

# **Chapter 25 OFFENSES—MISCELLANEOUS**

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## **Section 25.ED.010 Editor's note to Chapter 25**

For state law authorizing the city to keep and preserve public peace, see NDCC, § 40-05-01(33).

## **Article 25.04 In General**

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### **Section 25.04.01      Definitions.**

Any word not specifically defined in this Chapter, but which is defined in Title 12.1 of the North Dakota Century Code, shall have the meaning set forth in the said Title 12.1. (Ord. No. 1191, § 1.)

### **Section 25.04.02000   Division 25.04.02 Offenses of General Applicability**

#### **Section 25.04.02010   Criminal attempt**

- (a)      A person is guilty of criminal attempt if, acting with the kind of culpability otherwise required for commission of an offense, he intentionally engages in conduct which, in fact, constitutes a substantial step toward commission of the offense. A "substantial step" is any conduct which is strongly corroborative of the firmness of the actor's intent to complete the commission of the offense. Factual or legal impossibility of committing the offense is not a defense, if it could have been committed had the attendant circumstances been as the actor believed them to be.
- (b)      A person who engages in conduct intending to aid another to commit an offense is guilty of criminal attempt if the conduct would establish his complicity as an accomplice under North Dakota Century Code, section 12.1-03-01, were the offense committed by the other person, even if the other is not guilty of committing or attempting the offense, for example, because he has a defense of justification or entrapment.
- (c)      Criminal attempt is an offense if the crime attempted is an offense; except, that whenever it is established by a preponderance of the evidence at sentencing that the conduct constituting the attempt did not come dangerously close to commission of the offense, an attempt to commit an offense shall be punished as an infraction. Criminal attempt to

commit an infraction is an infraction. (Source: North Dakota Century Code, section 12.1-06-01.) (Ord. No. 867, § 1.)

### **Section 25.04.02020 Criminal conspiracy**

- (a) A person commits conspiracy if he agrees with one or more persons to engage in or cause conduct which, in fact, constitutes an offense or offenses proscribed by the ordinances of the city, and any one or more of such persons does an overt act to effect an objective of the conspiracy. The agreement or the overt act must occur within the city. The agreement need not be explicit, but may be implicit in the fact of collaboration or existence of other circumstances.
- (b) If a person knows or could expect that one with whom he agrees has agreed or will agree with another to effect the same objective, he shall be deemed to have agreed with the other, whether or not he knows the other's identity.
- (c) A conspiracy shall be deemed to continue until its objectives are accomplished, frustrated or abandoned. "Objectives" includes escape from the scene of the crime, distribution of booty and measures, other than silence, for concealing the crime or obstructing justice in relation to it. A conspiracy shall be deemed abandoned if no overt act to effect its objectives has been committed by any conspirator during the applicable period of limitations.
- (d) It is no defense to a prosecution under this section that the person with whom such person is alleged to have conspired has been acquitted, has not been prosecuted or convicted, has been convicted of a different offense, if immune from prosecution, or is otherwise not subject to justice.
- (e) Accomplice liability for offenses committed in furtherance of the conspiracy is to be determined as provided in North Dakota Century Code, section 12.1-03-01.
- (f) Conspiracy shall be subject to the penalties provided for attempt in subsection 3 of section 25.04.02.010. (Source: North Dakota Century Code, section 12.1-06-04.) (Ord. No. 867, § 1.)

### **Section 25.04.04000 Division 25.04.04 Integrity and Effectiveness of Government Operation**

#### **Section 25.04.04010 Aiding consummation of crime**

A person is guilty of the offense of aiding consummation of an offense against the ordinances of the city if he intentionally aids another to secrete, disguise or convert the proceeds of the offense against the ordinances or otherwise profits from the offense. (Source: North Dakota Century Code, section 12.1-08-04.) (Ord. No. 867, § 1.)

#### **Section 25.04.04020 Public servants permitting escape**

A public servant concerned in official detention, as defined by North Dakota Century Code, § 12.1-08-06(3), pursuant to process issued by a court, judge or magistrate is guilty of an offense against the ordinances of the city if he negligently permits an escape. (Source: North Dakota Century Code, section 12.1-08-07.) (Ord. No. 867, § 1.)

### **Section 25.04.04030 Criminal contempt**

- (a) The municipal court has power to punish for contempt of its authority only for the following offenses:
  - (1) Misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice;
  - (2) Misbehavior of any of its officers in their official transactions; or
  - (3) Disobedience or resistance to its lawful writ, process, order, rule or command; or
  - (4) As otherwise provided in 40-18-14, NDCC.
- (b) Except as otherwise provided, a criminal contempt proceeding under this section shall be deemed a prosecution for an offense for the purposes of North Dakota Century Code, chapters 12.1-01 through 12.1-05, North Dakota Century Code, chapter 12.1-32, and article 25.20 of this chapter.
- (c) A criminal contempt proceeding under this section is not a bar to subsequent prosecution for a specific offense if the court certifies in the judgment of conviction of criminal contempt, or the order terminating the proceeding without acquittal or dismissal, that a summary criminal contempt proceeding was necessary to prevent repetition of misbehavior disruptive of an ongoing proceeding and the subsequent prosecution as a specific offense is warranted. In a subsequent prosecution, the defendant shall receive credit for all time spent in custody and any fine paid by him pursuant to the criminal contempt proceeding.
- (d) This section shall not be construed to deprive a court of its power, by civil contempt proceedings, to compel compliance with its lawful writ, process, order, rule, decree or command or to compensate a complainant for losses sustained by reason of disobedience or resistance thereto, in accordance with the prevailing usages of law and equity, including the power of detention. (Ord. No. 867, § 1; Ord. No. 1157 § 5.)

### **Section 25.04.04040 Hindering proceedings by disorderly conduct**

A person is guilty of a class B misdemeanor if he recklessly hinders an official city proceeding by noise or violent or tumultuous behavior or disturbance.

Comment: Intentional hinderings by disorderly conduct must be prosecuted in state court since the punishment authorized is higher than that authorized for municipal courts. However, the conduct might also fall within the scope of criminal contempt under section 25.04.04.030.

The proceedings intended to be covered under this offense are official proceedings as defined in North Dakota Century Code, section 12.1-01-04(23), involving agencies or branches of the municipal government. (Ord. No. 867, § 1; Ord. No. 1645, § 1)

### **Section 25.04.04050 Impersonating official**

- (a) A person is guilty of an offense if he falsely pretends to be a public servant of the city and acts as if to exercise the authority of such public servant.
- (b) It is no defense to prosecution under this section that the pretended capacity did not exist or the pretended authority could not legally or otherwise have been exercised or conferred. If the offender "obtains a thing of value" as a result of his pretension, he is guilty of the greater offense prohibited by North Dakota Century Code, section 12.1-13-04(1) (b) which is classified as a class A misdemeanor and thus must be prosecuted in

state court. It is also the intention of this section to cover only impersonation of city officials rather than state officials. (Ord. No. 867, § 1.)

### **Section 25.04.04060 Refusing to halt**

Any person, other than the driver of a motor vehicle under section 23.12.050, who willfully fails or refuses to stop or who otherwise flees or attempts to elude, in any manner, a pursuing peace officer, when given a visual or audible signal to stop, is guilty of a class B misdemeanor. A signal to stop complies with this section if the signal is perceptible to the person and:

1. If given from a vehicle, the signal is given by hand, voice, emergency light, or siren, and the vehicle is appropriately marked showing it to be an official law enforcement vehicle; or
2. If not given from a vehicle, the signal is given by hand, voice, emergency light, or siren, and the officer is in uniform or prominently displays the officer's badge of office. (Ord. No. 1590, § 12.)

### **Section 25.04.06000 Division 25.04.06 Civil Rights**

#### **Section 25.04.06010 Discrimination in public places**

A person is guilty of offense class B misdemeanor if, whether or not acting under color of law, he, by force or threat of force, or by economic coercion, intentionally:

- (a) Injures, intimidates or interferes with another because of his sex, race, color, religion or national origin and because he is or has been exercising or attempting to exercise his right to full and equal enjoyment of any facility open to the public.
- (b) Injures, intimidates or interferes with another because of his sex, race, color, religion or national origin in order to intimidate him or any other person from exercising or attempting to exercise his right to full and equal enjoyment of any facility open to the public. (Source: North Dakota Century Code, section 12.1-14-04.) (Ord. No. 867, § 1; Ord. No. 1645 § 2)

#### **Section 25.04.06020 Preventing exercise of civil rights; hindering or preventing another aiding third person to exercise civil rights**

#### **Section 25.04.06020 Preventing exercise of civil rights; hindering or preventing another aiding third person to exercise civil rights**

A person is guilty of a class B misdemeanor if, whether or not acting under color of law, he, by force or threat of force or by economic coercion, intentionally:

- (a) Injures, intimidates or interferes with another who is exercising or is about to

- exercise his civil rights, or because he has exercised his civil rights.
- (b) Intimidates or prevents another from aiding a third person to exercise his civil rights. (Source: North Dakota Century Code, section 12. 114-05.) (Ord. No. 867, § 1; Ord. No. 1645, § 3)

## **Article 25.06 Sale of Tobacco Products**

### **Sections:**

<b>25.06.010</b>	<b>Definitions</b>
<b>25.06.020</b>	<b>Possession, Purchase, or Use of tobacco products by minors prohibited</b>
<b>25.06.030</b>	<b>Sale of tobacco products to minors prohibited</b>
<b>25.06.040</b>	<b>Penalties – Sale to Minors; Use, Possession by Minors</b>
<b>25.06.050</b>	<b>Smoking Restrictions – Exceptions – Retaliation - Application</b>
<b>25.06.060</b>	<b>Responsibility of Proprietors</b>
<b>25.06.070</b>	<b>Penalties – Smoking Restrictions</b>

### **Section 25.06.010 Definitions**

Unless the context or subject matter otherwise requires:

- 1) *City* shall mean the City of Dickinson, North Dakota.
- 2) *Person* shall mean any individual, partnership, corporation or other business or other legal entity.
- 3) *Minor* shall mean any person, regardless of sex, who has not yet reached the age of eighteen (18).
- 4) *Retail tobacco dealer* shall mean any individual, partnership, corporation or other business or other legal entity selling, offering for sale, exposing for sale, or having in possession for sale, at retail, tobacco products.
- 5) *Tobacco products* includes any product that contains tobacco, is derived from tobacco, or contains nicotine or other similar substances that is intended for human consumption or is likely to be consumed, whether smoked, heated, inhaled, chewed, absorbed, dissolved, or ingested by any other means. *Tobacco product* includes E-cigarettes and other electronic smoking devices, pipes and rolling papers, but does not include any product approved by the United States Food and Drug administration for legal sale as a tobacco cessation product and is being marketed solely for the approved purpose.
- 6) *Vending machine* shall mean any kind of device or mechanical machine which, upon insertion of coins, tokens or other objects will release tobacco products in packages or otherwise. (Ord. 1234 § 2)
- 7) *Bar* means a retail alcoholic beverage establishment licensed under Article 4 that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of those beverages. The term includes a bar located within a hotel, bowling center, restaurant, or other establishment that is not licensed primarily or exclusively to sell alcoholic beverages.
- 8) *Business* means a sole proprietorship, partnership, association, joint venture, corporation, or other business entity, either for profit or not for profit, including retail establishments where goods or services are sold and professional corporations and other entities where professional services are delivered.
- 9) *E-cigarette* means any electronic oral device, such as one composed of a heating element and battery or electronic circuit, or both, which

provides a vapor of nicotine or any other substances, and the use or inhalation of which simulates smoking. The term shall include any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, and e-pipe or under any other product, name or descriptor. *E-cigarette* also includes any component part of such product whether or not sold separately. *E-cigarette* does not include any product approved by the United States Food and Drug Administration for legal sale as a tobacco cessation product and is being marketed and sold solely for the approved purpose.

- 10) *Employee* means an individual who is employed by an employer in consideration for direct or indirect monetary wages or profit, or an individual who volunteers services for an employer.
- 11) *Employer* means an individual, business, or private club, including a municipal corporation or trust, or the state and its agencies and political subdivisions that employs the services of one or more individuals.
- 12) *Enclosed area* means all space between a floor and ceiling that has thirty-three percent or more of the surface area of its perimeter bounded by opened or closed walls, windows, or doorways. A wall includes any physical barrier regardless of whether it is opened or closed, temporary or permanent, or contains openings of any kind, and includes retractable dividers and garage doors.
- 13) *Health care facility* means any office or institution providing health care services or treatment of diseases, whether physical, mental or emotional, or other medical, physiological or psychological conditions. Some examples of health care facilities include hospitals; clinics; ambulatory surgery centers; outpatient care facilities; weight control clinics; nursing homes; homes for the aging or chronically ill; nursing, basic, long-term, or assisted living facilities; laboratories; and offices of any medical professional licensed, including all specialties and subspecialties in those fields. This definition shall include all waiting rooms, hallways, private rooms, semiprivate rooms, wards within health care facilities, and any mobile or temporary health care facilities.
- 14) *Health care services* means services provided by any health care facility. Some examples of health care services are medical, surgical, dental, vision, chiropractic, psychological, and pharmaceutical services.
- 15) *Place of employment* means an area under the control of a public or private employer, including, work areas, auditoriums, classrooms, conference rooms, elevators, employee cafeterias, employee lounges, hallways, meeting rooms, private offices, restrooms, temporary offices, vehicles, and stairs. A private residence is not a place of employment unless it is used as a licensed child care, adult day care, or health care facility.
- 16) *Public place* means an area which the public enters. Some examples of public places are publicly owned buildings, vehicles, or offices; bars; bingo facilities; gambling and gaming facilities; child care and adult day care facilities subject to licensure by the department of human services, including those operated in private homes; convention facilities; educational facilities, both public and private; facilities primarily used for exhibiting a motion picture, stage, drama,

lecture, musical recital, or other similar performance; financial institutions; health care facilities; hotels and motels including all rooms that are rented to guests; laundromats; any common areas in apartment buildings, condominiums, mobile home parks, retirement facilities, nursing homes, and other multiple-unit residential facilities; private and semi-private nursing home rooms; museums, libraries, galleries, and aquariums; polling places; professional offices; public transportation facilities, including buses, trains, airplanes and similar aircraft, taxicabs and similar vehicles such as towncars and limousines when used for public transportation, and ticket, boarding, and waiting areas of public transit facilities, including bus and train stations and airports; reception areas; restaurants; retail food production and marketing establishments; retail service establishments; retail stores including tobacco and hookah establishments; rooms, chambers, places of meeting or public assembly, including school buildings; shopping malls; sports arenas; theaters; and waiting rooms.

- 17) *Publicly owned building, vehicle, or office* means a place or vehicle owned, leased, or rented by any state or political subdivision, or by any agency supported by appropriation of, or by contracts or grants from, funds derived from the collection of taxes.
- 18) *Restaurant* includes every building or other structure, or any part thereof, and all buildings in connection therewith that are kept, used, maintained, advertised, or held out to the public as a place where food is served. Some examples of restaurants include coffee shops, cafeterias, Sandwich stands, private and public school cafeterias, kitchens, and catering facilities in which food is prepared on the premises for serving elsewhere, and a bar area within a restaurant.
- 19) *Shopping mall* means an enclosed public walkway or hall area that serves to connect retail or professional businesses.
- 20) *Smoking* means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated tobacco or plant product intended for inhalation, in any manner or in any form. Smoking also includes the use of an e-cigarette which creates a vapor, in any manner or any form, or the use of any oral smoking device for the purpose of circumventing the prohibition of smoking.
- 21) *Sports arena* means an indoor or outdoor place where members of the public assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events. Some examples of sports arenas include sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, and bowling centers. (Ord. 1234 § 2, Ord. 1495 § 1, Ord. 1601 § 1)

## **Section 25.06.020 Possession, Purchase, or Use of tobacco products by minors prohibited**

- (a) It shall be a noncriminal offense for a minor to possess, sell, purchase, attempt to purchase, smoke, or use tobacco products. This section shall not apply to a person under the age

of eighteen (18) years who purchases or attempts to purchase tobacco or tobacco products while under the direct supervision of the police department or an entity authorized by the City or the State of North Dakota for training, education, or research purposes, nor to a person under the age of eighteen (18) years who purchases or attempts to purchase tobacco products while under the direct supervision of the police department for enforcement purposes.

(b) Any minor fourteen years of age or older who has been cited for a violation of subsection (a) may appear before the Dickinson Municipal Court and pay the fee by the time scheduled for a hearing, or if bond has been posted, may forfeit the bond by not appearing at the scheduled time.

An individual appearing at the time scheduled in the citation may make a statement in explanation of that individual's action and the judge may waive, reduce, or suspend the fee or bond, or both. If the individual cited follows the procedures of this subdivision, that individual has admitted the violation and has waived the right to a hearing on the issue of commission of the violation. The bond required to secure appearance before the court must be identical to the fee. This subdivision does not allow a citing officer to receive the fee or bond.

(c) If a minor fourteen years of age or older cited for a violation of subsection (a) does not choose to follow the procedures provided under subdivision (b), that individual may request a hearing on the issue of the commission of the violation cited. The hearing must be held at the time scheduled in the citation or at some future time, not to exceed ninety days later, set at that first appearance. At the time of a request for a hearing on the issue on commission of the violation, the individual cited shall deposit with the court an appearance bond equal to the fee for the violation cited.

(d) The failure to post bond or to pay an assessed fee is punishable as a contempt of court, except a minor may not be imprisoned for the contempt.

(e) The prosecution must prove the commission of a cited violation under subsection (a) by a preponderance of the evidence. (Ord. 1234 § 2, Ord. 1495 § 1)

### **Section 25.06.030 Sale of tobacco products to minors prohibited**

(a) It shall be an offense for any person to sell, furnish to a minor, or to procure for a minor, tobacco products. As used in this subsection, "sell" includes dispensing from a vending machine under the control of the actor.

(b) Retailers are hereby obligated to check a state-issued photographic identification of purchasers twenty-six (26) years and younger for proof of age.

(c) Sale of tobacco products through vending machines is restricted. It shall be unlawful for any person to sell or dispense any tobacco products from a vending machine, except that tobacco products may be offered for sale or sold from a vending machine on the premises of a licensed on-sale or off-sale alcoholic beverage establishment, in any area of the premises where persons under the age of twenty-one (21) years of age are prohibited and where the vending machine is located within the immediate vicinity, plain view and control of a responsible adult employee, so that all tobacco purchases will be readily observable by the employee. The vending machine may not be located in the coat room, restroom, unmonitored hallway, outer waiting area, or similar unmonitored area; nor shall the vending machine be accessible to the public when the establishment is closed.

(d) Except on licensed alcohol premises, no tobacco products may be stored or displayed in a retail outlet in any area or in a manner which allows for self-service access by customers.

(e) Every act or omission of whatever nature, constituting a violation of the provisions of this Section 25.06.030 by any officer, director, manager or other agent or employee of any licensee

shall be deemed and held to be the act of such licensee; and such licensee shall be punishable in the same manner as if such act or omission had been done or omitted by the licensee personally. (Ord. 1234 § 2, Ord. 1495 § 1)

## **Section 25.06.040 Penalties – Sale to Minors, Use, Possession by Minors**

Any person violating the provisions of Section 25.06.030 shall, upon conviction, be guilty of an infraction. Any person violating the provisions of Section 25.06.020 by a minor shall be a noncriminal offense, as provided therein. Each day that a violation is permitted to exist shall constitute a separate punishable offense.

The minimum fee required for violating the provisions of the foregoing sections of this Article shall be as follows:

- (a) For a violation of Section 25.06.020 by a minor: a fine of \$100.
- (b) For a violation of Section 25.06.030 by a Retail tobacco dealer:
  - First offense, a fine of \$100.00
  - Second offense within two years a fine of \$250.00 and suspension of license of 7 days
  - Third and subsequent offenses within two years a fine of \$500.00 and revocation of license
- (c) For procuring tobacco products for a minor in violation of Section 25.06.030(a):
  - First offense, a fine of \$100.00
  - Second offense within two years, a fine of \$250.00
  - Third and subsequent offenses within two years, fine of \$500.00

A portion of all fees collected may be contributed to an established smoking cessation program approved by the Board of City Commissioners.

Affirmative Defenses: A retail tobacco dealer may participate in a City Commission approved compliance training program, including maintaining a valid log book to identify all persons to whom tobacco products were sold, whether such person's identity and age was confirmed by checking a valid state-issued identification card, and the name and age of all such purchasers, together with verification of training for all employees. In the event that a Retail tobacco dealer is later charged with a violation of Section 25.06.030, the Retail tobacco dealer may assert participation in the City Commission approved compliance training program as an affirmative defense to the charge. Upon proof of program participation, the Retail tobacco dealer shall be entitled to a dismissal of the complaint. This affirmative defense may be asserted only one time in any three-year period by any one Retail tobacco dealer. (Ord. 1234 § 2, Ord. 1495 § 1)

## **Section 25.06.050 Smoking restrictions--Exceptions--Retaliation—Application**

1. In order to protect the public health and welfare and to recognize the need for individuals to breathe smoke free air, smoking is prohibited in all enclosed areas of:
  - a. Public places; and
  - b. Places of employment.

2. Smoking is prohibited within twenty feet [6.10 meters] of entrances, exits, operable windows, air intakes, and ventilation systems of enclosed areas in which smoking is prohibited. Owners, operators, managers, employers, or other persons who own or control a public place or place of employment may seek to rebut the presumption that twenty feet [6.10 meters] is a reasonable minimum distance by making application to the director of the local health department or district in which the public place or place of employment is located. The presumption will be rebutted if the applicant can show by clear and convincing evidence that, given the unique circumstances presented by the location of entrances, exits, windows that open, ventilation intakes, or other factors, smoke will not infiltrate or reach the entrances, exits, open windows, or ventilation intakes or enter into such public place or place of employment and, therefore, the public health and safety will be adequately protected by a lesser distance.
3. The following areas are exempt from subsections 1 and 2:
  - a. Private residences, except those residences used as a child care, adult day care, or health care facility subject to licensure by the department of human services.
  - b. Outdoor areas of places of employment, except those listed in subsection 2.
  - c. Any area that is not commonly accessible to the public and which is part of an owner operated business having no employee other than the owner operator.
4. Smoking as part of a traditional American Indian spiritual or cultural ceremony is not prohibited.
5. No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, or other person because that person asserts or exercises any rights afforded by this section or reports or attempts to prosecute a violation of this section. An employee who works in a setting where an employer allows smoking does not waive or surrender any legal rights the employee may have against the employer or any other party. Violations of this subsection shall be a class B misdemeanor.
6. This section may not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.
7. Notwithstanding any other provision of this chapter, an owner, operator, manager or other person in control of an establishment, facility, or outdoor area may declare that entire establishment, facility, or outdoor area as a nonsmoking place. (Ord. 1495 § 1)

### **Section 25.06.060 Responsibility of proprietors**

The owner, operator, manager or other person in control of a public place or place of employment where smoking is prohibited by the provisions of Section 25.06.050 shall:

1. Clearly and conspicuously post no smoking signs or the international no smoking symbol in that place.
2. Clearly and conspicuously post at every entrance to that place a sign stating that smoking is prohibited.
3. Clearly and conspicuously post on every vehicle that constitutes a place of employment at least one sign, visible from the vehicle's exterior, stating that smoking is prohibited.
4. Remove all ashtrays from any area where smoking is prohibited, except for ashtrays displayed for sale and not for use on the premises.
5. Communicate to all existing employees and to all prospective employees upon their application for employment that smoking is prohibited in that place.

6. For places under his or her control, direct a person who is smoking in violation of provisions of Section 25.06.050 to extinguish the product being smoked. If the person does not stop smoking, the owner, operator, manager or employee shall refuse service and shall immediately ask the person to leave the premises. If the person in violation refuses to leave the premises, the owner, operator, manager, or employee shall immediately report the violation to law enforcement or to the Tobacco Prevention and Control Division of the Southwestern District Health Unit. The refusal of the person to stop smoking or leave the premises in response to requests made under this section by an owner, operator, manager, or employee shall not constitute a violation of the provisions of Sections 25.06.050 or 25.06.060 by the owner, operator, manager, or employee. (Ord. 1495 § 1)

### **Section 25.06.070 Penalties – Smoking Restrictions**

1. An individual who smokes in an area in which smoking is prohibited under Section 25.06.050 is guilty of an infraction punishable by a fine not exceeding fifty dollars.
2. Except as otherwise provided in subsection 5 of Section 25.06.050, an owner or other person with general supervisory responsibility over a public place or place of employment who willfully fails to comply with Section 25.06.050 is guilty of an infraction, subject to: a fine not to exceed one hundred dollars (\$100.00) for the first violation; a fine not to exceed two hundred dollars (\$200.00) for a second violation within one year; and to a fine not to exceed five hundred dollars (\$500.00) for each additional violation within one year of the preceding violation.
3. In addition to the fines established by this section, violation of any provision of Sections 25.06.050 or 25.06.060 by a person who owns, manages, operates, or otherwise controls a public place or place of employment may result in the suspension or revocation of any permit or license issued to the person for the premises on which the violation occurred.
4. Violations of any provision of Sections 25.06.050 and 25.06.060 are declared to be a public nuisance that may be abated by restraining order, preliminary or permanent injunction, or other means provided by law.
5. Each day on which a violation of any provision of Sections 25.06.050 and 25.06.060 occurs shall be considered a separate and distinct violation.

### **Section 25.06.080 Child-resistant packaging for liquid nicotine containers**

1. Any nicotine liquid container that is sold at retail in this state must satisfy the child-resistant effectiveness standards set forth in title 16, CFR, part 1700, section 15(b)(1), when tested in accordance with the method described in title 16, CFR, part 1700, section 20.
2. As used in this section, “nicotine liquid container” means a bottle or other container of a liquid or other substance containing nicotine in which the liquid or substance is sold, marketed, or intended for use in an electronic smoking device. The term does not include a liquid or other substance containing nicotine in a cartridge that is sold, marketed, or intended for use in an electronic smoking device, provide that the cartridge is prefilled and sealed by the manufacturer and not intended to be opened by the consumer.
3. Any person that engages in retail sales of liquid nicotine containers in violation of this section is subject to a civil penalty of not more than five hundred dollars for each separate violation of

this section. (Ord. 1601 § 2)

## **Article 25.08 Offenses Against Persons**

### **Sections:**

**25.08.010 Simple assault**

**25.08.020 Harassment.**

### **Section 25.08.010 Simple assault**

- (a) A person is guilty of an offense if he:
- (1) Willfully causes bodily injury to another human being; or
  - (2) Negligently causes bodily injury to another human being by means of a firearm, destructive device or other weapon, the use of which against a human being is likely to cause death or serious bodily injury.
- (b) Consent to the conduct causing bodily injury by all persons injured by the conduct is a defense if:
- (1) Neither the injury inflicted nor the injury threatened is such as to jeopardize life or seriously impair health;
  - (2) The conduct and the injury are reasonably foreseeable hazards of joint participation in a lawful athletic contest or competitive sport; or
  - (3) The conduct and the injury are reasonably foreseeable hazards of an occupation or profession or of medical or scientific experimentation conducted by recognized methods and the persons subjected to such conduct or injury, having been made aware of the risks involved, consent to the performance of the conduct or the infliction of the injury.
- (c) Assent does not constitute consent, within the meaning of this section, if:
- (1) It is given by a person who is legally incompetent to authorize the conduct charged to constitute the offense and such incompetence is manifest or known to the actor;
  - (2) It is given by a person who by reason of youth, mental disease or defect, or intoxication, is manifestly unable or known by the actor to be unable to make a reasonable judgment as to the nature or harmfulness of the conduct charged to constitute the offense; or
  - (3) It is induced by force, duress or deception.
- (d) Violation of this Section shall constitute a class B misdemeanor for the first offense when the victim is an actor's family or household member, as defined in subsection 4 of N.D.C.C. § 14-07.1-01, and all other circumstances not contemplated by N.D.C.C. §12.1-17-01(2)(a) or (b).
- (e) The sentence for an offense under this Section against an actor's family or household member, as defined in subsection 4 of section 14-07.1-01, must include an order to complete a domestic violence offender treatment program. The court may not order the offender to attend anger management classes or individual counseling unless a domestic violence offender treatment program is not reasonably available to the defendant and the court makes findings for the record explaining why an order to complete a domestic violence offender treatment program would be inappropriate.

Comment: This section parallels the simple assault offense in North Dakota Century Code, section 12.1-17-01, and the consent provisions in North Dakota Century Code,

section 12.1-17-08. It essentially follows lay usage in covering what was under common law more technically a battery. Common law assault is now covered more descriptively as terrorizing, North Dakota Century Code, section 12.1-17-04; menacing, North Dakota Century Code, section 12.1-17-05; criminal coercion, North Dakota Century Code, section 12.1-17-06; or harassment, North Dakota Century Code, section 12.1-17-07.

More serious assault (battery) is covered by state law under aggravated assault, North Dakota Century Code, section 12.1-17-02 or, as simple assault upon a peace officer or correctional institution employee acting in an official capacity, as a class C felony under North Dakota Century Code, section 12.1-17-01. (Ord. No. 867, § 1.) Second and subsequent offenses shall be considered a Class A misdemeanor and governed by state law when the victim is an actor's family or household member as defined in subsection 4 of N.D.C.C. § 14-07.1-01 and the actor has a prior conviction for simple assault under this section or an assault offense under section 12.1-17-01.1 or 12.1-17-02 involving the commission of domestic violence as defined in subsection 2 of section 14-07.1-01. (Ord. No. 1621 § 1.)

### **Section 25.08.020 Harassment.**

- (1) A person is guilty of a class B misdemeanor if, with intent to frighten or harass another, the person:
  - (a) Makes a telephone call anonymously or in offensively coarse language;
  - (b) Makes repeated telephone calls, whether or not a conversation ensues, with no purpose of legitimate communication; or
  - (c) Communicates a falsehood in writing or by telephone and causes mental anguish.
- (2) Any offense defined herein and committed by use of a telephone may be deemed to have been committed at either the place at which the telephone call or calls were made or at the place where the telephone call or calls were received. (Ord. No. 1190, § 1.)

## **Article 25.12 Offenses Against Property**

### **Sections:**

- 25.12.02000 Division 25.12.02 Property Destruction and Criminal Intrusion**
- 25.12.02010 Criminal mischief**
- 25.12.02020 Tampering with or damaging public service**
- 25.12.02030 Consent as defense; definition of "of another" for purposes of sections 25.12.02.010 and 25.12.02.020**
- 25.12.02040 Criminal trespass**
- 25.12.04000 Division 25.12.04 Theft and Related Offenses**
- 25.12.04010 Consolidated theft offenses**
- 25.12.04020 Theft of property generally**
- 25.12.04030 Theft of services**
- 25.12.04040 Theft of property lost, mislaid or delivered by mistake**
- 25.12.04050 Thefts punishable under city ordinance**
- 25.12.04060 Defrauding secured creditors**
- 25.12.04070 Retail theft; shoplifting**
- 25.12.04080 Defenses and proof as to theft and related offenses**
- 25.12.04090 Definitions**
- 25.12.04100 Making or uttering slugs**

### **Section 25.12.02000 Division 25.12.02 Property Destruction and Criminal Intrusion**

#### **Section 25.12.02010 Criminal mischief**

A person is guilty of an offense if he:

- (a) Willfully tampers with tangible property of another so as to endanger person or property; or
- (b) Willfully damages tangible property of another. Conduct is punishable as criminal mischief under this section when any pecuniary loss, if intentionally caused, is not in excess of one hundred dollars; if recklessly caused, is not in excess of two thousand dollars; and if the damages to tangible property of another are not by means of an explosive or a destructive device.
- (c) The penalty for the offense of criminal mischief may not exceed a fine of one thousand dollars, imprisonment for thirty days, or both such fine and imprisonment. (Source: North Dakota Century Code, section 12.1-21-05 and North Dakota Century Code, section 40-05-06 as amended by S.B. 2217 in 1975 and S.B. 2534 in 1977.) (Ord. No. 867, 1.)

#### **Section 25.12.02020 Tampering with or damaging public service**

A person is guilty of an offense if he negligently causes a substantial interruption or impairment of a public communication, transportation, supply of water, gas, power or other public service by:

- (a) Tampering with or damaging the tangible property of another;
- (b) Incapacitating an operator of such service; or

- (c) Negligently damaging the tangible property of another by fire, explosive or other dangerous means. (Source: North Dakota Century Code, section 12.1-21-06.) (Ord. No. 867, § 1.)

### **Section 25.12.02030 Consent as defense; definition of "of another" for purposes of sections 25.12.02.010 and 25.12.02.020**

For prosecutions of criminal mischief under section 25.12.02.010 or tampering with or damaging a public service under section 25.12.02.020:

- (a) Whenever it is an element of the offense that the property is of another, it is a defense to a prosecution under those sections that the other has consented to the actor's conduct with respect to the property.
- (b) Property is that "of another" if anyone other than the actor has a possessory or proprietary interest therein. (Source: North Dakota Century Code, section 12.1-21-07 and 08(2).) (Ord. No. 867, § 1.)

### **Section 25.12.02040 Criminal trespass**

(a) A person is guilty of class B misdemeanor if, knowing that he is not licensed or privileged to do so, he enters or remains in any place as to which notice against trespass is given by actual communication to the actor by the person in charge of the premises or other authorized person or by posting in a manner reasonably likely to come to the attention of intruders.

(b) A person is guilty of a class B misdemeanor if that person remains upon the property of another after being requested to leave the property by a duly authorized person. (Ord. No. 867, § 1; Ord. No. 1023, § 1; Ord. No. 1176, § 3 Ord. No. 1645, § 4.)

### **Section 25.12.04000 Division 25.12.04 Theft and Related Offenses**

#### **Section 25.12.04010 Consolidated theft offenses**

(a) Conduct denominated theft in sections 25.12.04.020 to 25.12.04.040 constitutes a single offense designed to include the separate offenses heretofore known as larceny, stealing, purloining, embezzlement, obtaining money or property by false pretenses, extortion, blackmail, fraudulent conversion, receiving stolen property, misrepresentation of public funds, swindling and the like.

(b) A charge of theft under sections 25.12.04.020 to 25.12.04.040 which fairly apprises the defendant of the nature of the charges against him shall not be deemed insufficient because it fails to specify a particular category of theft. The defendant may be found guilty of theft under such a charge if his conduct falls under sections 25.12.04.020 and 25.12.04.040, so long as the conduct proved is sufficiently related to the conduct charged that the accused is not unfairly surprised by the case he must meet. (Source: North Dakota Century Code, section 12.1-23.01.) (Ord. No. 867, § 1.)

### **Section 25.12.04020 Theft of property generally**

A person is guilty of theft if he:

- (a) Knowingly takes or exercises unauthorized control over, or makes an unauthorized transfer of an interest in, the property of another with intent to deprive the owner thereof;
- (b) Knowingly obtains the property of another by deception or by threat with intent to deprive the owner thereof, or intentionally deprives another of this property by deception or by threat; or
- (c) Knowingly receives, retains or disposes of property of another which has been stolen, with intent to deprive the owner thereof. (Source: North Dakota Century Code, section 12.1-23-02.) (Ord. No. 867, § 1.)

### **Section 25.12.04030 Theft of services**

A person is guilty of theft if:

- (a) He intentionally obtains services, known by him to be available only for compensation, by deception, threat, false token or other means to avoid payment for the services: or
- (b) Having control over the disposition of services of another to which he is not entitled, he knowingly diverts those services to his own benefit or to the benefit of another not entitled thereto.

Where compensation for services is ordinarily paid immediately upon their rendition, as in the case of hotels, restaurants and comparable establishments, absconding without payment or making provision to pay is prima facie evidence that the services were obtained by deception. (Source: North Dakota Century Code, section 12.1-23-03.) (Ord. No. 867, § 1.)

### **Section 25.12.04040 Theft of property lost, mislaid or delivered by mistake**

A person is guilty of theft if he:

- (a) Retains or disposes of property of another when he knows it has been lost or mislaid; or
- (b) Retains or disposes of property of another when he knows it has been delivered under a mistake as to the identity of the recipient or as to the nature or amount of the property; and with intent to deprive the owner of it, he fails to take readily available and reasonable measures to restore the property to a person entitled to have it. (Source: North Dakota Century Code, section 12.1-23-04.) (Ord. No. 867, § 1.)

### **Section 25.12.04050 Thefts punishable under city ordinance**

Theft under sections 25.12.04.020 to 25.12.04.040 may be punished as an offense against the city ordinances if the highest value by any reasonable standard, regardless of the actor's knowledge of such value, of the property or services which were stolen by the actor, or which the actor believed that he was stealing, or which the actor could reasonably have

anticipated to have been the property or services involved, does not exceed five hundred dollars, and if:

- (a) The theft was not committed by threat;
- (b) The theft was not committed by deception by one who stood in a confidential or fiduciary relationship to the victim of the theft;
- (c) The defendant was not a public servant or an officer or employee of a financial institution who committed the theft in the course of his official duties;
- (d) The property stolen is not a firearm, ammunition, explosive or destructive device, or an automobile, aircraft or other motor-propelled vehicle;
- (e) The property does not consist of any government file, record, document or other government paper stolen from any government office or from any public servant;
- (f) The defendant is not in the business of buying or selling stolen property and he does not receive, retain or dispose of the property in the course of that business;
- (g) The property stolen does not consist of any implement, paper or other thing uniquely associated with the preparation of any money, stamp, bond or other document, instrument or obligation of the State of North Dakota;
- (h) The property stolen does not consist of livestock taken from the premises of the owner; and
- (i) The property stolen does not consist of a key or other implement uniquely suited to provide access to property the theft of which would be a felony or was not stolen to gain such access. (Source: North Dakota Century Code, section 12. 1-23-05.) (Ord. No. 867, § 1, Ord. No. 1645 § 5)

### **Section 25.12.04070 Retail theft; shoplifting**

- (a) Presumption. Any person concealing upon his person or among his belongings, or causing to be concealed upon the person or among the belongings of another, unpurchased merchandise displayed, held, offered or stored for sale in a retail mercantile establishment and removing it to a point beyond the last station for receiving payments in that retail mercantile establishment shall be prima facie presumed to have so concealed such merchandise with the intention of permanently depriving the merchant of possession or of the full retail value of such merchandise.
- (b) Procedure for Detention of Suspect. Any peace officer or merchant who reasonably believes that a person has committed or is in the process of committing theft may detain such person, on or off the premises of a retail mercantile establishment, in a reasonable manner and for a reasonable length of time for all or any of the following purposes:
  - (1) To require the person to identify himself.
  - (2) To verify such identification.
  - (3) To determine whether such person has in his possession unpurchased merchandise and, if so, to recover such merchandise.
  - (4) To inform a peace officer of the detention of the person and surrender custody of that person to a peace officer.
  - (5) In the case of a minor, to inform a peace officer, the parents, guardian or other

private person interested in the welfare of that minor of this detention and to surrender custody of such minor to the person informed.

- (c) Definitions. For the purposes of this section, the following words and phrases shall have the meanings respectively ascribed to them by this subsection:

Concealed. An item which, even though there is some notice of its presence, is itself not visible through ordinary observation.

Full Retail Value. The merchant's stated or advertised price of the merchandise.

Merchandise. Any item of tangible personal property, and specifically includes shopping carts.

Merchant. An owner or operator of any retail mercantile establishment or any agent, employee, lessee, consignee, officer, franchisee or independent contractor of such owner or operator.

Person. Any natural person or individual.

Premises of a Retail Mercantile Establishment. Includes, but is not limited to, the retail mercantile establishment, any common use areas in shopping centers and all parking areas set aside by a merchant or on behalf of a merchant for the parking of vehicles for the convenience of the patrons of such retail mercantile establishment.

Retail Mercantile Establishment. Any place where merchandise is displayed, held, offered or stored for sale to the public.

Shopping Cart. Those pushcarts of the type or types which are commonly provided by grocery stores, drug stores or other retail mercantile establishments for the use of the public in transporting commodities in stores and markets and, incidentally, from the stores to a place outside the store.

- (d) "Shoplifting" defined; penalty. Theft of unpurchased merchandise displayed, held, offered or stored for sale in a mercantile establishment from that establishment when open for business is "shoplifting". A person who violates this section shall be guilty of a class B misdemeanor. (Source: North Dakota Century Code, sections 51-21-01, 51-21-02, 51-21-03 and 40-05-06.) (Ord. No. 867, § 1; Ord. No. 1176, § 4, Ord. No. 1645, § 7)

## **Section 25.12.04080 Defenses and proof as to theft and related offenses**

- (a) It is a defense to a prosecution under sections 22.12.04.010 to 25.12.04.090 that:
- (1) The actor honestly believed that he had a claim to the property or services involved which he was entitled to assert in the manner which forms the basis for the charge against him; or
  - (2) The victim is the actor's spouse, but only when the property involved constitutes household or personal effects or other property normally accessible to both spouses and the parties involved are living together. The term "spouse," as used in this section, includes persons living together as husband and wife.
- (b) It does not constitute a defense to a prosecution for conduct constituting an offense in violation of sections 22.12.04.010 to 25.12.04.090 that:

- (1) Stratagem or deception, including the use of an undercover operative or law enforcement officer, was employed;
  - (2) A facility or an opportunity to engage in such conduct, including offering for sale property not stolen as if it were stolen, was provided; or
  - (3) Mere solicitation that would not induce an ordinary law abiding person to engage in such conduct was made by a law enforcement officer to gain evidence against a person predisposed to engage in such conduct.
- (c) (1) It shall be a prima facie case of theft under sections 22.12.04.010 to 25.12.04.090 if it is shown that a public servant or an officer, director, agent, employee of, or a person connected in any capacity with a financial institution has failed to pay or account upon lawful demand for money or property entrusted to him as part of his official duties or if an audit reveals a shortage or falsification of his accounts.
- (2) Proof of the purchase or sale of stolen property at a price substantially below its fair market value, unless satisfactorily explained, gives rise to an inference that the person buying or selling the property was aware of the risk that it had been stolen.
  - (3) Proof of the purchase or sale of stolen property by a dealer in property, out of the regular course of business, or without the usual indicia of ownership other than mere possession, unless satisfactorily explained, gives rise to an inference that the person buying or selling the property was aware of the risk that it had been stolen. (Source: North Dakota Century Code, section 12.1-23-09.) (Ord. No. 867, § 1.)

### **Section 25.12.04090 Definitions**

For the purposes of sections 25.12.04.010 to 25.12.04.080, the following words and phrases shall have the meanings respectively ascribed to them by this section:

Dealer in Property. A person who buys or sells property as a business.

Deception.

- (a) Creating or reinforcing a false impression, including false impressions as to fact, law status, value, intention or other state of mind; but deception as to a person's intention to perform a promise shall not be inferred from the fact alone that he did not substantially perform the promise unless it is part of a continuing scheme to defraud;
- (b) Preventing another from acquiring information which would affect his judgment of a transaction;
- (c) Failing to correct a false impression which the actor previously created or reinforced, or which he knows to be influencing another to whom he stands in fiduciary or confidential relationship;
- (d) Failing to correct an impression which the actor previously created or reinforced and which the actor knows to have become false due to subsequent events;
- (e) Failing to disclose a lien, adverse claim or other impediment to the enjoyment of property which he transfers or encumbers in consideration for the property obtained or in order to continue to deprive another of his property, whether such impediment is or is not valid, or is or is not a matter of official record;
- (f) Using a credit card, charge plate or any other instrument which purports to evidence an undertaking to pay for property or services delivered or

rendered to or upon the order of a designated person or bearer (1) Where such instrument has been stolen, forged, revoked or canceled, or where for any other reason its use by the actor is unauthorized, and (2) where the actor does not have the intention and ability to meet all obligations to the issuer arising out of his use of the instrument; or

- (g) Any other scheme to defraud. The term "deception" does not, however, include falsifications as to matters having no pecuniary significance, or puffing by statement unlikely to deceive ordinary persons in the group addressed. "Puffing" means an exaggerated commendation of wares in communications addressed to the public or to a class or group.

Deprive.

- (a) To withhold property or to cause it to be withheld either permanently or under such circumstances that a major portion of its economic value, or its use and benefit, has, in fact, been appropriated;
- (b) To withhold property or to cause it to be withheld with the intent to restore it only upon the payment of a reward or other compensation; or
- (c) To dispose of property or use it or transfer any interest in it under circumstances that make its restoration, in fact, unlikely.

Fiduciary. A trustee, guardian, executor, administrator, receiver or any other person acting in a fiduciary capacity, or any person carrying on fiduciary functions on behalf of a corporation or other organization which is a fiduciary.

Financial Institution. A bank, insurance company, credit union, safety deposit company, savings and loan association, investment trust or other organization held out to the public as a place of deposit of funds or medium of savings or collective investment.

Obtain.

- (a) In relation to property, to bring about a transfer or purported transfer of an interest in the property, whether to the actor or another; or
- (b) In relation to services, to secure performance thereof.

Property. Any money, tangible or intangible personal property, property (whether real or personal) the location of which can be changed (including things growing on, affixed to or found in land and documents although the rights represented thereby have no physical location) contract right, chose-in-action, interest in or claim to wealth, credit, or any other article or thing of value of any kind. "Property" also means real property the location of which cannot be moved if the offense involves transfer or attempted transfer of an interest in the property.

Property of Another. Property in which a person other than the actor or in which a government has an interest which the actor is not privileged to infringe without consent, regardless of the fact that the actor also has an interest in the property and regardless of the fact that the other person or government might be precluded from civil recovery because the property was used in an unlawful transaction or was subject to forfeiture as contraband. Property in possession of the actor shall not be deemed property of another who has a security interest therein, even if legal title is in the creditor pursuant to a conditional sales contract or other security agreement. "Owner" means any person or a government with an interest in property such that it is "property of another" as far as the actor is concerned.

Receiving. Acquiring possession, control or title, or lending on the security of the property.

Services. Labor, professional service, transportation, telephone, mail or other public service, gas, electricity and other public utility services, accommodations in hotels, restaurants or elsewhere, admission to exhibitions, and use of vehicles or other property.

Stolen. Property which has been the subject of theft or robbery or a vehicle which is received from a person who is then in violation of North Dakota Century Code, section 12.1-23-06.

Threat. An expressed purpose, however communicated, to:

- (a) Cause bodily injury in the future to the person threatened or to any other person;
- (b) Cause damage to property;
- (c) Subject the person threatened or any other person to physical confinement or restraint;
- (d) Engage in other conduct constituting a crime;
- (e) Accuse anyone of a crime;
- (f) Expose a secret or publicize an asserted fact, whether true or false, tending to subject a person, living or deceased, to hatred, contempt or ridicule or to impair another's credit or business repute;
- (g) Reveal any information sought to be concealed by the person threatened;
- (h) Testify or provide information or withhold testimony or information with respect to another's legal claim or defense;
- (i) Take or withhold official action as a public servant, or cause a public servant to take or withhold official action;
- (j) Bring about or continue a strike, boycott or other similar collective action to obtain property or deprive another of his property which is not demanded or received for the benefit of the group which the actor purports to represent;
- (k) Cause anyone to be dismissed from his employment, unless the property is demanded or obtained for lawful union purposes; or
- (l) Do any other act which would not in itself substantially benefit the actor or a group he represents but which is calculated to harm another person in a substantial manner with respect to his health, safety, business, employment, calling, career, financial condition, reputation or personal relationship. Upon a charge of theft, the receipt of property in consideration for taking or withholding official action shall be deemed to be theft by threat regardless of whether the owner voluntarily parted with his property or himself initiated the scheme.

Traffic.

- (a) To sell, transfer, distribute, dispense or otherwise dispose of to another person; or
- (b) To buy, receive, possess, or obtain control of, with intent to sell, transfer, distribute, dispense or otherwise dispose of to another person. (Source: North Dakota Century Code, section 12.1-23-10.) (Ord. No. 867, § 1.)

### **Section 25.12.04100 Making or uttering slugs**

- (a) A person is guilty of a class B misdemeanor if he makes or utters a slug or slugs which do not exceed fifty dollars in value with intent to deprive a

supplier of property or service sold or offered by means of a coin machine or with knowledge that he is facilitating such a deprivation by another person.

(b) In this section:

- (1) "Slug" means a metal, paper or other object which by virtue of its size, shape, or any other quality is capable of being inserted, deposited or otherwise used in a coin machine as an improper but effective substitute for a genuine coin, bill or token.
- (2) "Coin machine" means a coin box, turnstile, vending machine or other mechanical or electrical device or receptacle designed (a) to receive a coin or bill of a certain denomination or a token made for the purpose; and (b) in return for the insertion or deposit thereof, automatically to offer, provide, assist in providing or permit the acquisition of property or a public or private service.
- (3) Value of the slugs means the value of the coins, bills or tokens for which they are capable of being substituted. (Source: North Dakota Century Code, section 12.1-24-05.) (Ord. No. 867, § 1, Ord. No. 1645 § 8)

## **Article 25.16 Offenses Against Public Order, Health, Safety and Sensibilities**

### **Sections:**

- 25.16.02000 Division 25.16.02 Riot**
- 25.16.02010 Engaging in**
- 25.16.02020 Disobedience of public safety orders under riot conditions**
- 25.16.04000 Division 25.16.04 Disorderly Conduct; Loitering; Gambling; Prostitution**
- 25.16.04010 Disorderly conduct--Generally**
- 25.16.04020 Same--Defense when conduct consists of speech or other expression**
- 25.16.04030 Loitering**
- 25.16.04040 Gambling**
- 25.16.04050 Prostitution**
- 25.16.06010 Sunday Business or Labor - This Section was repealed with Ordinance No. 1312 (March 6, 2006)**
- 25.16.08000 Division 25.16.08 Alcohol-Related Offenses**
- 25.16.08010 Purchase, possession, etc., of alcoholic beverages by persons less than twenty-one years of age prohibited; exceptions**
- 25.16.08020 Misrepresentation of age; obligations of licensee**
- 25.16.08030 Bottle clubs prohibited**
- 25.16.08040 Public intoxication; assistance and/or medical care to be rendered**
- 25.16.08050 No prosecution solely for intoxication**
- 25.16.10000 Division 25.16.10 Protection of Minors**
- 25.16.10010 Display of objectionable materials or performance to minors; definitions; penalty**
- 25.16.12000 Division 25.16.12 Miscellaneous Offenses**
- 25.16.12010 Discharging or using air guns, spring guns, sling shots, etc.**
- 25.16.12020 Erection, construction or maintenance of barbed wire fences or enclosures**
- 25.16.12030 Bomb threats, etc.**
- 25.16.12040 Curfew for minors**
- 25.16.12050 Discharging firearms, explosives, etc.**
- 25.16.12060 Electrical interference with radio reception--Generally**
- 25.16.12070 Same--Operation of X-ray equipment**
- 25.16.12080 Same--Enforcement of restrictions generally; right of city engineer to enter for inspection**
- 25.16.12090 Same--Notification of violation**
- 25.16.12100 Same--Prosecution**
- 25.16.12110 Manufacture, sale, use, etc., of explosives**
- 25.16.12120 Installation of loudspeakers and musical instruments**
- 25.16.12130 Use, possession, etc., of controlled substances**
- 25.16.12135 Unlawful Possession of Marijuana Paraphernalia**
- 25.16.12140 Posting, etc., of bills, posters, etc.; distribution of handbills, etc.**
- 25.16.12150 Spitting, throwing litter, etc., in public places**
- 25.16.12160 Unlawful Deposit of Materials at Recycling Sites**
- 25.16.12170 Soliciting and Panhandling**

## **Section 25.16.02000 Division 25.16.02 Riot**

### **Section 25.16.02010 Engaging in**

A person is guilty of an class B misdemeanor if, during a riot as defined in subsection (b) of section 25.16.02.010, or when one is immediately impending, he disobeys a reasonable public safety order to move, disperse or refrain from specified activities in the immediate vicinity of the riot. A public safety order is an order designed to prevent or control disorder, or promote the safety of persons or property, issued by the senior law-enforcement official on the scene. (Source: North Dakota Century Code, section 12.1-25-04.) (Ord. No. 867, § 1, Ord. No. 1645, § 8)

### **Section 25.16.02020 Disobedience of public safety orders under riot conditions**

A person is guilty of an class B misdemeanor if, during a riot as defined in subsection (b) of section 25.16.02.010, or when one is immediately impending, he disobeys a reasonable public safety order to move, disperse or refrain from specified activities in the immediate vicinity of the riot. A public safety order is an order designed to prevent or control disorder, or promote the safety of persons or property, issued by the senior law-enforcement official on the scene. (Source: North Dakota Century Code, section 12.1-25-04.) (Ord. No. 867, § 1, Ord. No. 1645, § 9)

## **Section 25.16.04000 Division 25.16.04 Disorderly Conduct; Loitering; Gambling; Prostitution**

### **Section 25.16.04010 Disorderly conduct--Generally**

- (a) A person is guilty of violating the ordinances of this city if, with intent to harass, annoy or alarm another person or in reckless disregard of the fact that another is harassed, annoyed or alarmed by his behavior, he:
- (1) Engages in fighting, or in violent, tumultuous or threatening behavior;
  - (2) In a public place, uses abusive, insulting or offensive language, or an abusive, insulting or offensive gesture, under circumstances in which such language by its very utterance, or gesture, is likely to cause or provoke a disturbance or breach of the peace;
  - (3) Makes, countenances, assists or permits unreasonable noise, disturbance or improper diversion;
  - (4) Obstructs vehicular or pedestrian traffic, or the use of a public facility;
  - (5) Persistently follows a person in or about a public place or places;
  - (6) While loitering in a public place for the purpose of soliciting sexual contact, he solicits such contact;
  - (7) Creates a hazardous or seriously alarming condition by any act which he is not licensed or privileged to do;
  - (8) Enters on the property of another and for a lewd or unlawful purpose looks into a dwelling on the property through any window or other opening in the dwelling;
  - (9) Not being a peace officer, discharges a firearm or displays a deadly

- weapon in a public place;
- (10) Exposes his genitals under circumstances in which, in fact, his conduct is likely to be observed by a person who would be offended or alarmed, and with intent to arouse or gratify the sexual desire of any person, including the actor;
  - (11) Throws any missile in a public place or in any place where there is any person to be endangered thereby, although no injury to any person ensues;
  - (12) Creates, by chemical means, a noxious and unreasonable odor in a public place; or
  - (13) Damages, befouls or disturbs public property or the property of another so as to create a hazardous, unhealthy or physically offensive condition.
  - (14) Discharges, ignites, or otherwise engages in the use of fireworks within the City of Dickinson. See Section 13.08.100(a) for definition of fireworks.
- (b) A person whose conduct violates paragraphs (1) through (10) of subsection (a) is guilty of class B misdemeanor. A person whose conduct violates paragraphs (11) through (13) of subsection (a) is guilty of an infraction. A person whose conduct violates paragraph (14) of subsection (a) is guilty of an infraction. With specific and exclusive respect to paragraph (14) of subsection (a), the penalty shall be a \$150 fine.
  - (c) Prosecutions under paragraphs (5) and (6) of subsection (a) shall be instituted only upon complaint to a law-enforcement officer by someone other than a law-enforcement officer.

(Sources: In general, see North Dakota Century Code, section 12.1-31-01; Subsection (a): Paragraph (2): North Dakota Century Code, section 12.1-31-01 (3); Wis. Stat. Ann. § SO 47.01; Minn. Stat. Ann. § 609.715; La. Rev. Stat. § 14.103 Paragraph (7): North Dakota Century Code, section 12.1-31-01 (7); Ore. Rev. Stat. § 166.025(1) (h) Paragraph (8): Tex. Penal Code § 42.01(a) (7); Ill. Ann. Stat. Crim. Code § 26-1(a) (6) Paragraph (9): Tex. Penal Code § 42.01(a) (8) and (9); Colo. Rev. Stat. Ann. § 18-9-106(e) and (f) Paragraph (10): North Dakota Century Code, section 12.1-2704, repealed by S.L. 1975, Ch. 119, § 13 Paragraph (11): North Dakota Century Code, section 62-04-02, repealed by S. L. 1975, Ch. 106, § 673 Paragraph (12): Tex. Penal Code § 42.01(a) (3) Subsection (b) is derived from the Proposed New Federal Criminal Code § 1861(2) Subsection (c) is derived from the Proposed New Federal Criminal Code § 1861(4).)

(Ord. No. 867, § 1, Ord. No. 1632, § 1, Ord. No. 1645, § 11)

## **Section 25.16.04020 Same--Defense when conduct consists of speech or other expression**

- (a) If conduct that would otherwise violate section 25.16.04.010(a)(3) (unreasonable noise) or section 25.16.04.010(a)(4) (obstructing traffic or public facility) consists of speech or other communication, of gathering with others to hear or observe such speech or communication, or of gathering with others to picket or otherwise express in a nonviolent manner a position on social, economic, political or religious questions, the actor must be ordered to move, disperse, or otherwise remedy the violation prior to his arrest if he has not yet intentionally harmed the interests of others which those sections seek to protect.
- (b) The order required by this section may be given by a peace officer, a fireman, a person with authority to control the use of the premises or any person directly affected by the violation.
- (c) It is a defense to prosecution under section 25.16.04.010(a) (3) or (4):
- (1) That in circumstances in which this section requires an order no order was given;
  - (2) That an order, if given, was manifestly unreasonable in scope; or
  - (3) That an order, if given, was promptly obeyed. (Source: Tex. Penal Code § 42.04.) (Ord. No. 867, § 1.)

## **Section 25.16.04030 Loitering**

- (a) A person commits an infraction if he:
- (1) Loiters in a place, at a time or in a manner not usual for law-abiding individuals under circumstances that warrant alarm for the safety of persons or property in the vicinity. Among the circumstances which may be considered in determining whether such alarm is warranted is the fact that the actor takes flight upon appearance of a peace officer, refuses to identify himself, or manifestly tries to conceal himself or any object.
  - (2) Loiters in or about a school, college or university building or grounds, not having any reason or relationship involving custody of, or responsibility for, a pupil or student, or any other specific legitimate reason for being here, and not having written permission from a school administrator or other person authorized to grant such permission.
- (b) The word "loiter" means to delay or to stand idly around.
- (c) Unless flight by the actor or other circumstances makes it impracticable, a peace officer shall, prior to any arrest for an infraction under this section, afford the actor an opportunity to dispel any alarm which would otherwise be warranted, by requesting him to identify himself and explain his presence and conduct.
- (d) No person shall be convicted of an offense under this section if the peace officer did not comply with subsection (c) hereof, or if it appears at trial that the explanation given by the actor was true and, if believed by the peace officer at the time, would have dispelled the alarm.
- (e) It shall be an affirmative defense that the defendant's acts were lawful and he was exercising his right of lawful assembly as a part of peaceful and orderly petition for the redress of grievances, either in the course of labor disputes or otherwise. (Ord. No. 867, § 1.)

### **Section 25.16.04040 Gambling**

- (a) It shall be an infraction to engage in gambling except those forms of gambling allowed by state statute.
- (b) "Gambling" means risking any money, credit, deposit or other thing of value for gain contingent, wholly or partially, upon lot, chance, the operation of gambling apparatus or the happening or outcome of an event, including an election or sporting event, over which the person taking the risk has no control. Gambling does not include:
- (1) Lawful contests of skill, speed, strength or endurance in which awards are made only to entrants or to the owners of entries; or
  - (2) Lawful business transactions or other acts or transactions now or hereafter expressly authorized by law.
- (c) "Gambling apparatus" means any device, machine, paraphernalia or equipment that is used or usable in playing phases or any gambling activity whether that activity consists of gambling between persons, or gambling by person involving the playing of a machine. Gambling apparatus does not include an amusement game or device as defined in North Dakota Century Code, section 53-03-01, or an antique "slot" machine twenty-five years old or older which is collected and possessed by a person as a hobby and is not maintained for the business of gambling. (Ord. No. 867, § 1.)

### **Section 25.16.04050 Prostitution**

- (a) A person is guilty of the offense of prostitution if he:
- (1) Is an inmate of a house of prostitution or is otherwise engaged in sexual activity as a business; or
  - (2) Solicits another person with the intention of being hired to engage in sexual activity.
- (b) Testimony of a person against his or her spouse shall be admissible to prove offenses under this section involving the spouse's prostitution.
- (c) In this section:
- (1) "Sexual activity" means sexual act or sexual conduct as those terms are defined in North Dakota Century Code, section 12.1-20-02.
  - (2) A "house of prostitution" is any place where prostitution is regularly carried on by a person under the control, management or supervision of another.
  - (3) An "inmate" is a prostitute who acts as such in or through the agency of a house of prostitution.

Comment: The ordinance proscribing prostitution is derived from North Dakota Century Code, sections 12.1-29-03.04 and 05. Definitions pertaining to the more serious offenses of promoting prostitution and facilitating prostitution have been omitted. Those two offenses are prohibited as class C felonies or class A misdemeanors, depending on the circumstances, by North Dakota Century Code, sections 12.1-29-01 and 02, respectively. (Ord. No. 867, § 1.)

### **Section 25.16.06010 Sunday Business or Labor - This Section was repealed with Ordinance No. 1312 (March 6, 2006)**

This Section was repealed with Ordinance No. 1312 §5, dated March 6, 2006.

## **Section 25.16.08000 Division 25.16.08 Alcohol-Related Offenses**

### **Section 25.16.08010 Purchase, possession, etc., of alcoholic beverages by persons less than twenty-one years of age prohibited; exceptions**

- (a) Any person under twenty-one years of age purchasing, consuming or having consumed, attempting to purchase or having in his or her possession any alcoholic beverage, or furnishing money to any person for such purchase, or entering any licensed premises where such beverages are being sold or displayed, except as provided by subsection (b) hereof, is guilty of Class B misdemeanor.. The sentence for an offense under this Section must include an order for an addiction evaluation by an appropriate licensed addiction treatment program.
- (b) Any person under twenty-one years of age may remain in a restaurant where alcoholic beverages are being sold if the restaurant is separated from the room in which alcoholic beverages are opened or mixed, if gross sales of food are at least equal to gross sales of alcoholic beverages which are consumed in the dining area, and if (1) accompanied by a parent or legal guardian, (2) employed by the restaurant as a food waiter, food waitress, busboy or busgirl under the direct supervision of a person twenty-one or more years of age, and not engaged in the sale, dispensing, delivery or consumption of alcoholic beverages, or (3) if the person is a law-enforcement officer entering the premises in the performance of official duty. Any establishment where alcoholic beverages are sold may employ persons from eighteen to twenty-one years of age to work in the capacity of musicians under the direct supervision of a person over twenty-one years of age. (Source: North Dakota Century Code, sections 5-01-08 and 5-02-06.) (Ord. No. 867, § 1; Ord. No. 1047, § 1; Ord. No. 1176, § 5, Ord. No. 1645, § 12)

### **Section 25.16.08020 Misrepresentation of age; obligations of licensee**

Any person who shall misrepresent or misstate his age or the age of any other person, or shall misrepresent his age through presentation of any document purporting to show such person to be of legal age to purchase alcoholic beverages shall be guilty of an infraction. Every licensee shall be required to keep a book which such licensee and his employees shall require anyone who has shown documentary proof of his age, which substantiates his age to allow the purchase of alcoholic beverages, to sign if the age of such person is in question. Such book shall show the date of the purchase, the identification used in making the purchase and the appropriate numbers of such identification, the address of the purchaser and his signature. (Source: North Dakota Century Code, section 5-01-08.1.) (Ord. No. 867, § 1; Ord. No. 1176, § 6.)

### **Section 25.16.08030 Bottle clubs prohibited**

Any person operating an establishment whereby persons are allowed to bring their own alcoholic beverages on the premises where the proprietor sells soft drinks, mix, ice or charges for bringing such beverages on the premises, is guilty of a class B misdemeanor. (Source: North Dakota Century Code, section 5-01-10.) (Ord. No. 867, § 1, Ord. No.1645, §

13)

### **Section 25.16.08040 Public intoxication; assistance and/or medical care to be rendered**

A peace officer shall have authority to take any apparently intoxicated person to his home, to a local hospital or, whenever such person constitutes a danger to himself or others, to a jail for the purposes of detoxification. A duly licensed physician of such local hospital shall have authority to hold such person for treatment up to seventy-two hours. Such intoxicated person shall not be held in jail because of intoxication more than twenty-four hours. An intoxicated person shall not be placed in a jail unless a jailer is constantly present within hearing distance and medical services are provided when the need is indicated. Upon placing such person in a hospital or jail, such peace officer shall notify the intoxicated person's family as soon as possible. Any additional costs incurred by the city on account of an intoxicated person shall be recoverable from such person. (Source: North Dakota Century Code, section 5-01-05.1.) (Ord. No. 867, § 1.)

### **Section 25.16.08050 No prosecution solely for intoxication**

No person shall be prosecuted solely for public intoxication. Law-enforcement officers may utilize standard identification procedures on all persons given assistance because of apparent intoxication. (Source: North Dakota Century Code, section 5-01-05.2.) (Ord. No. 867, § 1.)

### **Section 25.16.10000 Division 25.16.10 Protection of Minors**

#### **Section 25.16.10010 Display of objectionable materials or performance to minors; definitions; penalty**

- (a) A person is guilty of a class B misdemeanor if he willfully displays at a newsstand or any other business establishment frequented by minors, or where minors are or may be invited as a part of the general public, any photograph, paperback book, pamphlet or magazine, the exposed cover or available content of which exploits, is devoted to or is principally made up of depictions of nude or partially denuded human figures posed or presented in a manner to exploit sex, lust or perversion for commercial gain.
- (b) As used in this section:
  - (1) "Nude or partially denuded human figures" means less than completely and opaquely covered human genitals, pubic regions, female breasts or a female breast, if the breast or breasts are exposed below a point immediately above the top of the areola, or human buttocks; and includes human male genitals in a discernibly turgid state even if completely and opaquely covered.
  - (2) "Where minors are or may be invited as a part of the general public" includes any public roadway or public walkway.
  - (3) The above shall not be construed to include a bona fide school, college, university, museum, public library or art gallery. (Ord. No. 867, § 1, Ord. No.

**Section 25.16.12000 Division 25.16.12 Miscellaneous Offenses**

**Section 25.16.12010 Discharging or using air guns, spring guns, sling shots, etc.**

It shall be unlawful for any person to discharge or use any air guns, spring gun, sling shot or bow and arrow in the city when such activity may create an injury, danger or hazard to person or property. (Ord. No. 867, § 1.)

**Section 25.16.12020 Erection, construction or maintenance of barbed wire fences or enclosures**

No person shall, within the city, erect, construct or maintain any fence or enclosure of any premises, piece or parcel of ground with what is known as barbed wire, unless such barbed wire on such fence shall be at least six feet above the surface of the ground. (Ord. No. 867, § 1.)

**Section 25.16.12030 Bomb threats, etc.**

It shall be unlawful for any person, without any good reason and justification, to furnish or release any information to any individual or group intended to cause such individual or group to believe that an explosion or other occurrence likely to be damaging to person or property is going to happen. This section shall be considered violated regardless of whether or not anyone is actually deceived by such information as long as such report is calculated to create such deception. (Ord. No. 867, § 1.)

**Section 25.16.12040 Curfew for minors**

(a) It shall be unlawful for any minor under the age of eighteen years to loiter, idle, wander, stroll or play or drive or ride in cars idly or aimlessly in or upon the public streets, avenues, highways, roads, alleys, parks, playgrounds and other public grounds, public places and public buildings, places of amusement or entertainment, and vacant lots or other undersupervised places in the city between the hours of 11:00 P.M. and 5:00 A.M. of the following day for the days of Sunday through Thursday; 1:00 A.M. and 5:00 A.M. of the following day for the days of Friday and Saturday. This section do not apply to a minor while attending or while en route to or from employment or activities supervised by a school, church, civic or fraternal organization or governmental agency, nor shall such provisions apply to a minor accompanied by his or her parents, guardian or other adult person having care and custody of such minor. If it is claimed that such minor is upon an emergency errand, such minor must carry a written permit signed by the parent or legal guardian of the child, stating the nature of the errand, time of departure and the place where the errand is being performed. The curfew as set forth herein shall be 1:00 a.m. for all days of the week for minors attending public dances or other events approved by the City in the summer months from the day after the Dickinson Public School system dismisses classes through the day before classes reconvene each year, provided however, that this exception only applies while said minor is en route to or from said public dance and while attending said dance.

(b) It shall be unlawful for the parent, guardian or other adult person having the lawful care, custody or control of any minor person to willfully and recklessly allow or permit such minor person to violate the provisions of this section, or to aid or abet such violation.

(c) It shall be unlawful for any person operating or in charge of any place of amusement, entertainment or refreshment or other place of business, to knowingly permit any minor to loiter, loaf or idle in such place during the hours prohibited by this section.

(d) Whenever the owner or person in charge of any place of amusement, entertainment or refreshment or other place of business shall find a minor, during the hours prohibited, loitering, loafing or idling in such place of business, he shall immediately order the minor to leave, and if the minor refuses to leave the premises the owner or person in charge shall immediately notify the police department and inform the department of such refusal.

(e) This section shall not be construed so as to permit the presence of any minor in any place where his presence is now prohibited by law.

(f) Any police officer is hereby authorized to arrest without warrant any person or persons observed by him to be violating the provisions of this section.

(g) A person who violates this section shall be guilty of an infraction and sentenced accordingly. (Ord. No. 867, § 1; Ord. No. 1099, § 1; Ord. No. 1114, § 1; Ord. No. 1176, § 7; Ord. No. 1250 § 1.)

### **Section 25.16.12050 Discharging firearms, explosives, etc.**

No person shall fire or discharge within the city limits any gun, cracker, cannon cracker, fowling piece, pistol or firearm of any description containing powder or combustible material or do any blasting of rock or other substance, unless a written permit granting permission so to do, which shall prescribe the time at which such firing is permitted, shall first be issued by the president of the board of city commissioners. Any permit so issued shall be subject to revocation by the president at any time after it is granted. (Ord. No. 867, § 1, Ord. No. 1645 §15.) A person violating this section shall be guilty of a class B misdemeanor.

### **Section 25.16.12060 Electrical interference with radio reception-- Generally**

It shall be unlawful for any person knowingly to maintain, use, operate or cause to be operated within the city any machine, device, appliance, equipment or apparatus of any kind whatsoever, the operation of which shall cause reasonably preventable electrical interference with radio reception within the city. The maintenance, use or operation within the city of any machine, device, appliance, equipment or apparatus of any kind so as to interfere with radio reception in violation hereof is hereby declared to be a common nuisance.

This section shall not be held or construed to embrace or cover the regulation of any transmitting, broadcasting or receiving instrument, apparatus or device used in interstate commerce or the operation of which is licensed or authorized by or under the provisions of any act of Congress. (Ord. No. 867, § 1.)

### **Section 25.16.12070 Same--Operation of X-ray equipment**

A person duly licensed to practice medicine, osteopathy, chiropractic or dentistry by the state may, in the course of the practice of his profession, operate or cause to be operated under

his direct supervision at any time any machine or apparatus necessary to make X-ray pictures or examinations or to give treatments if the machines or apparatus used therefor are properly equipped to avoid all unnecessary or reasonably preventable interference with radio reception and are not negligently operated. (Ord. No. 867, § 1.)

### **Section 25.16.12080 Same--Enforcement of restrictions generally; right of city engineer to enter for inspection**

It shall be the duty of the city engineer and his duly authorized deputies and assistants to administer and enforce the provisions of this section, to inspect the installation, working and operation of all apparatus, devices, appliances or equipment causing or likely to cause radio interference, to investigate complaints of such interference, to locate the sources thereof and to advise and make recommendations and orders as to its elimination.

The city engineer and his duly authorized deputies and assistants shall have the right to enter upon any premises at all reasonable hours for the purpose of inspecting the installation and working of all machines, devices, appliances, equipment or apparatus coming within the terms of sections 25.16.12.060 to 25.16.12.100. It shall be unlawful for any person to interfere with any such officer in making the inspection, to refuse to permit him to enter the premises for any such purpose or to hinder him in the discharge of his duties. Any inspector entering any premises to make any such inspection, upon request, shall exhibit to any person there in charge a certificate of the city auditor showing his authority as an inspector. (Ord. No. 867, § 1.)

### **Section 25.16.12090 Same--Notification of violation**

When an official inspection and test shall have been made and it is found that any machine, device, appliance, equipment or apparatus is being operated within the city in violation of sections 25.16.12.060, 25.16.12.070, 25.16.12.080 and 25.16.12.090, the city engineer shall notify the owner or operator thereof in writing to discontinue the use of such device, etc. or to make such additions, repairs, adjustments or alterations so that such device, etc., may be lawfully operated. This notice shall be personally served on the owner or operator and, in the event that such owner or operator does not within seventy-two hours after such service either entirely discontinue the use of such device etc., or repair, adjust or alter it or attach proper silencing devices so that it conforms to this section, the further maintenance, use or operation thereof shall be deemed a violation. (Ord. No. 867, § 1.)

### **Section 25.16.12100 Same--Prosecution**

When any person has been notified in writing by any peace officer that he is violating sections 25.16.12.060 to 25.16.12.090 and the written notice has specified the time within which the interfering apparatus shall be corrected, each day's maintenance or operation of the same without correction after the expiration of the time stated in the notice shall be considered a separate offense hereunder. The giving of such notice shall not be prerequisite to prosecution for a single offense, but one arrested for such a violation shall be discharged upon submission to the police magistrate of satisfactory evidence that he has within seventy-two hours caused the apparatus, device, appliance or equipment, the operation of which has caused radio interference, to conform to the requirements. (Ord. No. 867, § 1.)

### **Section 25.16.12110 Manufacture, sale, use, etc., of explosives**

No person shall manufacture, keep, store or have in his possession for the purpose of storing, keeping or selling any nitroglycerine, dynamite, dynamite caps, fulminate of mercury, blasting powder, guncotton or any other dangerous explosive within the city.

Any person desiring to use any nitroglycerine, dynamite, dynamite caps, fulminate of mercury, blasting powder, guncotton or other dangerous explosive within the city shall first make application in writing to the chief of the fire department and it shall be illegal to proceed with such use of such explosive until a permit is issued by the chief of the fire department.

No person shall weigh, sell or handle by candle, lamp, gas light or any other open light any gunpowder or other explosive, and no person shall bring or have any such light or any fire or any burning substance within fifteen feet of any such explosive at any time. (Ord. No. 867, § 1.)

### **Section 25.16.12120 Installation of loudspeakers and musical instruments**

It shall be unlawful for any person to place upon any street or sidewalk of the city or the entrance of any building in the city any radio or radio loudspeaker, or other musical instrument the sound of which is transmitted through the air, or to place or install any radio or radio loudspeaker or other musical instrument in an opening so as to cause the sound thereof to be transmitted outside of the building; provided, however, that this section shall not apply in any manner to any type of sound equipment utilized on, in or in conjunction with church buildings or otherwise permitted by the city commission. (Ord. No. 867, § 1.)

### **Section 25.16.12130 Use, possession, etc., of controlled substances**

It shall be unlawful for any person to possess the controlled substance marijuana, and any person who violates this section regarding possession of one ounce, (28.35 grams) or less of marijuana shall be guilty of a class B misdemeanor.

Whenever a person pleads guilty or is found guilty of a first offense regarding possession of marijuana aforesaid and the judgment of guilt is entered, the court, upon motion, shall seal the court record of that conviction if the person is not subsequently convicted within two years of a further violation of this section or chapter 19-03.1 of the North Dakota Century Code, and has not been convicted of any other criminal offense. Once sealed, the court record may not be opened even by order of the court.

Whenever any person who has not previously been convicted of any offense under this section or under any statute of the United States or of any state relating to narcotic drugs, marijuana, or stimulant, depressant or hallucinogenic drugs, pleads guilty to or is found guilty of possession of marijuana as aforesaid, the court, without entering a judgment of guilt and with the consent of the accused, may defer further proceedings and place him on probation upon terms and conditions. Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge the person and dismiss the proceeding against him. Discharge and dismissal under this section shall be without adjudication of guilt and is not a conviction for purposes of this section or for purposes of disqualifications for disabilities imposed by law upon conviction of a crime. There may be only one discharge and dismissal under this section with respect to any person. (Ord. No. 867, § 1; Ord. No. 1590, § 13.)

## **Section 25.16.12135 Unlawful Possession of Marijuana Paraphernalia**

A person may not use or possess with the intent to use drug paraphernalia to ingest, inhale, or otherwise introduce into the human body marijuana in violation of North Dakota Century Code 19-03.1. A person violating this subsection is guilty of a class B misdemeanor. (Ord. No.1590, § 14)

## **Section 25.16.12140 Posting, etc., of bills, posters, etc.; distribution of handbills, etc.**

Without having first obtained consent of the owner or occupants, no person shall paste-up, stick-up, nail or post handbills, placards or posters or make, print or mark any work, character or advertisement of any kind upon any private house, railing, fence, telegraph, telephone, electric light or other pole or post, any automobile or other vehicle, whether upon the streets of the city or elsewhere, or other private property; nor shall he post, print, mark or nail any handbill, poster or advertisement of any kind upon any public building, bridge, fence, street or sidewalk within the city, except in compliance with the requirements of law in the posting of legal notices.

No person, whether licensed or not, shall scatter or throw upon the streets, avenues, sidewalks or alleys of the city, or into any vehicles thereon any handbill, poster, advertisement or paper. (Ord. No. 867, § 1.)

## **Section 25.16.12150 Spitting, throwing litter, etc., in public places**

It shall be unlawful for any person to spit, expectorate or throw fruit, fruit parings or skins, nuts or nut shells upon the sidewalks or crossing of any of the streets, avenues, alley or driveways within the corporate limits of the city or upon the floors, stairs or hallways within or sidewalls leading to or from any public building, theatre, public hall or office or store or any railway depot or platform connected therewith or connected thereto, whether such premises are publicly or privately owned.

No person shall throw or deposit upon any street or highway within the limits of the city any glass bottle, glass, nails, tacks, wires or cans likely to injure any person, animal or vehicle, or throw or deposit rubbish of any kind upon the street. A person who violates this section shall be guilty of an infraction and sentenced accordingly. (Ord. No. 867, § 1.)

## **Section 25.16.12160 Unlawful Deposit of Materials at Recycling Sites**

The Board of City Commissioners hereby finds that designated recycling sites operated and maintained by the City of Dickinson are intended for the sole purpose of collection of recyclable materials therein designated at the site; and further finds that persons depositing materials at recycling sites other than those materials specifically designated therefore impose a significant harm upon the City and its citizens in the form of, among other things, increased costs of collection and potential of fire and other hazards.

Therefore, it shall be unlawful for any person to deposit any materials at any designated recycling site operated and maintained by the City of Dickinson except for those specific materials

designated for collection of recyclables as provided in signs placed by the City upon the recycling site.

Any person who violates this section shall be guilty of an infraction, which may be punishable by a fine of up to \$500. (Ord. No.1441 § 1.)

### **Section 25.16.12170 Soliciting and Panhandling**

1. Statement of Purpose. The intent and purpose of this section is to promote and protect the public health, welfare and safety of the City, its residents and visitors. The City finds that that the activity of begging, panhandling or soliciting the occupants or operators of vehicles from any roadway, highway, street, ally, driveway, median strip within or between a public roadway distracts drivers and creates a potential safety hazard or pedestrians and motorists. The activity of soliciting from occupants of vehicles distracts drivers from their primary duty to watch traffic and pedestrians and be alert for potential hazards and to observe all traffic control signals, signs or warnings. Distracted drivers are more prone to be involved in accidents, and accidents on the streets constitute a substantial traffic safety problem.

Solicitation near school and churches presents a potentially threatening environment and raises concerns regarding public health, welfare and safety of the City, its residents and visitors. Soliciting in a manner that is confrontational and involves conduct that is perceived by the person being solicited as harassing, coercing, or intimidating or which obstructs the free passage of that individual is detrimental to the quality of life and economic vitality of the community.

This section is not intended to limit any person from exercising his or her constitutional right to solicit, picket, protest or engage in other constitutionally protected activity, but rather to protect citizens from the fear and intimidation accompanying certain kinds of solicitations and to eliminate a source of traffic hazards and delays.

2. Definitions. Whenever the following words and phrases are used in this section, they shall have the following meanings:

- (a) Aggressive Panhandling. Shall mean engaging in any conduct with the intention of intimidating another person, or in reckless disregard of the fact that another person is intimidated by his/her conduct, into giving away money or goods, including but not limited to, approaching, speaking to or following a person in a manner that would cause a reasonable person to fear imminent physical injury or the imminent commission of a criminal act upon the person or upon property in the person's immediate possession; touching another person without consent, continuing to solicit after the person gives a negative response to the request; using violent or threatening gestures or language in conjunction with the solicitation; or engaging in any conduct intended to or likely to intimidate a person into responding affirmatively to the solicitation.

- (b) Panhandling or Soliciting. For purposes of this section, panhandling, solicit, soliciting and solicitation are interchangeable and mean employment of the spoken, written or printed word or other acts as are conducted in the

furtherance of the purpose of collecting money or any item of value for the use of one's self or other's; or attempting to sell or obtain compensation for items or services under circumstances that would leave a reasonable person to conclude that the payment is in substance donation.

(c) Public Area. Shall mean an area to which the public or a substantial group of persons has access, and includes, but is not limited to, any street, highway, sidewalk, parking lot, plaza, transportation facility, school or school grounds, place of amusement, park, playground, and any doorway, entrance, hallway, lobby and other portion of any business establishment, an apartment, house or hotel not constituting a room or apartment designed for actual residence.

(d) Highway 22 Corridor shall mean that area in the City of Dickinson described as follows: Starting within five hundred feet in any direction from the center of the intersection of 12<sup>th</sup> Street and Highway 22 then north with a setback of one-hundred feet to the east and west of Highway 22 to the intersection of 23rd Street and Highway 22. This area shall include the five hundred feet in any direction from the center of the intersection of 23rd Street and Highway 22.

3. Prohibition. It shall be unlawful for any person to:

- (a) Engage in any aggressive panhandling in a public area;
- (b) Solicit on private property if the owner, tenant or lawful occupant has asked the person not to solicit on their property, or has posted a sign clearly indicating that soliciting is not welcome on the property;
- (c) Solicit any operator of a motor vehicle within the Highway 22 Corridor;
- (d) Solicit any operator of a motor vehicle within five hundred feet from the centerline of any I-94 exit ramp into the City of Dickinson. This shall include any and all exit ramps currently in operation and any and all exit ramps subsequently constructed;
- (e) Solicit within 100 feet of any school building or school playground when children are present. For purposes of this subsection, a school shall not include a college, university or other institution of higher learning.
- (f) Solicit within 100 feet of any church or other religious establishment

3. This section does not apply to solicitations made on private property with the prior consent of the owner or other person in legal possession of the property. The section also does not apply to solicitations made by any person or entity that has obtained a special use permit or a temporary use permit from the City of Dickinson.

4. Penalty. A person who violates this Section by engaging in any of the conduct outlined in subsection 3(a)-(f) is guilty of an infraction. A motorist that stops the free flow of traffic at the intersections and exit ramps identified above for the purpose of engaging a person who is panhandling shall be cited under Chapter 23 of the Dickinson Municipal Code. (Ord. No. 1588, § 1.)

## **Article 25.20 Sentencing**

### **Sections:**

<b>25.20.010</b>	<b>Classification of offenses</b>
<b>25.20.020</b>	<b>Sentencing alternatives</b>
<b>25.20.030</b>	<b>Procedure for trial of infraction</b>
<b>25.20.040</b>	<b>Special sanction for organizations</b>
<b>25.20.050</b>	<b>Factors to be considered in sentencing</b>
<b>25.20.060</b>	<b>Imposition of fine; response to nonpayment</b>
<b>25.20.070</b>	<b>Probation--Generally</b>
<b>25.20.080</b>	<b>Same--Conditions; revocation</b>
<b>25.20.090</b>	<b>Restitution or reparation</b>
<b>25.20.100</b>	<b>Merger of sentences; sentencing for multiple offenses</b>

### **Section 25.20.010 Classification of offenses**

Offenses against the ordinances of the city are divided into two classes, as follows:

- (a) Offense, for which a maximum penalty of thirty days imprisonment, a fine of one thousand five hundred dollars, or both, may be imposed.
- (b) Infraction, for which a maximum fine of one thousand dollars may be imposed. Any person convicted of an infraction who has, within one year prior to commission of the infraction of which he was convicted, been previously convicted of an offense classified as an infraction of state statutes or the ordinances of this or any other North Dakota municipality may be sentenced as though convicted of an offense. If the prosecution contends that the infraction is punishable as an offense, the complaint shall so specify unless the prosecution is unable with reasonable effort to learn of the prior conviction prior to execution of the complaint.
- (c) All violations of the provisions of the ordinances of the city are offenses unless specifically labeled infractions or unless a different classification or punishment is specifically authorized. (Source: North Dakota Century Code, section 12.1-32-01.)
- (d) North Dakota Century Code, section 40-05-06, shall not be construed to prohibit the utilization of the sentencing alternatives, other than a fine or imprisonment, provided by North Dakota Century Code, sections 12.1-32-02, for the violation of a city ordinance, nor shall this section limit the use of deferred or suspended sentences pursuant to subsections 3 and 4 of North Dakota Century Code, section 12.1-32-02. (Ord. No. 867, § 1; Ord. No. 1025, § 1; Ord. No. 1157 § 6, Ord. No. 1645 § 16 )

### **Section 25.20.020 Sentencing alternatives**

- (a) Every person convicted of an offense who is sentenced by the court shall be sentenced to one or a combination of the following alternatives, unless the sentencing alternatives are otherwise specifically provided in the statute defining the offense:
  - (1) Payment of the reasonable costs of his prosecution.
  - (2) Probation.
  - (3) A term of imprisonment, including intermittent imprisonment.
  - (4) A fine.

- (5) Restitution for damages resulting from the commission of the offense.
- (6) Restoration of damaged property, or other appropriate work detail.
- (7) Commitment to an appropriate licensed public or private institution for treatment of alcoholism, drug addiction or mental disease or defect.
- (8) Commitment to any other facility or program deemed appropriate for the treatment of the individual offender, including available community-based programs.

Sentences imposed under this subsection shall not exceed in duration the maximum sentences provided in section 25.20.010, or as provided specifically in an ordinance defining an offense.

This subsection shall not be construed as not permitting the unconditional discharge of an offender following conviction. Sentences under paragraphs (5) or (6) shall be imposed in the manner provided in section 25.20.090. This subsection shall not be construed to prohibit utilization of North Dakota Century Code, section 40-18-13, relating to suspension of sentence, nor shall this subsection limit the conditions which can be imposed on a probationer under section 25.20.070.

(b) Credit against any sentence to a term of imprisonment shall be given by the court to a defendant for all time spent in custody as a result of the criminal charge for which the sentence is imposed, or as a result of the conduct on which such charge was based. "Time spent in custody" shall include time spent in custody in a jail or mental institution for the offense charged, whether that time is spent prior to trial, during trial, pending sentence or pending appeal.

(c) A court may refer a person convicted of driving while under the influence of an intoxicating liquor or a narcotic drug, prior to sentencing, to an approved treatment facility for diagnosis. Upon receipt of the results of this diagnosis, the court may impose a sentence as prescribed in section 23.76.010 or it may sentence the person to treatment in a facility approved by the state department of human services.

(d) All sentences imposed shall be accompanied by a written statement by the court setting forth the reasons for imposing the particular sentence. The statement shall become part of the record of the case.

(e) If an offender is sentenced to a term of imprisonment, that term of imprisonment commences at the time of the sentencing unless, upon motion of the defendant, the court orders the term to commence at some other time. (Source: North Dakota Century Code, section 12.1-32-02.) (Ord, No. 867, § 1.)

### **Section 25.20.030 Procedure for trial of infraction**

(a) Except as provided in this subsection, all procedural provisions relating to the trial of criminal cases as provided in the statutes or rules relating to criminal procedure shall apply to the trial of a person charged with an infraction. A person charged with an infraction is not entitled to be furnished counsel at public expense unless he may be subject to a sentence of imprisonment under subsection (b) of section 25.20.010.

(b) Except as provided in North Dakota Century Code, title 12.1, or the ordinances of the city, all provisions of law and rules of criminal procedure relating to offenses shall apply to infractions, including, but not limited to, the powers of law-enforcement officers, the periods for commencing action and bringing a case to trial and the burden of proof.

(c) Following conviction of an infraction, the offender may be sentenced in accordance with subsection (a) of section 25.20.020, except that a term of imprisonment may not be imposed

except in accordance with subsection (c) of section 25.20.060 or subsection (b) of section 25.20.010.

(d) If an ordinance provides that conduct is an infraction without specifically including a requirement of culpability, no culpability is required.

(e) Except as provided in this section, section 25.20.010 or section 25.20.020, or as the context may otherwise indicate a differentiation between the infraction classification and the offense classification, the term "offense" refers to all violations of the ordinances of the city including infractions. (Source: North Dakota Century Code, section 12.1-32-03.1.) (Ord. No. 867, § 1.)

### **Section 25.20.040 Special sanction for organizations**

When an organization is convicted of an offense, the court may, in addition to any other sentence which may be imposed, require the organization to give notice of its conviction to the persons or class of persons ostensibly harmed by the offense, by mail or by advertising in designated areas or by designated media or otherwise. (Source: North Dakota Century Code, section 12.1-32-03.) (Ord. No. 867, § 1.)

### **Section 25.20.050 Factors to be considered in sentencing**

The following factors, or the converse thereof where appropriate, while not controlling the discretion of the court, shall be accorded weight in making determinations regarding the desirability of sentencing an offender to imprisonment:

- (a) The defendant's criminal conduct neither caused nor threatened serious harm to another person or his property.
- (b) The defendant did not plan or expect that his criminal conduct would cause or threaten serious harm to another person or his property.
- (c) The defendant acted under strong provocation.
- (d) There were substantial grounds which, though insufficient to establish a legal defense, tend to excuse or justify the defendant's conduct.
- (e) The victim of the defendant's conduct induced or facilitated its commission.
- (f) The defendant has made or will make restitution or reparation to the victim of his conduct for the damage or injury which was sustained.
- (g) The defendant has no history of prior delinquency or criminal activity, or has led a law-abiding life for a substantial period of time before the commission of the present offense.
- (h) The defendant's conduct was the result of circumstances unlikely to recur.
- (i) The character, history and attitudes of the defendant indicate that he is unlikely to commit another crime.
- (j) The defendant is particularly likely to respond affirmatively to probationary treatment.
- (k) The imprisonment of the defendant would entail undue hardship to himself or his dependents.
- (l) The defendant is elderly or in poor health.
- (m) The defendant did not abuse a public position of responsibility or trust.
- (n) The defendant cooperated with law-enforcement authorities by bringing other offenders to justice, or otherwise cooperated.

Nothing herein shall be deemed to require explicit reference to these factors in a presentence report or by the court as sentencing. (Source: North Dakota Century Code, section 12.1-32-04.) (Ord. No. 867, § 1.)

### **Section 25.20.060 Imposition of fine; response to nonpayment**

- (a) The court, in making a determination of the propriety of imposing a sentence to pay a fine, shall consider the following factors:
  - (1) The ability of the defendant to pay without undue hardship.
  - (2) Whether the defendant, other than a defendant organization, gained money or property as a result of commission.
  - (3) Whether the sentence to pay a fine will interfere with the defendant's capacity to make restitution.
  - (4) Whether a sentence to pay a fine will serve a valid rehabilitative purpose.
- (b) The court may allow the defendant to pay any fine or costs imposed in installments. When a defendant is sentenced to pay a fine or costs, the court shall not impose at the same time an alternative sentence to be served in the event that the fine or costs are not paid.
- (c) If the defendant does not pay any fine or costs imposed, or make any required partial payment, the court, upon motion of the prosecuting attorney or on its own motion, may issue an order to show cause why the defendant should not be imprisoned for nonpayment. Unless the defendant shows that this default is excusable, the court may, after hearing, commit him to imprisonment until the fine or costs, or both, are fully paid or discharged by labor as provided in North Dakota Century Code, section 40-18-12.

The court may not commit a person under this section when the sole reason for his nonpayment is his indigency. An order or commitment under this subsection shall not be for a period in excess of thirty days. As used in this subsection, "fine" does not include a fee established pursuant to subsection (b) of section 23.80.080. (Source: North Dakota Century Code, section 12.1-32-05 and section 40-11-12.) (Ord. No. 867, § 1.)

### **Section 25.20.070 Probation--Generally**

- (a) Unless terminated as provided in subsection (b) hereof, the period during which a sentence to probation shall remain conditional and be subject to revocation is two years.
- (b) The court may terminate a period of probation and discharge the defendant at any time earlier than that provided in subsection (a) above if warranted by the conduct of the defendant and the ends of justice.
- (c) Notwithstanding the fact that a sentence to probation can subsequently be modified or revoked, a judgment which includes such a sentence shall constitute a final judgment for all other purposes. (Source: North Dakota Century Code, section 12.1-32-06.) (Ord. No. 867, § 1.)

### **Section 25.20.080 Same--Conditions; revocation**

- (a) The conditions of probation shall be such as the court in its discretion deems reasonably necessary to ensure that the defendant will lead a law-abiding life or to assist him to do so. The court shall provide as an explicit condition of every sentence to probation that the defendant not commit another offense during the period for which the sentence remains subject to revocation.

- (b) When imposing a sentence to probation, the court may impose such conditions as it deems appropriate, and may include any one or more of the following:
- (1) Work faithfully at a suitable employment or faithfully pursue a course of study or of vocational training that will equip him for suitable employment.
  - (2) Undergo available medical or psychiatric treatment and remain in a specified institution as required for that purpose.
  - (3) Attend or reside in a facility established for the instruction, recreation or residence of persons on probation.
  - (4) Support his dependents and meet other family responsibilities.
  - (5) Make restitution or reparation to the victim of his conduct for the damage or injury which was sustained, or perform other reasonable assigned work. When restitution, reparation or assigned work is a condition of the sentence, the court shall proceed as provided in section 25.20.090.
  - (6) Pay a fine imposed after consideration of the provisions of section 25.20.060.
  - (7) Refrain from possessing a firearm, destructive device or other dangerous weapon unless granted written permission by the court.
  - (8) Refrain from excessive use of alcohol, or any use of narcotics or of another dangerous or abusable drug without a prescription.
  - (9) Promptly notify the court of any change of address or employment.
  - (10) Remain within the jurisdiction of the court, unless granted permission to leave by the court.
  - (11) Refrain from associating with known users or traffickers in narcotics, marijuana or other controlled substances.
- (c) When a defendant is sentenced to probation, he shall be given a certificate explicitly setting forth the conditions on which he is being released.
- (d) The court may, upon notice of the probationer, modify or enlarge the conditions of a sentence to probation at any time prior to the expiration or termination of the period for which the sentence remains conditional. If the defendant violates a condition at any time prior to the expiration or termination of the period, the court may, pursuant to the procedure specified in North Dakota Rules of Criminal Procedure, 32(f), continue him on the existing sentence, without modifying or enlarging the conditions or, if such continuation, modification or enlargement is not appropriate, may impose any other sentence that was available under section 25.20.020 at the time of the initial sentencing.
- (e) Jurisdiction over a probationer may be transferred from the court which imposed the sentence to another court of this state, with the concurrence of both courts. Retransfers of jurisdiction may also occur in the same manner. The court to which jurisdiction has been transferred under this subsection shall be authorized to exercise all powers permissible under this chapter over the defendant. (Source: North Dakota Century Code, section 12.1-32-07.) (Ord. No. 867, § 1.)

### **Section 25.20.090 Restitution or reparation**

- (a) Prior to imposing restitution or reparation as a sentence or condition of probation, the court shall hold a hearing on the matter with notice to the prosecuting attorney and to the defendant as to the nature and amount thereof. At or following the hearing, the court shall make determinations as to:

- (1) The reasonable damages sustained by the victim or victims of the criminal offense, which damages shall be limited to fruits of the criminal offense and expenses actually incurred as a direct result of the defendant's criminal action.
- (2) The ability of the defendant to restore the fruits of the criminal action or to pay monetary reparations, or to otherwise take action to restore the victim's property.
- (3) The likelihood that attaching a condition relating to restitution or reparation will serve a valid rehabilitational purpose in the case of the particular offender considered.

The court shall fix the amount of restitution or reparation, which shall not exceed an amount the defendant can or will be able to pay, or shall fix the manner of performance of any condition or conditions of probation established pursuant to this subsection. Any payments made pursuant to such order shall be deducted from damages awarded in a civil action arising from the same incident. An order that a defendant make restitution or reparation as a sentence or condition of probation may, if the court so directs, be filed, transcribed and enforced by the person entitled to the restitution or reparation in the same manner as civil judgments rendered by the courts of this state may be enforced.

(b) The court may order the defendant to perform reasonable assigned work as a condition of probation, which assigned work need not be related to the offense charged, but must not be solely for the benefit of the private individual other than the victim. (Source: North Dakota Century Code, section 12.1-32-08.) (Ord. No. 867, § 1.)

### **Section 25.20.100 Merger of sentences; sentencing for multiple offenses**

(a) Unless the court otherwise orders, when a person serving a term of commitment is committed for another offense, or offenses, the shorter term or the shorter remaining term shall be merged in the other term. When a person on probation or parole for an offense committed in this city is sentenced for another offense or offenses, the period still to be served on probation or parole shall be merged in any new sentence of commitment or probation. When the court merges sentences under this subsection it shall forthwith furnish the penal facility in which the defendant is confined under sentence with authenticated copies of its sentence, which shall cite the sentences being merged. If the court has imposed a sentence which is merged pursuant to this subsection, it shall modify such sentence in accordance with the effect of the merger.

(b) A defendant may not be consecutively sentenced to more than one year. (Source: North Dakota Century Code, section 12.1-32-11.) (Ord. No. 867, § 1.)