoqah also notes “prior to Middle Eastern Restaurant’s last failed inspection, an electrical outage occurred the day prior and therefore the conditions noted were not representative of the general conditions of the restaurant”.

**Characteristics of the Applicant’s Property and Environs:**

Middle Eastern Restaurant is located at 303 Elton Hills Dr NW, Rochester, MN 55901. The license is classified by Public Health as a “high risk, small food & beverage establishment”. High risk license types are based upon the food processes that are conducted within the establishment, such as cooling and cooking from raw food sources. Small establishments are defined by square footage of the establishment. This

has been the restaurant's license type for the duration of Mr. Sandoqah's ownership of the business.

**Relationship of the Request to the Intent of the Applicable Ordinance:**

The Minnesota Department of Health delegates Olmsted County Public Health authority to license and regulate a wide variety of license types including food & beverage establishments. Olmsted County Code of Ordinances Chapter 3100 - Environmental Public Health Services Administrative Ordinance was also enacted to supplement and carry out the purposes of Olmsted County ordinances and State of Minnesota laws for public health protection. This includes, but not limited to, ordinances regulating the following: public pools, youth camps, recreational camping areas, manufactured home parks, public lodging, public food and beverage establishments, public health nuisances, rabies and public non-community transient water systems that are in facilities licensed by Olmsted County Public Health Services.

Chapter 3100 applies to all incorporated municipalities and unincorporated areas within the boundaries of Olmsted County. Where conditions imposed by any provision of environmental public health ordinances are either more restrictive or less restrictive than comparable provisions imposed by any other law, ordinance, statute, resolution, or regulation of any kind, the regulations which are more restrictive, or impose higher standards or requirements, shall prevail.

Section 4008.32a of the County's Administrative Enforcement and Appeals Procedure grants authority to the Director of Public Health to revoke a license or permit without a hearing before a hearing officer, where the Director finds (1) imminent hazard or danger to public health, safety, or welfare of the environment or (2) a violation of applicable provisions of an ordinance or permit which may result in construction or operations that threaten the public's safety, welfare, or environment.

**Recommended Findings and Actions:**

Olmsted County Public Health Services (OCPHS) has determined that Middle Eastern Restaurant has failed to take sufficient steps to consistently mitigate and correct violations of the MN Food Code and the County's Environmental Public Health Services Ordinance. The failure to demonstrate consistent compliance poses a risk to the public's safety and welfare and places an undue burden upon the County and its environmental health inspectors to continuously assure minimum food safety standards are met as evidenced by the following facts.

1. Mr. Sandoqah has owned and operated Middle Eastern Restaurant at 303 Elton Hills Dr. N.W. in Rochester since 2019, operating pursuant to Olmsted County Food & Beverage License #11185.
2. Since quarter the 4<sup>th</sup> Quarter of 2023, Middle Eastern Restaurant has required 8 inspections and re-inspections by OCPHS staff due to consistent non-compliance with Minnesota Food Code and other local requirements. This inspection total

does not include inspections in that same timeframe by other local regulatory entities such as the Rochester Fire Department to address non-compliance with applicable requirements of the Minnesota Fire Code.

3. Since Mr. Sandoqah has owned Middle Eastern Restaurant, OCPHS staff and the City of Rochester have been required to take enforcement measures on multiple occasions:
  - a. OCPHS issued 1 Notice of Violation on October 27, 2023.
  - b. OCPHS issued 1 License Suspension on September 22, 2023.
  - c. Rochester Community Development Department (Building Code) issued orders on September 22, 2023, for immediate correction for unauthorized habitation in the basement level of the restaurant.
  - d. Rochester Fire Department (RFD) issued notices of failed inspections on September 22, 2023, October 2, 2023, and October 6, 2023.
  - e. Because of serious unremedied public health and safety concerns, OCPHS and RFD staff directed that Licensee could conditionally reopen the restaurant effective October 9, 2023, for food delivery and pickup only, prohibiting table service in the restaurant until the concerns noted were corrected.
  - f. OCPHS Issued 1 conditional license on December 22, 2023, due to Licensee's continued non-compliance and failure to remedy the Food Code and Fire Code violations noted.
4. OCPHS has observed continued non-compliance, and a lack of Active Managerial Control. Active Managerial Control is defined by the U.S. Food and Drug Administration as "the purposeful incorporation of specific actions or procedures by industry management into the operation of their business to attain control over foodborne illness risk factors." In addition to failure to comply with MN Food Code requirements, Middle Eastern Restaurant has also failed to comply with Minnesota Fire Code regulations.
5. The following is a summary of events leading to the revocation of Middle Eastern Restaurant's Food & Beverage license.
  - a. On August 14, 2023, OCPHS accompanied by Rochester Police Department and County Victim Services staff visited Middle Eastern Restaurant to assess a complaint. During the assessment, staff noted three rooms in the basement were set up for habitation in violation of Rochester Housing Code requirements, signs included mattresses, clothing, shoes, personal belongings, food, cooking equipment, and toiletries. No egress windows, smoke detectors, carbon monoxide detectors, or other life safety components were observed. In addition, a

hookah bar was identified in the main dining area of the restaurant, which is in violation of the requirements of Olmsted County Smoke Free Workplace Ordinance, Section 2104.01. Inspection of the restaurant kitchen showed violations from the MN Food Code, including risk factors associated with cold holding of food, cooling food, food cross contamination, handwashing, improper food storage, improper food labeling, and numerous facility issues.

- b. On September 21, 2023, OCPHS accompanied Rochester Police Department, Rochester Fire Department, Rochester Community Development, and Olmsted County Victim Services staff to assess Middle Eastern Restaurant. Public Health staff observed violations including but not limited to unauthorized habitation in the basement with no egress windows, smoke detectors, CO detectors, lapsed inspections for fire extinguishers, and ANSUL fire suppression system within the exhaust hood, electrical hazards, and faulty emergency lighting. Also observed were MN Food Code violations that included improper cooling of food, handwashing, labeling, food storage, food cross-contamination, and equipment and facility maintenance. The result of the inspection was the suspension of Middle Eastern Restaurant's food and beverage establishment license due to imminent public health and safety hazards.
- c. On October 6, 2023, OCPHS, Rochester Fire Department, and Rochester Community Development staff conducted a re-inspection of the outstanding Fire Code violations present at Middle Eastern Restaurant. At this time a conditional reopening of the restaurant was authorized.
- d. On October 20, 2023, OCPHS staff conducted a routine assessment of Middle Eastern Restaurant. During the assessment, a lack of Active Managerial Control was identified. Multiple violations were observed including no Certified Food Protection Manager, improper food cooling methods, no labeling for food in the coolers, facilities in need of repair and cleaning, soiled food contact surfaces, improper storage of food and food products, cross contamination, unstocked and inaccessible handwashing stations, lack of an employee illness log or policy, unauthorized people in the food preparation area and restaurant, no thermometers for taking food temperatures, no test strips for testing sanitizer solution, new food preparation equipment not reviewed and approved by OCPHS, and cooking equipment not located under an appropriate ventilation hood. Many of these issues were identified during previous assessments. Some

items were corrected but had then regressed. This inspection resulted in the issuance of a Notice of Violation on October 27, 2023.

- e. On December 22, 2023, a new conditional license was issued to Middle Eastern Restaurant for the 2024 licensing year. This was in response to the following:
  - i. On November 2, 2023, OCPHS staff provided a scheduled on-site food safety training with an interpreter to help educate the restaurant staff about the food preparation practices necessary to comply with the MN Food Code.
  - ii. On November 30, 2023, OCPHS staff conducted an unannounced follow-up visit and observed some improvement in food safety practices and provided training on food cooling practices.
  - iii. On December 6, 2023, OCPHS staff conducted an unannounced reassessment and observed gaps in active managerial control and regression from the previous progress seen in the November 30, 2023, visit. OCPHS staff again provided onsite training to the restaurant staff at the time of reassessment.
  - iv. On December 8, 2023, OCPHS staff conducted a scheduled follow-up visit, observed improvement in some of the items identified in the December 6, 2023, inspection, but concerns about the owner's ability to independently actively manage overall food safety remained.

The conditional license provided the following conditions:

- i. Licensee to submit all required license paperwork and fees prior to the expiration of the existing license on December 31, 2023.
- ii. Multiple unannounced inspections would take place moving forward. Failure to "pass" these inspections during the license period would result in the immediate revocation of the license. To "pass" an inspection, there must be less than:
  - a. Two priority 1 violations
  - b. Four priority 2 violations
  - c. Five priority 3 violations, or any combination of 1, 2, or 3 violations on the inspection report.

Priority 1, 2, and 3 designations are included on the inspection report for each violation listed.

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- f. On January 17, 2024, OCPHS staff conducted a routine inspection of Middle Eastern Restaurant. Six priority 3 violations were noted, which resulted in a failed inspection per their conditional license. An email was sent to the owner notifying him of the failed inspection.
  - g. On March 7, 2024, OCPHS conducted a routine inspection of Middle Eastern Restaurant. Three priority 3 violations were noted, which qualified as a passed inspection as laid out by the terms of the conditional license.
  - h. On July 31, 2024, OCPHS, conducted a routine inspection of Middle Eastern Restaurant. Two priority 1 violations, ten priority 2 violations and 14 priority 3 violations, for a total of 26 violations were noted. The most important violations consisted of:
    - i. No certified food protection manager, MN Rule 4606.0033A
    - ii. Using unapproved kitchen equipment, MN Rule 4626.1720A
    - iii. Soiled food contact surfaces, MN Rule 4626.0840A
    - iv. Foos cross contamination, MN Rule 4626.0270A, 4626.0235A(1)
    - v. Improper food storage, MN Rule 4626.0235A(4)
    - vi. Evidence of pests, MN Rule 4626.1565 A, B, D
    - vii. Use of non-commercial food preparation equipment, MN Rule 4626.0506A
    - viii. Excessive storage and unused equipment, MN Rule 4626.1300
    - ix. Inadequate cleaning, MN Rule 4626.1520A

The number of violations, and inability to consistently maintain food safety and compliance with local regulations demonstrates a lack of active managerial control within the facility and puts the public's health at risk. This constituted a second failed inspection per the requirements set out in Middle Eastern Restaurant's 2024 conditional license.

6. OCPHS staff follow specific internal policies for enforcement that are approved by the Minnesota Department of Health as part of the Olmsted County Public Health and Minnesota Department of Health's delegation agreement with the County.
7. OCPHS internal policy recommends the utilization of two Environmental Health staff when dealing with enforcement, complex establishments, or operators that have not been supportive of compliance efforts. This is to promote consistency, accuracy, and safety. OCPHS conducts inspections during reasonable business hours. All inspections that were conducted for Middle Eastern Restaurant were during normal operating hours, and customers were observed within the facility and evidence of food prep was observed during these inspections.

8. OCPHS staff provided ample time and opportunity to the Licensee to improve food safety practices within the restaurant between 2023-2024. Middle Eastern Restaurant failed to demonstrate consistent and compliant food safety practices within the establishment during this time as required by the MN Food Code, the Minnesota Fire Code and the applicable Olmsted County Ordinances, leading to the revocation of their license.

**Adverse Effects on Public Health:**

1. The CDC estimates 1 in 6 Americans get sick from foodborne disease a year. Half of these illnesses are associated with food & beverage establishments. The Minnesota Food Code contains minimum design, installation, construction, operation, and maintenance requirements for all food establishments in Minnesota. These rules are the standards with which food establishments must comply in the handling, storing, preparation and service of food to the retail consumer.
2. Olmsted County policy recognizes that ensuring the availability of resources is necessary to protect the public health and safety of all Olmsted County residents. The volume of inspections and amount of support to maintain basic food safety which OCPHS staff has had to devote to this establishment is not sustainable.
3. Middle Eastern Restaurant has failed to act in a manner consistent with multiple governing provisions including the Minnesota Food Code (Minnesota Rules Chapter 4626), the Minnesota Fire Code, the Olmsted County Environmental Public Health Services Administrative Ordinance, and OCPHS public policy.
4. The failure to act causes an increased risk to the health and safety of Olmsted County residents who intend to dine at the Middle Eastern Restaurant.
5. The failure to act has and will continue to jeopardize the health and safety of Middle Eastern Restaurant patrons unless abated.

**Conclusion:**

Olmsted County has been delegated regulatory authority over food and beverage licenses and the enforcement of these licenses by the Minnesota Department of Health in the Minnesota Department of Health delegation agreement with the County and as set forth in the County's Environmental Public Health Services Administrative Ordinance - Chapter 3100 and the County's Administrative Enforcement and Appeals Procedure - Chapter 4000 of the County's Code of Ordinances and. Pursuant to this authority, Middle Eastern Restaurant was issued a license to operate a food and beverage establishment by Olmsted County Public Health Services. Due to repeated non-compliance within the establishment and repeated failure to establish active managerial control for food safety within the facility, Olmsted County Public Health Services determined that the facility poses a consistent food safety risk to the public. This

necessitated the intervention of Olmsted County Public Health Services under Chapter 4008.32 of the County Environmental Public Health Services Ordinance because the Director determined Licensee's violations of the Minnesota Food Code and the Minnesota Fire Code have occurred to the point that continued restaurant operations threaten the public's health and safety, and therefore OCPH revoked the license without hearing before a hearing officer. The County requests that the administrative hearing officer make findings of fact consistent with this report and the evidence to be produced at the hearing. The County requests that the hearing officer uphold the Director's determination that the continuing public health and safety risks posed by the licensee's restaurant operations warrants a revocation of the Middle Eastern Restaurant's food and beverage establishment license.

DocuSigned by:

*Sagar Chowdhury*

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9/17/2024 | 1:17 PM CDT

Sagar Chowdhury

Associate Director of Public Health