CHAPTER 33-33-06
BED AND BREAKFAST FACILITIES

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33-33-06-01. Definitions.

1. "Approved" means acceptable to the department based on a determination as to conformance with appropriate standards and good public health practice.

2. "Corrosion-resistant material" means a material which maintains its original surface characteristics under prolonged influence of the food, cleaning compounds, and sanitizing solutions which may contact it.

3. "Department" means the department of health and human services.

4. "Easily cleanable" means that surfaces are readily accessible and made of such materials and finish and so fabricated that residue may be effectively removed by normal cleaning methods.

5. "Employee" means the permitholder, individuals having supervisory or management duties, and any other individual working in a bed and breakfast facility.

6. "Equipment" means stoves, ovens, ranges, hoods, slicers, mixers, meatblocks, tables, counters, refrigerators, sinks, dishwashing machines, steamtables, and similar items other than utensils, used in the operation of a bed and breakfast facility.

7. "Food" means any raw, cooked, processed edible substance, or combination of substances, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption.

8. "Food-contact surfaces" means those surfaces of equipment and utensils with which food normally comes in direct contact, and those surfaces with which food may come in contact and drain back onto surfaces normally in contact with food.

9. "Kitchenware" means all multiuse utensils other than tableware.

10. "Perishable food" means any food of such type or in such condition as may spoil.

11. "Private home" means a place of residence of an individual or family.

12. "Proprietor" means the person in charge of the bed and breakfast facility whether as owner, lessee, manager, or agent.

13. "Sanitize" means effective bactericidal treatment of clean surfaces of equipment and utensils by a process which has been approved by the department as being effective in destroying micro-organisms, including pathogens.

14. "Single-service articles" means cups, containers, lids or closures, plates, knives, forks, spoons, stirrers, paddles, straws, place mats, napkins, doilies, wrapping materials, and all similar articles which are constructed wholly or in part from paper, paperboard, molded pulp, foil, wood, plastic synthetic, or readily destructible materials, and which are intended for one usage only, then to be discarded.

15. "Sleeping unit" means a room used for sleeping purposes by guests.

16. "Tableware" means multiuse eating and drinking utensils.

17. "Time and temperature control for safety food" means a food that requires time and temperature control for safety to limit pathogenic microorganism growth or toxin formation.

18. "Utensil" means any implement used in the storage, preparation, transportation, or service of food.

History: Effective August 1, 1988; amended effective January 1, 1990; December 1, 1991; April 1, 2012; January 1, 2026.
General Authority: NDCC 23-01-03(3), 23-09.1-02
Law Implemented: NDCC 23-09.1-02

33-33-06-02. Water supply.

The water supply must be adequate, of a safe sanitary quality and from a source approved by the department. The water supply may not contain bacteriological, chemical, or physical impurities which affect, or tend to affect public health, must meet the bacteriological standards of the United States public health service for waters used upon public or interstate common carriers, and is subject to examination by the department. If it is unfit for drinking under these requirements, it either shall be improved to fulfill the standards or the use thereof shall be discontinued.

1. Each private water source shall be sampled and tested for bacteria initially and every twelve-month period thereafter. Seasonal operations shall be sampled during the peak operating season.

2. Each private water source shall be sampled initially for nitrate analysis. Seasonal operations shall be sampled during the peak operating season.

3. Additional bacteriological or chemical tests may be required by the department.

4. Initially each private source shall be inspected for location, source protection, and design standards.

5. No cross connections with unapproved water supplies may exist.

6. Adequate hot water heating facilities shall be provided. Hot and cold running water under pressure shall be provided to food preparation areas, and any other areas in which water is required for cleaning.

History: Effective August 1, 1988; amended effective January 1, 1990.
General Authority: NDCC 23-01-03(3), 23-09.1-02
Law Implemented: NDCC 23-09.1-02

33-33-06-03. Sewage.

All sewage shall be disposed of in a public sewerage system or in a sewage disposal system approved by the department.

1. An initial inspection shall be made of all existing onsite sewage disposal systems by the department. This inspection shall evaluate system adequacy and if no expansion of existing dwelling facilities is occurring, no expansion of the system may be required as long as the system is not failing or otherwise contaminating surface or ground water.

2. If an expansion of the dwelling facilities occurs, then evaluation of the onsite sewage disposal system shall be completed by the department. If the system is adequate, then no expansion of the system will be required. If the system is not adequate in size, then system expansion shall be required as per local regulations or, the requirements in ND Publication WP-74-1R (Septic Tank and Absorption Field Disposal Systems for the Home). Plans for expansion shall be submitted to the local jurisdiction or, the department, water supply and pollution control division, for review and approval prior to construction.

3. The department may require that the septic tank be opened to check its construction. If the department determines that pumping of the tank is necessary, the department may require this to occur.

4. If the department determines that the onsite system needs repair or a new system is required, then the system shall be repaired or replaced in accordance with local regulations, or ND Publication WP-74-1R (Septic Tank and Absorption Field Disposal Systems for the Home).

History: Effective August 1, 1988; amended effective January 1, 1990; April 1, 2012.
General Authority: NDCC 23-01-03(3), 23-09.1-02
Law Implemented: NDCC 23-09.1-02

33-33-06-04. Food supplies.

Food must be in sound condition, free from spoilage, filth, or other contamination and must be safe for human consumption. Food shall be obtained from or be equal to food from sources that comply with all laws relating to food and food labeling. Before serving any food to the public, the bed and breakfast facility shall comply with all applicable inspections of food required by law. Fluid milk and fluid milk products used or served shall be pasteurized and shall meet the grade A quality standards established by law.

History: Effective August 1, 1988; amended effective May 1, 1989.
General Authority: NDCC 23-01-03(3), 23-09.1-02
Law Implemented: NDCC 23-09.1-02

33-33-06-05. General food protection.

1. At all times, including while being stored, prepared, displayed, served, or transported, food shall be protected from potential contamination, including dust, insects, rodents, unclean equipment and utensils, unnecessary handling, coughs and sneezes, flooding, drainage, overhead leakage or overhead drippage from condensation and chemicals. The temperature of potentially hazardous food must be forty-one degrees Fahrenheit [5 degrees Celsius] or below or one hundred thirty-five degrees Fahrenheit [57.2 degrees Celsius] or above at all times, except during necessary periods of preparation and serving. Frozen food shall be kept at such temperatures as to remain frozen, except when being thawed for preparation or use. Potentially hazardous frozen food shall be thawed at refrigerator temperatures of forty-one degrees Fahrenheit [5 degrees Celsius] or below; or quick-thawed as part of the cooking process. An indicating thermometer shall be located in each refrigerator. Raw fruits and vegetables shall be washed thoroughly before use. Stuffings, poultry, stuffed meats and

poultry, and pork and pork products shall be thoroughly cooked before being served. Salads made of meat, poultry, potatoes, fish, shellfish, or eggs, and other potentially hazardous prepared food, shall be prepared, preferably from chilled products, with a minimum of manual contact. Portions of food once served to an individual may not be served again.

2. Refrigeration facilities, hot food storage facilities, and effective insulated facilities shall be provided as needed to assure the maintenance of all food at required temperatures during storage, preparation, and serving.

3. Live pets are not allowed in any room or area in which food is being prepared for guests.

History: Effective August 1, 1988; amended effective April 1, 2012.
General Authority: NDCC 23-01-03(3), 23-09.1-02
Law Implemented: NDCC 23-09.1-02

33-33-06-06. Food service equipment and utensils materials.

Multiuse equipment and utensils shall be constructed and repaired with safe materials, including finishing materials, shall be corrosion-resistant and nonabsorbent; and shall be smooth, easily cleanable, and durable under conditions of normal use. Single-service articles shall be made from clean, sanitary, safe materials. Equipment, utensils, and single-service articles may not impart odors, color, or taste, nor contribute to the contamination of food.

Multiuse eating and drinking utensils, kitchenware, and tableware used in the facility shall be sanitized after each use or, single-service items may be used.

Acceptable means of dishwashing/sanitization shall be:

1. Manual cleaning and sanitizing utilizing a sink with two or three compartments with approved chemical sanitizer. Utensils shall be air-dried.

2. Mechanical home style dishwasher with a one hundred sixty degrees Fahrenheit [71.1 degrees Celsius] water supply provided by a booster heater or sanitizing cycle.

History: Effective August 1, 1988.
General Authority: NDCC 23-01-03(3), 23-09.1-02
Law Implemented: NDCC 23-09.1-02

33-33-06-07. General employee health.

1. No employee, while infected with a disease in a communicable form that can be transmitted by foods or who is a carrier of organisms that can cause such a disease or while afflicted with a boil, an infected wound, or an acute respiratory infection, may work in a bed and breakfast facility in any capacity in which there is a likelihood of such employee contaminating food or food-contact surfaces with pathogenic organisms or transmitting disease to other persons.

2. Bed and breakfast employees shall maintain a high degree of personal cleanliness and shall conform to good hygienic practices. Employees shall thoroughly wash their hands with soap and warm water before preparing or serving food.

History: Effective August 1, 1988; amended effective January 1, 1990.
General Authority: NDCC 23-01-03(3), 23-09.1-02
Law Implemented: NDCC 23-09.1-02

33-33-06-08. Lighting and ventilation.

Rooms and areas used in conjunction with bed and breakfast facilities shall be lighted and ventilated as needed and shall be effective under actual use conditions. Lighting fixtures and ventilating equipment shall be kept clean and in good repair.

History: Effective August 1, 1988; amended effective January 1, 1990.
General Authority: NDCC 23-01-03(3), 23-09.1-02
Law Implemented: NDCC 23-09.1-02

33-33-06-09. Toilet, handwashing, laundry, and bathing facilities.

1. Bed and breakfast facilities shall be provided with approved sanitary toilet, handwashing, and bathing facilities. These facilities, and laundry facilities used in conjunction with bed and breakfast facilities, shall be kept clean and in good repair.

2. All lavatories and baths shall be supplied with hot and cold running water. Each person who is provided accommodations shall be provided individual soap and clean individual bath cloths and towels.

3. The temperature of hot water furnished to handwashing sinks (lavatories), showers, and bathtubs may not exceed one hundred twenty degrees Fahrenheit [48.9 degrees Celsius].

4. Clean towels and bath cloths shall be stored and handled in a sanitary manner.

History: Effective August 1, 1988; amended effective January 1, 1990.
General Authority: NDCC 23-01-03(3), 23-09.1-02
Law Implemented: NDCC 23-09.1-02

33-33-06-10. Beds, linens, and furniture.

1. Furniture, mattresses, curtains, and draperies, etc., shall be kept clean and in good repair.

2. Clean bed linen in good repair shall be provided for each guest who is provided accommodations and shall be changed between guests and as often as necessary.

3. Clean linen shall be stored and handled in a sanitary manner and separate from soiled linen.

History: Effective August 1, 1988.
General Authority: NDCC 23-01-03(3), 23-09.1-02
Law Implemented: NDCC 23-09.1-02

33-33-06-11. Insect and rodent control.

Effective measures intended to minimize the presence of rodents, flies, and other insects on the premises shall be utilized. The premises shall be kept in such condition as to prevent the harborage or feeding of insects or rodents. Openings to the outside shall be protected effectively against the entrance of rodents and insects by tight-fitting, self-closing doors, closed windows, screening, or other means.

History: Effective August 1, 1988.
General Authority: NDCC 23-01-03(3), 23-09.1-02
Law Implemented: NDCC 23-09.1-02

33-33-06-12. General requirements.

1. Pesticides, herbicides, and other substances which may be hazardous if ingested, inhaled, or handled shall be stored in a closet, cabinet, or box not accessible to young children.

2. Household cleaning agents such as bleaches, detergents, and polishes shall be stored out of the reach of young children.

3. Medications shall be stored in a separate cabinet, closet, or box not accessible to young children.

4. Bed and breakfast facilities shall be kept in a clean and sanitary condition.

History: Effective August 1, 1988.
General Authority: NDCC 23-01-03(3), 23-09.1-02
Law Implemented: NDCC 23-09.1-02

33-33-06-13. Swimming pools and spas.

When swimming pools and spas are provided for use by bed and breakfast facility guests, they must be designed, constructed, and maintained to protect the health and safety of its guests. A colorimetric test kit is required for the monitoring and adjusting of disinfectant levels and pH in swimming pools, spas, or other water recreational facilities. A weekly log of disinfection levels and pH must be maintained by the owner of the facility.

History: Effective August 1, 1988; amended effective April 1, 2012.
General Authority: NDCC 23-01-03(3), 23-09.1-02
Law Implemented: NDCC 23-09.1-02

33-33-06-14. Fire safety.

Bed and breakfast facilities shall be in compliance with the requirements of the Uniform Building Code and Uniform Fire Code as adopted and enforced by the state fire marshal. The department shall report to the state fire marshal violations of any provision of the code which might constitute a fire hazard in the premises so inspected.

The requirements for fire/life/safety shall include, but not be limited to, the following:

1. Smoke detectors.

   a. A smoke detection device in good operating condition shall be mounted on the ceiling or wall at a point centrally located in the corridor or area giving access to rooms used for sleeping purposes. All smoke detectors shall be inspected and listed by underwriters' laboratories or an equivalent. Smoke detectors shall be installed in accordance with the manufacturer's installation instructions.

   b. A smoke detector shall be installed in the basement of dwelling units having a stairway which opens from the basement into the dwelling. Such detector shall be connected to a sounding device or other detector to provide an alarm which will be audible in the sleeping area.

   c. The owner of the facility shall test the battery-operated smoke detectors at least weekly and hard-wired detectors at least monthly and shall maintain written records which detail the date and results of the test.

2. Every sleeping unit shall provide a minimum of fifty square feet [4.65 square meters] of floor area per guest.

3. Every sleeping unit shall have at least one operable window or exterior door approved for emergency escape or rescue. The units shall be operable from the inside to provide a full clear opening without the use of separate tools. All escapes or rescue windows from sleeping rooms must have a minimum net clear opening of 5.7 square feet [.52 square meters]. The

minimum net clear opening height dimension must be twenty-four inches [60.96 centimeters]. The minimum net clear opening width dimensions must be twenty inches [50.8 centimeters]. Where windows are provided as a means of escape or rescue, they must have a finished sill height not more than forty-four inches [111.76 centimeters] above the floor. No sleeping unit in bed and breakfast facilities may be in attic lofts or in basement rooms with a single major means of escape.

4. A fire extinguisher rated 2A and having a BC rating must be conveniently located and accessible in the bed and breakfast facility. The maximum travel distance to the extinguisher must be no more than seventy-five feet [22.86 meters].

5. Emergency numbers shall be posted on the telephones in the bed and breakfast facility.

History: Effective August 1, 1988; amended effective January 1, 1990; April 1, 2012.
General Authority: NDCC 23-01-03(3), 23-09.1-02
Law Implemented: NDCC 23-09.1-02

33-33-06-15. Inspection - Records kept.

Repealed effective January 1, 1990.

33-33-06-16. License - Application.

Repealed effective January 1, 1990.

33-33-06-17. Failure to comply with provisions of chapter.

Any proprietor of any bed and breakfast facility who fails to comply with any of the requirements of this chapter, or chapter 23-09.1 of the North Dakota Century Code, shall be given notice of the violation and of a reasonable time within which to comply with the requirements. The notice shall be in writing and shall be delivered personally by the department or shall be sent to the proprietor by any form of mail requiring a signed receipt and resulting in delivery to the proprietor. If the proprietor of the bed and breakfast facility fails to remedy the violations within the time stated within the notice, the department may refuse to grant a new license, or suspend or revoke the license through an administrative hearing held pursuant to chapter 28-32 of the North Dakota Century Code.

History: Effective August 1, 1988; amended effective January 1, 1990.
General Authority: NDCC 23-01-03(3), 23-09.1-02
Law Implemented: NDCC 23-09.1-02

33-33-06-18. License fees.

The annual license fee paid to the department by proprietors of bed and breakfast facilities is sixty dollars. The plan review application fee for a bed and breakfast facility is fifty percent of the annual license fee if a plan review application is required. For a person's initial license application, an annual license fee and a license application administration fee of one hundred dollars is required in addition to fifty percent of the annual license fee if a plan review application is required. An additional amount of fifty percent of the license fee must be imposed upon renewal if the license was not renewed on or before February first following the expiration date.

History: Effective January 1, 2006; amended effective April 1, 2008; January 1, 2014; January 1, 2026.
General Authority: NDCC 23-01-03
Law Implemented: NDCC 23-09.1-02