

TITLE XV.

Source: Ord. 1072, Sec. 2 (2017)

HEALTH

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CHAPTER 15-01

BOARD OF HEALTH AND HEALTH OFFICER.

SECTIONS:

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15-0101. BOARD OF HEALTH; MEMBERS; POWERS; HEALTH OFFICER AND DESIGNEES. The Board of Health shall be the Board of Health of Fargo Cass Public Health Department. The Board of Health shall have and exercise all powers under the law.

15-0102. DUTIES OF HEALTH OFFICER, DESIGNEES. The Health Officer and his designees, if any, shall have the following powers and duties:

1. Shall keep a record of the official acts of the local Health Officer.
2. Shall enforce every law and rule relating to preservation of life and health of individuals.
3. May make sanitary inspections of any place within the jurisdiction in which the local Health Officer finds a probability a health-threatening condition exists.
4. May investigate public water and ice supplies suspected of contamination and initiate necessary condemnation proceedings.
5. 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.
6. May take any action necessary for the protection of public health and safety.

7. May determine when confinement and decontamination is necessary for the safety of the public and may establish confinements consistent with procedures provided under N.D.C.C Chapter 23-07.6 and perform any acts required for decontamination when necessary.
8. Shall report any reportable disease to the State Department of Health as required by law.
9. May request the assistance of a county sheriff or police department in the same manner as provided under N.D.C.C. § 23-35-09(3).

15-0103. REGULATIONS: NOTICE OF. The Board of Health shall give notice, as provided by the laws of the State of North Dakota, of all general orders and regulations made by such Board, by publishing the same in the official newspaper within the jurisdiction of the Board, which publication shall be deemed a legal notice to all persons.

15-0104. POWER TO ENTER BUILDING. Whenever the Health Officer, or his designees, or the Board of City Commissioners shall deem it necessary for the preservation of the health of the inhabitants within the City, to enter any building within the City of West Fargo for the purpose of examining into and destroying, removing, or preventing any nuisance, source of filth or cause of sickness, and shall be refused entrance, the Health Officer, his designees, or any member of the Board of City Commissioners may make complaint under oath to the Municipal Judge of the City of West Fargo, stating the facts in the case, so far as he has knowledge thereof. Such Municipal Judge shall promptly review such complaint and if such complaint is reasonably based in fact shall thereupon issue a writ of entry directed to the Chief of Police of the City of West Fargo, sheriff or other peace officer, authorizing him to take sufficient aid and, accompanied by the Health Officer, his designees, or by at least one (1) member of the Board of City Commissioners of West Fargo, between the hours of sunrise and sunset, enter said building to have such nuisances, sources of filth, or cause of sickness destroyed, removed, or prevented under the direction of the Health Officer, his designees, or such member of the Board of City Commissioners as accompanied him.

15-0105. TESTING FOR SEXUALLY TRANSMITTED DISEASE. The Health Officer, when necessary for the protection of public health, shall:

1. Make examination of any person reasonably suspected of being infected with a sexually transmitted disease and detain that person until the results of the examination are known.

2. Require any person infected with a sexually transmitted disease to report for treatment to a reputable physician and to continue such treatment until cured or, if incurable, continue indefinitely such treatment as recommended by the physician.
3. Investigate sources of infection of sexually transmitted diseases.
4. Cooperate with the proper officials whose duty it is to enforce laws directed against prostitution, and otherwise to use every proper means for the repression of prostitution, including providing proper officials with all relevant information available concerning individuals who are infected with the human immunodeficiency virus and who are engaged in prostitution.

15-0106. QUARANTINE MEASURES CONCERNING CONTAGIOUS OR INFECTIOUS DISEASES. When a case of a contagious or infectious disease exists within the jurisdiction of the Health Department, the Director of the Health Department shall immediately examine the facts of the case and may implement such quarantine and sanitary measures recommended by the Health Officer to prevent the spread of such disease. The Health Officer, or the Director of the Health Department, acting under the Health Officer's authority, may immediately cause any person infected with such disease to be removed to a separate house if, in the opinion of the Health Officer, such person can be removed without danger to that person's health. If the infected person cannot be removed without danger to that person's health, the Health Officer shall make such quarantine regulations as it deems proper with reference to the house within which such infected person is, and may cause the persons in the neighbourhood to be removed, and may take such other measures as it deems necessary for the safety of the inhabitants within its jurisdiction. Such authority and quarantine measures shall comply with N.D.C.C. Chapter 23-07.6 (Communicable Disease Confinement Procedure).

15-0107. DESTRUCTION OF DISINFECTION OF ARTICLES EXPOSED TO INFECTION. The Health Department or Health Officer may cause to be destroyed any bed or bedding, curtains, carpets, or other articles which have been exposed to infection from infectious or contagious disease and may allow reasonable compensation for the same, or may provide a proper place with all the necessary precaution attendant upon the disinfection of such articles, and may provide transportation for the conveyance of such articles.

15-0108. HEALTH DEPARTMENT MAY PROVIDE TEMPORARY HOSPITAL FOR INFECTED PERSONS. The Health Department may provide such temporary hospital or place of reception for persons afflicted with infectious or contagious diseases as it judges best for their

accommodation and the safety of its inhabitants. It may provide necessary transportation for the conveyance of such persons to such hospital. All such hospitals, and all private houses or places where exist any infectious or contagious diseases, during the existence of such disease, shall be under the control and subject to the regulations of the Board of Health. All the inmates of such house or other place, during the existence of such disease therein, must conform to the regulations and obey the instructions of the Board of Health with reference thereto.

CHAPTER 15-02

GARBAGE

SECTIONS:

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15-0201. DEFINITION OF TERMS. The following definitions shall apply in the interpretation and enforcement of this chapter.

1. "Garbage" shall include refuse accumulation of animals, fruit, or vegetable matter, liquid or otherwise, that attends the preparation, use, cooking, dealing in, or storing of meat, fish, fruit, or vegetables.
2. "Rubbish" shall include all refuse not included in garbage and ashes. It includes tin cans, bottles, glass, scraps of iron, tin, wire, or other metals, rags, old clothing, unflattened paper containers, paper not used in preparation of food and drinks, old rubber, pieces of wood, boxes, barrels, crates, feathers, weeds, grass, lawn clippings, tree limbs, provided they are bundled or boxed and under two inches in diameter and not more than two feet in length, and similar refuse of every character collected or accumulated within the City of West Fargo.
3. "Ashes" shall include the residue from burning of wood, coal, coke, or other combustible materials for the purpose of heating, cooking, and disposing of waste and combustible materials.

4. "Recyclable material" shall include newsprint, rinsed glass bottles and jars and other glass containers without rings and caps, aluminum cans, tin and steel cans, flat corrugated cardboard, plastics, and scrap metal.

15-0202. GARBAGE CANS - REQUIRED - CAPACITY - CONSTRUCTION. Every owner or occupant of any house, hotel, restaurant, building, flat, apartment, tenement, commercial building, tourist court, or mobile home park unit in the City, where persons reside, board or lodge, or where animal or vegetable food is accumulated, kept for sale, prepared or served, shall provide for such house, hotel, restaurant, building, flat, apartment, tenement, commercial building, tourist court or mobile home park unit, and at all times maintain in good order a vessel or vessels for garbage.

For each flat, apartment, tenement, building, or mobile home park unit, one (1) such vessel for each living unit shall be provided.

Such vessel for garbage shall be watertight and made of metal or plastic with a close-fitting metal or plastic cover, and shall have a capacity of not less than ten (10) nor more than thirty-three (33) gallons. However, one (1) or more larger containers of such size and type as is approved by the City Public Works Director may be used if such Public Works Director determines the same to be necessary. Garbage receptacles should be placed on the premises, under the direction of the Public Works Director as to be easily accessible to the garbage collectors.

15-0203. RESERVED FOR FUTURE USE.

15-0204. GARBAGE CAN TO BE EMPTIED: WHEN. All garbage receptacles shall be emptied on the following schedule: In the case of private residences, said garbage collection shall be made at least once each week; and for all other places of business garbage collection shall be made as often as deemed necessary by the City Sanitation Superintendent.

15-0205. WHO MAY REMOVE CONTENTS OF GARBAGE CAN. It shall be unlawful for any person, firm or corporation, or any agent or employee thereof to haul, carry or convey through, along, or upon any public street, alley or sidewalk within the City of West Fargo, any garbage, rubbish, or ashes as classified under this chapter unless employed, licensed or permitted by the City of West Fargo, to carry or convey garbage.

15-0206. REMOVAL OF GARBAGE NOT TO BE INTERFERED WITH. No person shall obstruct, delay or interfere with any garbage collector engaged in collecting or removing garbage, rubbish, or ashes who is under the employ, license, and permit of the City of West Fargo.

15-0207. GARBAGE COLLECTION FEES. The fees for garbage collection shall be paid monthly in advance and shall be as follows:

1. Single Family Residence: \$13.00 per month.
2. Multiple Dwellings and mobile home park unit property: \$13.00 per month for each house keeping unit.
3. Commercial Establishments, factories, places of public entertainment and other business places shall be charged \$3.15 per cubic yard collected per month, with a minimum monthly charge of \$13.60 per month.
4. Commercial Establishments, factories, places of public entertainment and other business places may rent dumpsters from the City, if available. The rental charge shall be \$5.30 per cubic yard capacity of dumpster per month.

The payment in all cases for garbage service pickup collection and disposal shall be made directly to the City of West Fargo.

15-0208. COLLECTION BY CITY EMPLOYEES OR BY CONTRACT. The City either may purchase, maintain, or lease and operate equipment for the removal and disposal by City employees of all or any part of the garbage, rubbish, and ashes within the City of West Fargo or may provide for the collection, removal, or disposal thereof, in whole or in part, by any person, firm, or corporation with whom the City now has, or hereinafter may have, duly contracted as hereinafter provided.

15-0209. GARBAGE CONTRACT - ADVERTISING FOR BIDS - AWARDING - BOND REQUIRED. If it shall be deemed advisable by the Board of City Commissioners, the City Auditor shall advertise for bids for the removal of garbage, rubbish, and ashes out of the City limits under such conditions as the Board of Commissioners may designate. Such notice shall be published twice, once each week in the official newspaper of the City of West Fargo. Each bid shall be accompanied by a certified check in the sum of Five Hundred Dollars (\$500.00), payable to the order of the City Treasurer, which check shall be forfeited to the City if the successful bidder fails to enter into a contract with the City and give bond as provided below. The contract or contracts, as the case may be, shall be awarded to the lowest responsible bidder or bidders, if to be let by competitive bids. The person or persons obtaining such contract from the City shall execute a bond to the City of West Fargo in such sum as the Board of City Commissioners may provide for the full and faithful performance of all the agreements of said contract and a complete compliance with this ordinance.

15-0210. GARBAGE NOT MEETING SPECIFICATIONS.

A. The following items shall not be picked up as part of the garbage collection system of the City of West Fargo, and it shall be unlawful to place out for collection any of the following items:

1. Liquids.
2. Sludges (including sewage sludges, lime sludges, bar screenings and similar materials).
3. Animal manure.
4. Septic tank pumpings.
5. Unrinsed pesticide containers.
6. Hazardous wastes including:
 - a. Ignitibles (solvents, fuels and similar materials).
 - b. Corrosives (acids, alkalies and similar materials).
 - c. Reactives (hypo chlorites, swimming pool chemicals, cyanides, and similar materials).
 - d. EP toxic (paint sledges containing lead, chrome and similar materials).
7. Waste oil.
8. Asbestos.
9. Infectious wastes.
10. PCB's.
11. Large quantities of fly ash, soluble material, such as salt, may be restricted or require special handling.

B. The following items will be picked up not as part of the regular collection, but for a special fee to be set by the Public Works Director:

1. Lead acid batteries.
2. Tires.
3. Appliances.
4. Furniture.

5. Other items with the approval of the Public Works Director.

15-0211. DUTY OF CITY SANITATION SUPERINTENDENT. It shall be the duty of the City Sanitation Superintendent of the City of West Fargo to make such rules as he may deem necessary to regulate, enforce and carry out provisions of this chapter.

15-0212. OTHER GARBAGE HAULERS. No person, firm, corporation, or other business entity shall engage in the business of removing, collecting, transporting, or disposing of garbage, rubbish, ashes or recyclable materials as defined in Section 15-0201 within the city limits of West Fargo without first having obtained a permit therefor from the City Auditor. The fee for such permit shall be \$15. A separate permit shall be required for each entity served in West Fargo. The permit for hauling garbage under this chapter shall only be granted when the City Public Works Director, in his discretion, determines that it would not be feasible for the City to haul garbage from a specific commercial or industrial facility because of the quantity or unusual nature of the garbage. Application for such permit shall be made to the Public Works Director upon forms provided by him, and such application shall contain, among other things, the following information: the name of the hauler, its address and description of vehicle or vehicles in which garbage or recyclable materials are to be hauled in West Fargo, and the name and address of the specific commercial or industrial entity to be served. Such permit shall be valid for a one (1) year period, and the applicant must reapply each year thereafter for a new permit. The permit may be revoked by the Board of City Commissioners for violation of any provisions of this chapter. No such revocation shall become effective until notice shall first be given to the holder of the permit by certified mail stating the reasons for such revocation. Such revocation shall become final unless, within seven (7) days from the date of the mailing of such notice, the holder of such permit shall, in writing, request a hearing thereon by the Board of City Commissioners. The hearing shall be held at the next regularly scheduled meeting of the Board of City Commissioners, and the decision of the Board shall be final.

15-0213. ENCLOSURE FOR GARBAGE VESSELS. All dwelling units and All commercial establishments shall have approved enclosures for garbage cans which enclosures must meet minimum specifications set forth by the Board of City Commissioners and on file with the City Auditor.

15-0214. PENALTY. Any person violating any section of this chapter shall be guilty of an infraction and shall be subject to the penalties set forth in Section 1-0211. Each day such a violation continues shall be considered a separate offense.

15-0215. SEPARABILITY OF PROVISIONS OF ARTICLE. It is the intention of the Board of City Commissioners that the separate provisions of this article shall be deemed independent of all other provisions herein, and it is further the intention of said Board that if any provisions of this article be declared invalid, all other provisions thereof shall remain valid and enforceable.

15-0216. COLLECTION OF RECYCLABLE MATERIALS. Residents of residential dwellings and commercial buildings may participate in the City's plan of separation of recyclable materials as defined in Section 15-0201. The collection of separated materials shall be at such regular times as set by the City. Materials shall only be collected if set out in special recycling containers authorized by the City.

15-0217. ANTI-SCAVENGING CLAUSE. Ownership of separated recyclable materials set out for collection by the City shall be vested in the City. It shall be unlawful for any person, firm, or corporation to pick up separated recyclable materials for his/her own use, except the owner, lessee, or occupant of a residential dwelling may take back materials set out at that particular dwelling. In addition, any person, firm, or corporation may pick up recyclable materials pursuant to a special permit as provided in Section 15-0212.

CHAPTER 15-03

PUBLIC NUISANCES

SECTIONS:

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- 15-0302. Nuisances Prohibited.
- 15-0303. Definitions.
- 15-0304. Sanitary Nuisances.
- 15-0305. Noxious Weeds.
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- 15-0306. RESERVED FOR FUTURE USE.
- 15-0307. Junk Automobile, Building Materials - Storage or Accumulation Contrary to Public Health and Welfare.
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- 15-0310. RESERVED FOR FUTURE USE.
- 15-0311. Dumping - Excavation - Nuisance.
- 15-0312. Notice to Remove Nuisances.
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- 15-0315. Penalty.
- 15-0316. Authorized Persons.
- 15-0317. Odor - Nuisance.
- 15-0318. Nuisances on Park Property.

15-0301. NUISANCES - DEFINED. In all cases where no specific provision is made defining what is a nuisance and how the same may be removed, abated or prevented, in addition to what may be declared such herein, those offenses which are known to the common law of the land and the statutes of North Dakota as nuisances may, in case the same exist within the City of West Fargo, be treated as nuisances, and, in addition to those remedies otherwise provided by law, may be proceeded against as in this chapter, provided or in accordance with any other law which shall give the Court hearing the same jurisdiction.

15-0302. NUISANCES PROHIBITED - PERSONS DEFINED. No person, as owner or occupant of any lot or tenement, shall cause or permit any nuisance to be or remain in or upon any such lot or tenement or between the same and the center of the street or alley adjoining. For purposes of this Title, the term "person" includes, where relevant, corporations, unincorporated associations, or other legal entities. For purposes of this Title, words used in the singular include the plural, and the plural, the singular. Words in the masculine gender include the feminine and neuter genders.

15-0303. DEFINITIONS. Whenever used in this Title, each of the following words and phrases shall have the meaning ascribed to it:

1. "Garbage" shall include refuse accumulation of animals, fruit, or vegetable matter, liquid or otherwise, that attends the preparation, use, cooking, dealing in, or storing of meat, fish, fruit or vegetables.
2. "Noxious Weeds" shall mean any species of plant or vegetation recognized by the North Dakota State Weed Board as noxious.
3. "Junk" shall include, without limitation, parts of machinery or motor vehicles, unused furniture, stoves, refrigerators, or other appliances, remnants of wood, metal or any other cast-off material of any kind, whether or not the same could be put to any reasonable use.
4. "Junk automobiles" shall include, without limitation, any motor vehicle which is not licensed for use upon the highways of the State of North Dakota for a period in excess of sixty (60) days, and shall also include whether licensed or not, any motor vehicle which is inoperative for any reason for a period in excess of sixty (60) days, provided however, that excepted from this definition are unlicensed but operative vehicles which are kept as the stock in trade of a regularly licensed and established new or used automobile dealer.
5. "Abandoned vehicle" shall include, without limitation, any vehicle which has remained on private property for a period of forty-eight (48) continuous hours, or more, without the consent of the owner or occupant of the property, or for a period of forty-eight (48) continuous hours or more after the consent of the owner or occupant has been revoked.
6. "Building materials" shall include, without limitation, lumber, bricks, concrete or cinder blocks, plumbing materials, electric wiring or equipment, heating ducts or equipment, shingles, mortar, concrete or cement, nails, screws, or any other material used in constructing any structure.
7. "Demolition materials" shall include, without limitation, debris resulting from the demolition of buildings; such as concrete, stone, plaster, bricks, concrete blocks, and other materials that are the result of demolition and construction operations.

8. "Earth material" shall include any rock, gravel, natural soil or fill or any combination thereof.
9. "Hazardous waste" shall mean any waste or combination of wastes of a solid, liquid, contained gaseous, or semi-solid form which (a) because of its quantity, concentration, or physical, chemical, or other characteristic, in the judgment of the North Dakota State Health Department may (1) cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible or incapacitating reversible illness, or (2) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, disposed of, or otherwise managed; or (b) is identified by the mechanisms established in this chapter. Such wastes include, but are not limited to, those which exhibit extraction procedure (EP) toxicity, corrosivity, ignitability, or reactivity. The definition of hazardous waste above shall automatically be amended to adopt any amendments to Section 23-20.3-02(5), North Dakota Century Code, and any such amendments shall be of the same force and effect as if fully set out in this Ordinance.
10. "Trash and rubbish" shall include any and all forms of debris not herein otherwise classified.

15-0304. SANITARY NUISANCES.

1. PUMPING SEWAGE INTO OPEN GROUND PROHIBITED. It shall be a nuisance and offense for any person to pump the contents of any cesspool or septic tank or privy vault or other receptacle for the disposal of sewage upon the ground or into any open ditch or drainage course or to dispose of sewage in any manner other than by depositing the same in sewers, privy vaults, cesspools, septic tanks, or similar receptacles or by having said sewage or the contents of any of said receptacles hauled to someplace far enough from the platted portions of this City so as not to create any offensive odor or be a menace to health, and there to dispose of the same by the use of fire, chemicals, or other methods best suited to eliminate odor, destroy pathogenic bacteria and flies.
2. CELLAR, VAULT, PRIVATE DRAIN, CESSPOOL, OR SEWER NOT TO BECOME NAUSEOUS. No person shall allow or permit any cellar, vault, private drain, cesspool, or sewer upon any premises belonging to or occupied by him or her within the limits of the City to become foul, offensive, or injurious to the public health.

3. HARBORAGE FOR VERMIN PROHIBITED. It shall be a nuisance and offense for any person to accumulate on any premises, improved or vacant, and on all open lots and alleys in the City of West Fargo, any lumber, boxes, barrels, bricks, stones, or similar materials that may be permitted to remain thereon unless the same shall be placed on open racks that are elevated not less than eighteen (18) inches from the ground, and evenly piled or stacked so that these materials will not afford harborage for vermin.
4. DECAYED ANIMAL MATTER NOT TO REMAIN IN CITY. It shall be a nuisance and offense for any person having ownership or control of any animal matter which is unsound or in process of decay within the City of West Fargo, to permit the same to be and remain, while in such condition, within said City, or within one (1) mile of the limits thereof, more than twelve (12) hours after such animal matter shall have become unsound, or after the process of decay shall have begun in the same, whether it be at any establishment for the rendering or changing the character thereof, or elsewhere within the said City, or within one(1) mile of the limits thereof.
5. ACCUMULATION OF ANIMAL WASTE PROHIBITED. It shall be a nuisance and offense for any person, firm, corporation, occupant, or agent or employee thereof, to accumulate or to allow the accumulation of animal waste or excrement such that the conditions of the premises or any structure become, in the opinion of the health officer or his designee offensive and injurious to the public health or to the welfare of any animals kept on the premises. The accumulation of animal waste or excrement shall be deemed a nuisance and shall be abated by the health officer or his designee.
6. CASTING, THROWING OR DEPOSITING GARBAGE IN PUBLIC PLACES PROHIBITED. It shall be a nuisance and offense for any person to cast, throw, deposit or allow to accumulate in or upon any street, alley or other public place or in any ditch adjacent to any street, alley or other public place, any ashes, tin cans, garbage, rubbish, manure or refuse of any kind.
7. ACCUMULATION OF RUBBISH AND GARBAGE IN CITY LIMITS PROHIBITED. It shall be a nuisance and offense for any person to permit or suffer to accumulate in or about any yard, lot, place or premises, or upon any street, alley, sidewalk or City property, adjacent to or abutting upon any lot, block, place or premises owned or occupied by him within the City limits, refuse, vegetables, decayed or decaying substances, garbage, paper, rubbish, manure,

dead animals or ashes or filth of any kind nor suffer such yard, lot, place or premises to be or in such condition. Provided, however, that such section shall not preclude a person from maintaining a compost heap on property owned or leased by that person from materials obtained from that property and to be used on that property.

8. STAGNANT WATER, DUTY TO DRAIN. It shall be a nuisance and offense to allow stagnant water to stand or to remain along the line of any railroad, street, highway, alley, public place or along or upon any land within the City of West Fargo. It shall be the duty of all persons having, using, or occupying land, either as owners, tenants, or having control thereof as agents or otherwise, to remove or drain or cause to be removed or drained all stagnant water therefrom, and upon the order of the City to take all necessary steps to permanently alleviate that problem, including, but not limited to, filling the area in which the stagnant water is or has been standing.

15-0305. NOXIOUS WEEDS PROHIBITED. It shall be a nuisance and offense for any person owning or occupying any lot or tenement in the City of West Fargo, to grow or allow to grow thereon any Noxious Weeds.

15-0305A. CONTROL OF GRASSES AND NON-NOXIOUS WEEDS.

1. No grasses or non-noxious weeds shall be allowed to grow more than eight inches (8") in length upon or along the line of any railroad, street, highway, alley, public place, along or upon any vacant or other lot or place within the City. An area having more than thirty percent (30%) of grass plants or non-noxious weeds in excess of eight inches (8") in length shall be deemed a violation of this section.
2. It shall be the duty of all property owners, occupants, or persons having control over private property to maintain the growth of grasses or non-noxious weeds on such property so that it does not exceed eight inches (8") in length. These requirements apply to areas along and upon any railroad, street, highway, alley, public place or along or upon any vacant or other lot or place within the City. An area having more than thirty percent (30%) of grass plants or non-noxious weeds in excess of eight inches (8") in length shall be deemed a violation of this section.
3. Notice of a violation of this section shall be mailed to the registered property owner as shown in the property

tax records maintained in the City Assessor's office, upon any agent of the property owner, and upon any occupant of the property when appropriate. The owner, agent, tenant or person in charge of the property shall take appropriate action to cut and maintain all grasses and non-noxious weeds not to exceed eight inches (8") in height, as directed by the City within the specified period of time. Such notice may include notice to fill excavations and remove dirt piles so as to allow for the proper mowing of the grasses or non-noxious weeds. If the property owner, tenant, or agent fails to take such appropriate action within the time period as directed by the City, the City shall have authority to cut or mow the non-noxious weeds and grasses, fill any excavations, or remove dirt piles and assess the costs against the landowner.

4. The requirements of this section requiring control of non-noxious weeds and grasses do not apply to property where the owner or person in control of the property has applied for and obtained a land management plan permit from the City allowing grass growth or non-noxious weeds to exceed eight inches (8") in length.
5. To obtain a land management plan permit, the applicant must submit a written plan identifying the specific area where the plantings or grass or non-noxious weeds are planned to exceed eight inches (8") in length, a statement of intent and purpose for the area, a drawing, plat plan and/or survey showing the location of the planting on the applicant's property, a detailed description of the plant types and plant succession involved, and specific management and maintenance techniques to be employed. The land management plan must include provisions for maintaining plantings at a length not to exceed eight inches (8") in the area between the sidewalk and the street, or a strip not less than fifteen feet (15') adjacent to the street where there is no sidewalk, as well as a strip not less than four feet (4') adjacent to neighboring property lines unless waived in writing by the abutting property owner on the side so affected. Any such waiver of the requirements shall be affixed to the application and plan. No area of City-owned property within any street right-of-way may be included within a land management plan. This shall include the property between the sidewalk and the street and not less than fifteen (15) feet adjacent to the street where there is no sidewalk. As a condition of receiving approval of a land management permit, the applicant agrees and understands to mow or cut any grass or plantings when ordered to do so by the City official.

6. An application for a land management plan permit shall be on a form provided by the City and shall be submitted to the City Forester. A copy of the application shall be mailed to each of the owners of record, as listed in the office of the City Assessor, who are owners of the property situated in whole or in part within 200 feet of the boundaries of the properties affected. The application and any related information shall be considered by the City Forester. The City Forester shall have authority, after reviewing all appropriate materials and information, to approve or deny the application. An applicant who has had a permit denied or revoked, or an affected property owner in the event a permit is granted, may appeal the decision of the City Forester to the Board of Adjustment. Such appeal must be made in writing within fifteen (15) days of the City Forester's decision and shall be heard at a regular meeting of the Board of Adjustment.
7. An owner or occupant receiving a land management plan permit agrees to maintain any grass or plantings so as not to present hazards or to create a nuisance for adjoining properties, or to persons or vehicles traveling on the public ways. An owner or occupant receiving such permit also agrees to manage and maintain such grass or plantings such that they do not present a hazard to structures on affected land and to maintain such plantings as to enhance the appearance of the property on which they are located.
8. Notwithstanding issuance of a land management plan permit, the City may order the cutting of such grass or plantings included within a land management plan at any time the City determines that the growth may constitute a fire or safety hazard as to cause danger to the safety of the inhabitants of any residential structure located on the premises, or to citizens and residents of the neighborhood. Any costs incurred by the City shall be charged to the owner, occupant, or person in control of the property as authorized under this section.

15-0306. RESERVED FOR FUTURE USE (as per Ordinance No. 1137, Sec. 13 [2019])

15-0307. JUNK, JUNK AUTOMOBILES, BUILDING MATERIALS - STORAGE OR ACCUMULATION CONTRARY TO PUBLIC HEALTH AND WELFARE. It is hereby determined that the storage or accumulation of trash, rubbish, junk, junk automobiles, abandoned vehicles, building materials, upon any private property within the City of West Fargo, tends to result in blighted and deteriorated neighborhoods, the increase in criminal activity, the spread of vermin and

disease, and is contrary to the public peace, health, and safety and general welfare of the community.

1. UNLAWFUL TO ACCUMULATE ABANDONED VEHICLES AND JUNK. It shall be a nuisance and offense for any person to store or permit the storage or accumulation of trash, rubbish, junk, junk automobiles, or abandoned vehicles on any private property in the City of West Fargo except within a completely closed building or upon the business premises of a duly licensed junk dealer, junk buyer, dealer in used auto parts, dealer in secondhand goods, or junk gatherer.
2. UNLAWFUL TO DISMANTLE AUTOMOBILE - EXCEPTION. It shall be a nuisance and offense for any person to dismantle, cut up, remove parts from, or otherwise disassemble any automobile, whether or not the same be a junk automobile, abandoned vehicle or otherwise, or any appliance or machinery except in a completely enclosed building or upon the business premises of a duly licensed junk dealer, junk buyer, dealer in used auto parts, dealer in secondhand goods, or junk gatherer.
3. UNLAWFUL TO STORE BUILDING MATERIALS - EXCEPTION. It shall be a nuisance and offense for any person to store or permit the storage or accumulation of building materials on any private property, except in a completely enclosed building or except where such building materials are part of the stock in trade of a business located in said property, or except when such materials are being used in the construction of a structure on the property in accordance with a valid building permit issued by the City of West Fargo, and unless said construction is completed within a reasonable period of time.

15-0308. ABANDONED AUTOMOBILES -UNCLAIMED PERSONAL PROPERTY - NUISANCE. Any motor vehicle, animal or other article of personal property, located within the City of West Fargo, the use, condition or status of which is in violation of any ordinance of the City of West Fargo, or any law of the State of North Dakota, and constitutes an obstruction, hazard or detriment to public traffic, snow removal operations, public safety or public health, or which may be damaged, disabled or otherwise involved in an accident, or in the commission of any violation of any ordinance of the City of West Fargo or any law of the State of North Dakota, or any vehicle or other article of personal property abandoned or unclaimed within the City of West Fargo, is hereby declared to be a nuisance.

1. REMOVAL AND IMPOUND - CHIEF OF POLICE - DUTY. The Chief of Police or any member of the West Fargo Police

Department or any peace officer acting in that capacity within the City limits of the City of West Fargo shall remove or cause to be removed to City Hall, or other place designated by the Chief of Police, any personal property described in the immediately preceding paragraph and may impound and retain the same until the expense of removal, storage and impounding fee, if any, is paid, together with the amount of any fine, costs, bail or other claims of the City of West Fargo against the owner, or any other person lawfully entitled to the possession thereof the provisions of Section 15-0312 notwithstanding.

2. IMPOUND PROPERTY; WHEN HELD AND SOLD. If not reclaimed and redeemed by the true owner or the person lawfully entitled to the possession thereof within a period of sixty (60) days after impounding, any article or personal property described in the first paragraph of this section may be sold and disposed of by the Police Department of the City of West Fargo in the manner set out in Section 1-0703 of the ordinances of the City of West Fargo.
3. REPORT TO CITY AUDITOR, DISPOSITION OF PROCEEDS. Within thirty (30) days after such sale, the person making the sale shall make out in writing, and file with the City Auditor of West Fargo, a full report of such sale specifying the property sold, the amount received therefor, the amount of costs and expenses, and the disposition made by him of the proceeds of the sale. The proceeds arising from such sale shall be delivered over to the City Treasurer of West Fargo and credited to the General Fund.

15-0309. RESERVED FOR FUTURE USE (as per Ordinance No. 1137, Sec. 14 [2019])

15-0310. RESERVED FOR FUTURE USE (as per Ordinance No. 1137, Sec. 15 [2019])

15-0311. DUMPING - EXCAVATION - NUISANCE.

1. Dumping defined - for purposes of this section, dumping shall mean placing, burying or storing on, underneath or upon any land.
2. Within the City limits of West Fargo it shall be deemed a nuisance for any person to engage in dumping or any landowner, tenant or occupant to permit dumping of hazardous wastes except that hazardous wastes may be stored above ground if that person first obtains a

permit from the North Dakota Department of Health pursuant to Chapter 23-20.3, North Dakota Century Code.

3. Within the City limits of West Fargo it should be deemed a nuisance for any person to engage in dumping or any landowner, tenant or occupant to permit the dumping of garbage, junk, demolition materials, trash and rubbish unless the dumping is at a site for which the Board of Adjustment has granted a conditional use or other permit pursuant to the zoning regulations of the City of West Fargo, or unless a permit to use certain material for fill is first obtained from the Building Inspector. It shall not be deemed a nuisance pursuant to this section if the person is in compliance with another section of Chapter 15-02 of the Revised Ordinances of the City of West Fargo allowing the storing of materials under certain circumstances, or if the person is in compliance with the regulations for the storage of garbage contained in Chapter 15-02 of the Revised Ordinances of the City of West Fargo.
4. Within the City limits of West Fargo it shall be deemed a nuisance for any person to engage in dumping or any landowners, tenants, or occupants to permit the dumping of earth material without first obtaining a permit from the Building Inspector. Provided that no permit is necessary where the quantity of earth material is less than 100 cubic yards and the earth material when placed does not exceed 1 foot in depth. Provided further that no permit is needed when the person has first obtained a building permit and the dumping of earth material is connected with the project for which a building permit was granted.
5. The Police Department of West Fargo is hereby given the authority to prohibit and to stop dumping by any person within the City limits of West Fargo unless and until the person or persons stopped from dumping can establish to the satisfaction of the West Fargo Police Department that such dumping is permitted under the Revised Ordinances of the City of West Fargo. Any person prohibited from dumping by the West Fargo Police Department shall within 24 hours be entitled to a hearing before the Building Inspector, or in his absence, a Municipal Judge of the City of West Fargo to determine whether or not the dumping is in violation of the ordinances of the City of West Fargo.
6. Within the City limits of West Fargo it shall be nuisance if the Building Inspector determines that any existing or future excavation or embankment or cut or fill on private property has become a hazard to life or

limb, or endangers property, or adversely affects the safety, use, or stability of a public way or drainage channel or has a significant adverse impact on the drainage of water along its natural course resulting in the creation of stagnate water or the unnatural accumulation of water upon the property of another.

7. The permit from the Building Inspector authorized by Sections 15-0311(3) and (4) shall not be granted unless the following conditions are met:
 - (a) A permit fee in the amount of \$25 is paid to the Building Inspector.
 - (b) No real estate taxes are delinquent on the real property covered by the application.
 - (c) That a drainage plan is provided by the applicant showing the final grade of the real property after the requested dumping and which establishes, to the satisfaction of the City Engineer, that no other property will be adversely affected by the dumping.
 - (d) That a bond or a certified check payable to the City is deposited with the City Auditor in an amount set by the City Commission. The bond or certified check shall be for the purpose of cleaning up the site if the conditions of the permit are not followed and if the applicant does not immediately clean up the site. The amount of the bond or certified check shall be based on the City Commission's estimated cost to clean up the site if the conditions of the permit are not followed.

8. The permit from the Building Inspector authorized by Sections 15-0311(3) and (4) shall set forth the following conditions:
 - (a) The site where the dumping may occur.
 - (b) What materials may be dumped.
 - (c) That the drainage plan be followed.
 - (d) That if concrete or similar materials are permitted to be used as fill, the permit shall state the time period in which such materials may remain uncovered.
 - (e) That the permit shall expire one (1) year after issuance.

- (f) Any other condition which the City Commission deems advisable in order to control the dumping.

15-0312. NOTICE TO REMOVE NUISANCES. Except where otherwise provided in this chapter, if any person within the limits of the City of West Fargo shall permit or suffer on his premises or premises of which he may be the occupant, any nuisance the Board of City Commissioners, any member of the Board of City Commissioners, or such persons authorized by the City Commission shall cause notice to be given such person to remove or abate such nuisance. The notice shall set forth specifically the nuisance to be removed and the period of time in which it must be removed. The time period allowed for abating the nuisance shall not be less than forty-eight (48) hours after notice shall have been given, provided, however, that the time period may be less if the nuisance has caused or may cause death or injury to any person within the City of West Fargo. Provided further, that the provisions of this section shall in no way abrogate or restrict any emergency authority granted to the Board of City Commissioners or other emergency authority delegated to and exercised by persons duly authorized by the Board of City Commissioners.

15-0313. FAILURE TO REMOVE - PROSECUTION. If any person, as owner or occupant of any lot or tenement, after notice as provided in Section 15-0312, neglects or refuses to remove or abate the nuisance, the person giving such notice shall notify the City Attorney, who may commence prosecution of the offense in the West Fargo Municipal Court or seek injunctive relief in any courts of the State of North Dakota.

15-0314. FAILURE TO REMOVE - CIVIL PENALTY. The City official who sent notice of removal or abatement of a nuisance, may, in addition to the remedies set out in the previous section, if the nuisance is not abated within the time period set out in the notice, send notice to the violator of a hearing to be held by the City Commission to determine whether or not City officials should be directed to abate the nuisance. The violator must be given five (5) days written notice of the time of the hearing. If at that hearing the Commission determines that City officials should abate the nuisance, the Commission shall direct employees of the City to do so, and direct that all costs and expenses incurred in that abatement shall be assessed against the property concerned by the City Auditor. Provided, however, if the City official determines that the nuisance presents a clear and present danger of injury or death to a person in West Fargo, that official can direct City officials to abate the nuisance immediately without the need for Commission action. Once each year, after written notice to all violators, the Board of City Commissioners shall review all such assessments and hear all complaints against the same and approve the assessments as finally determined by the Board of City Commissioners. Such special assessments shall then be certified to the County Auditor and be placed upon the tax roll for that

year and to be collected as other taxes. The decision of the City Commission or City official to abate the nuisance in no way relieves the violator of prosecution under the prior section.

15-0315. PENALTY. Any person violating any section of this chapter shall be guilty of an infraction and shall be subject to the penalties set forth in Section 1-0211. Each forty-eight (48) hour period such violation continues shall be considered a separate offense.

15-0316. AUTHORIZED PERSONS. The following persons are hereby authorized by the City Commission to send out notices and take other actions as set out in this chapter to abate nuisances:

1. Any member of the City Commission.
2. City Health Officer.
3. Chief of Police.
4. Superintendent of Streets.
5. Chief of the West Fargo Volunteer Fire Department
6. Building Administrator.
7. City Forester.
8. Any contracted health officials.

15-0317. ODOR - NUISANCE.

1. Within the city limits of the City of West Fargo it shall be deemed a nuisance if there is a discharge into the ambient air of any objectionable odorous air contaminant which is in excess of two (2) odor concentration units outside the property boundary from which the emissions are being discharged.
2. A Barnebey-Cheney Scintometer properly maintained, or other instrumental method as approved by the State Health Department, must be used in determination of the intensity of an odor. An odor will be considered objectionable when at least two inspectors which have been certified by the State Health Department deem that odor objectionable if the odor were present in a place of residence. An "odor concentration unit" means the maximum number of standard units of odor-free air diluting a standard unit of odorous air so that the certified inspector can still detect that objectionable odor in the diluted mixture.

3. No person may discharge into ambient air hydrogen sulfide (H₂S) in concentrations that would be objectionable on land owned or leased by the complainant or in areas normally assessed by the general public. It shall be deemed a nuisance if two (2) samples with concentrations greater than 0.05 parts per million (50 parts per billion) are sampled at least 15 minutes apart within a 60-minute period. For measuring emissions of hydrogen sulfide, an ambient air analyzer designed for monitoring hydrogen sulfide must be the method used for determining the concentrations of emissions at the point of measurement, or other instrumental methods as approved by the North Dakota State Health Department.
4. The certified inspectors, in operating the Scentometer, an air analyzer designed for monitoring hydrogen sulfide, or other instrument approved by the State Health Department, must follow North Dakota State Health Department guidelines and procedures in conducting such test.
5. For purposes of this section, if a notice to remove or abate a nuisance is given, the odor nuisance will not be deemed to have been abated unless there are no further violations of Section 15-0317 for a period of thirty (30) consecutive days.

15-0318. NUISANCES ON PARK PROPERTY.

1. No owner, occupant, or user of property abutting Park District property of the West Fargo Park District shall cause or allow water from any down spout, sump pump or similar device to be directly or indirectly deposited on the Park District property.
2. No person shall deposit snow, earth, construction material, or other substance on Park District property of the West Fargo Park District without written permission from the Superintendent of the Park District. Notwithstanding written permission issued by the Park District, no person shall deposit any material containing salt, sand, or other substances which may be harmful to vegetation or other Park District property.
3. The Superintendent of the West Fargo Park District, or any other Park District employee designated by the Superintendent shall have the authority to issue letters to violators of this section. If the violation is not abated within the time set forth in the Notice of Violation, the City Attorney is authorized to prosecute such offenses in the West Fargo Municipal Court. All other procedures and penalties set forth in this chapter

are applicable to this section unless in conflict, in which case this section prevails.

CHAPTER 15-04

RECREATIONAL AQUATIC FACILITIES

Source: Ord 1167, Sec. 1 (2021)

SECTIONS:

- 15-0401. Definitions.
- 15-0402. Regulation by Health Department.
- 15-0403. Health Department Approval of Construction Plans.
- 15-0404. Fence/Barrier and Gate Requirements.
- 15-0405. Inspection by Health Department.
- 15-0406. Periodic Inspection and Testing by Health Department.
- 15-0407. Licenses and Fees.
- 15-0408. Licenses - Compliance and Revocation.
- 15-0409. Pool Operator Certification.
- 15-0410. Variance.
- 15-0411. Appeals.

15-0401. DEFINITIONS.

1. "Aquatic Venue," as defined by the Model Aquatic Health Code, means an artificially constructed or modified natural structure where the general public is exposed to water intended for recreational or therapeutic purpose. Such structures do not necessarily contain standing water so water exposure may occur via contact, ingestion, or aerosolization. Examples include swimming pools, water parks, water slides, spas (including spa pools and hot tubs), therapeutic pools, fountains, wet decks, spray pads, and interactive water features.
2. "Health Department" shall mean the Fargo Cass Public Health Department and its authorized designees and representatives.
3. "Certified operator" shall mean the person having a current certification from the successful completion of at least one of the following three courses: (a) the National Swimming Pool Foundation Certified Pool Operator course, (b) both Tech I and Tech II courses of the National Spa and Pool Institute, and (c) the National Recreation and Park Association Aquatic Facility Operator course.
4. "Person" shall mean any individual, limited liability company, firm, partnership, association, corporation,

company, society, government agency, club, business entity, or any organization of any kind.

5. "Pool" shall mean any structure, chamber, or tank containing an artificial body of water for recreational use, including, without limitation, a competition pool, wading pool, splash pad, spa, lazy river, special purpose pool, plunge pool, water slide, flume, speed slide, wave pool, sand bottom pool, vortex pool, and zero entry pool.
6. "Private residential pool" shall mean a pool connected with a single family residence or with a multi-unit owner occupied complex that is located on private property and that is under the control of the property owner(s), the use of which pool is limited to the owner(s) or invited guests, is deeper than 2 feet, and has a recirculation system. A pool that is used for commercial purposes is not a private residential pool.

15-0402. REGULATION BY HEALTH DEPARTMENT. The Health Department and agents and employees thereof, shall have authority to regulate the public health and safety in the City of West Fargo concerning use, design, operation, and maintenance of Aquatic Venues and shall have such authority to adopt regulations, rules, standards, and practices. Such regulations, rules, standards, and practices shall be approved by the Health Department, are hereby adopted by reference and fully incorporated herein, including any amendments hereinafter adopted, and shall be controlling within the jurisdiction of the Health Department.

No person shall own, operate, or allow to be occupied a Aquatic Venue, except a private residential pool, without a license for such issued by the Health Department.

No person shall occupy an Aquatic Venue that has been closed and placarded for closure by the Health Department, and no license shall allow such Aquatic Venue to be occupied after such closure and placarding other than for the limited purposes of repairs, maintenance or other activities needed to correct an imminent health hazard.

15-0403. HEALTH DEPARTMENT APPROVAL OF CONSTRUCTION PLANS. Before work is commenced on the construction of an Aquatic Venue, or on any alteration, addition, remodeling, or other improvement to an Aquatic Venue, the plans and specifications shall have been must be approved by the Health Department.

15-0404. FENCE/BARRIER AND GATE REQUIREMENTS. A fence or other barrier at least six (6) feet in height shall completely encircle all Aquatic Venues and private residential pools. Any

fence, gate, or door shall be equipped such that it can be latched from the inside to prevent access when the pool is unattended.

15-0405. INSPECTION BY HEALTH DEPARTMENT. The Health Department may inspect or cause to be inspected all Aquatic Venues within the City at such times as it may deem necessary to carry out the intent of this ordinance. The Health Department is hereby authorized to enter upon any premises to take such samples of water from such pools at such times as it may deem necessary and to require the owner, proprietor, or operator to comply with rules and regulations pertaining to Aquatic Venues promulgated by the Health Department, which regulations which have been adopted by the City of Fargo, North Dakota, as may be amended from time to time, are hereby adopted as applicable regulations in the City of West Fargo. In the event of the failure of compliance after due notice with the rules and regulations and requirements of the Health Department or the requirements of this ordinance, the Health Department shall have the power to abate or cause a suspension of the use of such Aquatic Venue until such time as the same is, in the opinion of the Health Department, no longer a menace or a hazard to health, safety, or morals.

15-0406. PERIODIC INSPECTION AND TESTING BY THE HEALTH DEPARTMENT. All Aquatic Venues in use shall be sampled and tested for water quality at intervals to be determined by the Health Department. The allowable limits and frequency of such tests shall be as determined by the Health Department.

15-0407. LICENSES AND FEES. A license shall be issued when investigation has determined that the Aquatic Venue and its method of operation will conform to the requirements of this chapter. A license, once issued, is nontransferable. A license shall be valid only for the location, unless revoked for cause, for the time period indicated. The license shall be posted in a conspicuous place in the Aquatic Venue. Fees shall be set by resolution of the board of city commissioners and shall be sufficient to cover the actual expenses of administering and enforcing this program, including the expenses of inspecting. The fee for the periodic tests required in Section 15-0409 shall be established by resolution of the Board of City Commissioners. Periodic inspection and testing fees shall be at the expense of the Aquatic Venue.

15-0408. LICENSES - COMPLIANCE AND REVOCATION. All licensees shall comply with the requirements of the regulations, rules, standards, and practices promulgated and adopted as set forth in Section 15-0402. The Health Department may revoke any license to operate an Aquatic Venue or may direct any Aquatic Venue to close upon violation of this chapter including a violation of the adopted regulations, rules, standards, and practices and including the failure to pay the administrative penalty imposed pursuant to this section; or may order both such closure and revocation of such license.

1. When the Health Department has revoked an Aquatic Venue license, the person in charge:
 - a. Shall immediately close the pool for use by anyone;
 - b. Shall be notified in writing by the Health Department that the Aquatic Venue license is immediately revoked upon service of the notice and the suspension shall remain in effect until a hearing with the Health Department occurs. If the Health Department finds the operation to be in compliance with the requirements of this chapter, the Aquatic Venue may reapply for a new license;
 - c. May request a hearing by filing a written request for a hearing with the Health Department within ten (10) days of receipt of the notice of revocation; and
 - d. Shall be notified, if a written request for a hearing is not filed within ten (10) days that the revocation shall be sustained.

Any Aquatic Venue owner whose license has been revoked may, at any time, make written application for a re-inspection for the purpose of re-applying for a license. The application shall include a statement, signed by the owner, that, in the owner's opinion, the conditions causing the revocation have been corrected.

A new license may be issued if the Health Department determines that conditions which prompted the revocation no longer exist.

2. When the health department has ordered an Aquatic Venue to be closed and has placarded the same to prohibit use until an imminent health hazard is corrected, if the licensee or agent or employee of the licensee either fails to close said pool or said licensee, agent or employee thereof opens the pool for occupancy or use prior to approval of the Health Department, then, in addition to any other remedies provided herein, administrative penalties may be imposed upon the licensee as follows:
 - a. For a first offense: a \$500 monetary penalty;
 - b. For a second offense within the prior twelve-month period since the date of the prior offense: a \$1,000 monetary penalty plus a period of suspension of the violator's license to be determined by the administrative board, below, or if said board's

decision is appealed, by the Board of City Commissioners; and

- c. For a third or any subsequent such offense occurring within the prior twelve-month period since the next previous offense: a \$1,000 monetary penalty plus a period of suspension of the violator's license to be determined by the administrative board, below, or if said board's decision is appealed, by the Board of City Commissioners.

3. Administrative Board-Notice of Violation-Procedure for Hearing-Appeals. There is hereby established a three-member administrative board consisting of the health officer, the director of public health and the city auditor. When an Aquatic Venue has been ordered closed and placarded by the Health Department, as authorized by law, and subsequently the health department determines that the Aquatic Venue either has not been closed, has not remained closed or has been unlawfully allowed to be occupied prior to approval of the Health Department, then the Health Department may cause a notice of violation to be delivered to the licensee, which notice shall describe the nature of the violation, the date or dates said violation existed, and the amount of the administrative penalty being sought by such notice. Upon receipt of the notice of violation, the licensee may admit to the violation, pay the monetary administrative penalty and make arrangements with the Health Department for implementation of the suspension of the licensee's license within ten (10) days or a public hearing before the administrative board will be scheduled by the Health Department. A hearing shall be set by the Health Department and a notice of said hearing issued to the licensee specifying the time and place of the hearing and further describing the reason for said hearing. The notice shall be served upon the licensee. No hearing shall be held until at least ten (10) days after the date of service of the notice. The licensee shall have a right to be heard at the hearing. After receiving the evidence at the hearing, the administrative board shall make a determination as to the facts that occurred and issue a written decision, determined by a majority vote of the members of the administrative board, to be served upon the licensee. If an administrative penalty is imposed, the written decision must identify the amount of the administrative fine in the amount set forth herein and the date by which it must be paid and it must provide the dates of commencement and completion of any period of suspension of the license. The licensee may appeal the decision of

the administrative board by filing a written notice of appeal of said decision with the Health Department within ten days of the date of service of the administrative board's written decision upon the licensee. A hearing of said appeal shall be set by the city commission specifying the time and place of the hearing and notice of the same shall be served upon the licensee. At the hearing of the appeal to the board of city commissioners, the licensee shall be allowed to make any statements or arguments and fully argue its case but it will not be entitled to a trial de novo. The decision of the board of city commissioners shall be based on a review of the evidence presented to the administrative board along with a record of the hearing and based upon a review of the findings and decision of the administrative board along with the statements and arguments of the licensee presented to the board of city commissioners to determine whether to affirm or reverse the decision of the administrative board. The decision of the board of city commissioners shall be served on the licensee, such decision being subject to further appeal in accordance with Chapter 28-34 of the North Dakota Century Code. Service of notices of hearing or of decisions of the administrative board or the board of city commission shall be completed in the same manner as provided by law for the service of a summons in a civil action (Rule 4, North Dakota Rules of Civil Procedure).

4. Within 15 days of the closure and placarding of an Aquatic Venue, the operator of the Aquatic Venue may request an opportunity to be heard and present proof that continued operation of the facility does not constitute a danger to the public health.

15-0409. POOL OPERATOR CERTIFICATION. Every commercial Aquatic Venue must have at least one (1) certified operator on staff to operate or to help operate the facility.

15-0410. VARIANCE. In any case where a license is required by this chapter, and upon application by the responsible person or persons, the Director of the Health Department, or health official designated by the Director of the Health Department, may grant a variance from the strict interpretation or application of law, regulations, or rules. A variance may be granted upon an affirmative finding that all of the following conditions exist:

1. The requested variance arises from conditions that are unique to the subject property or matter that are not ordinarily found in similar properties or matters;
2. The strict application of the applicable standards or regulations will constitute an unnecessary hardship;

3. The strict enforcement of any provision of this chapter, or of the rules and regulations promulgated pursuant to this chapter would be unreasonable, impractical, or not feasible under the circumstances;
4. The variance desired will not adversely affect the public health, safety, or general welfare; and
5. The variance is the minimum variance that will overcome the hardship.

In granting the variance, the Director of the Health Department or designated health official may include such conditions as may be reasonably necessary to maintain the general purpose of these rules and regulations and the interest of applicable local, state, or federal laws.

15-0411. APPEALS. Any person aggrieved by a decision of the Health Department or one (1) of its officials, including, without limitation, an order or denial of an order, or by the denial of a permit or a variance, may appeal such decision by filing a notice of appeal with the Director of the Health Department. Appeals of final decisions made pursuant to the procedures of this chapter must be filed within ten (10) days of the date of the decision. Said appeal must be in writing and shall be submitted to the Director of the Health Department. The Health Department shall consider the appealed decision as a new matter in a public hearing and, at the close of the public hearing, act to affirm or reverse the original decision.

CHAPTER 15-05

TANNING FACILITIES

SECTIONS:

- 15-0501. Definitions.
- 15-0502. Operation of Tanning Facilities - License Required.
- 15-0503. Regulation, Inspection, and Enforcement by Health Department.
- 15-0504. Display of License - License Nontransferable.
- 15-0505. Application and Fees; Issuance and Expiration of Licenses; and Renewals.
- 15-0506. Advertising and Prohibited Claims.
- 15-0507. Requirements for Written Notice to Costumers.
- 15-0508. Requirement to Prominently Display Warning Sign.
- 15-0509. Liability.
- 15-0510. Age Restrictions for Customers.
- 15-0511. Duties of Owner.
- 15-0512. Duties of User.
- 15-0513. Reports of Injury.
- 15-0514. Authority of Health Department to Promulgate Regulations.
- 15-0515. Denial, Suspension, or Revocation of License.
- 15-0516. North Dakota Requirements for Tanning Facilities Adopted.
- 15-0517. Violations and Penalties.

15-0501. DEFINITIONS. In this chapter, unless the context or subject matter otherwise requires, the following definitions shall apply:

1. "Applicant" shall mean any person who applies to the Health Department for a license to operate a tanning facility.
2. "Customer" shall mean any member of the public who is provided access to a tanning device in exchange for a fee or other compensation, or any individual who, in exchange for a fee or other compensation, is afforded use of a tanning device as a benefit of membership in or access to a health club, condominium ownership, apartment complex activity center, hotel or motel room rental, or other offer. For purposes of this chapter, the term customer shall be synonymous with the term "user."
3. "Health Department" shall mean the Fargo Cass Health Department and its authorized designees and representatives.

4. "Operator" shall mean an individual designated by the license holder to manage the tanning facility and to assist and instruct the public in the correct operation of the tanning devices.
5. "Person" shall mean any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group or agency, or a representative or agent of any of these.
6. "Phototherapy device" shall mean equipment that emits ultraviolet radiation and is used in treating disease.
7. "Protective eyewear" shall mean any apparatus designed to be worn over the eyes by a user of tanning devices which absorbs all UV-A, UV-B and visible light up to 500 nanometers but licenses sufficient light to pass through to allow a user to safely negotiate obstacles, and that complies with the standards set forth in 21 CFR 1040.20.
8. "Radiation" shall mean ultraviolet radiation.
9. "Tanning device" shall mean a device that emits electromagnetic radiation having wavelengths in the air between two hundred (200) and four hundred (400) nanometers and which is used for tanning of human skin and any equipment used with that device, including Food and Drug Administration-approved protective eyewear, timers, and handrails. The term does not include a phototherapy device used by a physician.
10. "Tanning facility" shall mean a place or business that provides individuals access to a tanning device.
11. "Ultraviolet radiation" shall mean electromagnetic radiation with a wavelength in air of two hundred (200) to four hundred (400) nanometers.
12. "UV-A" shall mean ultraviolet radiation having a wavelength in air of three hundred twenty (320) to four hundred (400) nanometers.
13. "UV-B" shall mean ultraviolet radiation having a wavelength in air of two hundred ninety (290) to three hundred twenty (320) nanometers.

15-0502. OPERATION OF TANNING FACILITY—LICENSE REQUIRED. No person may operate a tanning facility within the City of West Fargo without a license issued by the Health Department. This provision applies to all persons who possess or operate tanning devices which are made available to the public for the purpose of

artificial light skin tanning, including tanning devices offered for use as part of a membership or premium offer in a health club, condominium, apartment complex activity center, hotel or motel rental.

15-0503. REGULATION, INSPECTION AND ENFORCEMENT BY HEALTH DEPARTMENT. In order to provide for the health and safety, the Health Department shall have authority to regulate and enforce the provisions stated herein concerning the use, operation, and maintenance of tanning facilities within the jurisdiction of the Health Department. The Health Department shall have authority to enter upon the premises of a tanning facility and to inspect or cause to be inspected all tanning facilities as often as is necessary to confirm compliance with the provisions of this chapter. In the event of a failure to comply with the provisions of this chapter, after due notice thereof, the Health Department shall have the power to abate or cause a suspension of the use of the tanning facility until such time as the same is, in the opinion of the Health Department, no longer a hazard to health or safety.

15-0504. DISPLAY OF LICENSE - LICENSE NONTRANSFERABLE. A license issued pursuant to this chapter shall be displayed in a conspicuous place at the tanning facility for which the license is issued. A license issued pursuant to this chapter is non-transferable.

15-0505. APPLICATION AND FEES; ISSUANCE AND EXPIRATION OF LICENSES; AND RENEWAL.

1. Application. The owner of a tanning facility shall submit an application for a license to the Health Department on a form provided by the Health Department along with payment of the required license fee. License fees and fees for renewal thereof shall be established by the Health Department. The application must include the name and complete mailing address of the applicant, the street address of the tanning facility, a scale drawing and floor plan of the proposed tanning establishment and any other information reasonably required by the Health Department for the administration of this section.
2. Issuance of licenses and expiration. Approved licenses shall be issued annually by the Health Department effective January 1 of each year, and shall expire on December 31 of each year.
3. Renewal. Applications for renewal shall be submitted with the appropriate renewal fee to the Health Department on the same form as an initial application.

License renewals will be issued by the health department effective January 1 of each year.

15-0506. ADVERTISING AND PROHIBITED CLAIMS.

1. A tanning facility may not state in any advertising, written or verbal, that tanning is free of risk.
2. A tanning facility may not 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 scientific or medical source.
3. No person may state or imply that any activity allowed under a license has been approved by the Health Department.
4. A tanning facility may not state in any advertising that the tanning facility holds a license issued by the Health Department to operate a tanning facility.

15-0507. REQUIREMENTS FOR WRITTEN NOTICE TO CUSTOMERS. A Tanning facility shall give to each of the tanning facility's customer's written notice of the following:

1. Failure to wear the eye protection provided by the tanning facility may result in damage to the customer's eyes and may cause cataracts;
2. Overexposure to a tanning device causes burns;
3. Repeated exposure to a tanning device may cause premature aging of the skin and may cause skin cancer;
4. Abnormal skin sensitivity or burning of the skin while using a tanning device may be caused by:
 - a. certain foods;
 - b. certain cosmetics; and
 - c. certain medications, including tranquilizers, diuretics, antibiotics, high blood pressure medicines, and birth control pills.
5. An individual who takes a drug should consult a physician before using a tanning device.

15-0508. REQUIREMENT TO PROMINENTLY DISPLAY WARNING SIGN. A tanning facility shall display prominently a warning sign in each

area where a tanning device is used. The warning sign must convey the following directions and information:

1. Follow instructions.
2. Avoid too frequent or too lengthy exposure. Like 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.
3. Wear Food and Drug Administration-approved protective eyewear.
4. Ultraviolet radiation from tanning devices will aggravate the effects of the sun, so do not sunbathe during the twenty-four (24) hours immediately preceding or immediately following the use of a tanning device.
5. 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.
6. If your skin does not tan when exposed to the sun, it is unlikely that your skin will tan when exposed to a tanning device.

5-0509. LIABILITY. A tanning facility's compliance with this chapter does not relieve the owner or any employee of the tanning facility from liability for injury sustained by a user of a tanning device.

15-0510. AGE RESTRICTIONS FOR CUSTOMERS.

1. Use by customers under eighteen (18) years of age. A customer under eighteen (18) years of age shall not be allowed to use a tanning device at a tanning facility unless the customer provides the facility with written consent, in a form prescribed by the Health Department or from 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 (12) months from the date signed.

- B. Physician approval required for customers under fourteen (14) years of age. A customer under the age of fourteen (14) years shall not be allowed to use a tanning device at a tanning facility unless he has produced a written order from a physician licensed in this state prescribing or authorizing such use and unless he is accompanied by a parent or legal guardian every time he uses the tanning device.

15-0511. DUTIES OF OWNER. The owner of a tanning facility shall comply with the following requirements:

1. An owner shall provide attendants in the tanning facility who are trained to be capable of providing information and assistance to customers in the proper use of tanning devices. A properly trained attendant must be present during all hours of operation of a tanning facility.
2. Each tanning bed shall be properly sanitized after each use.
3. 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, shall be made available to the customer.
4. A customer shall not be allowed to use a tanning device unless the customer agrees to use Food and Drug Administration-approved protective eyewear.
5. A customer shall be shown how to use such physical aids as handrails and markings on the floor to determine the proper distance from the tanning device.
6. Timing devices must be accurate within ten percent (10%).
7. Each tanning device must be equipped with a mechanism that allows the customer to turn off the tanning device.
8. Customers shall be limited to the maximum exposure time recommended by the manufacturer.
9. Customers may not be allowed to use a tanning device more than once every twenty-four (24) hours.

10. The interior temperature of the tanning facility may not exceed one hundred degrees Fahrenheit (100° F).
11. A statement obtained as required under Section 15-0510(B) (1) must be retained by the owner for a period of three (3) years unless it is replaced by a new such statement prior to the expiration of such three (3) years.

15-0512. DUTIES OF USER. A user of a tanning facility shall comply with the following:

1. Before a user's first use of a tanning facility in a year, the user shall sign a statement acknowledging that the customer has read and understands the notice required by Section 15-0507 and the warning sign required by Section 15-0508 and specifying that the customer agrees to use Food and Drug Administration-approved protective eyewear.
2. Use Food and Drug Administration-approved protective eyewear at all times while using a tanning device.

15-0513. REPORTS OF INJURY.

1. Injury by customer—duty of owner to report. If a customer of a tanning facility reports to that facility a sunburn injury resulting from the use of a tanning device of the facility, the owner shall provide the customer with written information on how to report the alleged injury to the State Department of Health.
2. Health care provider's duty to report. 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 State Department of Health. As provided by N.D.C.C. Section 23-39-06, 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.

15-0514. AUTHORITY OF HEALTH DEPARTMENT TO PROMULGATE REGULATIONS. Regulations creating minimum standards for tanning facilities pertaining to the preparation and care of the equipment, education and information for prospective clients, professional standards for the tanning facility attendants, operators and technicians, sanitation procedures, requirements for single use items, maintenance and retention of records of tanning clients, and requirements for posting of notices and information

regarding tanning facilities may be adopted by the Health Department. Upon adoption thereof, notice of such regulations shall be published in a newspaper of general circulation within the City of West Fargo. A copy of such regulations shall be provided to all tanning facilities so that they may be read by users and by attendants, operators and technicians of a tanning facility.

15-0515. DENIAL, SUSPENSION OR REVOCATION OF LICENSE.

1. The Health Department may deny issuance of a license or may suspend or revoke a license issued under this chapter if the Health Department determines that the applicant or licensee, or an employee thereof, has violated any section within this chapter or is found to have:
 - a. Submitted false or misleading information in the application or in any report made to the Health Department.
 - b. Failed to construct, operate, or maintain the tanning facility in accordance with the application.
 - c. Operated the tanning facility in a way that causes or creates a nuisance or hazard to health or safety.
 - d. Violated any condition upon which the license was issued.
 - e. Failed to allow a Health Department staff person or a duly authorized agent to inspect the facility at a reasonable hour and in a reasonable manner for the purpose of determining compliance with this chapter.
 - f. Failed to pay the license fee.
2. No license issued under the provisions of this chapter shall be suspended or revoked by the Health Department before the Director of the Health Department has issued written notice to the owner and allowed the owner an opportunity to appear and be heard by the Director of the Health Department. The Director of the Health Department may also, in his discretion, issue an order for compliance requiring the owner to correct certain violations within a tanning facility within a certain time period. In the event the owner brings the tanning facility into compliance within the prescribed time, the Director of the Health Department may determine whether

any further discipline is in order. All notices or orders shall be delivered to the owner either by personal delivery or by any form of mail or third-party commercial delivery addressed to the owner at the address noted on the owner's application for tanning facility license and requiring a signed receipt and resulting in delivery to the owner.

3. Any decision of the Health Department may be appealed to the Board of Health.

15-0516. NORTH DAKOTA REQUIREMENTS FOR TANNING FACILITIES ADOPTED. There is hereby adopted by reference by the Board of City Commissioners, for the purpose of prescribing regulations of tanning facilities, those provisions compiled by the North Dakota Department of Health, chapter 33-42 of the North Dakota Administrative Code, and all other applicable chapters or sections of the North Dakota Century Code. This chapter is hereby adopted and incorporated from the date on which this ordinance shall take effect, the provisions thereof shall be controlling within the limits of the City of West Fargo.

15-0517. - VIOLATIONS AND PENALTY. Any person, firm, or corporation violating the provisions of this chapter shall, upon conviction thereof, be guilty of a class B misdemeanor, and shall be punished by a fine not to exceed One Thousand Dollars (\$1,000) or by imprisonment not to exceed thirty (30) days, or by both such fine and imprisonment.

CHAPTER 15-06

SMOKE AND GASSES

SECTIONS:

- 15-0601. Dense Smoke, Ash Dust, Soot, Cinders, Noxious Gases, and Paint Spray a Nuisance.
- 15-0602. Dense Smoke, Ash Dust, Soot, Cinders, Noxious Gases, and Paint Spray Prohibited.
- 15-0603. Complaints.
- 15-0604. Investigation.
- 15-0605. Action to Abate.
- 15-0606. Penalty for Violation of Chapter.

15-0601. DENSE SMOKE, ASH DUST, SOOT, CINDERS, NOXIOUS GASES, AND PAINT SPRAY AS NUISANCE. The emission of dense smoke, ash dust, soot, cinders, or noxious gases from the stack or chimney of any locomotive or similar machine or contrivance or from the smoke stack or chimney of any building or premises or the emission of paint spray from any paint sprayer or similar apparatus in such quantities as to cause injury or detriment to any person or persons or to the public, or to endanger the comfort, health, or safety of any such person or persons, or in such manner as to cause or tend to cause damage or injury to property is hereby declared to be a nuisance.

15-0602. DENSE SMOKE, ASH DUST, SOOT, CINDERS, NOXIOUS GASES, AND PAINT SPRAY PROHIBITED. No person, persons, association, or corporation shall cause, permit, or allow the escape into the open air from any smoke stack, chimney, or paint-spraying apparatus, of such quantities of dense smoke, ash dust, soot, cinders, acid or other fumes, dirt or other material, noxious gases, or paint spray in such place or manner as to cause injury, detriment, or nuisance to any person or persons or to the public or to endanger the comfort, health, or safety of any such person or persons or the public, or in such manner as to cause or have a natural tendency to cause injury or damage to business or property.

15-0603. COMPLAINTS. Any person or persons having cause for complaint with respect to the violation of Sections 15-0602 and 15-0603 shall file such complaint, in writing, with the Board of City Commissioners, setting forth the facts in connection therewith, including a description of the premises from which such smoke, ash dust, soot, cinders, noxious gases, or paint spray was allowed to escape and the name of the owner thereof.

15-0604. INVESTIGATION. When any complaint with respect to violation of Sections 15-0601 and 15-0602 has been filed with the

Board of City Commissioners, the same shall be referred to the City Engineer for investigation and, if upon such investigation, the City Engineer shall find the conditions complained of such as to justify said complaint, the Board shall, in writing, by registered mail or by personal service upon such owner, notify the owner of said premises to take such steps as, in the judgment of the Board may be necessary to remedy the same, such order to specify the time limit within which such action must be taken.

15-0605. ACTION TO ABATE. In the event that the owner of said premises fails to remedy offensive conditions within the time limit specified in the order given by the Board of City Commissioners as provided in Section 15-0604, the Board may, in its discretion, require the City Attorney to commence an action to abate said nuisance.

15-0606. PENALTY FOR VIOLATION OF CHAPTER. Any person who shall violate any of the terms and provisions of this chapter and who, when notified in writing by the Board of City Commissioners, shall fail, neglect, or refuse to take steps to correct the condition complained of, and to prevent a repetition thereof, within the time specified in the notice provided for in Section 15-0604, shall be guilty of a misdemeanor and, upon conviction shall be punished by a fine not to exceed \$100 or by imprisonment not to exceed 90 days, or by both such fine and imprisonment, in the discretion of the court, for each such offense; the court to have power to suspend said sentence and to revoke the suspension thereof. Each day any person, firm, association, or corporation shall violate any of the provisions of this chapter shall constitute a separate offense.

CHAPTER 15-07

FOOD ESTABLISHMENTS

Source: Ord. 1165, Sec. 1 (2021)

SECTIONS:

- 15-0701. Definitions.
- 15-0702. Regulations by Health Department.
- 15-0703. Approval of Construction Plans.
- 15-0704. Food Establishments to be Kept Clean.
- 15-0705. Inspection of Food Establishments.
- 15-0706. Food Establishments - Inspection of Premises - Inspection Fee - Suspension or Revocation of License.
- 15-0707. Unwholesome Food, Water, or Other Provisions Not to be Brought Into City.
- 15-0708. Sale of Meat and Poultry - Regulations.

15-0701. DEFINITIONS. In this chapter, unless the context otherwise requires,

1. "Health Department" shall mean Fargo Cass Public Health Department and its authorized deisgnees and representatives.
2. "License" shall mean a written authorization to operate issued by the Health Department.
3. "Misbranded" shall mean food, if in packaged form, that lacks a label containing the name and place of business of the manufacturer, packer, or distributor; or an accurate statement of the contents; or if it is offered for sale under the name of another food or if it purports to be or is represented as a food for which a definition and standard identity has been prescribed and it is not.
4. "Proprietor" shall mean the person in charge of a food establishment, whether as owner, lessee, manager, or agent.

15-0702. REGULATION BY HEALTH DEPARTMENT. The Health Department and agents and employees thereof, shall have authority to regulate the public health and safety in the City of West Fargo concerning use, design, operation, and maintenance of food establishments and shall have such authority to adopt regulations, rules, standards, and practices. Such regulations, rules, standards, and practices approved by the Health Department, are

hereby adopted by reference and fully incorporated herein, including any amendments hereinafter adopted, and shall be controlling within the jurisdiction of the Health Department.

No person shall own, operate, or allow to be occupied a food establishment without a license for such issued by the Health Department.

15-0703. HEALTH DEPARTMENT APPROVAL OF CONSTRUCTION PLANS. Before work is commenced on the construction of a food establishment, the plans and specifications shall have been approved by the Health Department.

15-0704. FOOD ESTABLISHMENTS TO BE KEPT CLEAN. Every person keeping, maintaining, or being in charge of any public or private food establishment shall keep such public or private food establishment in a clean, pure, and wholesome condition; and if any such person shall allow or permit the same to be, become, or remain unclean, impure, or unwholesome, such person shall be guilty of a violation of this chapter.

15-0705. INSPECTION OF FOOD ESTABLISHMENTS. Every food establishment shall be inspected by the Health Department as often as necessary to determine compliance with this chapter. Frequency of inspections shall be based on a system of risk categorization which involves types of foods served, the preparation steps these foods require and population served. It shall be the duty of the Health Department to visit, as often as required, each public and private food establishment to examine and carefully inspect all such meat, fish, oysters, birds or fowls, vegetables, fruit, or other provisions, and if any adulterated, misbranded, mislabeled, unhealthy, unwholesome, or deleterious meat, fish, oysters, birds, or fowls, vegetables, fruit, or other provisions so intended for sale or other disposition as human food is found in or about any such public or private food the Health Department shall at once give the person in charge or temporarily in charge of the same notice to remove at once the same out of said City or to such place as the Health Department shall direct or to destroy the same. The person in whose custody and possession the same shall be found to be shall at once remove the same out of the City or to such place as the Health Department shall direct or destroy the same as may be directed. The Health Department, if deemed advisable, may take possession of such unhealthy, unwholesome meat, fish, oysters, birds, fowls, vegetables, fruit, or other provisions so intended for sale or other disposition as human food and destroy the same at the expense of the person in whose custody such unwholesome provisions are found. Furthermore, based upon inspection findings or other evidence, the Health Department may impound any food that is found to be, or suspected of being, contaminated or adulterated and impound equipment or utensils that are found to be unsanitary or in such disrepair that food, equipment, or utensils may become

contaminated or adulterated. No food, equipment, or utensils impounded shall be used unless the impoundment has been released.

15-0706. FOOD ESTABLISHMENTS -- INSPECTION OF PREMISES -- INSPECTION FEE.--SUSPENSION OR REVOCATION OF LICENSE. The Health Department shall have free access to all food establishments at any reasonable time for purposes of inspection. The Health Department may enter, inspect, photograph, and secure any sample, photographs, or other evidence from every food service establishment, for the purpose of enforcing this chapter. A written report of the inspection shall be made and a copy shall be provided to the owner, manager, or operator of the food or establishment, subject to the requirements of this chapter, refuses to permit entry or inspection, the taking of samples, photographs, or other evidence or otherwise attempts to conceal samples or evidence, the Health Department may obtain an administrative search warrant to obtain the same. All food establishments shall pay an annual license fee in an amount to be established by resolution of the Board of City Commissioners, said fee payable prior to January 1 of each year. A license shall be issued when a pre-operational inspection has determined that the proposed food establishment and its method of operation will conform to the requirements of this chapter. A license, once issued, is nontransferable. A license shall be valid only for the person, location, type of food sales, or distribution activity approved and, unless suspended or revoked for cause, for the time period indicated. The license shall be posted in a conspicuous place in the food establishment. Fees shall be sufficient to cover the actual expenses of administering and enforcing this program, including the expenses of inspecting.

Whenever the proprietor of a food establishment has been convicted of a violation of this chapter and for a period of ten (10) days after the conviction fails to comply with any provision of this chapter, the Health Department may suspend or revoke the proprietor's license. Any license may be suspended or revoked by the Health Department for violation of this chapter. Any food establishment for which the license has been suspended, shall close and remain closed until the Health Department has conducted a re-inspection and found the food establishment to be in compliance with this chapter. The Health Department may suspend any license to operate or direct any food establishment to close if:

- A. Immediate danger to the public health or safety is found, unless the danger is immediately corrected. The Health Department may temporarily suspend the license and order the food establishment immediately closed. Immediate danger to the public health and safety means any condition, based upon inspection findings or other evidence, that can cause food infection, food intoxication, disease transmission, rodent or insect infestation, or hazardous condition, including, but not limited to, unsafe food temperature, sewage

contamination, non-potable water supply, or an employee who is a carrier of a communicable disease;

- B. Operations, facilities, or equipment in the food establishment fail to comply with the requirements of this chapter;
- C. The operator fails to submit plans as required in this chapter or an inspection indicates that construction or renovation at the facility is not in substantial compliance with the requirements of this chapter;
- D. The operator fails to submit a license application for a food establishment or change of operator;
- E. The operator was not granted a license under the requirements of this chapter;
- F. The holder of the license does not remit the annual renewal fee;
- G. The holder of the license does not comply with the requirements of this chapter; or,
- H. Interference with the Health Department or its agents and assistants in the performance of its duties has occurred.

When the Health Department has suspended a food establishment license, the person in charge:

- A. Shall immediately cease all food service operations;
- B. Shall be notified in writing by the Health Department that the food establishment license is immediately suspended upon service of the notice and that the suspension shall remain in effect until the Health Department finds the operation to be in compliance with the requirements of this chapter, and that the suspension may be lifted;
- C. May request a hearing by filing a written request for a hearing with the Health Department within 10 days of receipt of the notice of suspension; and,
- D. Shall be notified, if a written request for a hearing is not filed within 10 days, that the suspension is sustained.

Any food establishment owner whose license has been suspended may, at any time, request a re-inspection for the purpose of reinstatement of the license. A re-inspection may only be

requested if the conditions causing the suspension have been corrected.

In the event a license has been revoked by the Health Department for violation of this chapter, the provisions of this section pertaining to suspension of said license will be applicable, including the effect of revocation, the notification requirement and the right to a hearing, except that any food establishment for which the license has been revoked shall be, and remain, closed by the licensee until the Health Department has conducted a re-inspection and has determined that the food establishment is in compliance with this chapter and the licensee has paid the re-instatement license fee.

The Health Department may, after providing opportunity for a hearing, modify, suspend, or revoke a license for serious or repeated violations of any of the requirements of this chapter or for interference in the performance of the duty of the Health Department or its agents and assistants.

15-0707. UNWHOLESOME FOOD, WATER, OR OTHER PROVISIONS NOT TO BE BROUGHT INTO CITY. No meat, fish, oysters, birds or fowls, vegetables, fruit, water, ice, beverages, or other provisions of any kind not being then healthy, fresh, sound, wholesome, and safe for human food, nor any part of any animal, fish or fowl that died by accident or from disease, shall be brought into the City, or sold, offered, or held for sale at any public or private establishment.

15-0708. SALE OF MEAT AND POULTRY--REGULATIONS. No meat or meat products, poultry or poultry products intended for human consumption shall be sold or offered for sale or service within the City unless slaughtered and processed in a federal or state inspected packing plant, slaughterhouse or by the agency that has animal health jurisdiction; all such meat and meat products and poultry and poultry products must be plainly stamped with a state or federal mark of inspection.

CHAPTER 15-08

CHILD CARE FACILITY

Source: Ord. 1164, Sec. 1 (2021)

SECTIONS:

- 15-0801. Definitions.
 - 15-0802. Physical Activity Requirements.
 - 15-0803. Electronic Media Viewing.
 - 15-0804. Beverages.
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15-0801. DEFINITIONS.

- 1. "Child care facility" shall mean any facility required by the North Dakota Department of Human Services (NDDHS) to have a health inspection where children receive care, and supervision for twenty-four (24) hours or less per day, unaccompanied by the child's parent, guardian, or custodian.
- 2. "Electronic media" shall mean media that uses electronics or electromechanical energy for the end user (audience) to access the content.
- 3. "Health Department" shall mean the Fargo Cass Public Health Department and its authorized designees and representatives.

15-0802. PHYSICAL ACTIVITY REQUIREMENTS. All licensed child care facilities shall provide a program of age and developmentally appropriate physical activity that comply with the following:

- A. Participate, and ensure staff participates, in approved trainings equaling at least two (2) hours of physical activity (above and beyond playground safety) annually. Initial training must be completed within three (3) months of hire.
- B. Toddlers and preschool-age children shall play outdoors daily for a minimum of sixty (60) minutes. In inclement weather, active indoor play shall be substituted in safe play areas.
- C. Children ages twelve (12) months and older attending a full-day program shall be scheduled to participate in at least sixty (60) minutes of physical activity per day. Children attending less than a full day program shall be scheduled to participate in a proportionate amount of such activities.

- D. For children ages three (3) and older, at least thirty (30) of the sixty (60) minutes shall be structured and guided physical activity. Structured and guided physical activity shall be led by teachers and/or caregivers and shall promote moderate to vigorous physical activity, basic movement, creative movement, motor skills development, and general coordination.
- E. Infants should have supervised "tummy time" every day when they are awake. Caregivers should interact with an awake infant on their tummy for short periods of time (three (3) to five (5) minutes), increasing the amount of time as the infant shows he/she enjoys the activity.
- F. Toddlers and preschool-age children shall not be sedentary or sit passively for more than sixty (60) minutes continuously, except when sleeping.
- G. Infants shall be placed in safe settings that facilitate physical activity and do not restrict movement for more than twenty (20) minutes at one (1) time (seated position, swings, exer-saucers, etc.), promote the development of movement skills, and allow infants to perform small and large muscle activities. A least restrictive environment is encouraged at all times.
- H. Facilities shall document physical activities including outdoor time, active play, and routine physical activity, and make such documentation available to the Health Department at designated times. This documentation shall be included in the program daily schedule and program lesson/activity plans.

15-0803. ELECTRONIC MEDIA VIEWING.

- A. Electronic media shall not be used with children under two (2) years of age.
- B. For children ages two (2) and older, viewing of electronic media shall be limited to no more than sixty (60) minutes per day of educational programs or programs that actively engage child movement. Children attending less than a full day program shall be limited to a proportionate amount of such viewing.

15-0804. BEVERAGES.

- A. Beverages with added sweeteners, whether artificial or natural, shall not be provided to children.
- B. Juice shall only be provided to children twelve (12) months and older, and shall not be provided in a bottle.

Only one hundred percent (100%) juice shall be permitted and children shall receive no more than six (6) ounces per day.

- C. Water shall be made available and shall be easily accessible throughout the day.

CHAPTER 15-09

PET STORES

SECTIONS:

- 15-0901. Definitions.
- 15-0902. Unlawful to Operate Pet Store Without License - Sale or Display of Colored Birds or Animals Prohibited.
- 15-0903. License to Operate Pet Store Issued Annually - Fee - Application Form - Health Department to Enforce Regulations.
- 15-0904. Inspection of Licensed Premises.
- 15-0905. Cruelty to Pet Birds, Animals, and Fowl Prohibited.
- 15-0906. Pet Birds or Animals Shall be Provided with Clean and Proper Food and Water.
- 15-0907. Licenses - Termination, Suspension, Revocation.

15-0901. DEFINITIONS. As used in this ordinance, unless the context otherwise indicates, the following definitions shall apply:

- A. "Animals" shall include any non-human vertebrate species housed, offered for sale or adoption, or both, in a pet store, including, but not limited to, mammals, birds, reptiles, amphibians, fish, and also invertebrates housed, sold, or adopted as pets, except worms, leeches or the like sold for fishing bait.
- B. "Pet store" shall mean an establishment or market place where animals are bought, sold, exchanged, or offered for sale, in any single calendar year, to the general public with the intent of making a profit. This term includes the keeping for transfer or the transfer of animals at temporary facilities, such as flea markets, mobile facilities, department stores, merchandise outlets, discount outlets, animal shows conducting a sale, and other types of retail outlets where the animals are intended as companions or household animals. The term "pet store" shall not include a person, firm, company, or corporation which sells, offers for sale, or exchanges less than 25 pet animals in any single calendar year, nor which keeps lost or homeless pet animals for the purpose of locating the existing owner of the pet animals or a new owner and which recoups solely expenses incurred in caring for said pet animal.
- C. "Health Department" shall mean the Fargo Cass Public Health Department and its authorized designees and representatives.

15-0902. UNLAWFUL TO OPERATE PET STORE WITHOUT LICENSE - SALE OR DISPLAY OF ARTIFICIALLY COLORED BIRDS OR ANIMALS PROHIBITED. It shall be unlawful to operate a pet store unless a license is first obtained from the Health Department. No artificially colored birds or animals shall be sold or displayed by any person at any time.

15-0903. LICENSE TO OPERATE PET STORE ISSUED ANNUALLY - FEE - APPLICATION FORM - HEALTH DEPARTMENT TO ENFORCE REGULATIONS. The license mentioned in Section 15-0902 hereof shall be issued annually, January 1, by the Health Department after an inspection. The fee shall be as established by the Health Department, and the applicants shall fill in and sign an application form furnished by the Health Department.

The Health Department is authorized to promulgate regulations creating minimum standards for pet stores pertaining to the facilities for housing and maintenance of animals, requirements for feeding and watering animals, sanitary conditions for animals, disease control and medical care, record keeping requirements and minimum age requirements of animals to be sold, which regulations will be enforced by the Health Department.

15-0904. INSPECTION OF LICENSED PREMISES. The members of the Board of City Commissioners of the City of West Fargo, the Chief of Police, or any officer of the Health or Police Department may, at any time, enter upon any licensed premises for the purpose of inspection or to determine whether the licensed premises are in compliance with any and all ordinances of the City.

15-0905. CRUELTY TO ANIMALS PROHIBITED. It shall be unlawful for any person within the City to beat, injure, mistreat, or otherwise abuse inhumanely, unnecessarily, or cruelly any animal.

15-0906. ANIMALS SHALL BE PROVIDED WITH CLEAN AND PROPER FOOD AND WATER. All animals kept for sale or display or any other purpose shall be provided with suitable sanitary housing with clean and proper food and water available at all times.

15-0907. LICENSES -TERMINATION, SUSPENSION, REVOCATION. All licenses issued under the provisions of this chapter, unless otherwise specifically provided, shall terminate on December 31 following the date of issuance; provided, however, that any license issued under the provisions of this chapter may, under certain circumstances, be terminated, suspended or revoked by the Health Department.

A. The Health Department may, in its discretion, suspend or revoke for cause any license issued under the provisions of this chapter. The grounds for suspension or revocation shall, among others, include the following:

1. The licensee has filed a petition in bankruptcy.

2. An individual licensee, one of the partners in a partnership licensee, or one of the officers in a corporation or limited liability licensee, or any individual in active management of the licensed business is determined to have violated any of the provisions of this chapter.
 3. The licensee has been convicted of a felony under the laws of the United States or under the laws of one of the several states.
 4. The licensee has made any false statement in his application for a license.
 5. The licensee has violated one or more of the regulations pursuant to Section 15-0903.
- B. The grounds enumerated in Subsection A of this section shall not be deemed to be exclusive, and any license issued under the provisions of this chapter may be suspended or revoked by the Health Department for any other reason deemed by the Health Department to be sufficient in order to promote and protect the health, safety, and humane treatment of animals in the care of the licensees. When any license is suspended or revoked by the Health Department pursuant to the provisions of this section, or when the licensee voluntarily ceases business, no portion of the license fee previously paid shall be returned to the licensee or to anyone claiming under or through him.
- C. No license issued under the provisions of this chapter shall be suspended or revoked for cause by the Health Department without a public hearing. In the event that the Health Department intends to consider the suspension or revocation of any license for cause, it shall notify the licensee of its intention to consider the same. The notice shall specify the time and place of the suspension or revocation hearing and shall be served upon the licensee or his managing agent in the same manner as provided by law for the service of a summons in a civil action. No suspension or revocation hearing shall be held before the expiration of 15 days after the date of the service of the notice upon the licensee.

If, upon such hearing, it appears to the Health Department that sufficient cause exists for the suspension or revocation of a license issued pursuant to the provisions of this chapter, the Health Department shall make its order suspending or revoking the said license.

- D. An order suspending or revoking a license issued pursuant to the provision of this chapter may be appealed to the Health Department. The licensee must give notice of its intent to appeal the order of suspension or revocation to the Health Department no later than 15 days following the date of the service of the order upon him.

CHAPTER 15-10

REGULATIONS RELATING TO CLEANUP OF CLANDESTINE DRUG
LAB SITES AND CHEMICAL DUMP SITES

SECTIONS:

- 15-1001. Purpose and Intent.
- 15-1002. Jurisdiction.
- 15-1003. Fees.
- 15-1004. Definitions.
- 15-1005. Existence of Clandestine Drug Lab Site or Chemical Dump Site - Observation During Law Enforcement Investigation or by Other Officials in Regular Course of Duties.
- 15-1006. Declaration of Property as a Public Health Nuisance - Order to Vacate the Premises.
- 15-1007. Issuance of Order to Abate Public Health Nuisance - Notice.
- 15-1008. Notice of Declaration and Order of Abatement - Notice to Concerned Parties.
- 15-1009. Site Owner's Right to Appeal.
- 15-1010. Site Owner's Responsibility to Abate Public Health Nuisance - Required Action.
- 15-1011. Duty to Notify Health Officer of Prospective Change in Ownership.
- 15-1012. Site Owner's Responsibility for Costs.
- 15-1013. Site Owner's Failure to Abate Public Health Nuisance - City's Authority to Abate.
- 15-1014. Notice Filed with Property Record and/or Motor Vehicle Record.
- 15-1015. Recovery of Costs by City.
- 15-1016. Recovery of Costs from Persons Causing Damage.
- 15-1017. Site Owner and Address.
- 15-1018. Occupation Prohibited.
- 15-1019. Removal of Personal Property From the Site.
- 15-1020. Removal of Posted Declaration of Public Health Nuisance.
- 15-1021. Health Officer's Authority to Modify or Remove Declaration of Public Health Nuisance or Order for Abatement.
- 15-1022. Violations and Penalties.

15-1001. PURPOSE AND INTENT. The purpose of this chapter is to reduce public exposure to health risks where law enforcement officers or other city officials have determined that hazardous chemicals from a suspected clandestine drug lab site or associated dumpsite may exist. The Board of City Commissioners finds that such sites may contain suspected chemicals and residues that place people, particularly children or adults of child bearing age, at

risk when exposed through inhabiting or visiting the site, now and in the future.

15-1002. JURISDICTION. This ordinance shall apply to all areas located within the city limits of West Fargo.

15-1003. FEES. Fees for the administration of this chapter may be established and amended periodically by resolution of the Board of City Commissioners.

15-1004. DEFINITIONS. In this chapter, unless the context otherwise requires:

- A. "Child" shall mean any person less than eighteen (18) years of age.
- B. "Chemical dumpsite" shall mean any place or area, including any motor vehicle, trailer or boat, where chemicals or other waste materials used in a clandestine drug lab have been located.
- C. "Chemical investigation site" shall mean a clandestine drug lab site that is under notice and order for cleanup and/or remediation as a public health nuisance, as determined by the health officer, or his designee.
- D. "Clandestine drug lab" shall mean the unlawful manufacture or attempt to manufacture controlled substances or the possession of equipment and other items commonly used to manufacture controlled substances.
- E. "Clandestine drug lab site" shall mean any place or area where law enforcement has determined that conditions associated with the operation of an unlawful clandestine drug lab exist. A clandestine drug lab site may include dwellings, accessory buildings, accessory structures, a chemical dumpsite, any tract of land, or any motor vehicle, trailer or boat where conditions associated with the operation of an unlawful clandestine drug lab exist.
- F. "Cleanup" shall mean removal and/or containment of substances hazardous to humans and/or the environment at a chemical investigation site.
- G. "Controlled substance" shall mean a drug, substance, or immediate precursor in Schedules I through V as set forth in North Dakota Century Code Chapter 19-03.1. The term shall not include distilled spirits, wine, malt beverages, intoxicating liquors or tobacco.
- H. "Director of Public Health" shall mean the Director of the Health Department.

- I. "Health Officer" shall mean the local Health Officer for the Health Department and his designees.
- J. "Health Department" shall mean Fargo Cass Public Health Department and its authorized designees and representatives.
- K. "Household hazardous waste" shall mean waste generated from a clandestine drug lab. Such wastes shall be treated, stored, transported, or disposed of in a manner consistent with North Dakota Department of Health, North Dakota Department of Environmental Health, Cass County Health rules and regulations.
- L. "Law enforcement officer" shall mean any licensed peace officer.
- M. "Manufacture, in places other than a pharmacy" shall mean and include the production, cultivation, quality control, and standardization, by mechanical, physical, chemical or pharmaceutical means, packing, repacking, tableting, encapsulating, labeling, relabeling, filling, or by other process, of drugs.
- N. "Owner" shall mean any person, firm, or corporation who owns, in whole or in part, the land, building, structure, motor vehicle, trailer or boat associated with a clandestine drug lab site or chemical dumpsite.
- O. "Public health nuisance" shall mean any dwelling, accessory structure, building and/or adjacent property, or motor vehicle, trailer or boat associated with a clandestine drug lab site are create a potential threat to the public health, safety, and welfare of the citizens of West Fargo and hereby declared to be a public health nuisance.
- P. "Remediation" shall mean methods such as assessment, evaluation, testing, venting, detergent scrubbing, enclosure, encapsulation, demolition, quarantine, and/or removal of contaminated materials from a chemical investigation site.
- Q. "Site" shall mean the location, area, building, motor vehicle, trailer or boat, where items typically associated with a chemical dumpsite, chemical investigative site, or clandestine drug lab are located or found.
- R. "Site owner" shall mean any person, firm, or corporation who owns, in whole or in part, the land, building,

structure, motor vehicle, trailer or boat associated with a clandestine drug lab site or chemical dumpsite.

- S. "Structure" shall mean a dwelling, building, motor vehicle, trailer, boat, ice fishing house, appliance or any other area or location, either fixed or temporary.

15-1005. EXISTENCE OF CLANDESTINE DRUG LAB SITE OR CHEMICAL DUMP SITE - OBSERVATION DURING LAW ENFORCEMENT INVESTIGATION OR BY OTHER CITIES OFFICIALS IN REGULAR COURSE OF DUTIES. Law enforcement officers as part of a criminal investigation or caretaking public service function, or other city officials in the regular course of their duties, who identify or observe conditions associated with a clandestine drug lab site or chemical dump site that places neighbors, visiting public, or present and future occupants of the affected property at risk for exposure to harmful contaminants and other associated conditions, shall notify public health authorities and other pertinent agencies of the site location, property owner if known, and conditions found at the site.

When law enforcement officers or other city officials have completed their work and are prepared to leave the site, they shall post a warning sign on the entrance of the affected part of the structure. In a situation involving a vehicle, such warning sign shall be clearly posted on the vehicle. The warning sign shall be of a size and contain information sufficient to alert visitors or returning occupants to the site that the area is a chemical investigation site, may be dangerous to enter, and must not be entered except by authorization of the Health Department, health officer, or law enforcement agency identified on the sign. Upon receiving information related to conditions associated with a clandestine drug lab site or chemical dump site, the Health Department shall conduct an appropriate investigation of the site.

15-1006. DECLARATION OF PROPERTY AS A PUBLIC HEALTH NUISANCE - ORDER TO VACATE THE PREMISES. If law enforcement or public health authorities confirm the presence or existence of a clandestine drug lab site or chemical dumpsite, the property shall be deemed a public health nuisance. Following an inspection by the health officer and/or his designee confirming the presence of a clandestine drug lab site or chemical dumpsite, the health officer shall issue a declaration of public health nuisance for the affected site, identifying the site as a public health nuisance and declaring the site as unsafe to occupy. As part of this declaration, the health officer shall have authority to order all occupants of such building, structure, or any part thereof to immediately vacate the premises. A copy of the declaration shall be posted on doorway entrances to the site or, in the case of bare land, in several conspicuous places on the property. In a situation involving a vehicle, a copy of the declaration shall be clearly posted on the vehicle.

The declaration of public health nuisance shall not expire until the property owner completes cleanup and remediation efforts related to the property as provided for in this ordinance.

15-1007. ISSUANCE OF ORDER TO ABATE PUBLIC HEALTH NUISANCE - NOTICE. Upon issuance of a declaration of public health nuisance, the health officer shall issue an order of abatement for the affected site. A copy of the order for abatement shall be posted on all doorway entrances to the site, or in the case of bare land, the order shall be posted in several conspicuous places on the property. In a situation involving a vehicle, a copy of the order for abatement shall be clearly posted on the vehicle. The health officer shall send personal or written notice to the site owner of the order to abate, which shall include the following:

- A. A copy of the abatement order;
- B. Information about the potentially hazardous condition of the site;
- C. Notification of suspension of the site's rental license if applicable;
- D. A summary of the site owner's and occupant's responsibilities under this ordinance; and
- E. Information that can help the owner locate appropriate services necessary to abate the public health nuisance.

15-1008. NOTICE OF DECLARATION AND ORDER OF ABATEMENT - NOTICE TO CONCERNED PARTIES. The health officer shall notify the owner of the property in person or by mail of the declaration of public health nuisance and order of abatement along with the following parties:

- A. Occupants of the property;
- B. Neighbors at probable risk;
- C. West Fargo Police Department; and
- D. North Dakota Department of Health and other State and local authorities which are known to have public and environmental protection responsibilities that are applicable to the situation.

Such notice shall include information related to the following:

- A. Property location by street address and other identifiable location;

- B. Property owner's and occupant's identities – especially the identities of any children and women of child-bearing age found or known to be associated with the site;
- C. Chemicals found and indications of chemical residues; and
- D. Presumed duration of the lab.

15-1009. SITE OWNER'S RIGHT TO APPEAL. The site owner may appeal the declaration of public health nuisance and related order for abatement to the Board of City Commissioners. Such appeal must be made in writing and filed with the City Auditor before the deadline when the site owner is otherwise required to submit a cleanup/remediation plan as required under section 15-1010.

15-1010. SITE OWNER'S RESPONSIBILITY TO ABATE PUBLIC HEALTH NUISANCE - REQUIRED ACTION. Within twenty (20) business days of the date the abatement order is mailed or personally served upon the site owner, the site owner shall accomplish the following:

- A. Notify the health officer that he has confirmed that all persons and their pets have vacated the site and that the site will remain vacated and secured until the public health nuisance is completely abated as required by this ordinance;
- B. Contract with one or more City-approved environmental hazard testing and cleaning firms to conduct the following work according to the most the current North Dakota Department of Health Management Practices for Cleanup of Methamphetamine Labs, or according to standards and regulations as may be adopted by the North Dakota Department of Health:
 - 1. A detailed on-site assessment of the extent of contamination at the site and the contamination of the personal property therein;
 - 2. Soil testing of the site and testing of all property and soil in proximity to the site that the environmental hazard testing and cleaning firm determines may have been affected by the conditions found at the site;
 - 3. A complete cleanup of the site (including but not limited to the cleanup or removal of contaminated plumbing, ventilation systems, fixtures and contaminated soil) or a demolition of the site and a complete cleanup of the demolished site;
 - 4. A complete cleanup, or disposal at an approved dumpsite, of all personal property in the site;

5. A complete cleanup of all property and soil in proximity to the site that is found to have been affected by the conditions found at the site;
 6. Remediation testing and follow-up testing to determine that all health risks are sufficiently reduced, according to North Dakota Department of Health Management Practices for Cleanup of Methamphetamine Labs, or according to standards and regulations as may be adopted by the North Dakota Department of Health, to allow safe human occupancy and use of the site and use of the personal property therein.
- C. Provide the health officer with the contractor's plan and schedule for remediation;
 - D. Sign an agreement with the health officer concerning a cleanup and/or remediation schedule. The schedule shall establish reasonable deadlines for completing all actions required by this ordinance for abatement of the public health nuisance. In determining appropriate deadlines, the health officer shall consider practical limitations and the availability of contractors in approving the schedule for cleanup. The health officer may consider practical limitations and the availability of contractors in approving the schedule for cleanup;
 - E. Provide written documentation of the cleanup process, including a signed, written statement that the property is safe for human occupancy and that the cleanup was conducted according to North Dakota Department of Health Management Practices for Cleanup of Methamphetamine Labs, or according to standards and regulations as may be adopted by the North Dakota Department of Health;
 - F. The site owner may request an extension of time to consider options for arranging cleanup or removal of the affected parts of the structure. The owner or occupant must show good cause for any such extension. Such extension shall be dependent upon the owner's assurance that the affected parts of the structure will not be occupied pending appropriate cleanup or demolition.

15-1011. DUTY TO NOTIFY HEALTH OFFICER OF PROSPECTIVE CHANGE IN OWNERSHIP. During the time that an order of abatement is in effect for an affected site, the site owner shall inform the health officer of any prospective change in ownership of the affected site.

15-1012. SITE OWNER'S RESPONSIBILITY FOR COSTS. The site owner shall be responsible for all costs associated with nuisance

abatement and of cleanup of the site, including contractor's fees and public costs for services that were performed in association with a clandestine drug lab site or chemical dump site cleanup. Public costs may include, but are not limited to:

- A. Posting of the site;
- B. Notification of affected parties;
- C. Securing the site, providing limited access to the site, and prosecution of unauthorized persons found at the site;
- D. Expenses related to the recovery of costs, including the assessment process;
- E. Laboratory fees;
- F. Cleanup services;
- G. Administrative fees; and
- H. Other associated costs.

15-1013. SITE OWNER'S FAILURE TO ABATE PUBLIC HEALTH NUISANCE - CITY'S AUTHORITY TO ABATE.

- A. If the site owner fails to organize and implement appropriate cleanup and remediation efforts within twenty (20) business days of the date the abatement order is mailed to the site owner, or if the site owner otherwise fails to comply with this ordinance, the health officer is authorized to proceed in a prompt manner and to take all reasonable actions necessary to abate the public health nuisance, including, but not limited to contracting with a City-approved environmental hazard testing and cleaning firm to conduct the work listed in section 15-1009.
- B. If the City is unable to locate the property owner within ten (10) days of the declaration of public health nuisance, the City is authorized to proceed in a prompt manner to initiate the onsite assessment and cleanup.
- C. If the estimated costs associated with cleanup and remediation of real or personal property at the site exceeds fifty percent (50%) of the County Assessor's market value of the structure and land, the City may exercise its authority under the Revised Ordinances of 1990 of the City of West Fargo, Chapter 5-02.

15-1014. NOTICE FILED WITH PROPERTY RECORD AND/OR MOTOR VEHICLE RECORD.

- A. If the site owner fails to organize and implement appropriate cleanup and remediation efforts within twenty (20) business days of the date the abatement order is mailed to the site owner, or if the site owner otherwise fails to comply with this ordinance, the health officer is authorized to provide a copy of the declaration of public health nuisance and abatement order to the County Recorder and to the lien and/or mortgage holders of the affected site to help assure that persons with interest in the site have access to information about the declaration of public health nuisance.
- B. When the affected property is a motor vehicle, boat, or trailer, the health officer is authorized to notify the appropriate state and local agencies that maintain motor vehicle, boat, or trailer records, and the holders of liens or security interests against the vehicle or trailer, of the declaration of public health nuisance and order of abatement.

15-1015. RECOVERY OF COSTS BY CITY. If the City abates the public health nuisance, in addition to any other legal remedy, the City shall be entitled to recover all of its costs plus an additional 25% of the costs for administration. The City may recover costs by civil action against the owner of the site or by assessing such costs, together with any amendments or modifications thereto.

15-1016. RECOVERY OF COSTS FROM PERSONS CAUSING DAMAGE. No provisions of this ordinance are intended to limit the site owner's, residents' or the City's right to recover costs incurred under this ordinance from either the persons contributing to the public health nuisance, such as the operators of the clandestine drug lab, and/or from other lawful sources.

15-1017. SITE OWNER AND ADDRESS. For purposes of this chapter, when the site is real property and the owner or the address of the owner of the site is unknown, the owner and the owner's address is deemed to be that of the property's taxpayer's name and address as that information is maintained by the County Auditor's office. When the site is a vehicle, boat or trailer and the owner or the address of the owner of the site is unknown, the owner and the owner's address is deemed to be that of the person on file as the owner on the current or most recent title to the vehicle, boat or trailer.

15-1018. OCCUPATION PROHIBITED. It shall be unlawful for any person to occupy, enter, or allow occupancy or entrance to a building or structure declared a public health nuisance until such

declaration is vacated or modified. In a situation involving a vehicle, it shall be unlawful for any person to enter or otherwise operate a motor vehicle declared a public health nuisance until such declaration is vacated or modified. This provision does not apply to the health officer, his designees, to law enforcement authorities, or other City officials.

15-1019. REMOVAL OF PERSONAL PROPERTY FROM THE SITE. While a declaration of public health nuisance has been posted at the site, no personal property may be removed from the site without prior written consent from the Health Officer. Consent to remove personal property shall only be granted at the reasonable discretion of the Health Officer, and only in cases of hardship after:

- A. A City-approved environmental hazard testing and cleaning firm has advised the City, in writing, that the item(s) of personal property can be sufficiently cleaned to remove all harmful contamination; and
- B. The owner of the personal property agrees in writing:
 - 1. That the owner is aware of the danger of using the contaminated property;
 - 2. That the owner will thoroughly clean the property to remove all contamination before the property is used; and
 - 3. That the owner releases and agrees to indemnify the City, its staff, and the Board of City Commissioners from all liability to the owner and/or third persons for injuries or damages caused, or alleged to have been caused, by the contaminated property.

15-1020. REMOVAL OF POSTED DECLARATION OF PUBLIC HEALTH NUISANCE. It shall be unlawful for any person, except the Health Officer or other authorized City personnel, to remove or alter a posted declaration of public health nuisance or an order of abatement from a chemical dumpsite or a clandestine drug lab site.

15-1021. HEALTH OFFICER'S AUTHORITY TO MODIFY OR REMOVE DECLARATION OF PUBLIC HEALTH NUISANCE OR ORDER FOR ABATEMENT. The Health Officer may modify or remove the declaration of public health nuisance and related order for abatement. Such modification or removal shall only occur after the Health Officer receives documentation from a City-approved environmental hazard testing and cleaning firm stating that the suspected health and safety risks, including those to neighbors and potential dwelling occupants, either do not exist or have been sufficiently abated or corrected to justify amendment or removal of the declaration. In addition,

prior to the Health Officer allowing occupancy of the site or structure, the site owner shall execute a covenant in recordable form identifying the property as a clandestine drug lab site which has been remediated and such covenant shall be recorded in the County Recorder's office. When the declaration or order of abatement is modified or removed, the Health Officer shall forward that information to the County Recorder to be included in the property record if notice of the nuisance declaration was previously filed with the County Recorder as described above. Notice shall also be provided to the motor vehicle or other license records agencies and lien holders if a notice had previously been provided to them.

15-1022. VIOLATIONS AND PENALTIES. Any person violating any provision of this ordinance shall be guilty of a class B misdemeanor and upon conviction shall be subject to the penalties set forth in Section 1-0211 of the Revised Ordinances of 1990 of the City of West Fargo. In addition, the City shall be entitled to seek any other remedy available at law or in equity in order to protect the health, safety, and welfare of the community, including temporary and permanent injunctions.

CHAPTER 15-11

SOFT-SERVE FREEZING/DISPENSING MACHINES

SECTIONS:

- 15-1101. Definitions.
- 15-1102. Sanitizing Machines and Examination of Product.
- 15-1103. Labeling.
- 15-1104. License.
- 15-1105. License Revocation or Suspension.
- 15-1106. Sale of Nonconforming Products Prohibited.
- 15-1107. Exemptions.
- 15-1108. License Fees.

15-1101. DEFINITIONS.

- 1. "Commissary" shall mean any place, premise, or establishment in which soft-serve freezing/dispensing machines manufacture, store, and sell soft-serve dairy and nondairy frozen dessert products.
- 2. "Dispensing only machine" shall mean a machine that does not mix or freeze a mixture but which only dispenses a prepackaged ready-to-use soft serve dessert product.
- 3. "Laboratory" shall mean a biological, physical or chemical laboratory which is under the supervision of the state or local health authority.
- 4. "License" shall mean a written authorization to operate issued by the Health Department.
- 5. "Manufacturer" shall mean any establishment operating a soft-serve freezing/dispensing machine.
- 6. "Health Department" shall mean Fargo Cass Public Health Department and its authorized designees and representatives.
- 7. "Soft-serve" shall mean the frozen combination of two (2) or more ingredients used in the manufacture of soft-serve dairy or nondairy dessert products, with or without fruit, fruit juices, candy, nuts, meats, flavoring, or coloring.
- 8. "Soft-serve freezing/dispensing machine" shall mean any mechanically operated freezing/dispensing machine used to produce a partially frozen dairy or nondairy dessert

product combination of two (2) or more of the following: milk or milk products, edible oil or fat, eggs or egg products, sugar, water, fruit or fruit juices, flavoring, candy, coloring, or stabilizer, and includes, but is not limited to, soft-serve desserts, ices, novelties, or other similar products.

9. "Soft-serve mix" shall mean the unfrozen combination of two (2) or more ingredients used in the manufacture of soft-serve dairy and nondairy dessert products.

15-1102. SANITIZING MACHINES AND EXAMINATION OF PRODUCT. Soft-serve freezing/dispensing machines must be cleaned and sanitized as often as necessary to maintain the quality of the frozen product. The Director of the Health Department may establish required frequency and methods for sampling and testing of soft serve freezing/dispensing machines and the acceptable standards for sanitary conditions. The licensee of a soft serve freezing/dispensing machine shall be responsible for maintaining sanitary conditions of the soft serve freezing/dispensing machine in compliance with approved standards. Soft serve freezing/dispensing machines shall be made available for testing by the Health Department during business hours for testing and determination of compliance with approved standards. If after sampling, a soft serve freezing/dispensing machine is out of compliance according to the Health Department, the operation of the machine may be immediately suspended until it meets the applicable Health Department standards.

15-1103. LABELING. All soft-serve dairy/nondairy products that are not sold at the point of manufactured origin must be properly labeled according to the current Food and Drug Administration guidelines.

15-1104. LICENSE. It shall be unlawful for any person who does not possess a valid license from the Health Department to sell, store, or offer for sale any soft-serve machine dairy/nondairy dessert product.

15-1105. LICENSE REVOCATION OR SUSPENSION. A license, as required by this chapter, may be suspended by the Health Department upon the violation by the holder of any part of this chapter. Any person whose license has been suspended shall immediately discontinue operation of the soft-serve machine until the defects that caused the suspension have been corrected. Following correction, the applicant may request reinstatement of the license by the Health Department.

The Health Department may require the license holder to demonstrate proper cleaning procedures and maintenance of the soft-serve freezing/dispensing machine before reinstating the license.

15-1106. SALE OF NONCONFORMING PRODUCTS PROHIBITED. No mix or soft-serve dairy/nondairy dessert shall be sold within the City unless such mix or soft-serve dairy/nondairy dessert product has been manufactured and frozen in conformity with the requirements of this chapter. Milk and any milk product that is used in the manufacture of ice cream, frozen dairy dessert, frozen dessert, or sherbet shall be pasteurized. Ice cream mix, frozen dairy dessert mix, and frozen dessert mix are unfrozen products that are used in the manufacture of ice cream, frozen dairy dessert, or frozen dessert. They shall comply with all requirements for ice cream, frozen dairy dessert, or frozen dessert, respectively.

15-1107. EXEMPTIONS. The soft-serve freezing/dispensing machine program is concerned with the manufacture and freezing of soft-serve frozen desserts, including both dairy and nondairy products. The Health Department has determined that establishments freezing/dispensing nondairy ice beverage products exclusively, such as water ices, slush, frozen cappuccino, etc., or serving hard, hand-dipped ice cream, or dispensing only machines which dispense a prepackaged ready-to-use frozen dessert do not require a soft-serve freezing/dispensing machine license.

15-1108. LICENSE FEES. Any person, firm, or corporation that operates a soft-serve freezing/dispensing machine shall pay an annual license fee in an amount which shall be established by the Health Department. All such fees shall be paid to the City by the person, firm, or corporation licensed to operate a soft-serve freezing/dispensing machine as defined in this ordinance, said fees to be paid before the license is issued.

CHAPTER 15-12

HOTELS AND MOTELS

SECTIONS:

- 15-1201. Definitions.
- 15-1202. Health Department.
- 15-1203. Exterior Area.
- 15-1204. Public Restrooms and Handwashing Facilities.
- 15-1205. Guest Rooms.
- 15-1206. Hallways, Lobbies, Laundry Rooms, and Storage Rooms.
- 15-1207. Water System.
- 15-1208. Plumbing.
- 15-1209. Garbage and Refuse Disposal.
- 15-1210. Miscellaneous.

15-1201. DEFINITIONS. The following definitions shall apply in the interpretation and enforcement of this chapter.

1. "Clean" shall mean the absence of dirt, grease, rubbish, garbage, and other offensive, unsightly or extraneous matter.
2. "Employee" shall mean any person working in a hotel or motel including janitors, maids, porters, and other persons whose duties include the cleaning of rooms, toilets, or other parts of the building.
3. "Good repair" shall mean free of corrosion, breaks, cracks, chips, pitting, excessive wear and tear, leaks, obstructions, and similar defects so as to constitute a good and sound condition.
4. "Guest" shall mean an occupant of any hotel or motel.
5. "Guest room" shall mean any room used by a guest for sleeping purposes.
6. "Health Department" shall mean the Fargo Cass Public Health Department and its authorized designees and representatives.
7. "Health hazard" shall mean any chemical agent, source of filth, cause of sickness, or condition that is a health threat to employees or guests.
8. "Hotel or motel" shall mean a building, structure, enclosure, or any part thereof used as, maintained as, advertised as, or held out to be a place where sleeping

accommodations are furnished to the public for periods of less than one (1) week.

9. "Public restroom" shall mean any facility that provides toilet and handwashing facilities for the general public.

15-1202. HEALTH DEPARTMENT.

1. Regulation by Health Department - The Health Department, and agents and employees thereof, shall have authority to regulate the public health and safety in the City of West Fargo concerning use, design, operation, and maintenance of hotels and motels and shall have such authority to adopt regulations, rules, standards, and practices. Such regulations, rules, standards, and practices shall be approved by the Health Department, are hereby adopted by reference and fully incorporated herein, included any amendments hereinafter adopted, and shall be controlling within the jurisdiction of the Health Department.
2. Health Department Approval of Construction Plans - Before work is commenced on the construction of a hotel or motel, or any alteration, addition, remodeling, or other improvement, the plans and specifications must be approved by the Health Department.
3. Inspection by Health Department - The Health Department may inspect or cause to be inspected all hotels and motels within the City at such times as it may deem necessary to carry out the intent of this ordinance. In the event of the failure of compliance after due notice with the rules, regulations, and requirements of this ordinance, the Health Department shall have the power to abate or cause a suspension of use of such hotel or motel until such time as the Health Department deems there to be no longer a menace or a hazard to health, safety, or morals. Annual license fees will be set by the Health Department.

15-1203. EXTERIOR AREA.

1. Every building, structure, or enclosure used to provide lodging accommodations for the public shall be kept in good repair, and so maintained as to promote the health, comfort, safety, and well being of persons accommodated.
2. There shall be at least one (1) parking spot provided for each lodging room in the hotel or motel and for all staff. The parking lot and all property used in connection with the hotel or motel shall be kept free of litter and refuse. Walking and driving surfaces of all exterior areas shall be surfaced with concrete, asphalt, or a similar material effectively treated to facilitate

maintenance and minimize dust. These surfaces shall be graded to prevent pooling. Only articles necessary for the operation and maintenance of the establishment shall be stored on the premises.

3. Outside openings shall be protected against the entrance of insects and rodents by tight fitting, self closing doors, closed windows, screening, or other approved means. Screen doors shall be self closing, and screen for windows, doors, skylights, intake and exhaust air ducts, and other openings to the outside shall be tight fitting and free of breaks or holes. Screening materials shall not be less than sixteen (16) mesh to the inch.

15-1204. PUBLIC RESTROOMS AND HANDWASHING FACILITIES.

1. All public restrooms should be provided with mechanical ventilation, self closing doors, and proper handwashing facilities. The handwashing sink shall be equipped with self-dispensing soap and self-dispensing disposable towels or a hand drying device providing heated air and a suitable waste receptacle. Handwashing sinks shall also provide hot and cold water tempered by means of a mixing valve or combination faucet. Hot water shall not exceed one hundred thirty degrees (130° F). Any self-closing, slow closing, or metering faucet shall be designed to provide a flow of water for at least fifteen (15) seconds without the need to reactivate the faucet.
2. Restroom facilities shall be conveniently located and shall be accessible to employees and guests at all times.
3. Handwashing facilities, soap dispensers, hand drying devices, and all related fixtures shall be kept clean and in good repair.
4. Walls and floors in restrooms shall be constructed of smooth, easily cleanable materials and shall be kept clean and in good repair.

15-1205. GUEST ROOMS.

1. Walls and floors in guest rooms shall be constructed of smooth, easily cleanable materials and shall be kept clean and in good repair. This includes furniture, drapes, curtains, lamp shades, carpeting, and all other fixtures.
2. All beds, bunks, cots, and other sleeping places provided for guests in hotels and motels shall be supplied with suitable pillow slips and top sheets. All bedding including mattresses, quilts, blankets, pillows, sheets, spreads, and all bath linen shall be kept clean. No

bedding including mattresses, quilts, blankets, pillows, and bed and bath linen shall be used which are worn out or unfit for further use. Pillow slips, sheets, and bath linen after being used by one (1) guest shall be washed before they are used by another guest, a clean set being furnished each succeeding guest. For any guest occupying a guest room for an extended period of time, a fresh set of sheets and pillow slips shall be furnished at least once each week, and at least two (2) clean towels per guest each day if they are requested.

3. Each hotel or motel must provide toilet, handwashing, and bathing facilities for its guests. There must be a ratio of at least one (1) toilet and bathing facility for every eight (8) guests. These facilities must be maintained in good repair and cleaned at least between stays of different guests. All toilet and bathing facilities must also be well ventilated. An area is well ventilated when excessive heat, odors, fumes, vapors, smoke, or condensation is reduced to a negligible level and barely perceptible to the normal senses.
4. All guest rooms must have a heating system able to maintain a minimum temperature of sixty-seven degrees Fahrenheit (67°F).
5. The doors of all guest rooms used for sleeping in any hotel or motel shall be equipped with proper bolts or locks to permit the occupants to lock or bolt such doors securely from within the rooms. Such bolts or locks shall be constructed in a manner which will render it impossible to unbolt or unlock the door from the outside.

15-1206. HALLWAYS, LOBBIES, LAUNDRY ROOMS, AND STORAGE ROOMS.

1. Walls, floors, and ceilings in hallways, lobbies, and laundry rooms shall be constructed of smooth, easily cleanable materials and shall be kept clean and in good repair.
2. All laundry rooms and any other rooms used to store linen, cribs, roll away beds, food, or food service equipment must shield all lights or use shatterproof bulbs.

15-1207. WATER SYSTEM.

1. A safe, adequate supply of potable water, with both hot and cold, under pressure shall be provided in all bathrooms and toilets.
2. Guest room glasses must be single service or multi-use glasses that are cleaned and sanitized between each different guest.

3. Self-service ice provided for guests must be dispensed through the use of self-dispensing ice machines or prepackaged from an approved source. Self-service ice storage bins are not acceptable for guest use and must be kept in areas not accessible to guests. All self-dispensing ice machines shall be cleaned internally every quarter (3 months).

15-1208. PLUMBING.

1. All plumbing shall be properly maintained and meet all state and local plumbing codes.

15-1209. GARBAGE AND REFUSE DISPOSAL.

1. All liquid waste shall be disposed of in an approved public sewage system.
2. Prior to removal, all garbage and refuse in storage shall be kept in watertight, nonabsorbent receptacles which are covered with close fitting lids to prevent access to birds, rodents, and other vermin. These garbage receptacles shall be kept in good repair.
3. All garbage, trash, and refuse shall be removed from the premises frequently to prevent nuisance and unsightly conditions, and shall be disposed of in a sanitary manner.

15-1210. MISCELLANEOUS.

1. All cleaning operations must be conducted in a manner that minimizes contamination of the facility. Cleaning equipment, supplies, insecticides, paints, and other toxic materials must be stored properly. They may not be stored above or next to linens, food, or food service equipment. 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.
2. Every hotel and motel shall be constructed, maintained, and equipped to prevent the entrance, harborage, or breeding of flies, roaches, bedbugs, rats, mice, and all other insects and vermin. They must also have means necessary to eliminate such pests such as cleaning, renovation, or fumigation. The Health Department may order the facility to hire a licensed exterminator to exterminate pests when:

- A. The infestation is so extensive that it is unlikely that a nonprofessional can eradicate the pests effectively.
- B. The extermination method of choice can only be carried out by a licensed exterminator.
- C. Upon reinspection it is found that the establishment has not been brought into compliance with a prior order to rid the establishment of pests.

CHAPTER 15-13

TATTOOS, BODY ART AND BODY PIERCING

Source: Ord. 1166, Sec. 1 (2021)

Section:

- 15-1301. Definitions.
 - 15-1302. Regulation by Health Department.
 - 15-1303. Health Department Approval of Construction Plans.
 - 15-1304. Unlawful to Operate Body Art Establishment Without License - Exemptions.
 - 15-1305. License to Operate Body Art Establishment Issued Annually - Fee - Application Form - Display of License Required - Adoption of Regulations.
 - 15-1306. Inspections by Health Department.
 - 15-1307. Licenses - Termination, Suspension, Revocation.
 - 15-1308. Unlawful Practices.
 - 15-1309. Penalty.
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15-1301. DEFINITIONS. As used in this ordinance, unless the context otherwise indicates, the following definitions shall apply:

1. "Bloodborne pathogen" means a micro-organism that is present in human blood or in other bodily fluid or tissue which can cause a disease in humans, including the hepatitis B virus, the hepatitis C virus, and the human immunodeficiency virus, and for which testing is recommended by the United States public health service.
2. "Communicable disease" means a disease or condition that causes serious illness, serious disability, or death, the infectious agent of which may pass or be carried, directly or indirectly, from the body of one person to the body of another.
3. "Gross incompetence" means any serious lack of ability of knowledge to perform one's duty in a sanitary manner, or failure to comply with these regulations. It also means any conduct which endangers the public's health or safety.
4. "Health Department" shall mean Fargo Cass Public Health Department and its authorized designees and representatives.
5. "License" means written approval issued by the Health Department or any designee of the Health Department to operate a body art establishment.
6. "Procedure room" means the physical space or room used for performing body art procedures.

7. "Scarification" means altering the skin texture by cutting the skin and controlling the body's healing process in order to produce wounds, resulting in permanently raised wheals or bumps known as keloids.
8. "Temporary body art event" shall mean any event to promote body art which lasts no longer than five (5) consecutive days.

15-1302. REGULATION BY HEALTH DEPARTMENT. The Health Department, its agents and employees, shall have authority to regulate the public health and safety in the City of West Fargo concerning use, design, operation, and maintenance of body art establishments and shall have such authority to adopt regulations, rules, standards, and practices. Such regulations, rules, standards, and practices shall be approved by the Health Department, are hereby adopted by reference, and fully incorporated herein, including any amendments hereinafter adopted, and shall be controlling within the jurisdiction of the Health Department.

15-1303. HEALTH DEPARTMENT APPROVAL OF CONSTRUCTION PLANS. Before work is commenced on the construction of a body art establishment, the plans and specifications must be approved by the Health Department.

15-1304. UNLAWFUL TO OPERATE BODY ART ESTABLISHMENT WITHOUT LICENSE - EXEMPTIONS. It shall be unlawful to operate a body art establishment unless a license is first obtained from the Health Department. The provisions of this chapter do not apply to physicians nor to individuals who pierce only the non-cartilaginous perimeter and lobe of the ear with a pre-sterilized, single-use, stud-and-clasp ear-piercing system; provided, however, that such individuals shall not be exempt from the applicable U.S. Food and Drug Administration requirements.

15-1305. LICENSE TO OPERATE BODY ART ESTABLISHMENT ISSUED ANNUALLY - LICENSE FOR INDIVIDUAL TECHNICIAN - TEMPORARY LICENSE FEE - APPLICATION FORM - DISPLAY OF PERMIT REQUIRED - HEALTH DEPARTMENT TO ENFORCE REGULATIONS. After an inspection and approval of the proposed body art establishment by the Health Department or designee, the license described in Section 15-1304 hereof shall be issued annually by the Health Department. The fee therefor shall be as established by the Board of City Commissioners. The license shall be non-transferable and displayed prominently in the body art establishment where it may be readily observed by clients.

The Health Department is authorized to promulgate regulations creating minimum standards for body art establishments pertaining to the facilities, preparation and care of the body art area, education and information for prospective clients, professional standards for the body art operators/technicians, sanitation and sterilization procedures, requirements for single use items, maintenance and retention of records of body art procedures, and

requirements for posting of notices and information regarding body art, which regulations may be enforced by the Health Department or its designee after such regulations are approved by the city commission. A copy of such regulations must be posted in all body art establishments in a prominent location so that they may be read by clients and by operators and technicians of a body art establishment.

Each individual body art technician shall be required to first obtain a license from the Health Department. The fee therefor shall be established by the Health Department, and applicants shall complete and sign an application form furnished by the Health Department. Each individual body art technician must be working under a permitted body art establishment. If the body art establishment has only one (1) technician, only the establishment license needs to be obtained.

Body art establishments and body art technicians not otherwise licensed in the City who wish to practice body art at a temporary body art event, shall obtain a temporary license through the Health Department. The fee therefor shall be established by the Health Department, and the applicant shall complete and sign an application form furnished by the Health Department.

15-1306. INSPECTIONS OF LICENSED PREMISES. The Chief of Police, any officer of the police department, or any health officer of the Health Department may, at any time, enter upon any licensed premises for the purpose of inspection or to determine whether the licensed premises are in compliance with any and all ordinances and regulations adopted by the City of West Fargo. A copy of the inspection report must be furnished to the license holder or operator of the body art establishment.

15-1307. LICENSES - TERMINATION, SUSPENSION, REVOCATION. All licenses issued under the provisions of this chapter, unless otherwise specifically provided, shall terminate on December 31 following the date of issuance; provided, however, that any license issued under the provisions of this chapter may, under certain circumstances, be terminated, suspended, or revoked by the Health Department.

1. The Health Department may, in its discretion, suspend or revoke for cause any license issued under the provisions of this chapter. The grounds for suspension or revocation shall, among others, include the following:
 - a. The licensee has filed a petition in bankruptcy.
 - b. The licensee does not remit the annual renewal fee.
 - c. An individual licensee, one (1) of the partners in a partnership licensee, or one of the officers in a corporation licensee, or any individual in active

management of the licensed business is convicted of violating any of the provisions of this chapter.

- d. The licensee has been convicted of a felony under the laws of the United States or under the laws of one (1) of the several states.
 - e. The licensee has made any false statement in his application for a license.
 - f. The licensee has demonstrated gross incompetence and/or has violated one (1) or more of the regulations created pursuant to Section 15-1305.
 - g. The licensee interferes with the Health Department or its agents and assistants in the performance of its duties.
2. The Health Department may temporarily suspend the license and order the establishment immediately closed if immediate danger to the public health or safety is found, unless the danger is immediately corrected.
 3. The grounds enumerated in subsection 1 of this section shall not be deemed to be exclusive, and any license issued under the provisions of this chapter may be suspended or revoked by the Health Department for any other reason deemed by the Health Department to be sufficient in order to promote and protect the health, safety, and welfare of the public. When any license is suspended or revoked by the Health Department pursuant to the provisions of this section, or when the licensee voluntarily ceases business, no portion of the license fee previously paid shall be returned to the licensee or to anyone claiming under or through the licensee.
 4. No license issued under the provisions of this chapter shall be suspended or revoked for cause by the Health Department without a public hearing. In the event that the Health Department intends to consider the suspension or revocation of any license for cause, it shall notify the licensee of its intention to consider the same. The notice shall specify the time and place of the suspension or revocation hearing and shall be served upon the licensee or his managing agent in the same manner as provided by law for the service of a summons in a civil action. No suspension or revocation hearing shall be held before the expiration of fifteen (15) days after the date of the service of the notice upon the licensee.

If, upon such hearing, it appears to the Health Department that sufficient cause exists for the suspension or revocation of a license issued pursuant to the provisions of this chapter, the Health Department

shall make its order suspending or revoking the said permit.

15-1308. UNLAWFUL PRACTICES. In addition to such other prohibitions as are contained in this chapter:

1. No person shall perform body art on any body part of a person under the age of eighteen (18) without the written consent of the parent or legal guardian of such minor and without said parent or legal guardian being present during such procedure.
2. No person shall obtain or attempt to obtain any body art establishment license by means of fraud, misrepresentation, or concealment.
3. No person shall perform body art procedures unless such procedures are performed in a body art establishment with a current license.
4. No person shall perform body art procedures unless they are at least eighteen (18) years of age.
5. No person shall interfere with an appropriate enforcement officer in the performance of an inspection or in the performance of any other duties.
6. Willful failure by the licensee to post regulations which are required to be posted pursuant to Section 15-1305 of this chapter shall be unlawful.

15-1309. PENALTY. A person who willfully violates this ordinance is guilty of a Class B misdemeanor. Every person, firm, or corporation violating this ordinance shall be punished by a fine not to exceed \$1,500 or by imprisonment not to exceed 30 days, or by both such fine and imprisonment, in the discretion of the court; the court to have power to suspend said sentence and to revoke the suspension thereof. In addition to such fine and/or imprisonment, the court, in its discretion, may assess a fee in an amount not to exceed \$25.00 as provided in section 27-01-10, N.D.C.C.

CHAPTER 15-14

NOISE CONTROL

Source: Ord. 1095, Sec. 1 (2017)

SECTIONS:

- 15-1401. Definitions.
- 15-1402. Unnecessary Noise Prohibited.
- 15-1403. Unlawful Noise - Determination.
- 15-1404. Projection of Sound Unlawful.
- 15-1405. Exemptions.
- 15-1406. Application for Special Permit.
- 15-1407. Motor Sports Facilities.
- 15-1408. Enforcement and Penalty.
- 15-1409. Severability.

15-1401. DEFINITIONS. For purposes of this chapter, certain words and phrases used herein are defined as follows:

1. "Ambient noise" is the all-encompassing noise associated with a given environment, being usually composite of sounds from many sources, near and far.
2. "'A' band level" is the total sound level of all noise as measured with a sound level meter using the "A" weighing network. The unit measurement is the dB(A). "dB" is the abbreviation for the decibel. "dB(A)" is a weighted decibel which closely approximates the human ear response to sound.
3. "Bel" is the common logarithmic value of any sound intensity as related to the standard threshold of audibility (minimum detectable sound 10-12 watts per square meter).
4. "Cycle" is the complete sequence of value of a periodic quantity that occur during a period.
5. "Decibel" is one-tenth (1/10) of a bel as measured on the "A" scale of a standard sound meter.
6. "Emergency work" is work made necessary to restore property to a safe condition following a public calamity or work required to protect persons or property from an imminent exposure to danger.
7. "Emergency vehicles" are those vehicles such as ambulance, fire, police, and other city vehicles operating in time of emergency.

8. "Frequency" of a function periodic in time is the reciprocal of the primitive period. The unit is the cycle per unit time and must be specified.
9. "Motor sports facility" is any facility, track, or course upon which racing events are conducted.
10. "Motor sports facility owner" is the owner or operator of a motor sports facility or an agent or designee of the owner or operator. When a racing event is held on public land, the event organizer (i.e., promoter) shall be considered the motor sports facility owner for the purpose of this article.
11. "Noise" is any sound which is unwanted and which causes or tends to cause an adverse psychological or physiological effect on human beings.
12. "Person" is a person, person's firm, association, co-partnership, joint venture, corporation, or any entity public or private in nature.
13. "Property boundary" is the imaginary line exterior to any enclosed structure, at the ground surface and its vertical extension, which separates the real property owned by one person from that owned by another person.
14. "Sound-level meter" is an instrument including a microphone, an amplifier, an output meter, and frequency weighing networks for the measurement of noise and sound levels in a specified manner.

15-1402. UNNECESSARY NOISE PROHIBITED. It shall be 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 of West Fargo.

15-1403. UNLAWFUL NOISE - DETERMINATION. The standards that will be considered in determining whether a violation of Section 15-1402 exists shall include, but shall not be limited to, the following:

1. The volume of the noise.
2. The intensity of the noise.
3. Whether the nature of the noise is usual or unusual.
4. Whether the origin of the noise is natural or unnatural.
5. The volume and intensity of the background noise, if any.

15-1404. PROJECTION OF SOUND UNLAWFUL. It shall be unlawful to project a sound or noise, excluding noise emanating from a moving motor vehicle, from one (1) property into another within the boundary of a use district which exceeds the limiting noise criteria set forth in Table 1 below. Noise level will be measured at the property boundary or at any point within the property affected by the noise.

1. Sound or noise projecting from one (1) use district, into another district with a different noise level limit, shall not exceed the limits of the district into which the noise is projected.
2. The permissible levels in decibels set forth in Table 1 below shall be modified so that any noise occurring on property deemed to be nonconforming use property shall be determined upon the conforming zoning designation of the property.

TABLE 1. LIMITING NOISE LEVELS FOR ZONING DISTRICTS

	Zoning District			
	Residential R-1A, R-1B, R-1, R-2, R-2A, R-3, R-3A, R-4	Public and Agricultural A, P, P-1	Commercial C-1, C-1A, C-2, C-2A, C-2B	Industrial M-1, M-1A M-2
Maximum number of decibels per- mitted from 6:30 a.m. to 10:00 p.m., daily	55	55	65	80
Maximum number of decibels per- mitted from 10:00 p.m. to 6:30 a.m. of the following day	50	50	60	75

15-1405. EXEMPTIONS. The following uses and activities shall be exempt from noise level regulations:

1. Noises of safety signals, warning devices, and emergency relief valves.
2. Noises resulting from any authorized emergency vehicles, when responding to an emergency call or acting in time of emergency.

3. Noises resulting from emergency work as defined in Section 15-1401.6.
4. Any other noise resulting from activities of a temporary duration permitted by law and for which a license or permit therefor has been granted by the City in accordance with Section 15-1406.
5. Any regulation of railroad noise will be subject to the following:

Title 40, Code of Federal Regulations, part 201:

1. 201.1 (c), (m), (p), (t), (aa), (dd), (ee)
2. 201.10
3. 201.11 (a), (b)
4. 201.12 (a), (b)
5. 201.13
6. 201.22, 201.23, 201.24

15-1406. 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 City Administrator or his duly authorized representative. Any permit granted by the City Administrator hereunder shall contain all conditions upon which said permit has been granted and shall specify a reasonable time that the permit shall be effective. The City Administrator, or his duly authorized representative, may grant the relief as applied for if he finds:

1. That additional time is necessary for the applicant to alter or modify his activity or operation to comply with this Section; or
2. The activity, operation, or noise source will be of temporary duration, and cannot be done in a manner that would comply with other subsections of this Section; and
3. That no other reasonable alternative is available to the applicant; and
4. The City Administrator may prescribe any conditions or requirements he deems necessary to minimize adverse effects upon the community or the surrounding neighborhood.

15-1407. - MOTOR SPORTS FACILITIES.

1. No motor sports facility owner and no person owning or controlling a sports car racing vehicle, a drag racing vehicle, an oval course racing vehicle, a motorcycle racing vehicle, a snowmobile racing vehicle, or a modified competitive farm tractor shall cause or permit its operation at any motor sports facility unless the

vehicle is equipped with a properly installed and well maintained muffler or noise-disipative device and noise emissions from its operation do not exceed 105 db(A) at trackside or 105 db(A) at twenty (20) inches (five-tenths (.5) meters) from the exhaust outlet during the stationary measurement procedure.

2. No motor vehicle sports facility owner and no person owning or controlling a racing vehicle shall permit its use or operation at any time other than the following:
 - a. Sunday through Thursday during the hours of 8:00 a.m. through 10:00 pm; and,
 - b. Friday through Saturday, state and national holidays and the day preceding, not to exceed three (3) consecutive days, during the hours of 8:00 a.m. through 11:00 pm.

15-1408. ENFORCEMENT AND PENALTY. The City, or agents of the City, shall have authority to regulate and enforce the provisions stated herein concerning noise control. Any noise found to be in violation of this ordinance is hereby declared to be a public nuisance and may be abated, enjoined or repressed in the same manner as any other public nuisance, including restraining order or injunction issued by a court of competent jurisdiction. A violation of any of provision of this article shall constitute an infraction, punishable in accordance with § 1-0211. Each day a violation exists shall be deemed to be a separate offense. The remedy provided by this section shall not be deemed to be exclusive, and violations may be prosecuted in municipal court in the same manner as violations of other ordinances.

15-1409. SEVERABILITY. Should any part or provision of this ordinance by declared by a court of competent jurisdiction to be invalid, the same shall not affect the validity of the ordinance as a whole, or any part thereof, other than the part declared to be invalid.