



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

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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. 6241

<i>First Reading</i>	_____
<i>Second Reading</i>	_____
<i>Final Passage and Adoption</i>	_____
<i>Publication Date</i>	_____

AN ORDINANCE TO REPEAL CHAPTER 8-02 OF THE BISMARCK CODE OF ORDINANCES (REV.), RELATING TO FROZEN DESSERTS.

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

Section 1. Repeal. Chapter 8-02 of the City of Bismarck Code of Ordinances (1986 Rev.) relating to the Frozen Desserts is hereby repealed:

~~CHAPTER 8-02. FROZEN DESSERTS~~

~~8-02-01. Frozen Dessert -- Definition. For the purposes of this chapter, frozen dessert means any clean frozen or partially frozen combination of two or more of the following: Milk or milk products, eggs or egg products, sugars, water, fruit or fruit juices, candy, nut meats, or other harmless and wholesome food product, flavors, color, or harmless stabilizer, and shall be deemed to include ice cream, frozen custard, ice milk, milk sherbet, ices, and other similar products.~~

~~8-02-02. Enforcement Interpretation. This article shall be enforced by the health officer in accordance with the current dairy standards contained in NDCC Chapter 4 30 and North Dakota Dairy Department Regulation 7 3.2.~~
~~(Ord. 5714, 04-28-09)~~

~~8-02-03. Adulterated, Misbranded Products Prohibited. A person may not, within the city or its police jurisdiction, manufacture, freeze, sell, offer, or expose for sale, or have in possession with intent to sell, any mix or frozen dessert which is adulterated or misbranded.~~

~~8-02-04. Labeling. All cans, packages, and other containers enclosing mix or frozen desserts or their ingredients derived from~~

~~milk, except those filled from labeled bulk containers in retail dispensing, must be plainly labeled or marked with: a) the name of the contents; b) in the case of the mix, the word "pasteurized" if the contents have been pasteurized and the word "raw" if the contents have not been pasteurized; c) the name and the street address of the plant at which the contents were placed in the container; and, d) the expiration date. A descriptive word or phrase indicating in more detail the composition or flavoring of the mix or frozen dessert, such as strawberry, chocolate, custard, lemon, etc., may be used on the label.~~

~~The label or mark must be in letters of a size, kind, and color approved by the health officer. Trade names and trademarks may be permitted. The label may not contain marks or words which are misleading.~~

~~A person who manufactures, distributes, or dispenses frozen desserts or mix may not display any grade placard, sign, or notice without the approval of the health officer.~~

~~**8-02-05. Examination of Frozen Desserts and Their Ingredients.** During each consecutive six months period at least four samples of frozen desserts and pasteurized mix from each plant must be tested by the health officer. Samples of mix or frozen desserts may be taken by the health officer at any time prior to final delivery. Samples of ingredients may be tested as often as the health officer may require. Samples of frozen desserts from stores, cafes, soda fountains, restaurants, and other places where frozen desserts are sold may be tested as often as the health officer may require. Bacterial plate counts and direct microscopic counts must be made in conformity with the latest edition of standard methods recommended by the American Public Health Association. Examinations may include other chemical and physical determinations as the health officer may deem necessary for the detection of adulteration. Examinations must be made in conformity with the latest edition of standard methods of the American Public Health Association and the Association of Official Agricultural Chemists. All proprietors of plants, stores, cafes, restaurants, soda fountains, and other similar places shall furnish the health officer, upon his request, with the names of all persons from whom their mix or frozen desserts are obtained.~~

~~Whenever the average bacterial count, the average reduction time, or the average cooling temperature falls beyond the limits prescribed in section 8-02-06, the health officer shall send written notice thereof to the plant concerned, and shall take an additional sample, within three days, for determining a new~~

average. If the new average violates section 8-02-06, the health officer shall exclude the product from sale or suspend the permit.

~~**8-02-06. Standards for Frozen Dessert Products and Its Ingredients.**~~ All mix and desserts and its ingredients must be produced, processed, pasteurized to conform to the following chemical, bacteriological, and temperature standards and the sanitation requirements of this section.

1. ~~Miscellaneous protection from contamination. The various plant operations must be so located and conducted as to prevent any contamination of the mix, frozen desserts, their ingredients, cleaned equipment, or containers. All means necessary for the elimination of flies must be used. Separate rooms must be provided for (a) the pasteurizing, processing, cooling, freezing, and packaging operations, and (b) the washing and bactericidal treatment of containers; provided, that requirement (a) may be satisfied, in frozen desserts plants which freeze and sell only at retail on premises, if all mixing, freezing, and packaging processes, but not necessarily the hardening and storage compartments, are enclosed in a tight glass or other sanitary enclosure which is open only on the side farthest from the public, which has a dust-tight top extending over the entire freezer, and which is protected by a fan so installed and of such power as to prevent the entrance of flies. Containers of frozen desserts ingredients may not be loaded directly into the room or rooms used for pasteurization or subsequent processes. Pasteurized mix or frozen desserts, milk or milk products which have been in contact, or with which mix or frozen desserts from a lower grade plant have been in contact, unless such equipment has first been thoroughly cleaned and subjected to bactericidal treatment. None of the operations connected with a frozen desserts plant shall be conducted in a room used for domestic purposes.~~

2. ~~Handling of containers and equipment. Between bactericidal treatment and usage and during usage, containers and equipment may not be handled or operated in such manner as to permit contamination of frozen desserts, mix or their ingredients.~~

3. ~~Storage and handling of single-service containers and utensils. Caps, parchment papers, wrappers, can liners, and single service sticks, spoons and containers for frozen~~

~~desserts, mix, or their ingredients may be purchased only in sanitary containers, must be kept therein in a clean dry place, and must be handled in a sanitary manner. 4. Pasteurization of mix. All mix must be pasteurized.~~

~~5.—Cooling and handling. All milk and fluid milk products received at the frozen desserts plant for use in frozen desserts or mix must be immediately cooled in approved equipment at forty-five degrees Fahrenheit or less and maintained at that temperature until pasteurized, unless they are to be pasteurized within two hours after receipt; and all pasteurized mix must immediately be cooled in approved equipment to an average temperature of forty-five degrees Fahrenheit or less and maintained at that temperature until frozen.~~

~~All mix which is not frozen at the plant at which it was pasteurized must be transported to the place of manufacturing or freezing in sealed containers, and the mix must be handled in a sanitary manner. Dipping from containers of pasteurized mix is prohibited.~~

~~6.—Packaging. Packaging, cutting, molding, dipping, and other preparation of mix or frozen desserts or their ingredients must be done in an approved manner. Containers must be adequately covered immediately after filling. Caps or covers must be handled in such manner as to prevent contamination of the package contents.~~

~~7.—Overflow or spillage. Product drip, or overflow, or spilled mix or frozen desserts or their ingredients, may not be sold for human consumption.~~

~~8.—Returns. Mix or frozen desserts in broken or open or out dated containers may be returned to the plant for inspection but may not be used for making mix or frozen desserts.~~

~~9.—Personnel, health. The health officer or a physician authorized by him may examine and take a careful morbidity history of every person connected with a frozen desserts plant, or about to be employed, whose work brings him in contact with the production, handling, or storage of mix or frozen desserts, containers, or equipment. If such examination suggests that such person may be a carrier of or infected with the organisms of typhoid or paratyphoid fever or any other communicable diseases likely to be~~

~~transmitted through frozen desserts, he shall secure appropriate specimens of body discharges and cause them to be examined in a laboratory approved by him or by the state health authorities. If the test results confirm that the person is a carrier of or is infected with any communicable disease likely to be transmitted through frozen desserts, the health officer or other physician may bar the person from such employment.~~

~~The person shall furnish such information, submit to such physical examinations, and submit such laboratory specimens as the health officer may require for the purpose of determining freedom from infection.~~

~~10. Bacterial plate count of pasteurized mix or frozen desserts. The average bacterial plate count of the pasteurized mix or frozen desserts may at no time prior to delivery exceed 50,000 per gram and a Coliform Count not to exceed 10 per 1 gram as determined under section 8-02-05.~~

~~11. Ingredients. All mix and frozen desserts ingredients must be clean, have a fresh wholesome flavor and odor and a normal appearance, be of satisfactory quality, and must be handled or processed in an approved manner.~~

~~Milk and milk products used as ingredients in the raw state must have an average bacterial plate count not exceeding 200,000 per cubic centimeter, or an average direct microscopic count not exceeding 200,000 per cubic centimeter or per gram if clumps are counted or 800,000 if individual organisms are counted; and milk and milk products used as ingredients in the pasteurized, condensed, evaporated, or dried state must have an average bacterial plate count not exceeding 50,000 per cubic centimeter or per gram; provided, that these limits are doubled for cream. All milk and milk products used as ingredients must be produced on dairy farms conforming with all of the requirements for Grade A raw milk for pasteurization.~~

~~12. All samples collected will be analyzed by a laboratory certified by the North Dakota Department of Health Public Health Laboratory. Fees for analysis of samples will be determined by the laboratory and charged to the vendor of milk and/or frozen dessert products. All billing and collections for sample analysis will be the~~

~~responsibility of the laboratory conducting the analysis of the samples.~~

~~(Ord. 4956, 12-08-98; Ord. 5714, 04-28-09)~~

~~**8-02-07. Grades of Frozen Desserts Plants Which May Sell Products.** Mix or frozen desserts may not be sold for ultimate consumption within the city or its police jurisdiction unless it has been manufactured and frozen in conformance with the requirements of this article.~~

~~**8-02-08. Transferring and Dispensing Frozen Desserts.** A person may not transfer frozen desserts from one container to another or package the same on the street or in any vehicle or in any place except a sanitary room under approved conditions.~~

~~**8-02-09. Mix and Frozen Desserts from Points Beyond the Limits of Routine Inspection.** Mix and frozen desserts from points beyond the limits of routine inspection of the city may not be sold in the city or its police jurisdiction, unless controlled under provisions equivalent to the requirements of this article; provided that the health officer shall ascertain that the health officer having jurisdiction over the manufacture is properly enforcing such provisions.~~

~~**8-02-10. Notification of Disease.** Notice of any infectious, contagious or communicable disease must be sent, by any frozen desserts manufacturer or distributor among whose employees any infectious, contagious or communicable disease occurs, to the health officer immediately.~~

~~**8-02-11. Procedure When Infection Suspected.** When suspicion arises as to the possibility of transmission of infection from any person involved with the handling of mix, frozen desserts, or their ingredients, the health officer is authorized to require any or all of the following measures:~~

~~1. The immediate exclusion of that person from handling mix, frozen desserts, or their ingredients;~~

~~2. The immediate exclusion of the supply concerned from distribution and use;~~

~~3. Adequate medical and bacteriological examination of the person, or his associates and of his and their body discharges.~~

~~**8-02-12. Frozen Dessert Conveyance Equipment.** All frozen dessert conveyance equipment used for the purpose of vending on~~

~~any street or public way within the City of Bismarck must meet the following requirements:~~

~~1. Compliance with the requirements of Chapter 8-03 pertaining to food service sanitation code and food handling requirements.~~

~~2. The equipment for storage and handling of the frozen dessert product must have proper approval by the public health department, environmental health division.~~

~~3. The equipment must be capable of maintaining a zero degree temperature for the purpose of preventing deterioration of the frozen product.~~

~~4. All products must be from an approved source and shall be prepackaged. No repackaging may be allowed.~~

~~5. The vendor must be at least 14 years of age.~~

~~6. All conveyance equipment is subject to inspection with sampling of product for bacterial analysis.~~

~~7. Daily operating hours are limited to the hours of 9:00 a.m. to 9:00 p.m.~~

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

~~**8-02-13. Permit Required.** It is unlawful for any person to deliver, directly or indirectly, into, or receive for sale into the city or its police jurisdiction for sale or to produce, sell, or offer for sale therein, or to have in storage where mix or frozen desserts are sold or served any milk products' ingredients, mix or frozen desserts, without a permit.~~

~~**8-02-14. Fees.** The permit fees for this chapter 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 and must be paid before the issuance of any permit.~~

~~(Ord. 4877, 11-25-97; Ord. 5618, 07-24-07)~~

~~**8-02-15. License Expiration.** Permits issued under the provisions of this chapter are valid for the calendar year and expire on December 31st of each year.~~

~~**8-02-16. Suspension and Reissuance.**~~

~~1. A permit issued under the provision of this chapter may be suspended or revoked by the health officer after notice and an opportunity for hearing upon the violation by the holder of any of the provisions of this chapter.~~

~~2. Any frozen desserts plant whose permit has been suspended or revoked by the health officer may at any time make application for reissuing of the permit.~~

Section 2. 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 3. Effective Date. This ordinance shall take effect following final passage, adoption and publication.