

TITLE 8
HEALTH AND SANITATION

Table of Contents

CHAPTER 8-01.	GENERAL PROVISIONS.....	5
8-01-01.	Board of Health.....	5
8-01-02.	Powers.....	5
8-01-03.	Notice of Regulations and Orders.....	5
8-01-04.	Health Officer; Qualifications and Duties.....	5
8-01-05.	Enforcement.....	6
8-01-06.	Abatement and Removal of Nuisance, Source of Filth and Cause of Sickness; Right of Entry; Search Warrant.....	6
8-01-07.	Notice and Order.....	7
8-01-08.	Appeal and Emergency.....	7
8-01-09.	Hearing.....	7
8-01-10.	Fees.....	8
8-01-11.	Violation Reports.....	8
8-01-12.	Health Officer's Agent.....	8
8-01-13.	Fees.....	8
CHAPTER 8-02.	FROZEN DESSERTS.....	8
8-02-01.	Frozen Dessert -- Definition.....	8
8-02-02.	Enforcement Interpretation.....	8
8-02-03.	Adulterated, Misbranded Products Prohibited.....	8
8-02-04.	Labeling.....	9
8-02-05.	Examination of Frozen Desserts and Their Ingredients.....	9
8-02-06.	Standards for Frozen Dessert Products and Its Ingredients.....	10
1.	Miscellaneous protection from contamination....	10
2.	Handling of containers and equipment.....	10
3.	Storage and handling of single-service containers and utensils.....	10
4.	Pasteurization of mix.....	11
5.	Cooling and handling.....	11
6.	Packaging.....	11
7.	Overflow or spillage.....	11
8.	Returns.....	11
9.	Personnel, health.....	11
10.	Bacterial plate count of pasteurized mix or frozen desserts.....	12
11.	Ingredients.....	12
12.	All samples collected will be analyzed by a laboratory certified by the North Dakota Department of Health -- Public Health Laboratory.....	12
8-02-07.	Grades of Frozen Desserts Plants Which May Sell Products.....	12
8-02-08.	Transferring and Dispensing Frozen Desserts....	12
8-02-09.	Mix and Frozen Desserts from Points Beyond the Limits of Routine Inspection.....	13

8-02-10.	Notification of Disease.....	13
8-02-11.	Procedure When Infection Suspected.....	13
8-02-12.	Frozen Dessert Conveyance Equipment.....	13
8-02-13.	Permit Required.....	14
8-02-14.	Fees.....	14
8-02-15.	License Expiration.....	14
8-02-16.	Suspension and Reissuance.....	14
CHAPTER 8-03.	FOOD HANDLING ESTABLISHMENTS.....	14
8-03-01.	Code Adopted.....	14
8-03-02.	Subsequent Editions.....	15
8-03-03.	Conflicts.....	15
8-03-04.	Stands Restricted.....	15
8-03-05.	Permit Required.....	16
8-03-06.	Permit Fees.....	16
8-03-07.	Permit Display.....	16
8-03-08.	Suspension or Revocation.....	16
8-03-09.	Term of Permit; Proration of Fee.....	16
8-03-10.	Inspection - Procedure for Violations - Suspension.....	16
8-03-11.	Additional Requirements.....	16
8-03-12.	Meat Products.....	17
8-03-13.	Permit Required.....	18
8-03-14.	Permit Fee.....	18
8-03-15.	Term of Permit.....	18
8-03-16.	Permit Display.....	18
CHAPTER 8-04.1.	LODGING ESTABLISHMENTS.....	18
8-04.1-01.	Definitions.....	18
8-04.1-02.	Employee health and disease control.....	19
8-04.1-03.	Ice.....	19
8-04.1-04.	Guest room toilet and bathing facilities.....	19
8-04.1-05.	Utensil washing.....	20
8-04.1-06.	Single-service items.....	20
8-04.1-07.	Bedding and linen.....	20
8-04.1-08.	Housekeeping.....	20
8-04.1-09.	Permit Required.....	21
8-04.1-10.	Permit Fees.....	21
8-04.1-11.	Permit Display.....	21
8-04.1-12.	Suspension or Revocation.....	21
8-04.1-13.	Term of Permit; Proration of Fee.....	21
CHAPTER 8-05.	THE PROCESSING OF ANIMALS.....	22
8-05-01.	General Provisions.....	22
8-05-02.	Business Location Restrictions.....	23
8-05-03.	Storage Facilities.....	23
CHAPTER 8-06.	PESTICIDES.....	24
8-06-01.	Definitions.....	24
1.	Pest	24
2.	Pesticide.....	24
3.	Pesticide applicator.....	24
4.	Certified applicator.....	24
5.	General use pesticides.....	24
6.	Restricted use pesticides.....	24

8-06-02.	License Required.....	24
CHAPTER 8-07.	SOLID WASTE MANAGEMENT.....	25
8-07-01.	Declaration of Findings and Purpose.....	25
8-07-02.	Definitions.....	26
8-07-03.	Littering Prohibited; Duty to Clean.....	27
8-07-04.	Collection Regulations.....	28
8-07-05.	Collection by City; Exceptions.....	31
8-07-06.	Storage Container Requirements.....	31
8-07-07.	Hauling Restrictions.....	33
CHAPTER 8-07.1	CONSTRUCTION SITES.....	35
8-07.1-01.	Unlawful Dumping and Littering by Contractors; Duty to Clean.....	35
8-07.1-02.	Exceptions.....	38
8-07.1-03	Penalty.....	38
CHAPTER 8-08.	RODENT CONTROL.....	38
8-08-01.	Definitions.....	38
8-08-02.	Compliance Required for Business License.....	39
8-08-03.	Buildings to be Ratproofed.....	39
8-08-04.	New Floors.....	39
8-08-05.	Appeal and Emergency.....	40
8-08-06.	Ratproofing of Certain Buildings.....	40
8-08-07.	Removal of Ratproofing Prohibited.....	42
8-08-08.	Foodstuffs.....	42
8-08-09.	Feed.....	42
8-08-10.	Garbage, Refuse, Dead Animals.....	42
8-08-11.	Lumber, Boxes, Other Material.....	43
CHAPTER 8-09.	SMOKING IN PLACES OF PUBLIC ASSEMBLY.....	43
CHAPTER 8-10.	NOISES.....	43
8-10-01.	Declaration of Purpose and Intent.....	43
8-10-02.	Definitions.....	43
8-10-03.	Unlawful Noise.....	44
8-10-04.	Tables; Exceptions.....	45
8-10-05.	Guests on Premises.....	47
8-10-06.	Noisy Party or Gathering Prohibited.....	47
8-10-07.	Order to disperse - refusal Prohibited.....	48
8-10-08.	Tenant or Owner - Cooperation Required.....	48
8-10-09.	Violations - Prima Facie Evidence.....	48
8-10-10.	Classification; Penalty.....	48
CHAPTER 8-11.	BODY ART.....	48
8-11-01.	Definitions.....	48
8-11-02.	Tattooing and Body Piercing of Minors Prohibited	49
8-11-03.	Permit-Required.....	49
8-11-04.	Application for Permit.....	50
8-11-05.	Inspection.....	50
8-11-06.	Body Art Establishments; General Provisions...	50
8-11-07.	Sanitation and Sterilization Procedures.....	52
8-11-08.	Professional Standards.....	53
8-11-09.	Permit Suspension or Revocation.....	55

CHAPTER 8-12.	INDIVIDUAL SEWAGE TREATMENT SYSTEMS.....	55
8-12-01.	When municipal sewage treatment facilities are not available.....	55
8-12-02.	Permit Required.....	55
CHAPTER 8-13.	TANNING FACILITIES.....	56
8-13-01.	Definitions.....	56
8-13-02.	Permit-Fee.....	56
8-13-03.	Advertising - Notices - Warning Signs.....	57
8-13-04.	Duties.....	58
8-13-05.	Injury Reports.....	61
8-13-06.	Recordkeeping.....	61
8-13-07.	Permit Suspension or Revocation.....	62

CHAPTER 8-01. GENERAL PROVISIONS

8-01-01. Board of Health. The board of city commissioners constitutes the board of health.

Reference: N.D.C.C. 23-35-03.

(Ord. 5660, 05-13-08)

8-01-02. Powers. The board of health has all the duties and powers provided by law.

Reference: N.D.C.C. Ch. 23-35-08.

(Ord. 5660, 05-13-08)

8-01-03. Notice of Regulations and Orders. Notice must be given by the board of city commissioners, sitting as a board of health, of regulations made by the board by publishing those orders or regulations in the official newspaper within the city, which publication is deemed a legal notice to all persons.

(Ord. 5660, 05-13-08)

8-01-04. Health Officer; Qualifications and Duties.

1. The health officer must be a competent physician licensed by this state.

2. The health officer will perform all the duties prescribed by state law and city ordinances.

3. The health officer will act as city physician for the purpose of rendering medical services when called upon to do so.

4. Within the jurisdiction of the board of health, a health officer:

a. Shall keep a record of the official acts of the local health officer.

b. Shall enforce every law and rule relating to preservation of life and health of individuals.

c. May exercise the powers and duties of the board of health under the supervision of the board of health.

d. May make sanitary inspection of any place within the jurisdiction in which the health officer finds a probability that a health-threatening condition exists.

e. May investigate public water and ice supplies suspected of contamination and initiate necessary condemnation proceedings.

f. May enforce school cleanliness; inspect any school that may be overcrowded, poorly ventilated, or unsanitary; and, when necessary, report cases of any unsanitary or unsafe school building to the board of health for investigation.

g. May take any action necessary for the protection of public health, safety and welfare.

h. May determine when confinement and decontamination is necessary for the safety of the public. The health officer may establish confinements consistent with procedures provided under chapter 23-07.6 and perform any acts required for decontamination when necessary.

i. Shall maintain an office within the jurisdiction of the public health unit consistent with any terms of appointment.

*Reference: N.D.C.C. 23-04-06; 23-35-12.
(Ord. 5660, 05-13-08)*

8-01-05. Enforcement. Except as otherwise provided it is the duty of the health officer to enforce the provisions of this title and NDCC Chapter 23-35.

*Reference: N.D.C.C. 23-35
(Ord. 5660, 05-13-08)*

8-01-06. Abatement and Removal of Nuisance, Source of Filth and Cause of Sickness; Right of Entry; Search Warrant.

1. If necessary for the protection of public health to abate or remove any nuisance, source of filth, or cause of sickness, the health officer shall serve a notice and order on the owner or occupant of the property requiring the owner or occupant, at the owner's or occupant's expense, to remove or abate the nuisance, source of filth, or cause of sickness within a time specified by the health officer, not exceeding thirty days. If the owner or occupant fails to comply with the notice and order to remove or abate or if the nuisance, source of filth, or cause of sickness exists on property of a nonresident owner or on property the owner of which cannot be found, the health officer may remove or destroy the nuisance, source of filth, or cause of sickness at the expense of the city, which shall charge the expense against the lot, piece or parcel of land on which the work is done.

2. The governing body of the city may levy and assess against the property the cost of the removal or destruction of a nuisance, source of filth, or cause of sickness, in the manner provided under NDCC Chapter 40-22. Each

assessment must be recorded, collected, and paid as other taxes are recorded, collected and paid.

3. If the health officer determines that it is necessary for the preservation of public health to enter any building or property within the board of health's jurisdiction to examine, destroy, remove, or prevent any nuisance, source of filth, or cause of sickness and is refused entrance into the building or property, the health officer or a designated agent, may apply for a search warrant under oath to a district judge within the jurisdiction of the board of health stating the facts in the case which the health officer has knowledge. If a warrant is issued and if requested by the health officer, the police department shall provide assistance to the health officer in any action to search or seize material in or on any private property, to destroy, remove, or prevent the nuisance, source of filth or cause of sickness if there is probable cause to believe a public health hazard or public health nuisance exists on or in that property, and shall carry out any preventive measures the health officer requests.

*Reference: N.D.C.C. Ch. 23-35-09
(Ord. 5660, 05-13-08)*

8-01-07. Notice and Order. Whenever a violation of this title is found, the health officer or agent shall give written notification to the owner and the occupant that a violation has occurred and order the violation abated and the building or premises brought back into compliance with this title. A reasonable time must be allowed for compliance unless the health officer determines that the public health, safety or welfare is at risk.

(Ord. 5660, 05-13-08)

8-01-08. Appeal and Emergency. All decisions of the health officer dealing with violations of this title or the issuance or non-issuance of the licenses or permits required by this title are subject to appeal to the Board of City Commissioners upon written notice of appeal filed within 15 days of receipt of the notice and order or decision. If no appeal is filed within the time period specified, the decision or order of the health officer is final. An appeal stays the decision issued unless the health officer certifies to the board that a stay would cause imminent danger to the health, safety, or welfare of the citizens in which case the decision may be stayed only by a restraining order from the City Commission or a court of record.

8-01-09. Hearing. Upon receiving the notice of appeal, the board shall set a date for a hearing within fifteen days of receipt of the notice of appeal. Notice of the time and place

for the hearing must be served upon the appellee by certified mail or in person not less than five days prior to the hearing.
(Ord. 5660, 05-13-08)

8-01-10. Violations. Any person who fails to comply with a final decision or order is guilty of an offense. Each day the violation continues constitutes a separate offense.
(Ord. 5618, 07-24-07; Ord. 5660, 05-13-08)

8-01-11. Violation Reports. The health officer must notify the city attorney of any violations of the health ordinances, or any violation of the orders or requirements of the board of health, health officer or any subordinate.
(Ord. 5660, 05-13-08)

8-01-12. Health Officer's Agent. The director of public health or his or her designee is the agent for the city health officer in enforcing this title, and, subject to the direction of the city health officer, has all of the powers and duties of the city health officer.
(Ord. 5660, 05-13-08; Ord. 5714, 04-28-09; Ord. 6156, 10-13-15)

8-01-13. Fees. The fees for any permit 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)

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.

CHAPTER 8-03. FOOD HANDLING ESTABLISHMENTS

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 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)

8-03-02. Subsequent Editions. Subsequent editions or revisions of the code adopted by the provisions of this article shall be considered adopted and of full force and effect within the city upon the adoption thereof by the State of North Dakota and the filing of three copies thereof in the office of the city administrator.

(Ord. 5616, 07-24-07)

8-03-03. Conflicts. In the event of any conflict between the provisions of the Food Code and applicable provisions of state law or city ordinances, rules or regulations, the provisions of city ordinances, rules or regulations shall prevail and be controlling.

(Ord. 5616, 07-24-07)

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 issued by the city as permitted by this Title.

(Ord. 5616, 07-24-07)

8-03-05. Permit Required.

1. It is unlawful for any person without a permit 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 under the provisions of this chapter.

8-03-06. Permit Fees. The fees to be charged for permits 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)

8-03-07. Permit Display. Each permit 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 must be posted wherever the operator is serving meals or dispensing food products.

8-03-08. Suspension or Revocation. Any permit 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.

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

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. If the health officer discovers a violation on any item of sanitation the operator must be served with written notice 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 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)

8-03-11. Additional Requirements.

1. All equipment and multi-use utensils shall comply with applicable National Sanitation Foundation standards or their equivalent.

2. This Chapter does not prohibit a licensed operator from displaying or selling fruits or vegetables from a truck or stand located on his premises, provided he complies with all zoning requirements.

3. All food in retail food markets must be from approved sources and must be clean, wholesome, free from spoilage, adulteration, misbranding, and safe for human consumption.

(Ord. 5616, 07-24-07)

8-03-12. Meat Products. Meat processed in a retail food market facility licensed under the provisions of this article shall comply with the following provisions:

1. Meat offered for retail sales must be from an animal slaughtered under the supervision of the United States Department of Agriculture. All such carcasses or parts must be "stamped" with a plant or inspector number. Such product must be designated as "USDA inspected product" or "inspected product". Any meat product that does not bear the proper stamp as indicated is deemed "uninspected" product and may not be offered for retail sale in any form. Such uninspected product may be stored on the premises only if stored in a separate cooler from inspected product, or separated by a solid type of partition in the cooler area. Processing of uninspected product in any form at the same time inspected product is processed is prohibited.

2. Processing of uninspected product in a retail facility licensed by this article is permitted, provided no uninspected product is permitted in the meat processing area designated for retail sales. Any inspected product used in the processing and/or mixed with uninspected product must be deemed as uninspected product stamped "NOT FOR SALE". All uninspected product must be properly labelled indicating the name of the owner of the product. All such products must be returned to the original owner.

3. Processing of wild game. Wild game is defined as any animal except domestic cattle, swine, sheep, goats and horses and must be classified as "uninspected" product. Any wild game processed in a retail facility licensed by this article must be cleaned, cut into sections no larger than quarters, and completely boxed before entry into any part of the facility. Further processing of such meat must be performed as described in subparagraph (b).

4. All uninspected product must be free of hide before entry into the retail facility licensed by this article.

5. Any product that appears to be visibly contaminated or not properly identified must be confiscated immediately by the city health officer or his designee.

6. All processing equipment must be thoroughly cleaned and sanitized before the processing of inspected product and between processing of different species of inspected product.

(Ord. 5616, 07-24-07)

8-03-13. Permit 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 from the health officer.

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

(Ord. 5616, 07-24-07)

8-03-14. Permit Fee. The fee to be charged and paid for any permit 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)

8-03-15. Term of Permit. Permits 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. Temporary permits may be issued only for a period not to exceed six months.

(Ord. 5616, 07-24-07)

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

(Ord. 5616, 07-24-07)

CHAPTER 8-04.1. LODGING ESTABLISHMENTS.

8-04.1-01. Definitions. For purposes of this chapter the following words and phrases have the meanings ascribed to them:

Approved. Acceptable to the department based on compliance with applicable standards and public health practices.

Communicable disease. Any disease that can be directly or indirectly transmitted from person to person.

Department. The Bismarck Public Health Department, Environmental Health Division.

Guest. An occupant of a rental unit of a lodging establishment.

Guest room. Any room used or intended to be used by a guest for sleeping purposes.

Health hazard. A chemical agent, source of filth, cause of sickness, or condition that is a health threat to others or a threat to the public health.

Lodging establishment. Any hotel, motel, resort, building, or structure that is used to provide sleeping accommodations to the public for charge. The term does not include primitive lodging cabins, lodges, or ranches.

(Ord. 5617, 07-24-07; Ord. 5714, 04-28-09; Ord. 6156, 10-13-15)

8-04.1-02. Employee health and disease control. A person, while affected with any communicable disease or a carrier of such a disease, or while afflicted with boils, infected wounds, sores, or an acute respiratory infection, may not work in any area of a lodging establishment in any capacity in which there is a likelihood of the person contaminating equipment with pathogenic organisms or transmitting disease to other individuals. If the owner or operator of the lodging establishment has knowledge of any employee who has contracted a communicable disease or has become a carrier of such a disease, the owner or operator shall immediately notify the department.

(Ord. 5617, 07-24-07)

8-04.1-03. Ice. Ice provided to guests in a lodging establishment must be manufactured, stored, transported, and handled in a manner approved by the department. Processes and controls must be designed and monitored to ensure that neither the product nor the product area is subject to contamination. Ice must be dispensed with scoops, tongs, or other ice-dispensing utensils or through automatic self-service ice-dispensing equipment. Ice-dispensing utensils must be stored on a clean surface or in the ice with the dispensing handle extending out of the ice. Scooping of ice with a cup, glass, or similar container is prohibited. Ice storage bins must be drained through an air gap. When existing ice storage bins in areas accessible to the public are replaced, automatic self-service ice-dispensing equipment must be used.

(Ord. 5617, 07-24-07)

8-04.1-04. Guest room toilet and bathing facilities. Each lodging establishment must provide toilet, lavatory, and bathing facilities. In lodging establishments providing toilet, lavatory, and bathing facilities shared by more than one guest

room, the facilities must be provided in the ratio of one restroom for each ten guests, must be provided separately for each sex, and must be available on each floor. To determine the number of guests, a single-bed unit is designed for two people, and a double-bed unit is designed for four people. All facilities must be provided with hot and cold running water under pressure to each lavatory, shower, bathtub, and shower and bathtub combination at a maximum temperature of one hundred twenty degrees Fahrenheit [48.9 degrees Celsius] at the tap. Bathing or shower facilities must have a non-slip floor surface, such as a manufactured non-slip bathtub or shower unit, a rubberized throw mat, or adhesive-backed non-slip strips. All toilets, lavatories, and bathing fixtures must be kept clean, sanitary, and in good repair when the guest room is in use and between stays of different guests.

(Ord. 5617, 07-24-07)

8-04.1-05. Utensil washing. Utensil washing must be in compliance with North Dakota Administrative Code Chapter 33-33-04. Sanitizing solutions must comply with 21 CFR Section 178.1010. After cleaning and until use, all contact surfaces of equipment and utensils must be wrapped, sealed, or stored in a manner that protects them from contamination.

(Ord. 5617, 07-24-07)

8-04.1-06. Single-service items. Lodging establishments which do not have facilities for cleaning and sanitizing utensils that meet the requirements in North Dakota Administrative Code Chapter 33-33-04 shall use single-service articles. All single-service articles must be stored, handled, and dispensed in a sanitary manner and may be used only once. The use of common drinking containers in public places is prohibited. Single-service articles must be made from clean, sanitary, and safe materials.

(Ord. 5617, 07-24-07)

8-04.1-07. Bedding and linen. Lodging establishments that provide bedding and linen must furnish each guest with clean sheets and pillowcases for the bed, bunk, or cot to be occupied by the guest. Sheets must be of sufficient width and length to cover the mattress completely. All bath, linen, sheets, and pillowcases used by one guest must be washed and mechanically dried before being furnished to another guest. All bedding, including mattresses, mattress pads, quilts, blankets, pillows, sheets, and spreads, and all bath linen must be kept clean, in good repair, and stored in a sanitary manner. Soiled linens, uniforms, and other garments must be kept separate from clean linens to prevent cross-contamination. All clean linens must be stored on smooth, non-absorbent, cleanable surfaces located a minimum of six inches [152.4 millimeters] above the floor.

(Ord. 5617, 07-24-07)

8-04.1-08. Housekeeping. All parts of the lodging

establishment and its premises must be kept neat, clean, and free from litter and rubbish. Operations or conditions may not constitute a health hazard. Cleaning operations must be conducted in a manner that minimizes contamination of facilities. Cleaning equipment, supplies, insecticides, paints, and other toxic or hazardous products may not be stored above or next to linens. All cleaners, sanitizers, and disinfectants must comply with 21 CFR Section 178.1010. An ingredient label and 'direction for use label on each chemical being used must be readily available for reference or inspection. All containers used for dispensing these chemicals must be prominently and distinctively labeled for identification of contents.
(Ord. 5617, 07-24-07)

8-04.1-09. Permit Required. It is unlawful for any person without a permit 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 under the provisions of this chapter.
(Ord. 5617, 07-24-07)

8-04.1-10. Permit Fees. The fee to be charged for the permit 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) required for its operations.
(Ord. 5617, 07-24-07)

8-04.1-11. Permit Display. Each permit 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)

8-04.1-12. Suspension or Revocation. Any permit 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)

8-04.1-13. Term of Permit; Proration of Fee. The permit issued under the provisions of this chapter shall cover the period commencing January 1st and ending December 31st of each year. All permits expire on December 31st of each year. In the event a permit is issued during a permit period, the permit shall be prorated at a full permit fee for more than six months and one-half the permit fee for less than six months.
(Ord. 5617, 07-24-07)

CHAPTER 8-05. THE PROCESSING OF ANIMALS

8-05-01. General Provisions. The following provisions govern the processing of animals within the city limits:

1. A person may not bring into or store within the city any dead animals, bones or carcasses of dead animals, except such as are suitable and intended for human consumption, except in accordance with the provisions of this chapter.

2. Storage or skinning of dead animals is not permitted in any portion of the city where such storage and skinning is prohibited by the zoning ordinance of this city.

3. A person may not place outside of any building any hide, skin, fur or other portion of the body of any animal for the purpose of storing, drying or curing the same. All drying and curing of hides, skins and furs and any other portion of the body of any animal must be done inside of a building or warehouse. Hides, skins or furs or other portions of the bodies of dead animals may not be stored outside of a building or warehouse.

4. The carcasses of skinned animals may not be piled on the ground or on any wooden, tile, or other form of floor except a concrete floor as required by this article.

5. Bodies of dead animals intended for skinning may be kept before skinning only for so long as such bodies are solidly frozen and not longer. The bodies may be removed from the place where stored to the place where the skinning is carried on and kept in such skinning room a sufficient length of time to thaw the bodies sufficiently for skinning. After the animals have been skinned the carcasses thereof must, within 48 hours after the same are skinned, be removed outside of the corporate limits of the city.

6. The keeping of bones to which are attached any flesh, skin or hair is prohibited unless such bones are stored and kept in a warehouse constructed in the same manner and with the same floor construction as required by this article.

7. A person may not permit any truck containing dead bodies or carcasses of animals other than those animals suitable or intended for human consumption to remain standing on any street, alley or other public way in the city for a period of more than one hour.

8-05-02. Business Location Restrictions. It is unlawful for any person to maintain, establish or operate in the city or within one-half mile of the municipal limits of the city any place or establishment for the storage of bones, hides, furs, junk or scrap metal, slaughter houses, packing houses, renderies and blacksmith shops without a permit issued by the board of city commissioners, acting as the board of health. Application must be made on forms provided by the city accompanied by the fee as provided for issuance of a building permit. A permit may be issued, if in the discretion of the board, such business will not in any manner affect the health, morals, safety and comfort of the inhabitants of the city. This provision is declared to be enacted under the police power of the city for the protection of health, morals, safety and comfort of the people of the city.

8-05-03. Storage Facilities. The following provisions govern the storage of carcasses within the city:

1. A person may not bring in, keep, store or skin carcasses of dead animals in the city except in an approved warehouse or storage room.

2. The storage room or warehouse must be constructed with a concrete floor and finished in such a manner as to make it impervious to moisture.

3. The floor of the warehouse or storage room must be so constructed as to slope toward a drain or opening in the floor and the opening or drain must be connected with a sanitary sewer system of the city in a manner and according to the regulations and ordinances of this city governing connections with sanitary sewers.

4. Frozen carcasses may be temporarily stored in a warehouse containing a storage room constructed in the manner herein provided, or in any connecting warehouse not equipped with a concrete floor and drain; provided, any frozen carcasses so stored must be removed while they are in a frozen condition.

5. Each warehouse must be fully enclosed on all sides and covered by a roof and be accessible for the delivery of the carcasses or bones through an entrance not opening through or across any street or sidewalk in the city.

6. The warehouse or storage room must be equipped with ventilators constructed so as to open through the roof or top of the building and no opening or access to the building or warehouse may at any time be left or kept open so as to permit odors from the storage room or warehouse to escape through or across any street or sidewalk of the city.

7. The storage room or warehouse must at all times be kept in a clean and sanitary condition.

8. The floor of a warehouse used for skinning or piling of skinned carcasses of dead animals must be cleaned at least each day by flushing the same thoroughly with water and such floor shall be thoroughly cleaned.

CHAPTER 8-06. PESTICIDES

8-06-01. Definitions. For the purposes of this chapter the following words and phrases have the meanings respectively ascribed to them:

1. Pest:

a. Any insect, snail, slug, rodent, nematode, fungus, weed; or

b. Any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other microorganism (except viruses, bacteria, or other microorganisms on or in living man or other living animals) which are annoying or otherwise injurious or harmful to agriculture, health and the environment.

2. Pesticide:

a. Any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest; and

b. Any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.

3. Pesticide applicator: Any person who applies any pesticide.

4. Certified applicator: Any individual who is certified or licensed as required by Chapter 4-35, North Dakota Century Code, as authorized to use or supervise the use of any restricted use pesticide covered by his license.

5. General use pesticides: A pesticide formulation which is not classified for restricted use.

6. Restricted use pesticides: Any pesticide formulation which is classified "restricted use".

8-06-02. License Required.

1. Any person who applies pesticides for hire in the City of Bismarck must be a certified applicator licensed by the State of North Dakota, or for general use pesticides, working under the direct supervision of a certified applicator licensed by the State of North Dakota.

2. The pesticide applicator must have the license issued by the State of North Dakota in possession at all times while applying pesticides.

(Ord. 5190, 07-09-02; Ord. 5618, 07-24-07; Ord. 6119, 05-12-15)

CHAPTER 8-07. SOLID WASTE MANAGEMENT

8-07-01. Declaration of Findings and Purpose. The Board of City Commissioners finds and declares that:

1. The people of the City of Bismarck have a right to a clean environment, and the costs of maintaining a clean environment through the efficient environmentally acceptable management of solid wastes should be borne by those who use such services.

2. Serious economic, management and technical problems exist in the management of solid wastes.

3. Inefficient and improper methods of managing solid wastes create serious hazards to the public health, result in scenic blights, cause pollution of air and water resources, cause accident hazards, increase rodent and insect disease vectors, have an adverse effect on land values, create public nuisances, and otherwise interfere with community life and development.

4. In order to properly regulate the storage, collection, transportation and disposal of solid wastes to protect the public health, safety and welfare and to enhance the environment for the people of the city, it is necessary and proper that the city establish and maintain a sanitary landfill that meets all requirements established by the State of North Dakota and the North Dakota State Department of Health where all solid waste collected in the city from residences, commercial enterprises and all other locations shall be deposited.

5. In order to operate and maintain a sanitary landfill that meets all of the requirements of the State of North Dakota and the North Dakota State Department of Health, and that is adequate to meet the needs of all of the residents of the City of Bismarck, and to plan for the orderly expansion of the landfill to meet future needs of the City and for the acquisition of land and equipment for such purposes, it is necessary that all solid waste

collected in the City of Bismarck be deposited at the city landfill, or at other approved sanitary landfills designated by the City.

6. The City Commission finds that it is in the best interests of the people of the City of Bismarck to reduce the waste stream going into the landfill and finds that a recycling program and a yard waste program are effective methods to reduce that waste stream. In order to operate these programs, it is necessary that funding be provided by the solid waste utility.

7. The City of Bismarck has the authority, pursuant to Chapters 40-05 and 23-29, N.D.C.C., and Article 3 Section 7 of the Home Rule Charter for the City of Bismarck, to regulate the collection of all waste in the city, to adopt a solid waste management ordinance, and to regulate the disposal of all waste collected in the city.

8-07-02. Definitions. For the purpose of this chapter, the following terms have the meanings given:

1. "Collection" means the act of removing solid wastes from the central storage point of the primary source or residential container.

2. "Construction and demolition waste" means waste building materials and rubble resulting from construction, remodeling, repair or demolition operations on houses, commercial buildings, sidewalks, pavements and other structures.

3. "Garbage" means putrescible animal and vegetable wastes resulting from the handling, preparation, cooking and consumption of food, including wastes from markets, storage facilities, handling and sale of produce and other food products.

4. "Hazardous wastes" means any waste or combination of wastes which pose a substantial present or potential hazard to human health or living organisms because such wastes are nondegradable or persistent in nature or because they can be biologically magnified, or because they can be lethal, or because they may otherwise cause or tend to cause detrimental cumulative effects.

5. "Inert waste" means wood, concrete, metal, bricks, trees, rock, glass or other construction or demolition waste as directed by the Director of Public Works.

6. "Person" means any individual, corporation, partnership, firm, association, trust, estates, public or private institution, group, agency, political subdivision of this state, any other state or political subdivision or agency thereof and any legal successor, representative agent or agency of the foregoing.

7. "Premises" means any property, piece of land or real estate or building.

8. "Putrescible waste" means solid waste capable of being decomposed with sufficient rapidity as to cause nuisances from offensive odors or produce fly-breeding conditions.

9. "Recyclable" means any material designated by the Director of Public Works for removal from the solid waste stream for special collection and disposition.

10. "Rubbish" means nonputrescible solid wastes (excluding ashes), consisting of both combustible and noncombustible wastes, such as paper, cardboard, tin cans, yard clippings, wood, glass, bedding, crockery and similar materials.

11. "Scavenging" means uncontrolled removal of solid waste materials from any disposal operation site, storage area or collection point.

12. "Solid wastes" means garbage, rubbish and all other solid wastes and solid discarded materials, including solid waste materials resulting from industrial and commercial operations.

13. "Storage" means the interim containment of solid waste, in an approved manner after generation and prior to ultimate disposal.

14. "Yard waste" means grass clippings and leaves and shall not include garden refuse and trees and branches.

(Ord. 4362, 04-09-91; Ord. 4514, 05-25-93)

8-07-03. Littering Prohibited; Duty to Clean.

1. It is unlawful for any person to throw, drop, cast or deposit upon any street, alley, sidewalk, or any yard or premises, public or private, any filth of any kind, or cans, paper, trash, paper containers, solid waste, yard waste, bottles or any other form of litter or waste matter.

2. The owner or occupant of any store or other place of business situated within the city shall exercise reasonable diligence at all times to keep the premises

clean of wastepaper, wrapping paper, paper napkins, cartons, package containers and other used or waste materials thrown or left on said premises by its customers, and shall take reasonable measures to prevent waste from drifting or blowing to adjoining premises.

Receptacles of sufficient size and number must be placed on the premises accessible to the customers of such business where the above referred to articles of waste may be disposed of.

3. It is unlawful for any person going upon the premises of another to in any manner dispose of wastepaper, wrapping paper, paper napkins, cartons, package containers and other used or waste materials except in receptacles provided for such purposes.

4. No person shall use the disposal container of another to dispose of solid waste without the consent of the owner of the container.

8-07-04. Collection Regulations.

1. All solid wastes must be collected, conveyed and disposed of by the city under the supervision of the director of public works, except as otherwise provided in this chapter. The director of public works has authority to make regulations concerning the days of collection, type and location of waste containers and such other matters pertaining to the collection, conveyance and disposal as necessary, and to change and modify the same, and shall give notice thereof by public notice in the official newspaper. Any person aggrieved by a regulation of the director of public works has the right of appeal to the board of city commissioners, who shall confirm, modify or revoke such regulation, following notice to the aggrieved party and a hearing.

2. The director of public works has authority to make such reasonable regulations concerning individual collection, transportation and hauling and disposal of solid waste as deemed necessary, which shall become effective when notice thereof has been given by publication in the official newspaper.

3. A person may not place any solid waste in any street, alley or other public place or upon any private property within the city except in proper containers or for collection and removal. Nonputrescible solid wastes such as branches or newspapers and magazines may be bundled in bundles not exceeding 50 pounds and more than four feet in

length and placed out for collection not more than 24 hours before collection.

4. Any unauthorized accumulation of garbage or solid waste on any premises is hereby declared to be a nuisance and is prohibited, except as provided in paragraph 12 of this section.

5. Any approved waste container together with solid waste must be within 15 feet of an alley accessible to the property. Where no alleys are available, all waste containers must be as accessible as possible and within 3 feet of the curb. The Director of Public Works may allow a greater distance as conditions require. Special arrangements for other collection points may be made by the Director of Public Works for those citizens who are unable to move their waste container or solid waste to the required collection point. Waste containers should be placed out for collection by 8:00 a.m. the day of collection but not before the evening before the day of collection.

6. Residential collections must be made as often as is necessary to maintain and preserve the health of the community. When streets or alleys are in temporary condition to make collection impossible, such failure does not relieve the occupant of payment of charges for garbage collection.

7. All solid waste of each residence shall, if a reasonable amount, be collected during regular collection times for the standard charge. The director has the authority to refuse to collect unreasonable amounts or to make an additional charge for such amounts.

8. The driver and operator or operators of any truck engaged in the collection and removal of solid waste by the city may refuse to collect and remove the same if it does not substantially meet the requirements of this chapter.

9. Ownership of solid wastes set out for collection or deposited at the city disposal grounds is vested in the city. It is unlawful for any person other than the owner or other authorized person, to remove any refuse material from the solid waste container, storage area, or collection point of another or from the city disposal grounds.

10. A person may not burn or cause to be burned any paper, garbage, excelsior, straw, hay, leaves, brush, weeds, dry grass, shavings, rags, barrels, boxes, crates, lumber or other combustible materials or solid waste within

the city, except in an incinerator approved by the state health department.

11. Commercial bulk containers may be placed on public right-of-way used as an alley when it is impractical or impossible to store the container entirely on private property. Those containers placed on public right-of-way may not project more than five feet into the alley. The alley must have an unobstructed opening of at least 15 feet.

12. A person may compost grass or leaves collected on the property provided the composting site is operated in a safe and healthful manner and does not create a nuisance. Composting facilities should be approved by the Public Health Department, Environmental Health Division.

13. The City shall designate neighborhood collection points within the city and provide the necessary containers for yard wastes. No person shall deposit any solid waste in the city yard waste collection other than yard waste. Large volume producers of yard wastes shall dispose of yard wastes as directed by the Director of Public Works.

14. No person shall place, deposit or dump any material in a recycling container other than what is indicated as allowable on the container. A recycling container may include any public or private container, dumpster or receptacle that is clearly signed as being for the deposit of particular materials.

15. Recyclables shall be collected as specified by the Director of Public Works. Any recyclables set out for collection must be sorted as directed by the Director of Public Works and in containers provided by the City. All other rules pertaining to solid waste collection shall apply.

16. The City may designate neighborhood residential recyclable collection sites within the City and provide or contract for the provision of the necessary containers for recyclables generally or for any specific type of recyclable. Neighborhood residential recyclable collection sites shall be for the collection of residential recyclables only. No person or entity shall dump, deposit or leave any recyclable or garbage that is owned, produced by or derived from any commercial entity, enterprise, business or activity in or upon any city designated neighborhood residential recyclable collection site. A violation of this section shall be an infraction.

(Ord. 4180, 10-13-87; Ord. 4362, 4-09-91; Ord. 4490, 04-13-93; Ord. 4514, 05-25-93; Ord. 5086, 12-19-00; Ord. 5714, 04-28-09; Ord. 6217, 07-12-16)

8-07-05. Collection by City; Exceptions. Except as otherwise provided in this section, all garbage, rubbish or any other solid waste discarded or put out for collection by any person or collected within the city, must be collected, conveyed and disposed of by the city. It is unlawful for any other person to collect any garbage, rubbish or other solid waste for another within the city, or to convey such materials on any streets, highways or alleys of the city, unless such person has been granted a franchise to do so by the board of city commissioners.

1. Persons with a waste collection franchise granted by the board of city commissioners may collect garbage, rubbish or other solid wastes only from mobile home parks and all other locations other than residences and city facilities and convey such materials to the city landfill.

2. All garbage, rubbish or other solid wastes collected in the city must be deposited at the city landfill, or at other approved sanitary landfills designated by the city.

3. Persons with a waste collection franchise granted by the Board of City Commissioners may contract with the City for the collection of recyclables. This contract shall be competitively bid.

(Ord. 4177, 9-15-87; Ord. 4514, 05-25-93; Ord. 6217, 07-12-16)

8-07-06. Storage Container Requirements. The following provisions govern the type, use and maintenance of garbage containers:

1. Residential containers must be a tapered, commercially manufactured type, equipped with suitable handles and tight-fitting covers, and shall be watertight. They must have a maximum capacity of 32 gallons unless bulk containers are used. Plastic bags with a maximum capacity of 32 gallons shall also be acceptable waste containers provided they are closed tightly and have sufficient strength to hold the solid waste they contain. Owners of apartment houses of two or three units shall furnish not less than two 32-gallon cans per living unit. Owners of apartment houses of four or more units shall provide minimum sized bulk containers as follows:

a. One cubic yard for five living units or less;

b. Two cubic yards for six to ten living units;

c. Two cubic yards for each additional ten living units in excess of ten units;

d. Or as required by the Director of Public Works.

The Director of Public Works is authorized to make such inspections as are deemed reasonable to determine the number of containers and the number of pickups per week necessary to provide the minimum level of service required for the removal of refuse from an apartment house and to determine the rate to be used for such service.

Bulk containers must be constructed of durable rust and corrosion-resistant metal, be equipped with tight-fitting lids or doors to prevent entrance of insects or rodents, and must be watertight, leakproof and weatherproof.

2. In order to prevent bulk container (dumpster) users from downsizing their containers below their actual needs, the Director of Public Works is authorized to charge an overflow surcharge fee to be applied to the customer's monthly bill when overflows occur. The amount of the surcharge shall be as determined by the Director of Public Works.

The Director of Public Works is authorized to allow bulk container (dumpster) users to change their container sizes and quantities twice (2x) per year. A change out fee, as determined by the Director of Public Works, will be applied to the container user's monthly bill when change outs occur.

3. Every garbage and trash container must be maintained in as sanitary condition as possible in view of the use to which it is put; and must be thoroughly cleansed as needed by washing, scalding or otherwise. Bulk containers must be kept in good repair and painted once a year unless the director of public works approves existing condition.

4. All garbage must be drained and wrapped, sacked or bagged before being placed in waste containers. Waste containers must be kept tightly closed during the collection or deposit of garbage, trash or solid waste. The contents of all receptacles must be so protected that the wind cannot blow out and scatter same over the streets, alleys and premises of the city. Individuals are encouraged to compost lawn clippings and leaves or take them to containers provided by the City for their collection.

5. It is the duty of any person in control of any premises to replace any container which is damaged or

deteriorated and may cause injury to collection personnel or create a health problem within five days after receipt of a notice of violation.

6. Storage racks or container supports must be provided for individual containers stored outside to minimize corrosion, to prevent breeding of insects, and prevent rodent harborage. Distance to the bottom of the racks or container supports must be at least twelve inches above ground level. The maximum height of a front retaining rail may not exceed 24 inches above grade. Pursuant to Section 8-07-04(5), all containers must be moved to a collection point on the day of collection.

(Ord. 4362, 4-09-91; Ord. 4514, 05-25-93; Ord. 4990, 06-22-99)

8-07-07. Hauling Restrictions. A person may not haul or transport garbage, rubbish or solid waste to the city's disposal grounds except in a vehicle which does not permit any garbage, rubbish or solid waste to seep, spill, leak, blow, drop off or fall to the streets, roads or highways leading to such disposal grounds.

1. The grounds for disposal of solid waste shall be determined by the board of city commissioners. Such grounds must be operated as a sanitary landfill and meet the requirements as set forth by the state health department for landfill disposal purposes.

2. It is unlawful for any person to scavenge, rummage, move, remove, sort or handle solid waste material at the city disposal grounds (other than an employee of the city engaged to work there), and no person may enter upon or in said ground or deposit solid waste therein except during permitted hours as posted and in the manner and at the places as directed and designated, unless under written permit of the city director of public works. No hazardous wastes may be disposed of at the landfill site except in amounts normal in household waste, unless approved by the department. The use of such ground is permitted under such rules and regulations as adopted by the city.

3. The fees for the collection and disposal of solid waste, yard waste, recyclables, or any other materials are as determined from time to time by the city commission and contained in the fee schedule on file in the office of the city administrator. Such fees shall be billed and collected in the same manner and at the same time as the rates and charges for utility services furnished by the city.

4. Any person hauling a load of solid waste, yard waste, recyclables, or other materials over the streets of

the City and delivering it to the landfill must comply with the requirements of this section.

a. The following loads must be secured with enough cargo net, ropes, chains, straps, and/or bungee cords so the load cannot shift, move, or fall out.

1. Garbage cans must be secured to the vehicle or trailer bed with lids fastened to the container, or they must be covered with a cargo net or tarp.

2. Sheets of plywood, OSB, drywall, or sheet metal must be tied down.

3. Cardboard boxes must be secured so as to prevent them or their contents from falling out.

4. Each large item, such as furniture, appliances, mattresses or box springs, etc., must be secured to the vehicle.

5. Yard waste must be covered so as to prevent it from blowing or falling out.

6. Garbage in bags must be tied shut and secured to the vehicle or trailer or completely covered with netting or tarp.

7. Liquids, such as motor oil and antifreeze for recycling, must be in closed containers that are tied to the vehicle or packed so that they cannot shift or fall over.

b. The following loads must be covered completely with a tarp and the tarp must be tied to the vehicle or trailer to secure the load. A tarp that is open at the back, sides, front, or top is not secured.

1. Loads with loose plastic bags or paper must be covered with a tarp.

2. Construction or demolition debris must be covered with a tarp. Covering the load with a sheet of plywood that is secured to the vehicle is acceptable if no part of the load, such as lightweight material, can blow or fall out.

3. Roofing materials must be covered with a tarp.

4. Lightweight materials visible to attendant, like paper, loose plastic bags or containers, buckets, etc., must be covered with a tarp.

5. Garbage in bags must be tied shut or covered with a net or a tarp.

6. Yard waste with leaves or other loose lightweight debris not in closed containers must be covered with a tarp.

7. Loose garbage must be covered with a tarp.

8. Recyclable materials such as cans, bottles, and paper products in open containers must be covered with a tarp.

In addition to the landfill fee, the director of public works may impose an additional fee as approved by the City Commission to any load that enters the landfill while not in compliance with this section.

(Ord. 4514, 05-25-93; Ord. 5618, 07-24-07; Ord. 5971, 01-14-14)

CHAPTER 8-07.1. CONSTRUCTION SITES

8-07.1-01. Unlawful Dumping and Littering by Contractors; Duty to Clean.

1. No contractor shall allow any vehicle to operate out of any construction site, regardless of whether the same shall be operated by the contractor, his agents, employees or subcontractors, in such a manner as to release, dump, scatter, or deposit any rubbish, stones, wire, earth, ashes, cinders, sawdust, hay, glass, manure, filth, paper, snow, ice, dirt, mud, grass, leaves, twigs, shrubs, construction waste, garbage, or other waste, offensive or noxious material on any street, alley, or public place. The health officer or the building official shall order any contractor to take such precautions as he/she deems necessary to prevent any such materials from being deposited on the street, alley, or public place and to remove all such materials on the street, alley, or public place that originated from the construction site. If and in the event a contractor shall fail to comply with the order of the health officer or building official, the building official may order all construction stopped until compliance is obtained. For the purposes of this Chapter, a "contractor" shall include any person performing any construction related work, whether or not licensed as a contractor.

2. No contractor shall permit a vehicle to enter upon a public street, alley, sidewalk, or other public place without first:

a. Having its tires and wheels cleaned so as not to litter, soil or drag mud or dirt onto any street, alley, sidewalk, or other public place, and

b. Having any material removed from the interior or exterior of vehicle body which might fall or be deposited upon any street, alley, sidewalk, or public place by normal movement of vehicle in traveling over such places.

c. Appropriately securing any load of construction materials, construction debris or other solid waste contained in any truck, trailer or other means of transport so as to prevent any of the construction materials, construction debris or solid waste from blowing or falling out of the truck, trailer or other means of transport.

3. All streets, alleys, sidewalks, public places or private property where construction debris, construction materials or solid waste from any building or construction site have accumulated shall be maintained in a clean and litter-free condition by the contractor or owner of a project at all times. A contractor or owner shall take any steps necessary to secure construction materials, construction debris or solid waste on-site to prevent any migration of these materials by wind, water or by general construction activities. A contractor or owner shall be responsible to clean up any property that has received a migration of their materials.

4. If a street, alley, sidewalk, public place or private property should become soiled or littered through any of the means outlined in this Chapter, the health officer or the building official may order the contractor to clean up or take such precautions to secure the construction site as the health officer or the building official deem necessary to prevent construction materials, construction debris or solid waste from being deposited on any street, alley, public place, or private property.

5. Whenever a contractor is engaged in any construction or maintenance activity, it shall be the contractor's responsibility to see that none of the provisions of this article are violated by the contractor, its agents, employees, subcontractors, or haulers of materials and supplies. If more than one contractor or any governmental unit is involved in work which contributes to the littering of streets, alleys, sidewalks, other public places or private property in the same site or area, they

shall be separately and jointly responsible for compliance with the provisions of this Chapter.

6. Stop Work Order. The building official or health officer shall have authority to issue a stop work order, ordering suspension of all work and activity at the site, upon finding that the contractor or owner has failed to comply with the order of the health officer or the building official to comply with the provisions of this Chapter. Upon issuance of a stop work order, all work in the area covered by the building site, whether or not a permit has been issued, shall cease immediately. If any person notified of such stop work order fails to comply, the City shall commence whatever steps are necessary to obtain compliance. The building official or health officer may lift the stop work order upon proof of compliance with the provisions of this Chapter.

7. Whenever the building official or health officer issues a stop work order and declares the situation to be an emergency, the building official or health officer shall serve a notice and order on the person performing the work personally, or by certified mail. The person performing the work, owner or permittee has the right to an informal hearing before the building official or health officer by making an appointment with the building official or health officer. The informal hearing must be held within five (5) days of service of the notice and order. Following the hearing, the building official or health officer may affirm, modify or rescind the stop work order.

8. Notice and Order. Except for emergency orders under Paragraph 7 of this Section, whenever the building official or health officer finds that any person has violated or is violating this Chapter, the building official or health officer shall serve upon such person a written notice and order stating the nature of the violation. Within fifteen (15) days of the date of the notice, unless a different time frame is set by the building official or health officer due to the nature of the violation, the correction thereof must be completed to the satisfaction of the building official or health officer.

9. Appeal. All decisions of the building official or health officer dealing with violations of this Chapter are subject to appeal to the Board of City Commissioners upon written notice of appeal filed within fifteen (15) days of issuance of the decision. If no appeal is filed within the time period specified, the decision of the building official or health officer is final. An appeal stays the building official's or health officer's decision

unless the building official or health officer declares the order to be an emergency and certifies to the board that a stay would cause imminent danger to life or property in which case the decision may be stayed only by a restraining order from the Board of City Commissioners or a court of record.

10. Hearing on Appeal. Upon receiving the notice of appeal the Board of City Commissioners shall set a date for a hearing within thirty (30) days of receipt of the notice of appeal. Notice of the time and place for the hearing must be served upon the appellee by certified mail or in person not less than five (5) days prior to the hearing.

8-07.1-02. Exceptions. The provisions of this article shall not apply to construction work being done within the street right-of-way pursuant to a City excavation permit authorizing the same or to certain emergency or other work being performed pursuant to a City contract or by certain emergency forces, provided that excavated material stored temporarily within the work site shall not be scattered or carried or allowed to accumulate outside of such area.

8-07.1-03. Penalty Any person who fails to comply with a final or un-stayed order of building official or health officer or a decision of the Board of City Commissioners after a hearing or who has failed to comply with any provision of this Chapter is guilty of an infraction and subject to the provisions of Chapter 1-02 of the City Code (Penalties). Each day the violation continues constitutes a separate offense.
(Ord. 4514, 05-25-93; Ord. 5618, 07-24-07; Ord. 5971, 01-14-14; Ord. 6061, 05-27-14)

CHAPTER 8-08. RODENT CONTROL

8-08-01. Definitions. For the purpose of this chapter the following definitions apply:

1. Building. Any structure, public or private, that is adapted for occupancy either as a residence or business or commercial location, including hotels, apartment buildings, tenement houses, rooming houses, office buildings, public buildings, stores, theaters, markets, restaurants, grain elevators, abattoirs, warehouses, workshops, factories, dwellings, garages, outhouses, sheds, barns and all other structures on premises used for business or residence purposes.

2. Owner. The actual owner of the building, whether individual, partnership or corporation, or the agent of the owner or other person having custody of the building or to whom rent is paid. In the case of buildings leased with a

clause in the lease specifying that the lessee is responsible for maintenance and repairs, the lessee will be considered in such cases as the "owner" for the purpose of this title.

3. Rat harborage. Any condition which provides shelter or protection for rats, thus favoring their multiplication and continued existence in, under or outside of a structure of any kind.

4. Rat stoppage or ratproofing. A form of ratproofing to prevent ingress of rats into buildings hereinbefore defined from the exterior of one building to another. It consists essentially of rendering all actual or potential openings in exterior walls, ground, first floor, roofs and foundations that may be reached by rats from the ground by climbing or by burrowing, with materials impervious to rats in any manner.

8-08-02. Compliance Required for Business License. A license from the city to conduct or carry on a business may not be issued to any person until that person is in compliance with the requirements of this chapter.

8-08-03. Buildings to be Ratproofed.

1. All buildings in the city are required to be ratproofed, free of rats and maintained in a ratproof condition, under the direction and supervision of the health officer.

2. Whenever the health officer notifies the occupant of any building that there is rat infestation in the building, the occupant shall immediately institute appropriate measures for freeing the premises of all rats.

3. After notice and order by the health officer and failure of the owner to comply within the time required, the city health officer is hereby authorized and directed to free the buildings of rats at the expense of the owner. The health officer shall certify the cost of the work to the board of city commissioners and the board shall thereupon cause the same to be billed to the occupant or occupants or to the owner of the building. Any owner may appeal a notice and order to the Board of Health, and have the right to a hearing on the order of the health officer or the assessment of costs, pursuant to section 8-08-06.

8-08-04. New Floors. Whenever conditions inside or under buildings provide harborage for rats, and the health officer deems it necessary to eliminate harborage, the health officer may issue a notice and order to be served upon the owner or the

occupant thereof requiring the owner or occupant to install suitable cement floors in basements or to require the owner or occupant to correct interior rat harborage as may be necessary to facilitate the eradication of rats within a reasonable time.

8-08-05. Appeal and Emergency.

1. All orders of the health officer dealing with violations of this chapter are subject to appeal to the Board of Health upon written notice of appeal filed within three days of issuance of the order. Failure to file a timely appeal shall cause the health officer's order to be final.

2. An appeal stays an order unless the health officer determines and certifies to the board that a stay would cause imminent danger to life or property in which case the order may be stayed only by a restraining order from the board or a court of record.

8-08-06. Ratproofing of Certain Buildings.

1. A detached private garage, barn or other outbuildings which will permit or provide space below the floor for rat harborage must have an exterior protection consisting of one of the following:

a. A foundation wall constructed of tight masonry or concrete tightly attached to the sill of the exterior wall of the building, extending downward to solid rock or to a minimum depth of four feet below ground level and continuous around the entire structure except for openings, which are treated in accordance with the section on closure of openings.

b. A concrete or masonry and cement mortar curtain wall attached tightly to the sill of the exterior wall or extending along the exterior surface of the building constructed with a cross section in the shape of an "L", the vertical portion extending 18 inches or more below the exterior surface or grade at all points, and the horizontal portion extending outward and away from the exterior of the structure at least 12 inches. Whenever a concrete curtain wall extends along the exterior building surface, it must have a height of not less than six inches above the earth's surface. The thickness of the entire height of wall shall not be less than six inches. Such curtain wall must be continuous around the entire structure except for openings which are treated in accordance with the section on closure of openings. Alternative materials for curtain wall construction

may be approved by the health officer under special circumstances.

c. A combination of walls such as under (a) and (b) above, which will provide an equivalent degree of rat stoppage as determined by the city health officer.

d. In the absence of a basement or cellar, such buildings may be built on piers of masonry or on post; the height of such piers or post may not be less than 18 inches, the height to be measured from the highest ground level to the underside of the sill. Accessory buildings to a residence must be on a concrete slab conforming to the building code.

e. The intervening space between building and ground level must be open for ventilation, cleaning and visual inspection. All openings through the floor must be ratproofed as required by these specifications.

2. All openings in the exterior walls, foundations, basement, ground or first floors, and roofs which will admit a one-half inch diameter cylinder must be ratproofed so that they are within 48 inches of the existing exterior ground level immediately below such openings, or if they may be reached by rats from the ground by climbing unguarded pipes, wires, cornices, stairs, roofs, and other items such as trees, vines or by burrowing.

3. All window openings of business buildings, residences and apartment houses which are accessible to rats as defined above, which can be opened, must be appropriately protected by grills, expanded metal, or hardware cloth. All window screens covering fire or emergency exits must be removable and designed to permit quick exit.

4. All outside stairways, archways, elevator shafts and coal holes below grade must be provided with tightfitting metal cover or wooden covers and frames flashed with 24-gauge metal unless they are of the open type, in which case they must have the door or window opening in the foundation protected as required above for doors or windows. Walls of all such structures must be of masonry or concrete and have a concrete floor or bottom, if entrance by rats to the building through this portion is possible.

5. All sewers, pipes or drains through which rats may pass must be fitted or treated with a perforated metal or

iron cover that is properly secure. Perforations may not admit a cylinder one-half inch in diameter.

6. All such openings in foundation or exterior walls, floors or roofs accessible to rats must be closed solidly for at least three inches of thickness (preferably for the full thickness of a wall or floor) with the same material of construction as the wall and floor or fitted tightly with a collar or shield (which is securely fastened to the wall or floor) of not less than 24-gauge metal extending at least three inches beyond all sides of the opening. An alternative of cement concrete or cement mortar may be used, painted to match the existing building material.

7. All ventilating openings must be protected as required for windows. Such protective devices, where indicated, must be applied with screws, wing nuts or other means of permitting removal for cleaning, repair or other reasons. Automatic closing devices for fan ventilator openings are acceptable for ratproofing of such openings, if they are in operating condition.

8. All actual or potential openings other than doors in basement and cellar floors and walls through which rats may gain entrance, which are not used for passage, light or ventilation, must be closed for at least three inches in thickness (preferably for the full thickness of the walls or floor) with cement concrete, cement mortar or masonry with mortar, or with metal of 24-gauge or heavier, or with other material approved by the health officer.

8-08-07. Removal of Ratproofing Prohibited. It is unlawful for the owner, occupant, contractor, public utility company or plumber or any other person, to remove ratproofing from any business building for any purpose, unless it is replaced in a satisfactory condition within five days after receipt of notice and order from the health officer.

8-08-08. Foodstuffs. It is unlawful for any person to occupy any building or structure where foodstuffs are stored, kept, handled, sold, held or offered for sale, without complying with the ratproof regulations prescribed by this chapter for existing buildings and structures.

8-08-09. Feed. All foods and feed kept within the city for feeding chickens, cows, pigs, horses and other animals must be kept and stored in rat free and ratproof containers, compartments or rooms, unless kept in a ratproof building.

8-08-10. Garbage, Refuse, Dead Animals. All garbage or refuse consisting of waste animal or vegetable matter upon which rats may feed and all small dead animals must be placed and

stored until collection in covered containers of a type prescribed by the health officer, according to existing conditions, and it is hereby declared unlawful for any person to dump or place on any premises, land or waterway, any dead animals or any waste vegetable or animal matter of any kind.

8-08-11. Lumber, Boxes, Other Material. It is unlawful for any person to permit to accumulate on any premises, improved or vacant, or on any open lots and alleys in the city, any lumber, boxes, barrels, bricks, stones or similar materials, unless placed on open racks that are elevated not less than 12 inches above the ground, and evenly piled or stacked so that these materials will not afford harborage for rats.

CHAPTER 8-09. SMOKING IN PLACES OF PUBLIC ASSEMBLY

8-09-01. Declaration of Purpose and Intent. *Repealed by Ord. 4158, June 23, 1987.*

8-09-02. Place of Public Assembly - Definition. *Repealed by Ord. 4158, June 23, 1987.*

8-09-03. Designation of Non-Smoking Areas. *Repealed by Ord. 4158, June 23, 1987.*

8-09-04. Penalty. *Repealed by Ord. 4158, June 23, 1987.*

8-09-05. Enforcement. *Repealed by Ord. 4158, June 23, 1987.*

CHAPTER 8-10. NOISES

8-10-01. Declaration of Purpose and Intent.

1. The making, creation or maintenance of such loud, unnecessary, unnatural or unusual noises which are prolonged, unusual or unnatural in their time, place and use, affect and are a detriment to public health, comfort, convenience, safety, welfare and prosperity of the residents of the city.

2. The necessity, in the public interest, for the provisions and prohibitions contained in this article, is declared as a matter of legislative determination and public policy, and it is further declared that the provisions and prohibitions of this article are in pursuance of and for the purpose of securing and promoting the public health, comfort, convenience, safety, welfare and prosperity and the peace and quiet of the city and its inhabitants.

8-10-02. Definitions. For the purpose of this chapter, certain words and phrases are defined as follows:

1. "dB(A)" means the A-weighted sound level in decibels, as measured with a sound level meter that meets the requirements for a type 1, 2, S1A, or S2A in American National Standard Specification for Sound Level Meters ANSI S1.4.

2. "Noise" means any sound.

3. "Person" means any person, partnership, association, joint venture, corporation or any other entity.

8-10-03. Unlawful Noise.

1. It is unlawful for any person to make any loud, unnecessary or unusual noise or any noise which either annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of others within the limits of the city. Loud, unnecessary or unusual noises or noises which annoy, disturb, injure or endanger the comfort, repose, health, peace or safety of others are defined with reference to subsection 2 of this section.

2. The standards which shall be considered in determining whether a violation exists include, but are not limited to, the following:

a. The volume of the noise.

b. The intensity of the noise.

c. Whether the nature of the noise is usual or unusual.

d. Whether the origin of the noise is natural or unnatural.

e. The volume and intensity of the background noise, if any.

f. The proximity of the noise to residential sleeping facilities.

g. The nature and zoning of the area within which the noise emanates.

h. The density of inhabitation of the area within which the noise emanates.

i. The time of the day or night the noise occurs.

j. The duration of the noise.

k. Whether the noise is recurrent, intermittent or constant.

3. A noise need not exceed the decibel levels in Section 8-10-04 to be in violation of this section.
(Ord. 4871, 09-23-97)

8-10-04. Tables; Exceptions.

1. It is unlawful to project a sound or noise excluding noise emanating from a motor vehicle from one property into another, within the boundary of a use district which exceeds the limiting noise criteria set forth in Table I below.

a. Sound or noise projecting from one use district into another use district with a different noise level limit may not exceed the limits of the district into which the noise is projected.

b. The permissible levels in decibels set forth in Table I are modified so that any noise occurring on property deemed to be nonconforming use property is determined upon the conforming zoning designation of the property.

TABLE I. LIMITING NOISE LEVELS FOR ZONING DISTRICTS

	Zoning District			
	Residential	Commercial	Industrial	
	(RR, RRMH, R5, RMH, RMHC, HM, CR) R10, RM, RT, P)	(GA, CG, CB,	(MA, MB, A)	
Maximum number of dB(A) permitted from 7:00 a.m. until 11:00 p.m. daily		55	65	80
Maximum number of dB(A) permitted from 11:00 p.m. until 7:00 a.m. of the following day		50	60	75

2. Motorized vehicles. It is unlawful to operate a motorized vehicle within the city limits which creates a noise or sound which exceeds the noise level limits set out in Table II, as follows:

TABLE II. LIMITING NOISE LEVELS FOR MOTOR VEHICLES

a. Trucks, buses, construction equipment, or any motor vehicle with a gross weight rating of ten thousand (10,000) pounds or more:

Maximum allowable limit: 88 dB(A) measured at 25 feet.

b. Passenger cars, pickups, vans, motorcycles, snowmobiles, or any motor vehicle with a gross weight rating less than ten thousand (10,000) pounds:

Maximum allowable limit: 80 dB(A) measured at 25 feet.

3. Exceptions. The following uses and activities are exempt from noise level regulations under this section:

a. Noises of safety signals, warning devices, and emergency relief valves.

b. Noises resulting from any authorized emergency vehicles, when responding to an emergency call or acting in time of an emergency.

c. Noises resulting from work of an emergency nature.

d. Any construction or reasonable and necessary maintenance activities except in residentially-zoned areas between the hours of 11:00 p.m. to 7:00 a.m.

e. Any other noise resulting from activities of a temporary duration permitted by law and for which a special permit therefore has been granted under this section by the city.

f. Any aircraft operated in conformity with, or pursuant to, federal law, federal air regulations, and air traffic control instruction used pursuant to and within the duly adopted federal air regulations are exempt. Any aircraft operating under technical difficulties, in any kind of distress, under emergency orders of air traffic control or being operated pursuant to and subsequent to the declaration of an emergency under federal air regulations are also exempt.

g. All railroad locomotives and railroad operations and motor carriers engaged in interstate commerce.

h. The use of snow removal equipment, including but not limited to tractors, plows and snowblowers in the aftermath of a snowfall.

4. Application for special permit. Applications for a permit for relief from the noise level designated in this section on the basis of undue hardship may be made to the public health department, environmental health division. Any permit granted by the public health department, environmental health division shall contain all conditions under which the permit has been granted and shall specify a reasonable time that a permit is effective. The public health department, environmental health division may grant the relief as applied upon a finding:

a. That additional time is necessary for the applicant to alter or modify the activity or operation to comply with this section; or

b. The activity, operation or noise source will be of temporary duration, and cannot be done in manner that would comply with other subsections of this section; and

c. That no other reasonable alternative is available to the applicant; and

d. The public health department, environmental health division may prescribe any conditions or requirements deemed necessary to minimize adverse effects upon the community or the surrounding neighborhood.

(Ord. 4234, 1-03-89; Ord. 4872, 09-23-97; Ord. 5714, 04-28-09; Ord. 6156, 10-13-15)

8-10-05. Guests on Premises. It is unlawful for any person to permit or allow guests on his or her premises to make any loud, unnecessary or unusual noise or any noise which either annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of others.

(Ord. 5382, 01-25-05)

8-10-06. Noisy Party or Gathering Prohibited. No person shall participate in any party or gathering consisting of two or more people when the party or gathering occurs in a residentially zoned or used area or building between the hours of 11:00 p.m. and 7:00 a.m. and when the party or gathering gives rise to unreasonable noise likely to cause significant discomfort or annoyance to a reasonable person of normal sensitivities present in the area, considering the time of day and the residential character of the area or building.

(Ord. 5382, 01-25-05)

8-10-07. Order to Disperse - Refusal Prohibited. When a police officer determines that a party or other gathering of people is creating unreasonable noise, disturbing the peace, or is disturbing the quiet or repose of another person, the officer may order all persons present, other than the owner or tenant of the premises where the disturbance is occurring, to disburse immediately. No person ordered to leave the premises by a police officer shall refuse to do so.

(Ord. 5382, 01-25-05)

8-10-08. Tenant or Owner - Cooperation Required. Every owner of a premises, or tenant in charge of a premises, who has knowledge of a disturbance shall cooperate with police and make reasonable effort to stop the disturbance.

(Ord. 5382, 01-25-05)

8-10-09. Violations - Prima Facie Evidence. The following shall be prima facie evidence of a violation in any prosecution under this Chapter:

1. As to tenants, and owner if owner resides on the premises, if twice or more on the same day or if on successive days, the police department is called upon to enforce the terms of this ordinance either by citizen complaint or by personal investigation of a police officer.

2. As to the owner if the owner does not reside at the premises, if the police department gives the owner written notices of three violations of this ordinance by his tenants at any single location within a six month period.

3. Noise of such volume as to be clearly audible at a distance of 50 feet from the structure or building in which the party or gathering is occurring or in the case of apartment buildings, in the adjacent hallway or apartment, shall be prima facie evidence of unreasonable noise in violation of this Chapter.

(Ord. 5382, 01-25-05)

8-10-10. Classification; Penalty. A violation of any provision of this chapter is an infraction, for which the maximum penalty is a fine in the amount of \$500.00

(Ord. 5382, 01-25-05)

CHAPTER 8-11. BODY ART

8-11-01. Definitions.

1. "Body Art" means the practice of physical body adornment by permitted establishments and operators using, but not limited to, the following techniques: body piercing, tattooing, cosmetic tattooing, branding, and

scarification. This definition does not include practices that are considered medical procedures by the state board of medical examiners nor does this definition include, for the purposes of this Title, piercing of the non-cartilaginous lobe of the ear with pre-sterilized single-use stud-and-clasp ear-piercing systems.

2. "Body Art Establishment" means any place or premise where the practices of body art, whether or not for profit.

3. "Body Piercing" means the piercing of any part of the body for the purpose of inserting studs, pins, rings, chains, or other jewelry or adornment.

4. "Department" means the Bismarck Public Health Department, Environmental Health Division.

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

6. "Tattooing" means the marking of the skin of a person by insertion of permanent colors by introducing such colors through puncture of the skin.

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

8-11-02. Tattooing and Body Piercing of Minors Prohibited. No person shall tattoo any person under the age of eighteen (18) years, except in the presence of and with the written permission of a properly identified parent or legal guardian of such person. Under no circumstances shall any person tattoo or body pierce a person under the age of 16. A person providing tattoo or body piercing services shall conspicuously post a notice stating that it is illegal to tattoo or body pierce any person under the age of 18 without the parent or legal guardian's consent and without the parent or legal guardian present and that it is illegal to ever tattoo or body pierce any person under the age of 16 years old.

(Ord. 5264, 07-08-03)

8-11-03. Permit-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 to do so.

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

2. A permit 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 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 must be posted in the permitted location in a manner visible to customers at all times of operation.

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

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

8-11-04. Application for Permit. 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 to the public health department, environmental health division. Prior to issuance of a Body Art Permit, 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 issued under this chapter shall be limited to the location specified in the permit. No person, firm, or corporation shall provide body art services at any place other than the place or location named in the permit.

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

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

(Ord. 5264, 07-08-03)

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

1. All walls, floors, ceilings, and procedure surfaces of a body art establishment shall be smooth, free of open holes or cracks, light-colored, washable, and in good repair. Walls, floors, and ceilings shall be maintained in a clean condition. All procedure surfaces, including client chairs or benches, shall be constructed so as to be easily cleaned and sanitized after each client. The permitted location shall be completely separated from any other activities that may cause potential contamination of work surfaces.

2. Effective measures shall be taken by the permittee 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.

3. There shall be adequate floor space for each operator in the permitted location. Each permitted location shall have an area that may be screened from public view for clients requesting privacy. Multiple stations shall be, at a minimum, separated by dividers or partitions.

4. The permitted 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.

5. No animals of any kind shall be allowed in a body art establishment except for service animals used by persons with disabilities (e.g., seeing eye dogs). Fish aquariums shall be allowed in waiting rooms and nonprocedural areas.

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 location. There shall be at least one hand-sink for each three operators.

7. At least one covered waste receptacle shall be provided in each operator area and each toilet room. Receptacles in the operator area shall be emptied daily, and solid waste shall be removed from the premises daily. All refuse containers shall be lidded, cleanable, and kept clean.

8. All instruments and supplies shall be stored in clean, dry, covered containers. Reusable cloth items shall be mechanically washed with detergent and dried after each use. Cloth items shall be stored in a clean environment until use.

9. Toilet facilities must be available for body art establishment patrons and employees pursuant to the requirements of the ND Plumbing Code.

10. Tables, chairs, and other general use equipment must be constructed of plastic, metal with enamel or porcelain coating, or stainless steel. General use equipment must be maintained in an easily cleanable condition. Covered waste receptacles for wastes generated from the operation not directly associated with the application of tattoos or body piercing must be equipped with disposable single use plastic liners.

11. A body art establishment must be maintained in a clean, sanitary and vermin free condition and be kept in good repair.

(Ord. 5264, 07-08-03)

8-11-07. Sanitation and Sterilization Procedures.

1. A body art establishment must be equipped with a steam pressure autoclave capable of producing the minimum p.s.i. and temperature to sterilize to the autoclave manufacturer's specifications. Body art establishments must also be equipped with an ultrasonic cleaner equipped to hold disposable containers of cleaning solution and clean rinsing water.

2. All non-single-use, non-disposable instruments used for body art shall be cleaned thoroughly after each use by scrubbing with an appropriate soap or disinfectant solution and hot water or by following the manufacturer's instructions, to remove blood and tissue residue, and shall be placed in an ultrasonic unit also operated in accordance with manufacturer's instructions.

3. After cleaning, all non-disposable instruments used for body art shall be packed individually in approved bags and subsequently sterilized. All bags shall contain either a sterilizer indicator or internal temperature indicator. Bags must be dated with an expiration date not to exceed six (6) months.

4. All cleaned, non-disposable instruments used for body art shall be sterilized in an approved steam autoclave. The sterilizer shall be used, cleaned, and maintained according to manufacturer's instruction. A copy of the manufacturer's recommended procedures for the operation of the sterilization unit must be available for inspection by the public health department, environmental health division. Sterile equipment may not be used if the package has been breached or after the expiration date without first repackaging and re-sterilizing. Sterilizers shall be located away from work stations or areas frequented by the public. If the body art establishment uses only single-use, disposable instruments and products and only sterile supplies, an autoclave shall not be required.

5. Each permittee 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 permit 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.

6. All instruments used for tattooing or body piercing shall remain stored in sterile packages until just prior to the performance of a body art procedure. When assembling instruments used for body art procedures, the operator shall wear disposable medical gloves and use medically recognized techniques to ensure that the instruments and gloves are not contaminated.

7. All inks, dyes, pigments, needles, and equipment shall be specifically manufactured for performing tattoo procedures and shall be used according to manufacturer's instructions. The mixing of inks, dyes, or pigments or their dilution with potable water is acceptable. Immediately before a tattoo is applied, the quantity of the dye to be used shall be transferred from the dye bottle and placed into single-use paper cups or plastic cups. Upon completion of the tattoo, these single cups or caps and their contents shall be discarded.

8. Single use items shall not be used on more than one client for any reason. After use, all single-use needles, razors and other sharps shall be immediately disposed of in approved sharps containers. All products applied to the skin, including body art stencils, shall be single use and disposable. Petroleum jellies, soaps, and other products used in the application of stencils shall be dispensed and applied on the area to be tattooed with gauze or in a manner to prevent contamination of the original container and its contents. The gauze or single use towel shall be used only once and then discarded.

9. Floors, walls, counters, chairs and other equipment coming in contact with blood and/or body fluids shall be cleaned and sanitized immediately after a procedure has been performed.

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

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

1. No operator shall perform body art on a person who the operator knows is under the influence of alcohol or drugs, or has reason to believe may be otherwise legally incapacitated or incompetent or under the age of 18 years of age except as provided in Section 8-11-02. Nothing in this section is intended to require an operator to perform any body art procedure on a person under 18 years of age with parental or guardian consent.

2. Body art operators must be at least 18 years of age.

3. Smoking, eating and drinking are prohibited in the body art procedure area.

4. All operators shall maintain a high degree of personal cleanliness, conform to hygienic practices, and wear clean clothes when performing body art procedures. Before performing a body art procedure, the operator must thoroughly wash his or her hands in hot running water with liquid soap, rinse hands and dry them with disposable paper towels and do so as often as necessary to remove contaminants.

5. All operators shall be vaccinated against the Hepatitis B virus.

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

7. In performing body art procedures, the operator shall wear disposable medical gloves. Gloves must be changed if they become contaminated by contact with any non-clean surface or object or by contact with a third person. The gloves shall be discarded, at a minimum, after the completion of each procedure on an individual client, and hands shall be washed before the next set of gloves is donned. The use of disposable medical gloves does not preclude or substitute for hand washing procedures. Under no circumstances shall a single pair of gloves be used on more than one person.

8. If, while performing a body art procedure, the operator's glove is pierced, torn, or otherwise contaminated, the procedure delineated in paragraph 7 shall be repeated immediately. The contaminated gloves shall be immediately discarded, and the hands washed thoroughly before a fresh pair of gloves is donned. Any item or instrument used for body art that is contaminated during the procedure shall be discarded immediately and replaced with a new disposable item or a new sterilized instrument or item before the procedure resumes.

9. Waste that may release liquid blood or body fluids when compressed or may release dried blood or body fluids when handled must be placed in an approved "red" bag marked with the International Biohazard Symbol. It must then be disposed of by a waste hauler approved by the fire department, environmental health division or, at a minimum, in compliance with 29 CFR Part 1910.1030, "Occupational

Exposure to Blood-borne Pathogens". Sharps ready for disposal shall be disposed of in approved sharps containers. Contaminated waste that does not release liquid blood or body fluids when compressed or does not release dried blood or body fluids when handled may be placed in a covered receptacle and disposed of through normal, approved disposal methods. Storage of contaminated waste on site shall not exceed the period specified by the public health department, environmental health division or more than a maximum of 30 days, as specified in 29 CFR Part 1910.1030, whichever is less.

10. Any skin or mucosa surface receiving a body art procedure shall be free of rash or any visible infection.

11. The skin of the operator shall be free of rash or infection. Unless an impermeable cover such as a bandage, finger cot, and medical glove protects the lesion, no person or operator affected with boils, infected wounds, open sores, abrasions, weeping dermatological lesions or acute respiratory infection shall work in any area of a body art establishment in any capacity in which there is a likelihood that that person could contaminate body art equipment, supplies, or working surfaces with body substances or pathogenic organisms.

12. Written after-care instructions shall be provided to and reviewed with each client.

13. Ear piercing studs and clasps shall not be used anywhere on the body other than the non-cartilaginous perimeter and lobe of the ear.

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

8-11-09. Permit Suspension or Revocation. Any permit 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)

CHAPTER 8-12. INDIVIDUAL SEWAGE TREATMENT SYSTEMS

8-12-01. When municipal sewage treatment facilities are not available to a residence or building an individual sewage treatment system shall be installed in accordance with the North Dakota Plumbing Code.

8-12-02. Permit Required. Upon the receipt of a report from a Certified Soil Classifier or a Certified Soils Testing Agency that indicates the soil types and specifications for an individual site and that the property is suitable for the location of a septic system on that site as per the current North Dakota Plumbing Code, the building official will issue a

permit. As an alternative, installation of 350 square feet of drainfield per bedroom installed in accordance with the requirements of the ND Plumbing Code governing installation of individual sewage systems is also permissible and the building official will issue a permit for such installations. The building official shall conduct an inspection of the septic tank and drainfield to insure that the installation complies with the North Dakota Plumbing Code.

1. Septic tank and disposal field inspection fee shall be 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.

2. Septic system loan evaluation inspection fee shall be 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. 5197, 08-27-02; Ord. 5618, 07-24-07; Ord. 5714, 04-28-09)

CHAPTER 8-13. TANNING FACILITIES

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

1. "Department" means the Bismarck Public Health Department, Environmental Health Division.

2. "Phototherapy device" means equipment that emits ultraviolet radiation and is used in treating disease.

3. "Tanning device" means equipment that emits electromagnetic radiation having wavelengths in the air between two hundred and four hundred nanometers and which is used for tanning of human skin and any equipment used with that equipment, including food and drug administration-approved protective eyewear, timers, and handrails. The term does not include a phototherapy device used by a physician.

4. "Tanning facility" means a place or business that provides individuals access to a tanning device. Tanning facilities in 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)

8-13-02. Permit-Fee. A person may not operate a tanning facility without a permit issued by the department under this chapter. The holder of a permit shall display the permit in a conspicuous place at the tanning facility for which the permit is issued. Permits issued under this chapter expire annually. An applicant for a permit shall

submit an application for a permit to the department on a form provided by the department with a permit 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)

8-13-03. Advertising - Notices - Warning Signs.

1. A tanning facility may not state in advertising that the tanning facility holds a license or permit issued by the department to operate a tanning facility. No tanning facility may state in any advertising, written or verbal, that tanning is free of hazards from ultraviolet radiation or has any health benefits other than those recognized by a credible medical or scientific source.

2. A tanning facility shall give to each of the tanning facility's customer's written notice of the following:

a. Failure to wear the eye protection provided by the tanning facility may result in damage to the customer's eyes and may cause cataracts;

b. Overexposure to a tanning device causes burns;

c. Repeated exposure to a tanning device may cause premature aging of the skin and may cause skin cancer

d. Abnormal skin sensitivity or burning of the skin while using a tanning device may be caused by:

1. Certain foods

2. Certain cosmetics; and

3. Certain medications, including tranquilizers, diuretics, antibiotics, high blood pressure medicines, and birth control pills; and

e. An individual who takes a drug should consult a physician before using a tanning device.

3. A tanning facility shall display prominently

a warning sign in each area where a tanning device is used. The lettering on the warning sign shall be at least five millimeters high for the word "WARNING". The warning sign must convey the following directions and information:

a. Follow all instructions.

b. Avoid too frequent or too lengthy exposure. As with exposure to the sun, use of a tanning device can cause eye and skin injury and allergic reactions. Repeated exposure can cause chronic sun damage, which is characterized by wrinkling, dryness, fragility and bruising of the skin, and skin cancer.

c. Wear food and drug administration-approved protective eyewear.

d. Ultraviolet radiation from tanning devices will aggravate the effects of the sun, so do not sunbathe during the twenty-four hours immediately preceding or immediately following the use of a tanning device.

e. Medications and cosmetics may increase your sensitivity to ultraviolet radiation. Consult a physician before using a tanning device if you are using medications, have a history of skin problems, or believe that you are especially sensitive to sunlight. Women who are pregnant or using birth control pills and who use a tanning device may develop discolored skin.

f. If your skin does not tan when exposed to the sun, it is unlikely that your skin will tan when exposed to this tanning device.

4. The tanning facility shall maintain a record of the date on which each fluorescent tube is replaced. The tubes, bulbs or lamps shall be replaced at the frequency recommended by the manufacturer or when the tubes, bulbs or lamps become damaged or defective. No tube, bulb or lamp designated for medical use only may be used.

5. An owner or employee of a tanning facility may not claim, or distribute materials that claim, that using a tanning device is free of risk.

(Ord. 5607, 11-27-07)

8-13-04. Duties.

1. The owner of a tanning facility shall ensure that all of the following are fulfilled:

a. A customer under eighteen years of age may not be permitted to use the tanning in a facility until the customer provides the facility with written consent in a form prescribed by the department, of a parent or legal guardian to use the tanning facility. The consent must indicate that the parent or legal guardian has read the warnings required by this chapter and that the customer agrees to wear food and drug administration approved protective eyewear. The parent or legal guardian shall provide a notarized statement of consent or sign the consent form in the presence of the owner of the tanning facility or an employee responsible for the operation of the ultraviolet radiation device of the facility. The written consent form expires twelve months from the date signed. A customer under the age of fourteen years may not be allowed to utilize a tanning device at a tanning facility without a written order from a physician licensed in this state and without being accompanied by a parent or legal guardian for every use of the tanning facility.

b. During operating hours there is present at the tanning facility a trained operator who is able to inform customers about, and assist customers in, the proper use of tanning devices.

c. Each tanning bed is properly sanitized after each use.

Floors, walls, ceilings, fixtures, etc. shall be maintained in a clean condition and in good repair.

If cloth towels are used, laundry facilities including a mechanical washer and dryer shall be located in an area separated from tanning devices in the facility.

d. Properly sanitized and securely fitting food and drug administration-approved protective eyewear that protects the wearer's eyes from ultraviolet radiation and allows enough vision to maintain balance is made available to the customer.

e. Approved sanitizing solutions are those

approved by the Environmental Protection Agency. Chemical test strips shall be available and used to monitor the concentration of sanitizer used for sanitizing surfaces. Test strips must be compatible with sanitizer used.

f. A customer is not allowed to use a tanning device unless the customer agrees to use food and drug administration-approved protective eyewear.

g. A customer is shown how to use such physical aids as handrails and markings on the floor to determine the proper distance from the device.

h. A timing device that is accurate within ten percent is used.

i. Each tanning device is equipped with a mechanism that allows the customer to turn off the tanning device.

j. A customer is limited to the maximum exposure time recommended by the manufacturer.

k. A customer is not allowed to use a tanning device more than once every twenty-four hours.

l. The interior temperature of the tanning facility does not exceed one hundred degrees Fahrenheit.

m. The statements under subdivision a. of subsection 2 are retained by the tanning facility for the lesser of three years or until the customer signs a new statement.

n. Only tanning equipment manufactured and certified to comply with 21 CFR Part 1040, Section 1040.20, "Sunlamp products and ultraviolet lamps intended for use in sunlamp products", in tanning facilities may be used. Compliance shall be based on the standard in effect at the time of manufacture as shown on the device identification label required by 21 CFR Part 1010 Section 1010.3.

Only tanning equipment that has a timer which complies with the requirements of 21 CFR Part 1040, Section 1040.20(c)(2) may be used.

The timer shall be incorporated in the tanning device. The maximum timer interval shall not exceed the manufacturer's maximum recommended exposure time.

Protective acrylic sheets must be in place when a tanning device is in use, except that the protective acrylic may be sleeves over the lamps in the upper portion of a device or over lamps in booth devices.

2. A user of a tanning facility shall do all of the following:

a. Immediately before the customer's first use of a tanning facility in a year, sign a statement acknowledging that the customer has read and understands the notice under subsection 2 of Section 8-13-03 and the warning sign under subsection 3 of Section 8-13-03 and specifying that the customer agrees to use food and drug administration-approved protective eyewear.

b. Use food and drug administration approved protective eyewear at all times while using a tanning device.

(Ord. 5607, 11-27-07)

8-13-05. Injury Reports. If a customer of a tanning facility reports a sunburn injury to that facility resulting from the use of its tanning device, the owner shall provide the customer with written information on how to report the alleged injury to the department. If a health care provider treats a patient for a sunburn injury and determines, in the exercise of professional judgment, that the injury occurred as a result of using a tanning device at a tanning facility, the health care provider shall report the circumstances of the injury to the department. A health care provider making or not making a report in good faith pursuant to this section is immune from liability for making or not making a report.

(Ord. 5607, 11-27-07)

8-13-06. Recordkeeping.

1. The operator of a tanning facility shall maintain the following records:

a. Each customer's total number of tanning visits, dates and duration of tanning exposure.

b. Each customer's signature and acknowledgement that the customer has read and

understands the written notice as required in subsection 2 of section 23-39-03 of the North Dakota Century Code and the warning sign as prescribed in section 33-42-01-04 of this chapter.

c. Each parental or legal guardians written consent for customers under eighteen years of age as required in subsection 1(a) of North Dakota Century Code section 23-39-05. All customer records shall be maintained for three years after the last tanning visit.

2. The operator shall maintain the following information for each tanning device:

a. Manufacturers equipment/operators manual and any service-related material.

b. Inspections, maintenance, and notifications performed on the tanning device, including the date of service and dates of bulb replacement. Device records shall be maintained for three years.

(Ord. 5607, 11-27-07)

8-13-07. Permit Suspension or Revocation. Any permit 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)