TITLE 6

CRIMINAL OFFENSES

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CHAPTER 6-01. GENERAL PROVISIONS

6-01-01. Definitions. Where a term is used in this chapter, the meaning of that term as defined in Title 12.1, N.D.C.C., if that term is so defined, is hereby adopted by reference and incorporated herein.

6-01-02. Conflict with State Law. No offense defined in this chapter shall be construed to supersede any offense defined in Title 12.1, N.D.C.C., or elsewhere in state law. In the event any section of this chapter is in conflict with or contrary to any offense defined in Title 12.1 or elsewhere in state law, as those statutes maybe amended from time to time, the language in conflict with or contrary to state law shall be invalid and the offense containing such language shall be construed to be consistent with the definition of that offense set forth in state law.

6-01-03. Liability and Culpability. The provisions of Chapter 12.1, N.D.C.C., dealing with liability and culpability, as that chapter may be amended from time to time, are hereby adopted by reference and incorporated herein.

6-01-04. Accomplices - Corporations - Agents. The provisions of Chapter 12.1-03, N.D.C.C., dealing with accomplices, corporations and agents, as that chapter may be amended from time to time, are hereby adopted by reference and incorporated herein.

6-01-05. Juveniles - Intoxication - Mental Disease. The provisions of Chapter 12.1-04, N.D.C.C., dealing with juveniles, intoxication and mental disease, as that chapter may be amended from time to time, are hereby adopted by reference and incorporated herein.

6-01-06. Justification - Excuse - Affirmative Defenses. The provisions of Chapter 12.1-05, N.D.C.C., dealing with justification, excuse and affirmative defenses, as that chapter may be amended from time to time, are hereby adopted by reference and incorporated herein.

CHAPTER 6-02. GENERAL OFFENSES

6-02-01. Criminal Attempt.

1. A person is guilty of criminal attempt if, acting with the kind of culpability otherwise required for commission of an offense, that person 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.

2. A person who engages in conduct intending to aid another to commit an offense is guilty of criminal attempt if the conduct would establish that person's complicity as an accomplice under NDCC 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 the other has a defense of justification or entrapment.

3. Criminal attempt is an offense of the same class as the offense attempted.

4. Anything which constitutes an affirmative defense to prosecution under NDCC Sec. 12.1-06-01 is an affirmative defense to a prosecution under this section.

Reference: NDCC Sec. 12.1-06-01 (1985)

6-02-02. Aiding Consummation of Crime. A person is guilty of aiding consummation of an offense against the ordinances of this city if that person intentionally aids another to secrete, disguise, or convert the proceeds of the offense against the ordinances of this city or otherwise profits from the offense.

Reference: NDCC Sec. 12.1-08-04 (1985)

6-02-03. Public Servants Permitting Escape. A public servant concerned in official detention, as defined in NDCC Sec. 12.1-08-06(3), pursuant to process issued by a court, judge, or magistrate is guilty of an offense against the ordinances of this city if the public servant negligently permits an escape.

Reference: NDCC Sec. 12.1-08-07 (1985)

6-02-04. Criminal Contempt.

1. The municipal court has power to punish for contempt of its authority only for the following offenses:

a. Misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice;

b. Misbehavior of any of its officers in their official transactions.

c. Disobedience or resistance to its lawful writ, process, order, rule, decree or command.

2. Except as otherwise provided, a criminal contempt proceeding under this section is deemed a prosecution for an offense for the purposes of NDCC Chapters 12.1-01 through 12.1-05, NDCC Chapter 12.1-32, and the provisions of this chapter.

3. 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 that 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 pursuant to the criminal proceeding.

4. 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. Disobedience or resistance to its lawful writ, process, order, rule, decree or command shall be dealt with according to N.D.C.C. Sec. 40-18-14.

Reference: NDCC Sec. 12.1-10-01 (1985)

6-02-05. Impersonating City Officials.

1. A person is guilty of an offense if that person falsely pretends to be a public servant and acts as if to exercise the authority of that public servant.

2. 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 the pretension or falsely pretends to be a law enforcement officer, the offender is guilty of the greater offense prohibited by NDCC Section 12.1-13-04(1)(b), which is not subject to the jurisdiction of the municipal court.

Reference: NDCC Sec. 12.1-13-04 (1985) (Ord. 4346, 11-20-90)

6-02-06. Discrimination in Public Places. A person is guilty of an offense if, whether or not acting under color of

law, that person, by force, or threat of force or by economic coercion, intentionally:

1. Injures, intimidates, or interferes with another because of the other's sex, race, color, religion, or national origin and because the other person is or has been exercising or attempting to exercise the right to full and equal enjoyment of any facility open to the public.

2. Injures, intimidates, or interferes with another because of the other's sex, race, color, religion, or national origin in order to intimidate that person or any other person from exercising or attempting to exercise the right to full and equal enjoyment of any facility open to the public.

Reference: NDCC Sec. 12.1-14-04 (1985)

6-02-07. Preventing Exercise of Civil Rights. A person is guilty of an offense if, whether or not acting under color of law, that person, by force or threat of force or by economic coercion, intentionally:

1. Injures, intimidates or interferes with another because the other person is about to exercise his or her civil rights, or because the other person has exercised his or her civil rights.

2. Intimidates or prevents another from aiding a third person to exercise his or her civil rights.

Reference: NDCC Sec. 12.1-14-05 (1985)

6-02-08. False Report to Law Enforcement Officers. A person is guilty of an offense if that person knowingly gives false information to a law enforcement officer with intent to falsely cause an official investigation to begin or to affect the course or outcome of an official investigation or the disposition of the matter or investigation for which given.

Reference: NDCC Sec. 12.1 11-03 (1985)

6-02-09. Fleeing from Officer. It is unlawful for any person who has been apprehended by a police officer to leave the presence of the officer in such a manner as to cause the officer to pursue such person, or for any person being pursued by a police officer for the purpose of apprehension to fail to stop at the command or direction of the officer.

Source: Code of Ords., 1973, Sec. 24-8

CHAPTER 6-03. OFFENSES AGAINST PERSONS

6-03-01. Simple Assault. A person is guilty of an offense if that person:

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.

Reference: NDCC Sec. 12.1-17-01 (1985)

6-03-02. Sexual Assault.

1. A person who knowingly has sexual contact with another, or who causes such other person to have sexual contact with him or her, is guilty of an offense if:

a. That person knows or has reasonable cause to believe that the contact is offensive to the other person;

b. That person knows or has reasonable cause to believe that the other person suffers from a mental disease or defect which renders him or her incapable of understanding the nature of his or her conduct;

c. That person or someone with his or her knowledge has substantially impaired the other person's power to appraise or control his or her conduct, by administering or employing without the other's knowledge, intoxicants or other means for the purpose of preventing resistance;

d. The other person is in official custody or detained in a hospital, prison, or other institution and the actor has supervisory or disciplinary authority over that person.

2. As used in this section, "sexual contact" means sexual contact as that term is defined at Section 12.1-20-02, N.D.C.C.

Reference: NDCC Sec. 12.1-20-07 (1985)

6-03-03. Harassment. A person is guilty of an offense if, with intent to frighten or harass another, that person:

1. Makes a telephone call anonymously, or using offensively course language or, using other electronic communication, communicates offensive material with no purpose of legitimate communication;

2. Makes repeated telephone calls, or other electronic communication, whether or not conversation ensues, with no purpose of legitimate communication; or

3. Communicates a falsehood by telephone or by electronic communication and causes mental anguish.

4. Telephones or initiates communication with a 911 emergency line with the intent to annoy or harass another person or a public safety agency or who makes a false 911 report.

a. Intent to annoy or harass is established by proof of one or more calls with no legitimate 911 emergency purpose.

b. Upon conviction of a violation of this subsection, a person is also liable for all costs incurred as the result of any unnecessary emergency response.

5. Any offense defined herein and committed by use of electronic communication may be deemed to have been committed at either the place at which the electronic communication was made or at the place where the electronic communication was received.

6. Electronic communication means the transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, telephone, radio, electromagnetic, digital, photo-electronic, wireless or photo-optical system.

Reference: NDCC Sec. 12.1-17-07 (1985)
(Ord. 5032, 03-14-00; Ord. 6225, 08-09-16)

6-03-04. Consent as a Defense.

1. When conduct is an offense because it threatens or causes bodily injury, consent to the conduct causing bodily injury by all persons injured by the conduct is a defense if:

a. Neither the injury inflicted nor the injury threatened is such as to jeopardize life or seriously impair health;

b. The conduct and the injury are reasonably foreseeable hazards of joint participation in a lawful athletic contest of competitive sport; or

c. 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.

2. Assent does not constitute consent, within the meaning of this ordinance, if:

a. 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;

b. 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

c. It is induced by force, duress, or deception.

Reference: NDCC Sec. 12.1-17-08 (1985)

CHAPTER 6-04. OFFENSES AGAINST PROPERTY

6-04-01. Criminal Mischief. A person is guilty of an offense if that person:

1. Willfully tampers with tangible property of another so as to endanger person or property;

2. Willfully damages tangible property of another.

Conduct is punishable as criminal mischief under this ordinance 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 other damages to tangible property of another are not caused by means of an explosive or a destructive device.

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.

Reference: NDCC Sec. 12.1-21-05 (1985)

6-04-02. Tampering With or Damaging a Public Service. A person is guilty of an offense if that person negligently causes a substantial interruption or impairment of a public communication, transportation, supply of water, gas, power, or other public service by:

1. Tampering with or damaging the tangible property of another;

2. Incapacitating an operator of such service; or

3. Negligently damaging the tangible property of another by fire, explosive or other dangerous means.

Reference: NDCC Sec. 12.1-21-06 (1985)

6-04-03. Consent as a Defense and Definition of "of another". For prosecutions of criminal mischief under Section 6-04-01 or tampering with or damaging a public service under Section 6-04-02:

1. 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.

2. Property is that "of another" if anyone other than the actor has a possessory or proprietary interest therein.

Reference: NDCC Sec. 12.1-21-07, 08(2) (1985)

6-04-04. Criminal Trespass.

1. A person is guilty of an offense if, knowing that he or she is not licensed or privileged to do so, that person 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. The name of the person posting the premises must appear on each sign in legible characters.

2. A person is guilty of an offense if, knowing he is not licensed or privileged to do so, that person enters or remains in any building, occupied structure, or storage structure, or separately secured or occupied portion thereof; or enters or remains in any place so enclosed as manifestly to exclude intruders.

3. A person is guilty of an offense if that person remains upon the property of another after being requested to leave the property by a duly authorized person.

4. For a zoo, circus, exhibit, livestock yard or other facility that keeps animals, a person is guilty of an infraction if that person, without the permission of the keeper of the animal(s), willfully enters or remains within any cage, enclosure, corral, habitat, demarcated buffer zone, or other area that is delineated by a fence, wall or

other divider that is intended to separate an animal(s) from the general public.

Reference: NDCC Sec. 12.1-22-03 (1985)
(Ord. 4717, 08-22-95; Ord. 6201, 05-10-16)

6-04-04.1 Criminal Trespass In Schools. During such time as classes are in session:.

1. No person may enter or remain in a building of any public or private elementary or secondary school building in the City of Bismarck without first registering at the school's main office.

2. This section does not apply to:

a. Employees, elected school board members or enrolled students of the Bismarck Public Schools for the school where they are enrolled.

b. Employees and enrolled students of any private school in Bismarck, for the school that employs them or where they are enrolled.

c. Invitees of the public or private schools for events held at the schools.

d. Peace officers.

3. Notice of the requirement to register in the main office of the school must be conspicuously posted at each school entrance where the public has access. The name of owner of the property must appear on each sign in legible characters. No complaint for a violation of this section may be issued unless notice in compliance with this section is given.

4. No complaint for a violation of this section may be issued unless the complainant is the principal or vice principal in charge of the school where the alleged violation occurred.

(Ord. 6103, 02-24-15)

6-04-05. Consolidated Theft Offenses.

1. Conduct denominated theft in Sections 6-04-06 to 6-04-08 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 money, misappropriation of public funds, swindling, and the like.

2. A charge of theft under Sections 6-04-06 to 6-04-08 which fairly apprises the defendant of the nature of the charges against him or her 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 or her conduct falls under Sections 6-04-06 to 6-04-08, so long as the conduct proved is sufficiently related to the conduct charged that the accused is not unfairly surprised by the case the defendant must meet.

Reference: NDCC Sec. 12.1-23-01 (1985)

6-04-06. Theft of Property. A person is guilty of theft if that person:

1. 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;

2. Knowingly obtains the property of another by deception or by threat with intent to deprive the owner thereof, or intentionally deprives another of his or her property by deception or by threat; or

3. Knowingly receives, retains, or disposes of property of another which has been stolen, with intent to deprive the owner thereof.

Reference: NDCC Sec. 12.1-23-02 (1985)

6-04-07. Theft of Property Lost, Mislaid or Delivered by Mistake. A person is guilty of theft if that person:

1. Retains or disposes of property of another when he or she knows it has been lost or mislaid; or

2. Retains or disposes of property of another when he or she 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 or she fails to take readily available and reasonable measures to restore the property to a person entitled to have it.

Reference: NDCC Sec. 12.1-23-04 (1985)

6-04-08. Theft of Services. A person is guilty of theft if:

1. That person intentionally obtains services, known by him or her to be available only for compensation, by deception, threat, false token, or other means to avoid payment for the services; or

2. Having control over the disposition of services of another to which he or she is not entitled, he or she knowingly diverts those services to his or her 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.

Reference: NDCC Sec. 12.1-23-03 (1985)

6-04-09. Punishable Theft. Theft under Sections 6-04-06 to 6-04-08 may be punishable 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 or she was stealing, or which the actor could reasonably have anticipated to have been the property or services involved, does not exceed two hundred and fifty dollars and if:

1. The theft was not committed by threat;

2. The theft was not committed by deception by one who stood in a confidential or fiduciary relationship to the victim of the theft; and

3. 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 or her official duties;

4. The property stolen is not a firearm, ammunition, explosive or destructive device, or an automobile, aircraft, or other motor-propelled vehicle;

5. 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;

6. The defendant is not An the business of buying or selling stolen property and he or she does not receive, retain, or dispose of the property in the course of that business;

7. The property 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.

8. The property stolen does not consist of livestock taken from the premises of the owner; and

9. 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 and it was stolen to gain such access.

Reference: NDCC Sec. 12.1-23-05 (1985)

6-04-10. Retail Theft - Shoplifting..

1. Any person who conceals upon his person or among his belongings, or causes 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 who removes 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.

2. Where a term is used in this section, the meaning of that term as defined in Chapter 51-21 of the NDCC, as that chapter may be amended from time to time, is hereby adopted by reference and incorporated herein.

3. Any person reasonably believed to have committed or in the process of committing a theft covered by this section may be detained as set forth in section 51-21-03 of the NDCC. That section as it may De amended is adopted and incorporated by reference herein.

Reference: Chapter 51-21, NDCC (1982)

6-04-11. Defenses and Proof as to Theft and Related Offenses. The defenses, presumptions, inferences and proofs set forth in section 12.1-23-09 of the NDCC, as that section may be amended, are hereby adopted by reference and incorporated herein, and shall apply to prosecutions under this chapter.

Reference: NDCC Sec. 12.1-23-09 (1985)

CHAPTER 6-05. OFFENSES AGAINST THE PUBLIC ORDER

6-05-01. Disorderly Conduct. A person is guilty of an offense if, with intent to harass, annoy, or alarm another person or in reckless disregard of the fact that another person is harassed, annoyed, or alarmed by his behavior, that person:

1. Engages in fighting, or in violent, tumultuous or threatening behavior;

2. Makes unreasonable noise;

3. In a public place, uses abusive or obscene language, or makes an obscene gesture, which language or gesture by its very utterance or gesture inflicts injury or tends to incite an immediate breach of the peace;

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 or she solicits such contact;

7. Creates a hazardous, physically offensive or serious alarming condition by any act which serves no legitimate purpose;

8. Engages in harassing conduct by means of intrusive or unwanted acts, words, or gestures that are intended to adversely affect the safety, security, or privacy of another person.

9. Uses a fixed optical device that enhances or records a visual occurrence to view through any window of another person's property; or uses a surveillance camera to capture an image from the dwelling or accessory structure of another person; however, an individual using a surveillance camera has seven days from notice by a law enforcement officer to direct or shield the camera so as to not capture an image from another person's dwelling or accessory structure before there is an offense.

This section does not apply to constitutionally protected activity. If an individual claims to have been engaged in a constitutionally protected activity, the court shall determine the validity of the claim as a matter of law and, if found valid, shall exclude evidence of the activity.

Reference: NDCC Sec. 12.1-31-01 (1985)
(Ord. 5541, 09-26-06; Ord. 5911, 08-14-12; Ord. 5923, 10-23-12)

6-05-02. Indecent Conduct. A person is guilty of an ordinance violation if that person:

1. Urinates or defecates in a public place, other than a restroom or bathroom designated for his or her sex, where he or she may be observed by the general public.

2. Appears nude in a public place other than a restroom, bathroom, changing room, or similar facility,

designated for his or her sex. "Nude" means that any portion of the pubic areas, anus, vulva, genitals or female breasts below the top of the areola is exposed to view of the general public.

6-05-03. Engaging in a Riot.

1. A person is guilty of an offense if that person engages in a riot.

2. "Riot" means a public disturbance involving an assemblage of five or more persons which by tumultuous or violent conduct creates grave danger of damage or injury to property or persons or substantially obstructs law enforcement or other government functions.

3. A person may be convicted under section 6-02-01 of attempt or conspiracy to commit an offense under this section only if he or she engages in the prohibited conduct under circumstances in which there is a substantial likelihood that the conduct will imminently produce a violation of this section. Mere presence at a riot is not an offense under this section.

Reference: NDCC Sec. 12.1-25-01(2)&(3) (1985)

6-05-04. Disobedience of Public Safety Orders Under Riot Conditions. A person is guilty of an offense if, during a riot as defined in section 6-05-03(2), or when one is immediately impending, that person 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.

Reference: NDCC Sec. 12.1-25-04 (1985)

6-05-05. Throwing of Missiles. It is unlawful for any person to throw or discharge any stone, snowball or any similar object or other missile, including fireworks, upon, in or at any vehicle, building or upon or at any person.

Source: Code of Ords., 1973, Sec. 24-72.

6-05-06. Indecent Exposure. A person is guilty of an offense for:

1. Knowingly exposing one's penis, vulva, or anus in a public place with intent to annoy or harass another person;

2. Masturbating in a public place.

Reference: NDCC Sec. 12.1-20-12.1 (1985)

6-05-07. Window-Peeping. It is unlawful for any person to look, peer, or peep into, or to loiter in a position or place affording a view into any window not that person's own property, with intent to annoy, harass or alarm any person or in reckless disregard of the fact that any person is annoyed, harassed or alarmed.

Source: Code of Ords., 1973, Sec. 24-86

6-05-08. Prostitution; Definitions.

1. A person is guilty of the offense of prostitution if that person:

a. Is an inmate of a house of prostitution or is otherwise engaged in sexual activity as a business; or

b. Solicits another person with the intention of being hired or hiring another to engage in sexual activity.

2. In this chapter when a term dealing with prostitution is used, the meaning of that term as defined in Section 12.1-29-05 of the NDCC, as that section may be amended from time to time, is hereby adopted and incorporated by reference herein.

Reference: NDCC Sec. 12.1-29-03

6-05-09. Possession of Marijuana. Any person in possession of not more than one ounce of marijuana, as that term is defined by NDCC Section 19-03.1-01, within the City of Bismarck, is guilty of an offense.

Whenever a person is found guilty of a first offense under this section and a judgment of conviction is entered, the court, upon motion, shall seal that conviction from the record if the person is not subsequently convicted within two years of a further violation of this ordinance or like ordinance or statute in any other jurisdiction and has not been convicted of any other criminal offense.

References: NDCC Sec. 19-03.1-01 (1975 Supp.); NDCC Sec. 19-03.1-23 (1985 Supp.); NDCC Sec. 40-05-02 (1983)(Ord. 6161, 08-25-15)

6-05-09.1. Drug Paraphernalia (Marijuana). 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 NDCC Chapter 19-03.1. A person violating this subsection is guilty of an offense.

(Ord. 6161, 08-25-15)

6-05-10. Inhalation of Vapors. A person is guilty of an offense if that person intentionally inhales the vapors of a

volatile chemical in a manner designed to affect the person's central nervous system; to create or induce a condition of intoxication, hallucination, or elation; or to distort, disturb, or change the person's eyesight, thinking processes, balance, or coordination. This section does not apply to inhalations specifically prescribed for medical, dental, or ontometric treatment purposes or to controlled substances described in NDCC 19-03.1. For the purposes of this section, "volatile chemical" includes the chemicals or their isomers as listed at NDCC 12.1-31-06.
(Ord. 4820, 02-11-97)

6-05-11. School Attendance. A person is guilty of an ordinance violation if that person violates the provisions of Chapter 15.1-20, N.D.C.C., as that chapter may be amended from time to time.
(Ord. 5756, 12-22-09)

6-05-12. Jumping From Bridge Prohibited. A person who jumps or dives from a bridge on public right-of-way is guilty of an infraction.
(Ord. 5785, 09-14-10)

6-05-13. Panhandling.

1. Definitions.

a. "Aggressive Panhandling" means 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 the 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; or blocking or interfering with the free passage of a person.

b. "Panhandling" or "Soliciting" for purposes of this subsection 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 others; or attempting to sell or obtain compensation for item or service under circumstances that would leave a reasonable person to conclude that the payment is in substance a donation.

c. "Downtown Districts" shall mean that area in the City of Bismarck described as follows: Starting at the intersection of 9th Street and the north line of the Burlington Northern RR right-of-way, then north to the middle of the intersection of 9th Street and Broadway Avenue, then west along Broadway Avenue to the alley between 6th Street and 7th Street, then north in the alley approximately 270 ft, then west to the middle of 6th Street, then north to the middle of East Avenue B, then west to the middle of 2nd Street, then south to the middle of East Avenue A, then west to the alley between 1st Street and 2nd Street, then south to the middle of Rosser Avenue, then west to the middle of Washington Street, then south to the north line of the Burlington Northern RR right-of-way, then east along the north line of the Burlington Northern RR right-of-way to the point of beginning.

2. It shall be unlawful for any person to aggressively panhandle in any area within the city of Bismarck.

3. It shall be unlawful for any person to panhandle within the city of Bismarck, while located:

a. Within twenty feet of any intersection of city streets, state highways and state highway on-ramps or off-ramps;

b. On any median in any city street;

c. On the roadway of any city street intended for the use of vehicular traffic;

d. Within twenty feet of any bus stop;

e. Within twenty feet of any crosswalk;

f. On any bridge or tunnel located along or across a public roadway.

g. 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.

h. Within 20 feet of an entrance to any public restroom.

i. Within any city park.

j. Within the Downtown Business District, unless the person represents a bona fide charitable organization, including any organization recognized by 501(c) of the Internal Revenue Code [29 U.S.C. 501(c)].

k. On private property when asked by the owner or occupant to cease.

l. Within 20 feet of an outdoor dining or shopping area.

m. Within 20 feet of an ATM or the entrance to a building housing an ATM.

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.

4. A person who violates this section is guilty of an infraction.

(Ord. 5922, 10-09-12; Ord. 6102, 02-24-15)

CHAPTER 6-06. GAMBLING

6-06-01. Definitions. For the purposes of this chapter:

1. "Gambling" means risking any money, credit, deposit, or any 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:

a. Lawful contests of skill, speed, strength, or endurance in which awards are made to entrants or to the owners of the entries.

b. Lawful business transactions, or other acts or transactions now or hereafter expressly authorized by law.

2. "Lottery" means any plan for the distribution of a thing of value, whether tangible or intangible, to a person or persons selected by chance from among participants, some or all of whom have given a consideration for the chance of being selected.

3. "Gambling house" means any location or structure, stationary or movable, wherein gambling is permitted or promoted, or where a lottery is conducted or managed. In the application of this definition, any place where gambling

apparatus is found is presumed to be a gambling house, provided that this presumption shall not apply where cards, dice, or other games are found in a private residence.

Reference: NDCC Sec. 12.1-28-01 (1985)

6-06-02. Classification of Offenses.

1. Except as otherwise permitted by law, it is an offense for any person to:

a. Engage in gambling;

b. Knowingly maintain, or to knowingly aid or permit the maintenance of, a gambling house;

c. Conduct a lottery;

d. Sell, purchase, receive, or transfer a chance to participate in a lottery;

e. Disseminate information about a lottery with intent to encourage participation in it.

2. Subdivisions c, d and e of subsection 1 apply to a lottery drawn or to be drawn in this state, whether or not the lottery is lawful in the other state or country.

3. It is an offense for persons required by section 6-06-07 to obtain a valid work permit to:

a. Conduct, assist or supervise on-site games of chance without the required permit.

b. Knowingly provide false or misleading information on the work permit application.

c. Fail to wear the permit as required by section 6-06-07(6).

d. Fail to return the permit as required by section 6-06-07(9).

e. Alter, change or mutilate the permit in any way.

Reference: NDCC Sec. 12.1-28-02 (1983 Supp.)

6-06-03. Games of Chance - Conduct permitted When Authorized by State Law. Notwithstanding any other provision of this chapter, it is not unlawful to play or conduct games of chance pursuant to chapter 53-06.1 of the North Dakota Century Code, and the implementing rules and regulations of the attorney

general and the rules and regulations established by the City of Bismarck.

Source: Code of Ords. 1973, Sec. 24-57
Reference: Chapter 53-06, N.D.C.C. (1985 Supp.)

6-06-04. Rules and Regulations for Granting Site Authorization. In granting site authorization for locations at which eligible organizations licensed by the attorney general may conduct games of chance, the following rules and regulations apply:

1. Except as otherwise provided in this section, games of chance are allowed only in on-sale liquor premises that are approved by the board of city commissioners.

2. Every organization seeking site authorization shall:

a. Annually apply to the Board of City Commissioners for site authorization.

b. Submit with the site authorization application a diagram 8 1/2" x 11" in size designating the location of the proposed site and the area within the site where the games of chance will be located.

c. Provide a copy of all documents filed or to be filed with the attorney general relating to the license or permit the eligible organization intends to use on the proposed site.

d. Submit a statement showing the total amount of net proceeds earned from games of chance by that organization during the previous four quarters, and the distribution of those net proceeds, including the names and addresses of all organizations to which net proceeds were paid and the amount paid to each. This subsection does not apply to organizations that have not previously conducted games of chance in this state or to organizations reapplying for an existing site.

3. Games of chance in Class F or I licensed premises may be located only in a separate lounge or room within the licensed premises, where food is not normally served or consumed.

4. (a) Eligible organizations licensed by the city to conduct raffles may not sell tickets or conduct a raffle at a gaming site of another organization unless one of the conditions of NDCC Section 53-06.1-03(3)(a) are met. Organizations with a license issued by the state to conduct games of chance may conduct bingo, including electronic quick shot bingo pursuant to rules and regulations as promulgated by the state and only at locations other than licensed liquor premises, and may have

pull-tabs at a location, other than a licensed liquor premises, where site authorization has been granted to conduct bingo.

(b) Organizations with a license issued by the state to conduct games of chance may conduct bingo, including electronic quick shot bingo, on licensed liquor establishments. The following restrictions apply to bingo conducted on licensed liquor establishments:

(i) Bingo may be conducted during the normal business hours of the licensed liquor premises and under such rules and regulations as promulgated by the state.

(ii) Total pay out to the winner may not exceed five thousand dollars.

5. Games of chance may not be conducted in a licensed liquor premise at times other than when alcoholic beverages may be sold or served on licensed liquor premises.

6. No more than fifteen blackjack tables are permitted by any one licensee, and no more than six blackjack tables are permitted at any one location. No licensee may be authorized to operate at more than five sites within the city. If site authorization is approved for commercial passenger vessels operating on the Missouri River, any such sites shall not be counted for purposes of determining the total number of sites for any one organization.

7 If an eligible organization ceases operation at an approved site, that organization shall submit within sixty days to the city auditor a final report for the location, including the final money balance and explanation for closing the location.

8. If a liquor license for a site at which games of chance are conducted is sold or transferred, site approval for games of chance at that site shall be re-authorized for the remainder of the period for which granted with the consent and approval of the buyer or grantee of the liquor license.

9. Special temporary permits allowing games of chance at a location not part of the licensed premises within the same building or site may be granted by the board of city commissioners upon application by the licensee. The temporary site must be in a separate room or enclosed area where persons under the age of twenty-one are prohibited during the term of the permit. Applications must be filed with the city auditor no later than 15 days prior to the effective date of the permit. A

temporary permit may not be issued for a period in excess of 72 hours.

10. Notwithstanding Section 6 of this ordinance, special temporary permits allowing more than six blackjack tables at one approved location may be granted by the board of city commissioners upon application by the licensee. The temporary permit to increase the number of blackjack tables must be for an already approved location and all other rules regarding games of chance must be enforced. In no event shall the number of blackjack tables being used by the applicant at this or other locations exceed the maximum allowed by Section 6 of this ordinance. Applications must be filed with the city auditor no later than 15 days prior to the effective date of the permit. A temporary permit to increase the number of blackjack tables at a particular location may not be issued for a period in excess of 24 consecutive hours.

11. Every organization seeking to conduct a raffle shall:

a. Apply to the Bismarck Police Department for a raffle application and direction form.

b. Submit a completed raffle application containing a local law enforcement acknowledgement form and documentation of the organizations status of veterans, charitable, educational, religious, fraternal, civic, service or public spirited.

c. Submit a draft of the proposed raffle ticket.

d. Submit the application fee as set forth in 6-06-05(2).

e. The Police Department shall process applications and the Chief of Police acting under the Authority of the Board of City Commissioners may approve applications that conform to the requirements of this section and NDCC Chapter 53-06.1. Successful applicants will be notified and provided with a number from the Bismarck Police Department so that raffle tickets may be printed. The Chief of Police's denial of an application for a raffle may be appealed to the Board of City Commissioners.

f. Provide a copy of final ticket product to the Bismarck Police Department.

g. Upon completion of the raffle, the applicant shall provide the following information concerning the raffle to the Bismarck Police Department:

(i) The date, time and location of the drawing;

(ii) The names of two persons present at the drawing;

(iii) The names and addresses of the winners and the prizes awarded.

12. Paddle Wheels shall be allowed as permitted by the rules promulgated by the Attorney General. No more than four paddle wheels are permitted by any one licensee, and no more than two paddle wheels are permitted at any one location.

13. Electronic pull tab machines may be placed at off-sale liquor premises.

Reference: Chapter 53-06.1, NDCC (1985 Supp.) (Ord. 4121, 12-30-86; Ord. 4131, 3-10-87; Ord. 4163, 6-30-87; Ord. 4164, 7-07-87; Ord. 4245, 2-28-89; Ord. 4268, 6-06-89; Ord. 4313, 1-23-90; Ord. 4357, 2-26-91; Ord. 4356, 1-19-91; Ord. 4409, 12-03-91; Ord. 4532, 07-06-93; Ord. 4549, 09-21-93; Ord. 4585, 02-15-94; Ord. 4636, 09-13-94; Ord. 4698, 06-13-95; Ord. 4722, 08-22-95; Ord. 5461, 10-11-05; Ord. 5757, 12-22-09; Ord. 5903, 07-10-12; Ord. 6183, 01-13-16; Ord. 6227, 08-23-16)

6-06-05. Schedule of Fees for Site Authorization, Licenses and Work Permits.

1. Site authorization fee:

a. State issued Class G license application - one hundred dollars per site.

b. Class G licensees applying for a special temporary permit - twenty-five dollars.

2. Local raffle, bingo and local sports pool licenses - twenty-five dollars per event.

3. Work permit application fee:

a. Original application - twenty-five dollars.

b. Renewal application - twenty dollars.

c. Duplicate work permit or change of organization work permit - five dollars.

Reference: Chapter 53-06.1, NDCC (1985 Supp.)
(Ord. 4637, 09-13-94; Ord. 4730, 09-26-95; Ord. 4845, 05-13-97)

6-06-06. Persons Permitted to Conduct or Participate in Games of Chance.

1. No person except a member or employee of an eligible organization or member of an organization auxiliary to an eligible organization, may assist in the holding, operating or conducting of any game of chance.

2. Only the members of an organization licensed as a Class A licensee by the attorney general and their spouses and bona fide guests may participate in playing games of chance conducted by the licensed organization.

3. Individuals under the age of 21 may not conduct, assist or participate in the games of pull-tabs, jars, punch boards, twenty-one or sports pools.

4. Any person involved with the conduct of games of chance must be:

a. A person of good character, integrity, honesty and

b. A person whose prior activities, criminal record including arrest record or pending criminal cases, reputation, habits, and associations do not pose a threat to the public interest of this state or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair or illegal practices, methods and activities in the conduct of gaming or the carrying on of the business and financial arrangements incidental to the conduct of gaming.

5. A person who has pled guilty to or been found guilty of a felony offense as defined by the laws of this state, other states, or the federal government, or has pled guilty to or been found guilty of a violation of NDCC Chapter 53-06.1, 53-06.2, 12.1-28, or offenses of other states or the federal government equivalent to offenses defined in these chapters may not sell or distribute gaming equipment or conduct or assist in games of chance and may not be issued a gaming permit for five years from the date of conviction, release from incarceration, end of a period of suspension or deferral, or expiration of parole or probation, whichever is the latest.

A person who has pled guilty to or been found guilty of a misdemeanor offense in violation of NDCC Section 6-08-16.1, or Chapters 12.1-06, 12.1-23, 12.1-24, 19-03.1, 19-03.4, a violation of Section 6-08-16 under circumstances which indicate the person poses a threat to the public interest, more than one violation of Section 6-08-16 or offenses of other states, the federal government, or a municipality equivalent to these offenses may not be issued a gaming permit for two years from the date of conviction, release from incarceration, end of a

period of suspension or deferral, or expiration of parole or probation, whichever is the latest.

No person determined by the Attorney General to have participated in organized crime or unlawful gambling, may be permitted to conduct or assist in games of chance.
(Ord. 4407, 11-05-91; Ord. 4695, 06-13-95; Ord. 4967, 02-23-99; Ord. 5148, 01-08-02; Ord. 5700, 12-23-08)

6-06-07. Persons Required to Obtain a Work Permit.

1. A person may not conduct, assist or supervise on-site games of chance, other than raffles, free bingo and bingo that is conducted on no more than two occasions per year and each occasion lasts no longer than one week, without first obtaining a work permit from the Bismarck Police Department.

2. Applicants for a work permit shall complete and submit an application provided by the police department. The application shall include the information necessary to conduct a reasonable background investigation.

3. The chief of police shall issue or deny the work permit within a reasonable time of receipt of the application. Written notice of issuance or denial must be mailed to the applicant at the address listed as current on the application. In the case of a denial, the notice shall contain a statement of the facts upon which the denial is based.

4. Denial of a work permit is subject to an appeal to the Board of City Commissioners upon written notice of appeal filed within 10 days. If no appeal is filed within the time specified the chief of police's action shall be final.

5. Upon receipt of a notice of appeal, the Board shall set a date for a hearing within 15 days of receipt of the notice of the appeal. Notice of the time and place for the hearing must be served upon the applicant personally or by certified mail at least five days before the hearing. The Board shall hear such testimony and other evidence as it deems necessary and expedient, and thereupon make its findings and decision, which shall be final.

6. The work permit must be worn on the upper 1/3 of the body so that it is clearly visible to all participants and observers.

7. A permit is valid for three years following the date of issuance. Application for renewal must be made within thirty days prior to the expiration date of the permit then in force. The renewal application must contain the information necessary to bring the original application to date. Any duplicate or

change of organization permit is valid only for the term of the original permit.

8. Any change in a permit holder's gaming employment status from that listed on the original application must be reported to the police department prior to the change and the permittee must have the organization changed on the permit.

9. Expired work permits, as well as the work permits of people ceasing employment, must be turned in to the police department within ten days of date of expiration, or cessation of employment.

10. Any person issued a work permit under this chapter who fails to comply with any of the requirements of this chapter or any of the laws of the State of North Dakota or rules and regulations of the attorney general governing games of chance may have his or her work permit immediately revoked or suspended by order of the chief of police. Notice of revocation or suspension shall be served personally upon the permittee and the suspension or revocation shall begin upon service. A person whose work permit is revoked or suspended under this section may appeal to the Board of City Commissioners upon written notice of appeal delivered to the Office of City Administration within 10 days of the revocation or suspension. The appeal shall proceed according to paragraph 5 of this section. The decision of the Board of City Commissioners shall be final.
(Ord. 4254, 4-25-89; Ord. 4638, 09-13-94; Ord. 4696, 06-13-95)

6-06-08. Revocation or Suspension of Site Permits. A failure to comply with any of these requirements or with any of the laws of the State of North Dakota or the rules and regulations of the attorney general governing games of chance is cause for revocation or suspension of an eligible organization's permit to conduct games of chance at a particular site. A permit may be revoked or suspended upon written notice to the organization specifying the reasons for the proposed action and a hearing by the board of city commissioners. The notice shall specify the date and time of the hearing and be served on the organization, personally or by certified mail, no later than five days before the hearing date. The decision of the board of city commissioners shall be final.
(Ord. 4697, 06-13-95)

CHAPTER 6-07. OFFENSES INVOLVING MINORS OR ALCOHOL

6-07-01. Sale of Tobacco or Electronic Smoking Devices to Minors and Possession, Sale or Use by Minors Prohibited.

1. Any person who sells or furnishes to a minor, or procures for a minor, cigarettes, cigarette papers, cigars, snuff, tobacco, tobacco products, or an electronic smoking

device, in any form in which it may be utilized for smoking, inhaling or chewing is guilty of an infraction. For the purposes of this Chapter:

a. "Tobacco Product" 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. The term "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 and sold solely for the approved purpose.

b. "Electronic smoking device" means any electronic product or oral device, such as one composed of a heating element, battery or electronic circuit, that delivers nicotine or other substances to the individual inhaling from the device, including, an electronic cigarette, e-cigar, e-pipe, vape pen, or e-hookah. Electronic smoking device includes any component, part, or accessory of such a product, whether or not sold separately. Electronic smoking device does not include drugs, devices, or combination products approved for sale by the United States Food and Drug Administration, as those terms are defined in the federal Food, Drug and Cosmetic Act [52 Stat. 1040; 21 U.S.C. 301 et seq.]

2. No person over 13 and under 18 years of age shall sell, possess, purchase, attempt to purchase, smoke or use tobacco products or an electronic smoking device or tobacco in any other form in which it may be utilized for smoking, inhaling, or chewing except that a person under 18 years of age employed by a licensed tobacco dealer or distributor may handle the tobacco products, or electronic smoking devices listed in this section as a part of his or her employment. In addition, an individual under eighteen years of age may purchase and possess tobacco products or an electronic smoking device as part of a compliance survey program when acting with the permission of the individual's parent or guardian and while acting under the supervision of any law enforcement authority. A state agency, city, county, board of health, tobacco retailer, or association of tobacco retailers may also conduct compliance surveys, after coordination with the appropriate local law enforcement authority. Any person or business that is subject to a compliance survey shall be notified of the

results within 7 days of the survey. Any person violating this section shall have committed a non-criminal violation and shall pay a fee of seventy ($70) dollars, subject to the following procedures:

a. Any individual who has been cited for a violation of Section 2 may pay the statutory fee in municipal court by the time scheduled for a first appearance or if a 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 statutory fee. If the individual cited follows the procedures of this paragraph, that individual has admitted the violation and has waived the right to a hearing on the issue of commission of the violation. A bond posted under Section 2 must be in the amount of seventy ($70) dollars. The halting officer shall not receive the statutory fee or a bond.

b. If an individual cited for a violation under Section 2 does not choose to follow any procedure provided under paragraph a, that individual may appear at the time scheduled in the citation and request a hearing on the issue of the commission of the violation charged. The hearing must be held within 90 days of the first appearance. At the time of a request for a hearing on the issue of commission of the violation, the individual charged shall deposit with the court an appearance bond in the amount of seventy ($70) dollars. At the hearing on the violation, the city must prove the commission of a violation under this section by a preponderance of the evidence. If the individual does not appear at the time set for the hearing on the violation, the citation shall be deemed admitted and the bond shall be forfeited.

c. A person who admits, forfeits or is found guilty of this section must attend an approved tobacco awareness class within 30 days of the admission, forfeiture or finding of guilty. A person who fails to comply with this paragraph is in contempt of court.

d. A law enforcement officer that cites a minor for a violation of this section or the court shall mail a notice of the violation to the parent or legal guardian of the minor within ten days of the citation.

e. Any person who fails to answer a citation issued under this section or pay the fee or post the bond specified as required is in contempt of court.

f. A person adjudged guilty of contempt of court for failure to comply with this section may be sentenced by the court to a sanction or order designed to ensure compliance with the payment of the fee or fine or to an alternative sentence or sanction including community service.

3. It shall be an infraction for any person to sell or dispense any tobacco product or electronic smoking device through the use of a vending machine except that tobacco products or electronic smoking devices may be offered for sale or sold from a vending machine on licensed on-sale or off-sale alcoholic beverage premises in those areas not accessible to minors or through a vending machine that requires a salesperson to control the dispensation of such product. Vending machines for tobacco products or electronic smoking devices located upon licensed premises must be located within the immediate vicinity, plain view and control of a responsible employee, so that all purchases will be readily observable. The vending machine shall not be located in a coat room, restroom, unmonitored hallway, outer lobby or waiting area or similar unobserved area; nor shall the vending machine be accessible to the public when the establishment is closed.

4. For the purpose of this ordinance, "vending machine" shall mean any kind of electronic or mechanical device or machine which, upon the insertion of a debit card, credit card, bills, coin or coins, tokens or other objects will release tobacco products in packages or otherwise.

5. Except on licensed alcohol premises or in a walk in cigar humidor which is closed to people under 18 years of age, no person operating a place of business wherein tobacco products are sold or offered for sale shall sell, permit to be sold, offer for sale, or display for sale any tobacco product or electronic smoking device in any manner, unless such products and cigarettes are stored for sale behind a counter in an area that is accessible only to the employees of such business. A violation of this paragraph is an infraction.

6. Any nicotine liquid container that is sold at retail in the City 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. 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, provided that the cartridge is prefilled and sealed by the manufacturer and not intended to be opened by the consumer. Any person that engages in retail sales of liquid nicotine containers in violation of this section is guilty of an infraction.

Reference: NDCC Sec. 12.1-31-03 (1985)

(Ord. 4418, 02-25-92; Ord. 4687, 06-13-95; Ord. 4741, 01-23-96; Ord. 4826, 02-25-97; 4988, 05-25-99; Ord. 5017, 11-23-99; Ord. 5031, 03-14-00; Ord. 5129, 08-28-01; Ord. 5160, 02-26-02; Ord. 6029, 02-11-14; Ord. 6164, 10-27-15).

6-07-02. Curfew. It is unlawful for persons under the age of sixteen years to loiter, idle, wander, stroll, play in or upon, or drive or ride about in a vehicle or be in or upon the public streets, highways, roads, alleys, or public buildings, places or grounds between the hours of 10:30 p.m. and 5:00 a.m., and it is unlawful for a person sixteen years of age but not yet eighteen years of age to loiter, idle, wander, stroll, play in or upon, or drive or ride about in a vehicle or be in or upon the public streets, highways, roads, alleys, or other public buildings, places or grounds between the hours of 1:00 a.m. and 5:00 a.m. This section does not apply to persons accompanied by a parent, guardian or other adult person having their care and custody, or to persons upon emergency errands, or legitimate business directed by their parent, guardian or other adult person having their care and custody, or to persons traveling to or from a location outside the city on legitimate business or with the consent of a parent or guardian. This section also does not apply to a person in attendance at, or traveling between that person's home and a place of legitimate employment or an event or activity sponsored by or associated with a school, church, or similar organization, or an organized sporting, political, theatric or other like event or activity, within thirty minutes of the end of the work shift or the conclusion of the event or activity.

Source: Code of Ords., 1973, Sec. 24-121

6-07-03. Display of Objectionable Materials or Performance Prohibited; Definitions.

1. A person is guilty of an offense if that person willfully displays at newsstands or any other business establishment frequented by persons under the age of eighteen or where those persons are or may be invited as a part of the general public, any photograph, book, 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.

2. Where a term is used in this section, the meaning of that term as defined in Chapter 12.1-27.1 of the NDCC, as that chapter may be amended from time to time, is hereby adopted by reference and incorporated herein.

Reference: NDCC Sec. 12.1-27.1-03.1.

6-07-04. Possession or Consumption of Alcohol by Persons Under the Age of Twenty-One. A person under the age of twenty-one may not purchase, attempt to purchase, have in his or her possession, furnish money for such purpose, or consume any alcoholic beverage. The offense of consumption occurs in the county of consumption or the county where the offender is arrested.

Reference: NDCC Sec. 5-01-08 (1985 Supp.)
(Ord. 4251, 3-18-89; Ord. 5005, 08-24-99)

6-07-05. Persons Under the Age of Twenty-One in Liquor Establishments Prohibited. A person under the age of twenty-one may not enter any licensed liquor premises, except as permitted by section 5-01-08, N.D.C.C.

Reference: NDCC Sec. 5-01-08

6-07-06. Misrepresentation of Age. A person under the age of twenty-one may not misrepresent his or her age for the purpose of purchasing, being served or drinking any alcoholic beverage.

Reference: NDCC Sec. 5-01-08.1 (1975)

6-07-07. Open Containers Prohibited.

1. A person may not consume any alcoholic beverage, or have in his or her possession any container of an alcoholic beverage, in any municipal or public building, not licensed for that purpose.

2. A person may not consume any alcoholic beverage, or be in possession of any open can, bottle, glass, cup or other container of alcoholic beverage with the intent to consume, within any public street, highway or other right-of-way, or within any commercial establishment open to the public and not licensed for that purpose.

3. Notwithstanding this section, consumption of alcoholic beverages in a commercial bowling establishment open to the public is not unlawful, except in those areas

that are posted by the management as areas where consumption of alcoholic beverages is forbidden.

4. A violation of this section is an infraction.

Source: Code of Ords., 1973, Sec. 4-19.
(Ord. 4179, 9-29-87; Ord. 4193, 2-02-88)

CHAPTER 6-08. WEAPONS

6-08-01. Definitions. Where a term is used in this chapter, the meaning of that term as defined in Title 62 of the North Dakota Century Code, if that term is so defined, and as that Title may be amended from time to time, is hereby adopted by reference and incorporated herein.

Reference: N.D.C.C. Sec. 62.1-01-01 (1985)

6-08-02. Possession of Firearm at Public Gathering.

1. A person who possesses a firearm at a public gathering is guilty of an offense. For the purpose of this section, "public gathering" means an athletic or sporting event, a school, a church and a publicly owned or operated building.

2. This section does not apply to:

a. Law enforcement officers.

b. On-duty animal wardens employed by the City.

c. Members of the armed forces of the United States or National Guard, organized reserves, state defense forces, or state guard organizations, when on duty.

d. Competitors participating in organized sport shooting events.

e. Gun and antique shows.

f. Participants using blank cartridge firearms at sporting or theatrical events.

g. Students and instructors at hunter safety classes.

h. Private security personnel while on duty.

i. An instructor, a test administrator, an official, or a participant in educational, training, cultural, or competitive events involving the authorized use of a dangerous weapon if the event

occurs with permission of the person or entity with authority over the function or premises in question.

j. An individual in a publicly owned or operated rest area or restroom.

k. An individual possessing a valid class 1 concealed weapons license from this state or who has reciprocity under NDCC Section 62.1-04-03.1 authorizing the individual to carry a dangerous weapon concealed if the individual is in a church building or other place of worship and has the approval to carry in the church building or other place of worship by a primary religious leader of the church or other place of worship or the governing body of the church or other place of worship. If a church or other place of worship authorizes an individual to carry a concealed weapon, local law enforcement must be informed of the name of the authorized individual.

l. A municipal court judge, a district court judge, a staff member of the office of attorney general, and a retired North Dakota law enforcement officer, if the individual maintains the same level of firearms proficiency as is required by the peace officer standards and training board for law enforcement officers. A local law enforcement agency shall issue a certificate of compliance under this section to an individual who is proficient.

Reference: NDCC Sec. 62.1-02-05 (1985; Ord. 6041, 04-22-14; Ord. 6128, 06-09-15)

6-08-03. Discharge of Firearm Within City Limits.

1. A person who discharges a firearm within the city limits is guilty of an offense.

2. This section does not apply to the lawful discharge of firearms by law enforcement officers, by on-duty animal wardens employed by the City, by citizens in defense of person or property, or by participants in lawful activities in which discharge of firearms is a recognized part of the activity, including shooting galleries or ranges.

Reference: NDCC Sec. 62.1-02-06 (1985; Ord. 6041, 04-22-14; Ord. 6128, 06-09-15)

6-08-04. Use of Firearm by Minors Prohibited. Any parent, guardian or other person having charge or custody of any minor under fifteen years of age who permits that minor to carry or use in public any loaded firearm, except when the minor is under the direct supervision of the parent, guardian or other person, is guilty of an offense.

Reference: NDCC Sec. 62.1-02-07 (1985)

6-08-05. Loaded Firearm in Vehicle.

1. An individual may not keep or carry a loaded firearm in or on any motor vehicle, including an off-highway vehicle or snowmobile in this state. An individual violating this section is guilty of an offense.

2. This section does not apply to:

a. A member of the armed forces of the United States or National Guard, organized reserves, state defense forces, or state guard organization while in possession of a weapon issued to the member by the organization and while on official duty.

b. A law enforcement officer except while the officer is engaged in hunting or trapping activities with a rifle or shotgun.

c. A person who possesses a valid concealed weapons license from this state or who has reciprocity under section NDCC Section 62.1-04-03.1 with a handgun, or with a rifle or shotgun if not in the field hunting or trapping.

d. An individual in the field engaged in lawful hunting or trapping of nongame species or fur-bearing animals.

e. A security guard properly licensed to carry firearms.

f. A person who possesses a valid special permit issued pursuant to Section 20.1-02-05, N.D.C.C.

Reference: NDCC Sec. 62.1-02-10 (1985; Ord. 6128, 06-09-15)

6-08-06. BB and Pellet Guns.

1. No person may discharge in the city or carry loaded in a vehicle a weapon that will expel or is readily capable of expelling a projectile by the action of a spring, compressed air or compressed gas, including any such weapon commonly referred to as a BB gun, air rifle, pellet gun or CO2 gun.

2. This section shall not apply to lawful discharge by law enforcement officers, discharge by citizens in defense of person or property, discharge at structured events or competitions designed to test the skill of the participants, discharge at indoor target ranges or

discharge in conjunction with educational or gun safety classes.

(Ord. 4579, 02-15-94)

CHAPTER 6-09. SENTENCING; CLASSIFICATION OF OFFENSES

6-09-01. Sentencing. Every person convicted of an offense in municipal court shall be sentenced in the manner provided by law to one or more of the alternatives set forth in Chapter 12.1-32 of the NDCC. This section does not prohibit the unconditional discharge of an offender following conviction or the utilization of NDCC Section 40-18-13 relating to suspension of sentence, nor shall this section limit the conditions which can be imposed on a probationer.

References: Chapter 12.1-32, NDCC (1985); NDCC Sec. 40-18-13 (1983)

6-09-02. Classification of Offenses. Offenses against the ordinances of this city are divided into two classes as follows:

1. Offense, for which a maximum penalty of 30 days imprisonment, a fine of one thousand five hundred dollars, or both, may be imposed. For a violation of an ordinance enforcing the requirement of 40 CFR 403 relating to publicly owned treatment works or prohibiting shoplifting, vandalism, criminal mischief or malicious mischief, a fine of one thousand dollars, imprisonment of 30 days, or both such fine and imprisonment.

2. Infraction, for which a maximum fine of one thousand dollars may be imposed, provided that any person convicted of an infraction who has, within one year prior to commission of the infraction of which 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.

3. All violations of the provisions of the ordinances of this city are offenses unless specifically labeled infractions or unless a different classification or punishment is specifically authorized.

4. Except as provided in this section or as the context may otherwise indicate the term "offense" refers to all violations of the ordinances of this city including infractions.

(Ord. 5142, 11-27-01; Ord. 5977, 06-25-13; Ord. 6090, 11-25-14)

6-09-03. Special Sanction for Organizations. When an organization as defined in NDCC Section 12.1-03-04 is convicted of an offense, the court may in addition to any other sentence 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 media or otherwise.

Reference: NDCC 12.1-32-03 (1985)

6-09-04. Fee Assessments for Funding Crime Victim and Witness Programs. The municipal judge may assess a fee of not more than twenty-five (25) dollars as part of a sentence imposed on a defendant who pleads guilty to or is convicted of a violation of Section 6-02-07, 6-03-01, 6-03-02, 6-03-03, 6-05-01, 6-05-02, 6-05-03, 6-05-06, 6-05-07, 6-05-08 or a charge of aiding, accomplice or attempt of these offenses. The fee assessed under this section is in addition to any fine, penalty, costs, or administrative fee prescribed by law. The municipal judge may assess the fee when sentence is imposed or when sentence is suspended or imposition of sentence is deferred, unless the defendant is indigent and unable to pay the fee. All fees paid to the municipal court under this section shall be deposited in the general fund monthly for allocation by the board of city commissioners to private, non-profit domestic violence or sexual assault programs or to victim and witness advocacy programs whose primary function is to provide direct services to victims and witnesses of crime.

(Reference: NDCC 27-01-10)
(Chapter Source: Home Rule Charter for City of Bismarck)
(Ord. 4655, 12-20-94)