

**CHAPTER 23-09**  
**FOOD AND LODGING ESTABLISHMENTS AND ASSISTED LIVING FACILITIES**

**23-09-01. Definitions. (Effective through August 31, 2022)**

In this chapter, unless the context otherwise requires:

1. "Assisted living facility" means a building or structure containing a series of at least five living units operated as one entity to provide services for five or more individuals who are not related by blood, marriage, or guardianship to the owner or manager of the entity and which is kept, used, maintained, advertised, or held out to the public as a place that provides or coordinates individualized support services to accommodate the individual's needs and abilities to maintain as much independence as possible. An assisted living facility in this chapter includes a facility that is defined as an assisted living facility in any other part of the code. An assisted living facility does not include a facility that is a congregate housing facility, licensed as a basic care facility, or licensed under chapter 23-16, chapter 23-17.7, chapter 25-16, or section 50-11-01.4.
2. "Bakery" means an establishment or any part of an establishment that manufactures or prepares bread or bread products, pies, cakes, cookies, crackers, doughnuts, or other similar products, or candy, whether plain; chocolate or chocolate coated; mixed with nuts, fruits, or other fillers; covered with chocolate or other coating; and shaped, molded, or formed in various shapes. The term does not include food service establishments nor home cake decorators.
3. "Commissary" means a catering establishment, restaurant, or any other place in which food, containers, or supplies are kept, handled, prepared, packaged, or stored, including a service center or base of operations directly from which mobile food units are supplied or serviced. The term does not include an area or conveyance at a vending machine location used for the temporary storage of packaged food or beverages.
4. "Department" means the state department of health.
5. "Food establishment" means any fixed restaurant, limited restaurant, coffee shop, cafeteria, short-order cafe, luncheonette, grill, tearoom, sandwich shop, soda fountain, tavern, bar, catering kitchen, delicatessen, bakery, grocery store, meat market, food processing plant, school, child care, or similar place in which food or drink is prepared for sale or service to the public on the premises or elsewhere with or without charge.
6. "Food processing plant" means a commercial operation that manufactures, packages, labels, or stores food for human consumption and does not provide food directly to a consumer.
7. "Limited restaurant" means a food service establishment that is restricted to a specific menu as determined by the department or an establishment serving only prepackaged foods, such as frozen pizza and sandwiches, which receive no more than heat treatment and are served directly in the package or on single-serve articles.
8. "Lodging establishment" includes every building or structure, or any part thereof, which is kept, used, maintained, or held out to the public as a place where sleeping accommodations are furnished for pay to transient guests. The term does not include a facility providing personal care services directly or through contract services as defined in section 23-09.3-01 or 50-32-01.
9. "Mobile food unit" means a vehicle-mounted food service establishment designed to be readily movable.
10. "Proprietor" includes the person in charge of a food establishment, lodging establishment, or assisted living facility, whether as owner, lessee, manager, or agent.
11. "Pushcart" means a non-self-propelled vehicle limited to serving nonpotentially hazardous food or commissary-wrapped food maintained at proper temperatures.
12. "Restaurant" includes every building or other structure, or any part thereof, and all buildings in connection therewith, that are permanently kept, used, maintained, advertised, or held out to the public as a place where meals or lunches are served, but where sleeping accommodations are not furnished. The term includes a limited restaurant restricted to a specified menu.

13. "Retail food store" means any establishment or section of an establishment where food and food products are offered to the consumer and intended for offpremise consumption. The term includes a delicatessen that offers prepared food in bulk quantities only. The term does not include an establishment that handles only prepackaged nonpotentially hazardous foods, roadside market that offers only fresh fruits and vegetables for sale, food service establishment, or food and beverage vending machine.
14. "Retail meat market" means a commercial establishment and buildings or structures connected with it, used to process, store, or display meat or meat products for retail sale to the public for human consumption. The term does not include a meat establishment operating under the federal or state meat inspection program.
15. "Salvage processing facility" means an establishment engaged in the business of reconditioning or by other means salvaging distressed merchandise for human consumption or use.
16. "Temporary food service establishment" means any food service establishment that operates at a fixed location for not more than fourteen consecutive days. The term does not include a nonprofit public-spirited organization or person providing a limited type of food service as defined in chapter 23-09.2.

**Definitions. (Effective after August 31, 2022)**

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1. "Assisted living facility" means a building or structure containing a series of at least five living units operated as one entity to provide services for five or more individuals who are not related by blood, marriage, or guardianship to the owner or manager of the entity and which is kept, used, maintained, advertised, or held out to the public as a place that provides or coordinates individualized support services to accommodate the individual's needs and abilities to maintain as much independence as possible. An assisted living facility in this chapter includes a facility that is defined as an assisted living facility in any other part of the code. An assisted living facility does not include a facility that is a congregate housing facility, licensed as a basic care facility, or licensed under chapter 23-16, chapter 23-17.7, chapter 25-16, or section 50-11-01.4.
2. "Bakery" means an establishment or any part of an establishment that manufactures or prepares bread or bread products, pies, cakes, cookies, crackers, doughnuts, or other similar products, or candy, whether plain; chocolate or chocolate coated; mixed with nuts, fruits, or other fillers; covered with chocolate or other coating; and shaped, molded, or formed in various shapes. The term does not include food service establishments nor home cake decorators.
3. "Commissary" means a catering establishment, restaurant, or any other place in which food, containers, or supplies are kept, handled, prepared, packaged, or stored, including a service center or base of operations directly from which mobile food units are supplied or serviced. The term does not include an area or conveyance at a vending machine location used for the temporary storage of packaged food or beverages.
4. "Department" means the department of health and human services.
5. "Food establishment" means any fixed restaurant, limited restaurant, coffee shop, cafeteria, short-order cafe, luncheonette, grill, tearoom, sandwich shop, soda fountain, tavern, bar, catering kitchen, delicatessen, bakery, grocery store, meat market, food processing plant, school, child care, or similar place in which food or drink is prepared for sale or service to the public on the premises or elsewhere with or without charge.
6. "Food processing plant" means a commercial operation that manufactures, packages, labels, or stores food for human consumption and does not provide food directly to a consumer.
7. "Limited restaurant" means a food service establishment that is restricted to a specific menu as determined by the department or an establishment serving only prepackaged foods, such as frozen pizza and sandwiches, which receive no more than heat treatment and are served directly in the package or on single-serve articles.

8. "Lodging establishment" includes every building or structure, or any part thereof, which is kept, used, maintained, or held out to the public as a place where sleeping accommodations are furnished for pay to transient guests. The term does not include a facility providing personal care services directly or through contract services as defined in section 23-09.3-01 or 50-32-01.
9. "Mobile food unit" means a vehicle-mounted food service establishment designed to be readily movable.
10. "Proprietor" includes the person in charge of a food establishment, lodging establishment, or assisted living facility, whether as owner, lessee, manager, or agent.
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**23-09-02. State department of health to enforce provisions of chapter. (Effective through August 31, 2022)**

The department shall enforce the provisions of this chapter. Under no circumstances may any other state agency adopt rules that relate in any way to the provisions of this chapter.

**Department to enforce provisions of chapter. (Effective after August 31, 2022)**

The department shall enforce the provisions of this chapter. Under no circumstances may any other state agency adopt rules that relate in any way to the provisions of this chapter.

**23-09-02.1. Smoke detection devices or other approved alarm systems - Administrative procedure and judicial review.**

Each lodging establishment and assisted living facility shall install smoke detection devices or other approved alarm systems of a type and in the number approved by the department, in cooperation with the state fire marshal. The department, in cooperation with the state fire marshal, shall adopt reasonable rules governing the spacing and minimum specifications for approved smoke detection devices or other approved alarm systems. The department and state fire marshal shall provide all reasonable assistance required in complying with the provisions of this section.

### **23-09-03. Exiting requirements.**

Every lodging establishment and assisted living facility constructed in the state shall have adequate exiting as defined by the state building code in chapter 54-21.3 with the following exceptions:

1. All lodging establishments and assisted living facilities in existence at the time of implementation of this section are required to continue with fire escapes previously provided for within this section providing that they are deemed adequate by the local fire authority having approval, or by the state fire marshal's office.
2. If the lodging establishment or assisted living facility is provided with exterior access balconies connecting the main entrance door of each unit to two stairways remote from each other.

### **23-09-04. Fire escapes in hotels and lodgishouses not more than two stories high.**

Repealed by S.L. 1985, ch. 292, § 5.

### **23-09-05. Fire escapes to be kept clear - Notice of location and use of fire escapes required.**

Access to fire escapes required under this chapter must be kept free and clear at all times of all obstructions of any nature. The proprietor of the lodging establishment or assisted living facility shall provide for adequate exit lighting and exit signs as defined in the state building code, chapter 54-21.3.

### **23-09-06. Chemical fire extinguishers - Standpipes.**

Each lodging establishment or assisted living facility must be provided with fire extinguishers as defined by the national fire protection association standard number ten in quantities as defined by the state building code and the state fire code. Standpipe and sprinkler systems must be installed as required by the state building code and state fire code. Fire extinguishers, sprinkler systems, and standpipe systems must conform with rules adopted by the state fire marshal. A contract for sale or a sale of a fire extinguisher installation in a public building is not enforceable, if the fire extinguisher or extinguishing system is of a type not approved by the state fire marshal for such installation. No fire extinguisher of a type not approved by the state fire marshal may be sold or offered for sale within the state.

### **23-09-07. Lodging establishments or assisted living facilities with elevators - Protection to prevent spread of fire.**

All new construction of, remodeling of, or additions to lodging establishments or assisted living facilities equipped with passenger or freight elevators must comply with state building code fire protection requirements.

### **23-09-08. Bolts or locks to be supplied on doors of sleeping rooms.**

The doors of all rooms used for sleeping purposes in any lodging establishment within this state must be equipped with proper bolts or locks to permit the occupants of such rooms to lock or bolt the doors securely from within the rooms. The locks or bolts must be constructed in a manner that renders it impossible to unbolt or unlock the door from the outside with a key or otherwise, or to remove the key therefrom from the outside, while the room is bolted or locked from within. Any lodging establishment proprietor who fails to comply with this section is guilty of a class B misdemeanor.

### **23-09-09. Sanitation and safety.**

Every food establishment, lodging establishment, and assisted living facility must be operated with strict regard for the health, safety, and comfort of its patrons. The following sanitary and safety regulations must be followed:

1. Every food establishment, lodging establishment, and assisted living facility must be well constructed, drained, and provided with plumbing equipment according to

- established sanitary principles and must be kept free from effluvia arising from any sewerage, drain, privy, or other source within the control of the proprietor.
2. In municipalities in which a system of public water supply and sewerage is maintained, every food establishment, lodging establishment, and assisted living facility must be equipped with suitable toilets for the accommodation of its guests, and such toilets must be ventilated and connected by proper means of flushing with the water of said system. All lavatories, bathtubs, sinks, drains, and toilets must be connected with such sewerage system and installed according to all applicable plumbing codes.
  3. When a sewerage system is not available, open toilets must be located not less than forty feet [12.19 meters] from all kitchens, dining rooms, and pantry openings and must be properly cleaned, screened, and disinfected as often as may be necessary to keep them in a sanitary condition.
  4. All garbage and kitchen refuse must be kept in watertight containers with tight-fitting covers to prevent decomposition. No dishwater or other substance which is or may become foul or offensive may be thrown upon the ground near any food establishment, lodging establishment, or assisted living facility.
  5. All bedrooms must be kept free from insects and rodents, and the bedding in use must be clean and sufficient in quantity and quality.
  6. Each food establishment, lodging establishment, or assisted living facility shall keep in its main public washroom and available at all hours individual disposable paper towels, a continuous towel system that supplies the user with a clean towel, or a heated air hand drying device for the use of its guests.
  7. Bathrooms, toilet rooms, and laundry rooms must be provided with either natural or mechanical ventilation connected directly to the outside.
  8. All food establishments, lodging establishments, or assisted living facilities shall equip operable windows during the summer months with screens adequate to keep out insects.
  9. Neither the dining room nor kitchen of any food establishment, lodging establishment, or assisted living facility may be used as a sleeping or dressing room by any employee of the hotel or restaurant or by any other person.

**23-09-10. Drinking water standards.**

Every person operating a food establishment, lodging establishment, or assisted living facility shall see that the drinking water supplied therein is obtained from an approved source that is a public water system or a nonpublic water system that is constructed, maintained, and operated according to law.

**23-09-11. Inspection - Reports.**

Every lodging establishment, food establishment, or assisted living facility must be inspected at least once every two years by the department. Food establishments and assisted living facilities must be inspected based on a system of risk categorization which involves types of foods served, the preparation steps these foods require, volume of food, population served, and previous compliance history. The department and its inspectors may enter any such establishment at reasonable hours to determine compliance with this chapter.

**23-09-12. Certificate of inspection - When issued - Posting.**

Repealed by S.L. 1997, ch. 33, § 25.

**23-09-13. False certificate - Penalty.**

Repealed by S.L. 1975, ch. 106, § 673.

**23-09-14. Department to report to state fire marshal.**

The department, before the sixth day of each month, shall report to the state fire marshal on all food establishments, lodging establishments, or assisted living facilities inspected by the department during the preceding month, paying particular attention in the report to the violation

of any provision of this chapter relating to fire escapes and the installation and maintenance of automatic or other fire alarms and fire extinguishing equipment and to any other condition that might constitute a fire hazard in the premises so inspected. If no such violation or condition is found, the report must so state.

**23-09-15. Obstructing inspection - Penalty.**

Repealed by S.L. 1975, ch. 106, § 673.

**23-09-16. License - Application.**

Before any food establishment, lodging establishment, pushcart, mobile food unit, or assisted living facility may be operated in this state, it must be licensed by the department. The department shall waive the license requirement for any food establishment, lodging establishment, or assisted living facility licensed by a city or district health unit if the local health unit's sanitation, safety, and inspection rules are approved by the department. The application must be in writing on forms furnished by the department and must be accompanied by the required fee. The department shall issue a license to an applicant that meets all of the requirements of this chapter and any rules established by the department. The department may adopt rules establishing the amount and the procedures for the collection of annual license fees. The fees must be based on the cost of reviewing construction plans, conducting routine and complaint inspections, reinspection, and necessary enforcement action. License fees collected pursuant to this section must be deposited in the department's operating fund in the state treasury and any expenditure from the fund is subject to appropriation by the legislative assembly.

**23-09-16.1. License renewal.**

1. A license issued under this chapter expires on December thirty-first of each year.
2. A license may be renewed by December thirty-first by submitting a renewal application and a renewal fee established by the department by rule, provided the licensee is in compliance with this chapter and any rules established by the department.
3. If the renewal application and renewal fee are not received by December thirty-first, the license expires and the licensee may not operate.
4. Within sixty days after December thirty-first, an expired license may be renewed by submitting the renewal application, renewal fee, and a late fee established by the department by rule. The late fee is equal to fifty-percent of the license fee.
5. If the renewal application, renewal fee, and late fee are not received within sixty days after December thirty-first, the license may not be renewed, and the applicant shall apply and meet the requirements for licensure to be granted a license.
6. The department may extend the renewal deadlines for an application providing proof of hardship rendering the applicant unable to meet the deadline.

**23-09-17. License fees.**

Repealed by S.L. 2005, ch. 32, § 19.

**23-09-18. Failure to comply with chapter - Notice - How served.**

The department may deny an application or take disciplinary action against the license of an applicant or a licensee upon the failure of the applicant or licensee to comply with this chapter or with any of the rules adopted by the department. Before the department takes disciplinary action against a license for failure of a license, the department shall notify the licensee in writing of the reason disciplinary action is being considered and shall provide a reasonable amount of time for correction to be made. The notice must be in writing and delivered personally by an inspector of the department or sent by registered or certified mail. Action taken under the authority granted in this section must comply with chapter 28-32.

**23-09-19. State's attorney to prosecute violation.**

The state's attorney of any county of this state, upon complaint on oath of an inspector of the department, shall prosecute in the name of the state of North Dakota a proper proceeding against any person violating any provision of this chapter.

**23-09-20. Requirements of fireproof hotel - Penalty for false advertising.**

No person may advertise as fireproof a building or hotel unless all foundations, floors, roofs, walls, stairways, stairs, elevator shafts, and dumbwaiter shafts are constructed of concrete, brick, terra cotta blocks, steel, or other fireproof material. Any person violating the provisions of this section is guilty of a class A misdemeanor.

**23-09-20.1. Guest record.**

A record must be kept in each lodging establishment in which every individual patronizing the lodging establishment shall write that individual's name and address and the number of members in the party who will occupy a room or rooms therein.

**23-09-21. Penalty - General.**

Any person operating a food establishment, lodging establishment, or assisted living facility in this state, or letting a building used for such business, without first having complied with this chapter, is guilty of a class B misdemeanor.

**23-09-22. License canceled.**

Whenever the proprietor of a food establishment, lodging establishment, or assisted living facility has been convicted of a violation of this chapter and for a period of ten days after the conviction fails to comply with any provision of this chapter, the department may cancel the proprietor's license.

**23-09-23. Exemption for bed and breakfast facilities.**

This chapter does not apply to bed and breakfast facilities for which rules have been adopted under chapter 23-09.1.

**23-09-24. Salvaged food - License required.**

It is unlawful for a person to claim to be a salvaged food distributor or to engage in the activity of selling, distributing, or otherwise trafficking in distressed or salvaged food, or both, at wholesale, without a license issued under this chapter authorizing that person to operate as a salvaged food distributor. A salvaged food distributor license may not be issued absent compliance with this section and any rules adopted to implement this section. The department may adopt rules establishing the amount and the procedures for the collection of annual license fees under this section. License fees collected under this section must be deposited in the department's operating fund in the state treasury and any expenditure from the fund is subject to appropriation by the legislative assembly.