

MEETING OF THE BOARD OF CITY COMMISSIONERS

April 17, 2020

On April 17, 2020 at 4:00 p.m., the Board of City Commissioners met in the Tom Baker Meeting Room of the City/County Building, located at 221 N. 5th St. in Bismarck, N.D. This special meeting was held to discuss curb-side liquor sales.

City Administrator Keith Hunke, Walrus Restaurant owner Jill Sanford and manager Shawn Sanford were present. Assistant City Administrator Jason Tomanek, Attorney Combs, Vice Chair Marquardt, Commissioner Zenker, Commission Oban and Commissioner Guy all participated via Zoom. President Bakken did not participate.

On Tuesday, April 14, 2020, at the Regular City Commission Meeting, Commissioner Oban made a motion for staff to explore options for a resolution that would allow restaurants to sell curb-side beer and wine with the purchase of food, for one-month only, no longer, unless the Commission decided otherwise. There was no second to this motion, and the no action was taken by the Commission.

On April 17, 2020, Commissioner Zenker asked Attorney Combs to draft up the resolution Commissioner Oban made a motion for at the Regular Commission Meeting on April 14, 2020. Attorney Combs sent the draft to the Commissioners before the meeting on April 17.

Commissioner Zenker stated he wanted to revisit the item due to the increase of positive COVID-19 cases and the Governor's extended executive orders.

After discussion regarding the closures affecting local restaurants, sales tax and the language in the retail sale resolution, Commissioner Oban made a motion to allow the sale of beer, no more than 64 oz. and wine to be sold with curb-side food orders through May 17, 2020. Commissioner Guy seconded it. Upon a roll call vote, all voted aye. M/C.

The meeting was adjourned at 4:29 p.m.

**RESOLUTION REGARDING THE MORATORIUM PERTAINING TO
THE RETAIL SALE OF ALCOHOLIC BEVERAGES**

WHEREAS, the City Commission of the City of Bismarck has adopted Bismarck Code of Ordinances, Article 5-01 pertaining to the retail sale of alcoholic beverages; and

WHEREAS, the City Commission of the City of Bismarck hereby adopts the following policy pursuant to said Ordinance:

WHEREAS, the Mayor has declared a state of emergency as a result of the COVID-19 pandemic, by declarations dated March 15, 2020, and April 14, 2020, which were both ratified by the Bismarck City Commission; and,

WHEREAS, the Governor of the State of North Dakota, declared, by executive order of March 19, 2020, that “effective at 12:00 p.m., Friday, March 20th, all restaurants, bars, breweries, cafes and similar on-site dining establishments are closed to on-sale/on-site patrons; take-out, delivery, curbside, drive-through or off-sale services may continue; this requirement will continue through Monday, April 6, 2020, which Order was thereafter extended to April 30; and,

WHEREAS, the City’s “state of emergency” ordinance authorizes the Mayor and City Commission to, among other things, “. . . prohibit or limit the movement of persons or hours of operation of businesses, by curfew or otherwise, within the designated disaster or emergency area, and the occupancy of premises therein” and to “. . . limit or prohibit the sale, dispensing or transportation of alcoholic beverages . . .”; and,

WHEREAS, North Dakota cities are authorized to enact or adopt all such ordinances, resolutions, and regulations, not repugnant to the constitution and laws of this state, as may be proper and necessary to carry into effect the powers granted to such [cities] . . . as the general welfare of the municipality may require . . . “including the power” [t]o regulate the use and sale of alcoholic beverages . . . [N.D.C.C. §40-04-01 subd.1 and 29]; and,

WHEREAS, it is hereby found and declared that the health, safety and welfare of the City and its occupants will be benefited by providing appropriate means for the delivery of meals, including beverages, to individuals and families that fosters appropriate social distancing for the curbing of the COVID-19 pandemic;

NOW, THEREFORE, BE IT HEREBY RESOLVED:

1. **MORATORIUM ESTABLISHED.** A moratorium on enforcement is hereby established as to the enforcement within the jurisdictional limits of the City of Bismarck of Section 5-01-01(10) of the Bismarck Code of Ordinances, as follows:

- a) **The current text of the ordinance is:** "On-sale" means the sale of alcoholic beverages for consumption only on the premises where sold except that nothing in this section shall prohibit any person from taking and consuming a lawfully purchased on-sale alcoholic beverage from one licensed premises to another licensed premises located contiguously in the same building.

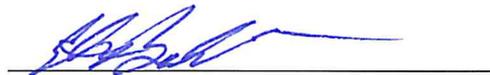
b) For purposes of this moratorium, the definition of the term “on-sale”, as set forth in 5-01-01(10) of the Bismarck Municipal Code, limited the “. . . the sale of alcoholic beverages for consumption only on the premises where sold . . .” shall be enforced such that professionally sanitized and sealed cans or bottles of beer, not to exceed 64 ounces, or professionally sanitized and sealed cans or bottles of wine to customers so long as they are sold with such food or meals sold by the restaurant and served or delivered by means of such “take-out”, “curbside delivery”, or such lawful means are hereby deemed to have been consumed on the licensed premises so long as said beverages are accompanied by food purchased from the restaurant.

2. **Mayor Authorized to Implement by Further Order or Orders.** The Mayor of the City is hereby authorized to promulgate and issue one or more executive orders as may be necessary to implement and clarify the terms of this moratorium, under the authority of Bismarck Code of Ordinances Section 2-08-03 and hereof, which executive orders may be further ratified or amended by the board of city commissioners as may be necessary or appropriate.

3. **Effect of Moratorium – Limitation of Enforcement.** This moratorium as to the enforcement of certain regulations or ordinances of the City shall serve to instruct, order and limit the police officers and prosecutors of the City or any other law enforcement officers or agents to refrain from enforcing City ordinances contrary to the terms hereof and to refrain from charging or citing persons, firms or other entities accordingly and, furthermore, said instruction, order and limitation in enforcement shall survive the termination of this moratorium, whether such termination occurs by lapse of time or by affirmative act.

4. **Effective Date and Term.** This moratorium shall take effect immediately upon the adoption hereof [the “Effective Date”] and shall extend until the 17th day of May, 2020, unless it is otherwise terminated or extended by resolution or motion of the board of city commissioners of the City of Bismarck.

DATED at Bismarck, North Dakota this 17th day of April, 2020.



Steve Bakken, President
City of Bismarck Commission

Attest:



Keith Hunke, City Administrator