

**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 declaration dated October 26, 2020, which has been ratified by the Bismarck City Commission which is still in effect; and,

WHEREAS, the Governor of the State of North Dakota, declared, by executive order of November 13, 2020, that effective, November 16th, “in person dining and service may be conducted between the hours of 4:00 a.m. and 10:00 p.m.” but closes those services after 10:00 p.m., 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, not to exceed 64 ounces, or professionally sanitized and sealed cans or bottles of liquor which includes mixed liquor, not to exceed 64 ounces, 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 specific to the type of alcoholic beverages that the license holder is allowed to serve on-sale.

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 14th day of December, 2020, or any extension of the Governor’s executive order 2020-43.1 or similar restriction on operating hours of in-person dining 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 24th day of November, 2020.



Steve Bakken, President

City of Bismarck Commission

Attest:



Keith Hunke, City Administrator