



BISMARCK-BURLEIGH PUBLIC HEALTH

DATE: November 14, 2016

FROM: Anton Sattler, Environmental Health Administrator
Renaë Moch, Director *RM*

ITEM: Proposed Amendments to Title 8 and Chapter 4-06 of city ordinance

REQUEST

Consider request from Bismarck/Burleigh Public Health to amend Title 8 Health & Sanitation and Chapter 4-06 Swimming Pools of Bismarck's Code of Ordinances.

Please place this item on the November 22, 2016 City Commission meeting.

BACKGROUND INFORMATION

Expiration dates in ordinance need to be updated with the recent approval of adjusting the Environmental Health license expiration date from December 31 to March 31. While reviewing the Environmental Health ordinances with staff, additional changes were identified and are recommended.

RECOMMENDED CITY COMMISSION ACTION

Recommend approval of proposed amendments to Title 8 and Chapter 4-06

STAFF CONTACT INFORMATION

Renaë Moch, Public Health Director, 701-355-1541, rmoch@bismarcknd.gov
Anton Sattler, Environmental Health Administrator, 701-355-3401, asattler@bismarcknd.gov

SUPPORTING INFORMATION:

Replace “Permit” with “License”:

Staff believes the word “license” is more appropriate for the following reasons:

- Environmental Health issues licenses (i.e.: food, lodging, body art, swimming pools, tanning) similar to a liquor license as they are valid for period of time and require annual renewal. They are unlike a building permit taken out for a project and upon completion the permit expires.
- The majority of the public refer to them as licenses rather than permits (i.e.: food license).
- Less confusion for the public and the staff as we are currently using licenseTrak (as opposed to permitTrak) for our records management system.

Update License Expiration Date:

Change license expiration date language from December 31 to March 31 as approved during the November 8th commission meeting.

4-06-09 – Swimming Pool Samples:

The current ordinance reads such that swimming pools can fail no more than 15 percent of their total pool samples. This is difficult to enforce, as we do not have the results of every pool sample taken, since the day it was opened. Furthermore the ordinance doesn't specify what action may be taken if a swimming pool fails more than 15 percent. For these reasons, staff recommends amending the ordinance to state that a swimming pool may be subject to closure, if the same pool fails three consecutive water samples.

Repeal Chapter 8-02 Frozen Desserts

Dairy processing facilities are regulated by the North Dakota Department of Agriculture. If there was issue/concern with frozen desserts food establishments (i.e.: restaurant, grocery store, convenience store, etc.) Environmental Health would have authority via the North Dakota Department of Health Food Code (which we have adopted by reference in city ordinance 8-03-01) to address the matter and take regulatory action if necessary. For this reason, Chapter 8-02 is not needed for enforcement of food establishments by the Environmental Health Division and staff recommends removing it.

Repeal definitions of “Temporary food market” & “Vendor”

We currently do not charge vendors selling only whole, unprocessed produce. Both of these license types have been removed from our fees and charges.

8-03-10 – Food Inspections:

Currently we inspect all food establishments (i.e.: restaurants, grocery stores, bars, convenience stores, coffee shops, etc.) once every six months. The FDA scientifically points out that primary risk factors including the types of food served, the food preparation processes used, the volume of food, and the population served, all have a bearing on the occurrence of foodborne illness. Based on this information, the FDA recommends that regulatory jurisdictions develop and use a process that groups food establishments into at least three categories based on potential and inherent food safety risks. Risk level 1 establishments (i.e.: coffee shops, bars and convenience stores) would be inspected annually. Risk level 2 establishments (i.e.: fast food restaurants) would be inspected twice a year. Risk level 3 establishments (i.e.: full scale restaurants) would be inspected three times a year. Staff prefers this risk based inspection frequency rather than treating all food establishments the same and inspecting each once every six month. Lastly, we are currently using a paperless inspection report which is emailed to the operator after receiving their electronic signature. For this reason, we want to add “email to a confirmed email address” as an appropriate means of notification to the operator.

CITY OF BISMARCK

Ordinance No. 6239

First Reading	_____
Second Reading	_____
Final Passage and Adoption	_____
Publication Date	_____

AN ORDINANCE TO AMEND AND RE-ENACT SECTIONS 8-01-13, 8-03-01, 8-03-04, 8-03-05, 8-03-06, 8-03-07, 8-03-08, 8-03-09, 8-03-10, 8-03-13, 8-03-14, 8-03-15, 8-03-16, 8-04.1-09, 8-04.1-10, 8-04.1-11, 8-04.1-12, 8-04.1-13, 8-11-01, 8-11-03, 8-11-04, 8-11-05, 8-11-06, 8-11-07, 8-11-08, 8-11-09, 8-13-01, 8-13-02 AND 8-13-07 OF THE BISMARCK CODE OF ORDINANCES (REV.) RELATING PERMITS REQUIRED UNDER THE PROVISIONS OF TITLE 8.

BE IT ORDAINED BY THE BOARD OF CITY COMMISSIONERS OF THE CITY OF BISMARCK, NORTH DAKOTA:

Section 1. Amendment. Section 8-01-13 of the City of Bismarck Code of Ordinances (1986 Rev.) relating to Fees is hereby amended and re-enacted to read as follows:

8-01-13. Fees. The fees for any permit license or inspection required by this title are as determined from time to time by the city commission and a complete schedule of fees for this chapter shall be on file with the office of the city administrator.
(Ord. 5660, 05-13-08)

Section 2. Amendment. Section 8-03-01 of the City of Bismarck Code of Ordinances (1986 Rev.) relating to Code Adopted is hereby amended and re-enacted to read as follows:

8-03-01. Code Adopted. The City hereby adopts the Food Code as adopted by the North Dakota Department of Health relating to food handling establishments including retail sales of food, defining food, potentially hazardous food, mobile food unit, temporary food ~~service~~ establishment, regulatory authority, utensils, equipment, etc.; providing for sale of only sound, properly labeled food; regulating the sources of food; establishing sanitation standards for food, food protection,

food service personnel, food service operations, food equipment and utensils, sanitary facilities and controls, and other facilities; requiring ~~permits~~ a license for the operation of food service establishments; regulating the inspection of such establishments; providing for the examination and condemnation of food; which is hereby incorporated by reference thereto, except as hereby amended. All equipment and multi-use utensils shall comply with applicable National Sanitation Foundation standards or their equivalent.

Chapter 102(2) is amended as follows:

~~"Temporary food market" means a fruit or vegetable stand or truck restricted in operation as to place and time as determined by the health officer. The time shall not exceed six consecutive months of operation.~~

"Temporary food-service establishment" means any food-service establishment which operates at a fixed location for a temporary period of time, not to exceed seven days in connection with a fair, carnival, circus, public exhibitions or similar transitory gathering.

Chapter 102, Section BB is amended by adding thereto:

~~"Vendor" means a person who distributes foods for consumption on or off premises which contain potentially hazardous food and generally do not need further processing except for heating and/or partial cooking (sandwiches, pizzas, etc.)~~

(Ord. 4956, 12-08-98; Ord. 5616, 07-24-07)

Section 3. Amendment. Section 8-03-04 of the City of Bismarck Code of Ordinances (1986 Rev.) relating to Stands Restricted is hereby amended and re-enacted to read as follows:

8-03-04. Stands Restricted. It is unlawful for any person to erect, construct, maintain or operate on any street, alley or public way within the city any popcorn machine, ice cream stand, or any structure, vehicle or building where popcorn, candy, ice cream, confectionery or other merchandise of any kind is kept, given away or offered for sale or sold except with a permit license issued by the city as permitted by this Title.

(Ord. 5616, 07-24-07)

Section 4. Amendment. Section 8-03-05 of the City of Bismarck Code of Ordinances (1986 Rev.) relating to Permit Required is hereby amended and re-enacted to read as follows:

8-03-05. Permit License Required.

1. It is unlawful for any person without a permit license to operate a food-processing establishment, food-service establishment or a temporary food-service establishment in the city or its police jurisdiction.

2. Only persons who comply with the requirements of this article are entitled to receive and retain a permit license under the provisions of this chapter.

Section 5. Amendment. Section 8-03-06 of the City of Bismarck Code of Ordinances (1986 Rev.) relating to Permit Fees is hereby amended and re-enacted to read as follows:

8-03-06. Permit License Fees. The fees to be charged for permits licenses required by this chapter are as set from time to time by the city commission and contained in the schedule of fees on file with the office of the city administrator.

(Ord. 4877, 11-25-97; Ord. 5616, 07-24-07)

Section 6. Amendment. Section 8-03-07 of the City of Bismarck Code of Ordinances (1986 Rev.) relating to Permit Display is hereby amended and re-enacted to read as follows:

8-03-07. Permit License Display. Each permit license issued under the provisions of this chapter must be posted in a conspicuous place in the place of business of the operator. At temporary food-service establishments permits licenses must be posted wherever the operator is serving meals or dispensing food products.

Section 7. Amendment. Section 8-03-08 of the City of Bismarck Code of Ordinances (1986 Rev.) relating to Suspension or Revocation is hereby amended and re-enacted to read as follows:

8-03-08. Suspension or Revocation. Any permit license issued under the provisions of this chapter may be temporarily suspended or revoked by the board of health, after notice and an opportunity for a hearing, for a violation of the provisions of this chapter.

Section 8. Amendment. Section 8-03-09 of the City of Bismarck Code of Ordinances (1986 Rev.) relating to Term of Permit; Proration of Fee is hereby amended and re-enacted to read as follows:

8-03-09. Term of Permit License; Proration of Fee. The ~~permit license~~ issued under the provisions of this chapter shall cover the period commencing ~~January~~ April 1st and ending ~~December~~ March 31st of ~~each~~ the following year. All ~~permits licenses~~ expire on ~~December~~ March 31st of each year. In the event a ~~permit license~~ is issued during a ~~permit license~~ period, the ~~permit license~~ shall be prorated at a ~~full permit fee for more than six months and one-half the permit license fee for less than six months~~ if paid after October 1 of each license year.

Section 9. Amendment. Section 8-03-10 of the City of Bismarck Code of Ordinances (1986 Rev.) relating to Inspection - Procedure for Violations - Suspension is hereby amended and re-enacted to read as follows:

8-03-10. Inspection - Procedure for Violations - Suspension. ~~At least once every six months the health officer shall inspect each retail food market located within the city. Every food establishment within the city shall be inspected by the Health Officer as often as necessary to determine compliance with this chapter. The frequency of inspections shall be based on a system of risk categorization which involves types of foods served, the preparation steps these foods require, volume of food, populations served and previous compliance history. If the health officer discovers a violation on any item of sanitation the operator must be served with written notice or notice by email to confirmed email address of the operator of the violation and an order to comply within a reasonable time. Failure to comply as ordered is grounds for suspension of the operator's permit license by the Board of Health, following notice and an opportunity for a hearing. The period of suspension shall be until the operator complies with section 8-03-13.~~

(Ord. 5616, 07-24-07)

Section 10. Amendment. Section 8-03-13 of the City of Bismarck Code of Ordinances (1986 Rev.) relating to Permit Required is hereby amended and re-enacted to read as follows:

8-03-13. Permit License Required.

1. It is unlawful for any person to operate a retail food market, to offer to sell or to sell food or drink in the city without a ~~permit~~ license from the health officer.

2. Only persons who comply with the provisions of this chapter are entitled to receive and retain a ~~permit~~ license under the provisions of this chapter.

(Ord. 5616, 07-24-07)

Section 11. Amendment. Section 8-03-14 of the City of Bismarck Code of Ordinances (1986 Rev.) relating to Permit Fee is hereby amended and re-enacted to read as follows:

8-03-14. Permit License Fee. The fee to be charged and paid for any ~~permit~~ license required by the provisions of this chapter is as set from time to time by the city commission and contained in the fee schedule on file with the office of the city administrator.

(Ord. 4877, 11-25-97; Ord. 5616, 07-24-07)

Section 12. Amendment. Section 8-03-15 of the City of Bismarck Code of Ordinances (1986 Rev.) relating to Term of Permit is hereby amended and re-enacted to read as follows:

8-03-15. Term of Permit License. ~~Permits Licenses~~ issued under the provisions of this chapter are valid ~~for a calendar year, expiring on December 31st of each year, except temporary permits which expire as indicated on the permit from April 1st through March 31st of the following year.~~ Temporary permits licenses may be issued only for a period not to exceed six months.

(Ord. 5616, 07-24-07)

Section 13. Amendment. Section 8-03-16 of the City of Bismarck Code of Ordinances (1986 Rev.) relating to Permit Display is hereby amended and re-enacted to read as follows:

8-03-16. Permit License Display. Each ~~permit~~ license issued under the provisions of this chapter must be posted in a conspicuous place in the place of business of the ~~permittee~~ licensee.

(Ord. 5616, 07-24-07)

Section 14. Amendment. Section 8-04.1-09 of the City of Bismarck Code of Ordinances (1986 Rev.) relating to Permit Required is hereby amended and re-enacted to read as follows:

8-04.1-09. Permit License Required. It is unlawful for any person without a permit license to operate a lodging establishment in the city or its police jurisdiction. Only persons who comply with the requirements of this chapter are entitled to receive and retain a permit license under the provisions of this chapter.
(Ord. 5617, 07-24-07)

Section 15. Amendment. Section 8-04.1-10 of the City of Bismarck Code of Ordinances (1986 Rev.) relating to Permit Fees is hereby amended and re-enacted to read as follows:

8-04.1-10. Permit License Fees. The fee to be charged for the permit license required by this chapter is as determined from time to time by the city commission and a complete schedule of fees for this chapter shall be on file with the office of the city administrator Nothing in this chapter relieves a lodging establishment from obtaining any other ~~permit(s)~~ license(s) required for its operations.
(Ord. 5617, 07-24-07)

Section 16. Amendment. Section 8-04.1-11 of the City of Bismarck Code of Ordinances (1986 Rev.) relating to Permit Display is hereby amended and re-enacted to read as follows:

8-04.1-11. Permit License Display. Each permit license issued under the provisions of this chapter must be posted in a conspicuous place so as to be seen from the customer side of the registration counter.
(Ord. 5617, 07-24-07)

Section 17. Amendment. Section 8-04.1-12 of the City of Bismarck Code of Ordinances (1986 Rev.) relating to Suspension or Revocation is hereby amended and re-enacted to read as follows:

8-04.1-12. Suspension or Revocation. Any permit license issued under the provisions of this chapter may be temporarily suspended or revoked by the board of health, after notice and an opportunity for a hearing, for a violation of the provisions of this chapter.
(Ord. 5617, 07-24-07)

Section 18. Amendment. Section 8-04.1-13 of the City of Bismarck Code of Ordinances (1986 Rev.) relating to Term of Permit; Proration of Fee is hereby amended and re-enacted to read as follows:

8-04.1-13. Term of Permit License; Proration of Fee. The permit license issued under the provisions of this chapter shall cover the period commencing ~~January~~ April 1st and ending ~~December~~ March 31st of ~~each~~ the following year. All ~~permits~~ licenses expire on ~~December~~ March 31st of each year. In the event a permit license is issued during a permit license period, the permit license shall be prorated at a ~~full permit fee for more than six months~~ and one-half the permit license fee for ~~less than six months~~ if paid after October 1st of each license year.

(Ord. 5617, 07-24-07)

Section 19. Amendment. Section 8-11-01 of the City of Bismarck Code of Ordinances (1986 Rev.) relating to Definitions is hereby amended and re-enacted to read as follows:

8-11-01. Definitions.

* * * * *

5. "Operator" means a permittee licensee, or person working for a permittee licensee, performing body art services.

* * * * *

(Ord. 5264, 07-08-03; Ord. 5714, 04-28-09; Ord. 6156, 10-13-15)

Section 20. Amendment. Section 8-11-03 of the City of Bismarck Code of Ordinances (1986 Rev.) relating to Permit Required is hereby amended and re-enacted to read as follows:

8-11-03. Permit- License Required. No person, firm or corporation shall establish, operate, conduct, maintain or manage any establishment or place offering body art services without first obtaining a permit license to do so.

1. A permit license issued under the provisions of this chapter shall be for a period of up to one year and all permits shall expire on ~~December~~ March 31st of each year.

2. A permit license is required for both permanent and temporary locations. All of the requirements of this chapter apply to both permanent and temporary locations.

3. The annual fee for a permit license is as set from time to time by the city commission and contained in

the fee schedule on file with the office of the city administrator.

4. The ~~permit~~ license must be posted in the permitted location in a manner visible to customers at all times of operation.

5. A ~~permit~~ license issued under this chapter is not transferable to another operator or location.

(Ord. 5264, 07-08-03; Ord. 5618, 07-24-07)

Section 21. Amendment. Section 8-11-04 of the City of Bismarck Code of Ordinances (1986 Rev.) relating to Application for Permit is hereby amended and re-enacted to read as follows:

8-11-04. Application for Permit License. Any person, firm, or corporation, that desires to engage in the business of body art within the city, shall make application for a Body Art ~~Permit~~ License to the public health department, environmental health division. Prior to issuance of a Body Art ~~Permit~~ License, the public health department, environmental health division shall conduct an inspection of the applicants proposed location and equipment to insure compliance with this chapter. The application shall be in writing on forms provided by the public health department, environmental health division. A ~~permit~~ license issued under this chapter shall be limited to the location specified in the ~~permit~~ license. No person, firm, or corporation shall provide body art services at any place other than the place or location named in the ~~permit~~ license.

(Ord. 5264, 07-08-03; Ord. 5714, 04-28-09; Ord. 6156, 10-13-15)

Section 22. Amendment. Section 8-11-05 of the City of Bismarck Code of Ordinances (1986 Rev.) relating to Inspection is hereby amended and re-enacted to read as follows:

8-11-05. Inspection. The initial inspection shall occur prior to opening the business and be made to ensure that ~~permit~~ license requirements are met. Each ~~permitted~~ licensed body art establishment shall be inspected by an Environmental Health Practitioner at least annually.

(Ord. 5264, 07-08-03)

Section 23. Amendment. Section 8-11-06 of the City of Bismarck Code of Ordinances (1986 Rev.) relating to Body Art Establishments; General Provisions is hereby amended and re-enacted to read as follows:

8-11-06. Body Art Establishments; General Provisions.

* * * * *

2. Effective measures shall be taken by the ~~permitter~~ licensee to protect against the entrance of or the breeding or presence of insects, vermin, or rodents in the permitted location. Insects, vermin, and rodents shall not be present in any part of the permitted location, its appurtenances, or appertaining premises.

* * * * *

4. The ~~permitted~~ licensed location shall be well-ventilated and provided with an artificial light source equivalent to at least 20 foot-candles at a height of 3 feet off the floor, except that at least 100 foot-candles shall be provided at the level where the body art procedure is being performed, and where instruments and sharps are assembled.

* * * * *

6. A hand-sink with hot and cold potable water, under pressure, preferably equipped with wrist-or foot-operated controls and supplied with liquid soap and disposable paper towels shall be readily accessible to each procedural area within the ~~permitted~~ licensed location. There shall be at least one hand-sink for each three operators.

* * * * *

(Ord. 5264, 07-08-03)

Section 24. Amendment. Section 8-11-07 of the City of Bismarck Code of Ordinances (1986 Rev.) relating to Sanitation and Sterilization Procedures is hereby amended and re-enacted to read as follows:

8-11-07. Sanitation and Sterilization Procedures.

* * * * *

5. Each ~~permitter~~ licensee shall demonstrate that the sterilizer used is capable of attaining sterilization by appropriate spore destruction tests. These tests shall be verified through an independent laboratory. The ~~permitter~~

license shall not be issued or renewed until documentation of the sterilizer's ability to destroy spores is received by the public health department, environmental health division. These test records shall be retained by the body art establishment for a period of three (3) years and made available to the public health department, environmental health division upon request.

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(Ord. 5264, 07-08-03; Ord. 6156, 10-13-15)

Section 25. Amendment. Section 8-11-08 of the City of Bismarck Code of Ordinances (1986 Rev.) relating to Professional Standards is hereby amended and re-enacted to read as follows:

8-11-08. Professional Standards. Body art operators shall comply with the following practices:

* * * * *

6. All ~~permittee's~~ licensees shall have at least one person certified in CPR present during hours of operation.

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(Ord. 5714, 04-28-09; Ord. 6156, 10-13-15)

Section 26. Amendment. Section 8-11-09 of the City of Bismarck Code of Ordinances (1986 Rev.) relating to Permit Suspension or Revocation is hereby amended and re-enacted to read as follows:

8-11-09. Permit License Suspension or Revocation. Any ~~permit~~ license issued under the provisions of this chapter may be suspended or revoked by the board of health for a violation of the provisions of this chapter, after notice and an opportunity for a hearing.

(Ord. 4572, 01-04-94; Ord. 4891, 03-24-98; Ord. 5264, 07-08-03)

Section 27. Amendment. Section 8-13-01 of the City of Bismarck Code of Ordinances (1986 Rev.) relating to Definitions is hereby amended and re-enacted to read as follows:

8-13-01. Definitions. As used in this chapter, unless the context otherwise requires:

* * * * *

4. "Tanning facility" means a place or business that provides individuals access to a tanning device. Tanning facilities ~~is~~ located in individual dwelling units for personal use are exempt from this chapter.

(Ord. 5607, 11-27-07; Ord. 5714, 04-28-09; Ord. 6156, 10-13-15)

Section 28. Amendment. Section 8-13-02 of the City of Bismarck Code of Ordinances (1986 Rev.) relating to Permit Fee is hereby amended and re-enacted to read as follows:

8-13-02. Permit-Fee. A person may not operate a tanning facility without a ~~permit~~ license issued by the department under this chapter. The holder of a ~~permit~~ license shall display the ~~permit~~ license in a conspicuous place at the tanning facility for which the ~~permit~~ license is issued. ~~Permits Licenses~~ issued under this chapter expire annually. An applicant for a ~~permit~~ license shall submit an application for a ~~permit~~ license to the department on a form provided by the department with a ~~permit~~ license fee as established by the city commission. The application must include the name and the complete mailing address and the street address of the tanning facility and any other information reasonably required by the department for the administration of this chapter.

(Ord. 5607, 11-27-07)

Section 29. Amendment. Section 8-13-07 of the City of Bismarck Code of Ordinances (1986 Rev.) relating to Permit Suspension or Revocation is hereby amended and re-enacted to read as follows:

8-13-07. Permit License Suspension or Revocation. Any ~~permit~~ license issued under the provisions of this chapter may be suspended or revoked by the board of health for a violation of the provisions of this chapter, after notice and an opportunity for a hearing. A violation of any provision of this chapter is an offense.

(Ord. 5607, 11-27-07)

Section 30. Severability. If any section, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

Section 31. Effective Date. This ordinance shall take effect following final passage, adoption and publication.