

ORDINANCE NO. 1165

AN ORDINANCE TO AMEND AND REENACT CHAPTER 15-07 OF THE REVISED ORDINANCES OF 1990 OF THE CITY OF WEST FARGO RELATING TO FOOD ESTABLISHMENTS

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

SECTION 1. Chapter 15-07 of the Revised Ordinances of 1990 of the City of West Fargo, North Dakota, is hereby amended and reenacted to read as follows:

CHAPTER 15-07

FOOD ESTABLISHMENTS

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.

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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 ~~service~~ 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 ~~service~~ 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.

SECTION 2. Effective Date. This ordinance shall be in full force and effect from and after the date of its final passage and publication.

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President of Board of City  
Commissioners of the City of  
West Fargo, North Dakota

ATTEST:

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City Auditor

Date of First Reading:

Date of Second Reading:

Date of Publication: