

Bottineau Municipal Code Revised

Chapter Thirteen

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Chapter Thirteen

Offenses

ARTICLE 1 – In General

13.0101 Criminal Contempt

1. The Municipal Court has power to punish for contempt of its authority 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; or
- C. Disobedience or resistance to its lawful writ, process, order, rule, decree or command.

2. 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.

3. 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 usage's of law and equity, including the power of detention.

13.0102 Hindering Proceedings by Disorderly Conduct

A person is guilty of an offense if the person recklessly or intentionally hinders an official City proceeding by noise or violent or tumultuous behavior or disturbance.

13.0103 Fleeing or Attempting to Elude a Police Officer

Any driver of a motor vehicle who willfully fails or refuses to bring the vehicle to a stop, or who otherwise flees or attempts to elude a pursuing police vehicle, when given a visual or audible signal to bring the vehicle to a stop, is guilty of a class B misdemeanor. A signal complies with the section if the signal is perceptible to the driver and the police officer giving such signal is in uniform, prominently displaying the officer's badge of office, and the vehicle is appropriately marked showing it to be an official police vehicle.

13.0104 Interference with Officers

No person in the City shall resist any police or fire officer, any member of the police or fire departments, or any person duly empowered with police or fire authority, while in the discharge or apparent discharge of duty, or in any way interfere with or hinder in the discharge of duty.

13.0105 False Alarms or False Reports

No person in the City shall intentionally make, turn in, or give a false alarm of fire, or of need for police or ambulance assistance, or aid or abet in the commission of such act. No person in the City shall make to, or file with, the police department of the City any false, misleading or unfounded statement or report concerning the commission or alleged commission of any crime occurring in the City.

13.0106 Criminal Attempt

1. 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.

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 his complicity as an accomplice under NDCC §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.

3. 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.

13.0107 Criminal Conspiracy

1. 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 this 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.

2. 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.

3. 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.

4. 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, is immune from prosecution, or it otherwise not subject to justice.

5. Accomplice liability for offenses committed in furtherance of the conspiracy is to be determined as provided in NDCC §12.1-03-01.

6. Conspiracy shall be subject to the penalties provided for attempt in Subsection 3 of Section 13.0106.

13.0108 Aiding Consummation of a Crime

A person is guilty of the offense of aiding consummation of an offense against the ordinances of this 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.

13.0109 Impersonating Officials

1. A person is guilty of an offense if he falsely pretends to be a public servant of this City and acts as if to exercise the authority of such 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 his pretension, he is guilty of the greater offense prohibited by NDCC §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 the ordinance to cover only impersonation of City officials rather than state officials.

13.0110 Discrimination in Public Places

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

1. 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.

2. Injures, intimidates, or interferes with another because of his sex, race, color, religion, 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.

13.0111 Preventing Exercise of Civil Rights-Hindering or Preventing Another Aiding Third Person to Exercise Civil Rights

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

1. Injures, intimidates, or interferes with another because he is or is about to exercise his civil rights, or because he has exercised his civil rights.

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

ARTICLE 2 – Offenses Against Persons

13.0201 Simple Assault

1. A person is guilty of an offense if that person:

A. Willfully causes bodily injury to another human being; or

B. 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.

2. 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 reasonable foreseeable hazards of joint participation in a lawful athletic contest or competitive sport; or

- C. The conduct and the injury are reasonable 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.
- 3. 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 of harmfulness of the conduct charged to constitute the offense; or
 - C. It is induced by force, duress or deception.

13.0202 Sexual Assault

- 1. A person who knowingly has sexual contact with another person, or who causes another person to have sexual contact with that person, 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 that other person incapable of understanding the nature of that other persons conduct;
 - C. That person or someone with that person's knowledge has substantially impaired the victim's power to appraise or control the victim's conduct, by administering or employing without the victim's knowledge, intoxicants, a controlled substance as defined in Chapter 19-03.1 of the North Dakota Century Code, 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 other person;
 - E. The other person is a minor, fifteen years of age or older, and the actor is the other person's parent, guardian, or is otherwise responsible for general supervision of the other person's welfare; or
 - F. The other person is a minor, fifteen years of age or older, and the actor is an adult.

13.0203 Harassment

A person is guilty of an offense if, with intent to frighten or harass another, the person:

- 1. Makes a telephone call anonymously or in offensively coarse language;
- 2. Makes repeated telephone calls, whether or not a conversation ensues, with no purpose of legitimate communication; or
- 3. Communicates a falsehood by telephone and causes mental anguish.

ARTICLE 3 – Offense Against Property

13.0301 Criminal Mischief-Penalty

1. A person is guilty of an offense if that person:

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

Or

B. Willfully damages tangible property of another.

2. Conduct is punishable as criminal mischief under this ordinance when pecuniary loss, if Intentionally caused, is not in excess of one hundred dollars (\$100.00); if recklessly caused, is not in excess of two thousand dollars (\$2,000.00); and if the damages to tangible property of another are not by means of an explosive or a destructive device.

3.. The penalty for the offense of criminal mischief may not exceed a fine of one thousand dollars (\$1,000.00), imprisonment from thirty (30) days, or both such fine and imprisonment.

13.0302 Tampering with or Damaging a Public Service

A person is guilty of an offense if that person 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.

13.0303 Unlawful Use of or Injury to Television or Radio Signals and Equipment

It shall be unlawful for any person or persons to obtain or attempt to obtain any cable television services from any cable television company, or any firm or private person with intent to cheat or defraud such cable television company, other firm or private person, by installing, rearranging, or tampering with any facilities or equipment, or by any trick, stratagem, impersonation, pretension, falsification of fact, or contrivance, or by any other device or means whatsoever.

13.0304 Consent as a Defense and Definition of “of another” for Criminal Mischief or Tampering with or Damaging a Public Service

For prosecution of criminal mischief under 13.0301 or tampering with or damaging a public Service under 13.0302:

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.

13.0305 Criminal Trespass

A person is guilty of an offense if, knowing that the person 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.

13.0306 Consolidated Theft Offenses

1. Conduct denominated theft in 13.0307 to 13.0309 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, misappropriation of public funds, swindling and the like.

2. A charge of theft under 13.0307 to 13.0309, which fairly apprises the defendant of the nature of the charges against the defendant, 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 charge if the defendant's conduct falls under 13.0307 to 13.0309, so long as the conduct proved is sufficiently related to the conduct charged that the accused is not unfairly surprised by the case that must be met.

13.0307 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 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.

13.0308 Theft of Services

A person is guilty of theft if:

1. The person intentionally obtains services, known by the person 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 the person is not entitled, the person 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.

13.0309 Theft of Property Lost, Mislaid or Delivered by Mistakes

A person is guilty of theft if the person:

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

2. Retains or disposes of property of another when that person 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 of a person entitled to have it.

13.0310 Thefts Punishable Under City Ordinances

Theft under 13.0307 to 13.0309 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 two hundred fifty dollars (\$250.00) 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;
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 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 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;
7. 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;
8. The property stolen does not consist of livestock taken from the premises of the owner;
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 or was not stolen to gain such access.
10. The property stolen is not a card, plate, or other credit device existing for the purpose of obtaining money property, labor, or services on credit, or is a debit card, electronic fund transfer card, code or other means of access to an account for the purpose of initiating electronic fund transfers.

13.0311 Defrauding Secured Creditors – Penalty

A person is guilty of an offense if he destroys, removes, conceals, encumbers, transfers, or otherwise deals with property subject to a security interest with intent to prevent collection of the debt represented by the security interest or if he makes false statements at the time of sale as to the existence of security interests.

13.0312 Retail Theft – Shoplifting

1. Presumption. Any person concealing upon that person's person or among that person's 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.

2. Detention of Suspect – Procedure. 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:

- A. To require the person to identify himself;
- B. To verify such identification;
- C. To determine whether such person has in the person's possession unpurchased merchandise and, if so, to recover such merchandise;
- D. To inform a peace officer of the detention of the person and surrender custody of that person to a peace officer;
- E. 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 said minor to the person informed.

3. Definitions. As used in this section, unless the context requires otherwise:

- A. An item is "concealed" within the meaning of this section if, even though there is some notice of its presence, the item itself is not visible through ordinary observation.
- B. "Full retail value" means the merchant's stated or advertised price of the merchandise.
- C. "Merchandise" means any item of tangible personal property and specifically includes shopping carts.
- D. "Merchant" means an owner or operator of any retail mercantile establishment or any agent, employee, lessee, consignee, officer, franchise or independent contractor or such owner or operator.
- E. "Person" means any natural person or individual.
- F. "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 said retail mercantile establishment.
- G. "Retail mercantile establishment" means any place where merchandise is displayed, held, offered or stored for sale to the public.
- H. "Shopping cart" means those push carts of the type or types which are commonly provided by grocery stores, drugstores 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.

4. Theft of unpurchased merchandise, displayed, held, offered or stored for sale in a mercantile establishment from that establishment when open for business is "shoplifting" for which the offender may be assessed a penalty upon conviction not exceeding one thousand dollars (\$1,000.00), imprisonment of thirty (30) days, or both such fine and imprisonment

13.0313 Defenses and Proof as to Theft and Related Offenses

1. It is a defense to a prosecution under this article that:
 - A. 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
 - B. 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.
2. It does not constitute a defense to a prosecution for conducts constituting an offense in violation of this article that:
 - A. Stratagem or deception, including the use of an undercover operative or law enforcement officer, was employed;
 - B. 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
 - C. 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.
3. It is a prima facie case of theft under this article 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.
 - A. 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.
 - B. 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 induce 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.

13.0314 Definitions

1. "Dealer in property" means a person who buys or sells property as a business.
2. "Deception" means:
 - 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; or
 - B. Preventing another from acquiring information which would affect his judgment of a transaction; or

- 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; or
 - 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; or
 - 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; or
 - 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 (i.) where such instrument has been stolen, forged, revoked or canceled, or where for any other reason its use by the actor is unauthorized, and (ii.) 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 statements 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.
3. “Deprive” means:
- 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; or
 - 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.
4. “Fiduciary” means 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.
5. “Financial institution” means 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.
6. “Obtain” means:
- 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.
7. “Property” means 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.

8. "Property of another" means property in which a person other than the actor or in which a government has an interest 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 that 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.

9. "Receiving," means acquiring possession, control or title, or lending on the security of the property.

10. "Services" means 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.

11. "Stolen" means 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.

12. "Threat" means an expressed purpose, however communicated, to:

- A. Cause bodily injury in the future to the person threatened or to any other person; or
- B. Cause damage to property; or
- C. Subject the person threatened or any other person to physical confinement or restraint; or
- D. Engage in other conduct constituting a crime; or
- E. Accuse anyone of a crime; or
- 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; or
- G. Reveal any information sought to be concealed by the person threatened; or
- H. Testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or
- I. Take or withhold official action as a public servant, or cause a public servant to take or withhold official action; or
- J. Bring about or continue to 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; or
- 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 he initiated the scheme.

13. "Traffic" means:

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.

13.0315 Making or Uttering Slugs

1. A person is guilty of an offense if that person makes or utters a slug or slugs which do not exceed fifty dollars (\$50.00) 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.

2. In this section:

A. "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;

B. "Coin machine" means a coin box, turnstile, vending machine, or other mechanical or electronic device or receptacle designed (i.) to receive a coin or bill of a certain denomination or a token make for the purpose; and (ii.) 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.

C. "Value" of the slugs means the value of the coins, bills or tokens for which they are capable of being substituted.

ARTICLE 4 – Offenses Against Public Order, Health, Safety and Sensibilities

13.0401 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 (5) or more persons, which by tumultuous and violent conduct creates grave danger of damage or injury to property or persons or substantially obstructs law enforcement or other government function.

13.0402 Disobedience of Public Safety Orders Under Riot Conditions

A person is guilty of an offense if, during a riot as defined in 13.0401 or which 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 designated to prevent or control disorder, or promote the safety of persons or property, issued by the senior law enforcement official on the scene.

13.0403 Disorderly Conduct

1. An individual 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 the individual's behavior, the individual:

- A. Engages in fighting or in violent, tumultuous or threatening behavior;
- B. Makes unreasonable noise;
- C. In a public place, uses abusive or obscene language, or makes an obscene gesture;
- D. Obstructs vehicular or pedestrian traffic, or the use of a public facility;
- E. Persistently follows a person in or about a public place or places;
- F. While loitering in a public place for the purpose of soliciting sexual contact, the individual solicits such contact;
- G. Creates a hazardous, physically offensive, or seriously alarming condition by any act that serves no legitimate purpose; or
- H. 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.

13.0404 Defense when Conduct Consist of Constitutionally Protected Activity

Ordinance 13.0403 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.

13.0405 Gambling

1. It shall be an infraction to engage in gambling.

2. "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:

- A. Lawful contests for skill, speed strength or endurance in which awards are made only to entrants or to the owners of entries; or
- B. Lawful business transactions or other acts or transactions now or hereafter expressly authorized by law.

3. "Gambling apparatus" means any device, machine, paraphernalia or equipment that is used or usable in playing phases of any gambling activity, whether that activity consists of gambling between persons, or gambling by a 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 53-04-01, or an antique "slot" machine twenty-five (25) years old or older which is collected and possessed by a person as a hobby and is not maintained for the business of gambling.

4. This ordinance shall not apply to gambling or games of chance conducted by a licensee under the authority of a valid license issued by the State of North Dakota.

13.0406 Prostitution

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;
 - B. Solicits another person with the intention of being hired to engage in sexual activity.
2. Testimony of a person against his or her spouse shall be admissible to prove offenses under this section involving the spouse's prostitution.
3. In this section:
 - A. A "house of prostitution" is any place where a person under the control, management or supervision of another regularly carries on prostitution.
 - B. An "inmate" is a prostitute who acts as such in or through the agency of a house of prostitution.
 - C. "Sexual activity" means sexual act or sexual contact as those terms are defined in North Dakota Century Code Section 12.1-20-02.

13.0407 Business or Labor on Sunday

1. Except as otherwise provided in this section, it is a class B misdemeanor for any person between the hours of twelve midnight and twelve noon on Sunday to engage in or conduct business or labor for profit in the usual manner and location, operate a place of business open to the public, or authorize or direct that person's employees or agents to take action prohibited under this section. This subsection shall not apply to any person who in good faith observes a day other than Sunday as the Sabbath, if that person refrains from engaging in or conducting business or labor for profit and closes the place of business to the public between the hours of twelve midnight and twelve noon on the day observed as the Sabbath.

2. Except for items sold at hobby shows, craft show, fairs, exhibits, occasional rummage sales including garage sales or other sales for which a sales tax permit is not required, and tourist attractions that derive at least fifty percent (50%) of their annual gross sales from seasonal or tourist customers, the sale or rental of any of the following items between the hours of twelve midnight and twelve noon on Sunday is prohibited:

- A. Clothing other than work gloves and infant supplies;
- B. Clothing accessories;
- C. Wearing apparel other than that sold to a transient traveler under emergency conditions;
- D. Footwear;
- E. Headwear;
- F. Home, business, office or outdoor furniture;
- G. Kitchenware;
- H. Kitchen utensils;

- I. China;
- J. Home appliances;
- K. Stoves;
- L. Refrigerators;
- M. Air conditioners;
- N. Electric fans;
- O. Radios;
- P. Television sets;
- Q. Washing machines
- R. Dryers;
- S. Cameras;
- T. Hardware other than emergency plumbing, heating, cooling or electrical repair or replacement parts and equipment;
- U. Tools other than manually driven hand tools;
- V. Jewelry;
- W. Precious or semiprecious stones;
- X. Silverware;
- Y. Watches;
- Z. Clocks;
- AA. Luggage;
- BB. Motor vehicles other than the daily rental of vehicles by business whose sole activity is automobile rental;
- CC. Musical instrument
- DD. The sale of audio or video recordings, records or tapes. Rental of these items is permitted;
- EE. Toys other than those customarily sold as novelties or souvenirs;
- FF. Mattresses;
- GG. Bed coverings;
- HH. Household linens;
- II. Floor coverings;

- JJ. Lamps;
- KK. Draperies;
- LL. Blinds
- MM. Curtains;
- NN. Mirrors;
- OO. Cloth piece goods;
- PP. Lawnmowers;
- QQ. Sporting or recreational goods other than those sold or rented on the premises where sports or recreational activities are conducted:
- RR. Paint and building and lumber supplies.

3. Subject to the limitations of this Subsection and Subsection 2, a business specified in this section may operate in the business' usual manner, location, and for its usual purposes. The businesses authorized under this Subsection to operate on Sunday include:

- A. Restaurants, cafeterias or other prepared food service organizations;
- B. Hotels, motels and other lodging facilities;
- C. Hospitals and nursing homes, including the sale of giftware on the premises;
- D. Dispensaries of drugs and medicines;
- E. Ambulance and burial services;
- F. Generation and distribution of electric power, water, steam, natural gas, oil or other fuel used as a necessary utility;
- G. Distribution of gas, oil and other fuels;
- H. Telephone, telegraph and messenger services;
- I. Heating, refrigeration and cooling services;
- J. Railroad, bus, trolleys, subway, taxi and limousine services;
- K. Water, air and land transportation services and attendant facilities;
- L. Cold store warehouse;
- M. Ice manufacturing and distribution facilities and services;
- N. Minimal maintenance of equipment and machinery;
- O. Plant and industrial protection services;

- P. Industries where continuous processing or manufacturing is required by the very nature of the process involved.
- Q. Newspaper publication and distribution;
- R. Newsstands;
- S. Radio and television broadcasting;
- T. Motion picture, theatrical and musical performances;
- U. Motor vehicle service stations that sell motor fuel and motor oil, and that customarily provide daily repair services or products for any of the following systems or parts of a motor vehicle:
 - I. Air conditioning system;
 - II. Batteries;
 - III. Electrical system;
 - IV. Engine cooling system
 - V. Exhaust system;
 - VI. Fuel system;
 - VII. Tires and tubes;
 - VIII. Emergency work necessary for the safe and lawful operation of the motor vehicle.
 - V. Athletic and sporting events;
 - W. Parks, beaches and recreational facilities;
 - X. Scenic, historic and tourist attractions;
 - Y. Amusement centers, fairs, zoos and museums;
 - Z. Libraries;
 - AA. Educational lectures, forums and exhibits;
 - BB. Service organizations (USO, YMCA, etc.);
 - CC. Coin-operated laundry and dry-cleaning facilities;
 - DD. Food stores operated by an owner or manager in addition to not more than ten (10) employees working in the store at one time on a Sunday;
 - EE. Bait shops for the sale of live bait and fishing tackle;
 - FF. From April 1st through June 15th, floral nurseries for the sale of bedding plants and nursery stock;
 - GG. From November 20th through December 24th, Christmas tree stands;
 - HH. Hobby shows, craft shows, fairs, exhibits;
 - II. Occasional rummage sales, including garage sales or other sales for which a sales tax permit is not required;
 - JJ. Community festivals licensed or authorized by the governing body of a City or the board of county commissioners;
 - KK. Premises licensed to dispense beer and alcoholic beverages within the limits prescribed in North Dakota Century Code Sections 5-02-05 and 5-02-05.1.
 - LL. Credit apparel services, lodging and travel reservation services, and, notwithstanding Subsection 2, telemarketing of goods and services.

13.0408 Cruelty to Animals

- 1. It is an offense for any person to:
 - A. Overdrive, overload, torture, cruelly beat, neglect or unjustifiably injure, maim, mutilate or kill any animal, or cruelly work any animal when unfit for labor;

- B. Deprive any animal over which he has charge or control of necessary food, water or shelter;
 - C. Keep any animal in any enclosure without exercise and wholesome change of air;
 - D. Abandon any animal;
 - E. Allow any maimed, sick, infirm or disabled animal of which he is the owner, or of which he has custody, to lie in any street, road or other public place for more than three (3) hours after notice;
 - F. No person shall willfully instigate, or in any way further, any act of cruelty to any animal or animals, or any act tending to produce such cruelty.
 - G. Cage any animal for public display except as allowed by North Dakota Century Code Section 36-21.1-02(8);
2. The word “animal” includes every living animal except the human race; the word “torture” or “cruelty” includes every act, omission, or neglect whereby unnecessary or unjustifiable pain, suffering or death is cause or permitted.

13.0409 Persons Less than Twenty-One (21) Years Prohibited – Exceptions

1. Any person under twenty-one (21) years of age manufacturing or attempting to manufacture alcoholic beverages, purchasing or attempting to purchase alcoholic beverages, consuming or having recently consumed alcoholic beverages other than during a religious service, being under the influence of alcoholic beverages, or being in possession of alcoholic beverages, or furnishing money to any person for such purchase, or entering any licensed premises where alcoholic beverages are being sold or displayed, except as provided in Subsection 2, is guilty of an offense. The court may, under this section, refer the person to an outpatient addiction facility licensed by the state department of human services for evaluation and appropriate counseling or treatment. The offense of consumption occurs where consumption takes place or where the offender is arrested. For purposes of this section, possession includes actual or constructive possession. Constructive possession means the power and capability to exercise dominion and control over the alcoholic beverage.

2. Except as permitted in the section, any licensee who dispenses alcoholic beverages to a person under twenty-one (21) years of age, or who permits such a person to remain on the licensed premises while alcoholic beverages are being sold or displayed, is guilty of an offense, subject to the provisions of Sections 5-01-08, 5-01-08.1 and 5-01-08.2 of the North Dakota Century Code. Any person under twenty-one (21) years of age may remain in a restaurant where alcoholic beverages are being sold if the restaurant is separate from the room in which alcoholic beverages are opened or mixed and gross sales of food are at. Any person under twenty-one years of age may remain in an area of a site where beer, wine, or sparkling wine is sold in accordance with the conditions of an event permit issued pursuant to Section 5-02-01.1 of the North Dakota Century Code. Any person who is nineteen years of age or older but under twenty-one years of age may be employed by the restaurant to serve and collect money for alcoholic beverages, if the person is under the direct supervision of a person twenty-one or more years of age, but may not be engaged in mixing, dispensing, or consuming alcoholic beverages. Any establishment where alcoholic beverages are sold may employ persons from eighteen (18) to twenty-one (21) years of age to work in the capacity of musicians under the direct supervision of a person twenty-one (21) or more years of age.

13.0410 Misrepresentation of Age – Obligations of Licenses

Any person who shall misrepresent or misstate his age or the age of any other person, least equal to gross sales of alcoholic beverages which are consumed in the dining area, or shall misrepresent his age through presentation of any document purporting to show that person to be of legal age to purchase

alcoholic beverages is guilty of an offense. Any licensee may keep a book and may require anyone who has shown documentary proof of his age, which substantiates his age to allow the purchase of alcoholic beverages, to sign the book if the age of that person is in question. The book must 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 the purchaser's signature.

13.0411 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 an offense.

13.0412 Public Intoxication – Assistance – Medical care

A peace officer has authority to take any apparently intoxicated person to the person's home, to a local hospital, to a detoxification center, or, whenever that person constitutes a danger to himself or others, to a jail for purposes of detoxification. A duly licensed physician of a local hospital has authority to hold that person for treatment up to seventy-two (72) hours. That intoxicated person may not be held in jail because of intoxication more than twenty-four (24) hours. An intoxicated person may 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 that person in a hospital, detoxification center, or jail, the 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 that person.

13.0413 No Prosecution for Intoxication

No person may be prosecuted solely for public intoxication. Law enforcement officers may utilize standard identification procedures on all persons given assistance because of apparent intoxication.

13.0414 Objectionable Materials or Performance – Display to Minors-Definitions – Penalty

1. A person is guilty of an offense if he willfully displays at newsstands 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, 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. As used in this section:

A. "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 discernible turgid state even if completely and opaquely covered.

B. "Where minors are or may be invited as a part of the general public" includes any public roadway or public walkway.

C. The above shall not be construed to include a bona fide school, college, university, museum, public library or art gallery.

13.0415 Curfew, General Regulations – Penalty

It shall be unlawful for any minor under the age of seventeen years to loiter, idle, wander, stroll, play or drive or ride in cars in or upon the public streets, highways, roads, alleys, parks, playgrounds or

other public grounds, public places and public buildings, places of amusement and entertainment, vacant lots or other unsupervised places, between the hours of ten p.m. and five a.m. of the following day, for the nights of Sunday through Thursday inclusive, and twelve midnight to five a.m. of the following day on nights of Friday and Saturday; provided, however, that the provisions of this section do not apply to a minor accompanied by his parents, guardian or other adult person having the care and custody of the minor, or where the minor is upon an emergency errand or legitimate business directed by his parents, guardian or other adult person having the care and custody of the minor.

It shall be unlawful for the parent, guardian or other adult person having the care and custody of a minor under the age of seventeen years to knowingly permit such minor to loiter, idle, wander, stroll, play or drive or ride in cars in or upon the public streets, highways, roads, alleys, parks, playgrounds or other public grounds, public places and public buildings, places of amusement and entertainment, vacant lots or other unsupervised places, between the hours of ten p.m. and five a.m. of the following day, official City time, for the nights of Sunday through Thursday inclusive, and twelve midnight to five a.m. of the following day for nights of Friday and Saturday; provided, however, that the provisions of this section do not apply when the minor is accompanied by his parents, guardian or other adult person having the care and custody of the minor, or where the minor is upon an emergency errand or legitimate business directed by his parents, guardian, or other adult person having the care and custody of the minor.

It shall be the duty of the person designated to sound a curfew at the times and by the means designated by resolution of the City Council.

13.0416 Defense When Conduct Consists of Speech or Other Expression

1. If conduct that would otherwise violate Section 13.0403(1)(b) (unreasonable noise) or Section 13.0403(1)(d) (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.

2. 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.

3. It is a defense to prosecution under Section 13.0403(1)(b) or (d):

A. That in circumstances in which this section requires an order no order was given;

B. That an order, if given, was manifestly unreasonable in scope; or

C. That an order, if given, was promptly obeyed.

13.0417 Loitering

1. A person commits an infraction if he:

A. 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.

B. 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.

2. The word "loiter" means to delay or to stand idly around.

3. Unless flight by the actor or other circumstance 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.

4. No person shall be convicted of an offense under this section if the peace officer did not comply with Subsection 3, 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.

5. 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.

13.0418 Resisting Police Officer

No person shall resist or oppose any police officer in the discharge of his duties.

13.0419 Barbed Wire and Electrified Fences

It shall be unlawful for any person to erect, construct or maintain any barbed wire or electrically charged fence within the laid out or platted portion of the City.

13.0420 Locks on Discarded Iceboxes

It shall be unlawful for any person to leave outside of any building or dwelling in a place accessible to children any abandoned, unattended or discarded icebox, refrigerator, or any other container of any kind which has an airtight snaplock or other device thereon without first removing such snaplock or doors from such icebox, refrigerator or container.

13.0421 False Alarms

It shall be unlawful for any person to give or create any false alarm as crying "fire," "police" or "watch," nor shall any person other than a police officer or City officer in the discharge of his duty, give, make or sound any alarm or call on or with any policeman's whistle, rattle or other instrument commonly known or used by any of the police officers of the City in making alarms or calls while in the discharge of his duty.

13.0422 Registering in Hotel Under Fictitious Name

Every person, except an officer of the law in the actual performance of his duty, who shall register, or be registered with his knowledge or consent, at any hotel, tourist home, tourist camp or other lodging place in the City under a fictitious or false name, or under any name other than his own, shall be guilty of a violation of this code.

13.0423 Indecent Exposure and Lewdness

No person shall appear in any street or public place in a state of nudity, or in any indecent or lewd dress, or make any indecent exposure of his person, or be guilty of any obscene or filthy act or any lewd, indecent, immoral or insulting conduct, language or behavior.

13.0424 Peeping into Dwelling

No person shall unlawfully enter upon the property of another and secretly or furtively peep through or attempt to so peer, into, through or spy through a window, door or other aperture of a dwelling.

13.0425 Sale of Tobacco to Minors and use by Minors Prohibited

1. It is an infraction for any person to sell or furnish to a minor, or procure for a minor, cigarettes, cigarette papers, cigars, snuff, or tobacco in any other form in which it may be utilized for smoking or chewing. It is an infraction for any person to sell or furnish to a minor or procure for a minor, an electronic cigarette. For the purposes of this chapter, "electronic cigarette" means any electronic oral device, such as one composed of a heating element, battery and/or electronic circuit, 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. As used in this Subsection, "sell" includes dispensing from a vending machine under the control of the actor.

2. It is a noncriminal offense for a minor to purchase, possess, smoke, or use electronic cigarettes, cigarettes, cigars, cigarette papers, snuff, or tobacco in any other form in which it may be utilized for smoking or chewing. However, an individual under eighteen years of age may purchase and possess tobacco as a 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.

3. A minor fourteen years of age or older found to have violated Subsection 2 must pay a fee of twenty-five (\$25.00) dollars.

A. Any individual who has been cited for a violation of Subsection 2 may appear before a court of competent jurisdiction 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.

B. If an individual cited for a violation of Subsection 2 does not choose to follow the procedures provided under subdivision a, 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 the 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.

C. 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.

4. The prosecution must prove commission of a cited violation under Subsection 2 by a preponderance of the evidence.

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

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

ARTICLE 5 – Sentencing

13.0501 Classification of Offenses

Offenses against the ordinances of this City are divided into two (2) classes, as follows:

1. Offense, for which a maximum penalty of thirty (30) days imprisonment, a fine of one thousand dollars (\$1,000.00), or both, may be imposed.

2. Infraction, for which a maximum fine of five hundred dollars (\$500.00) 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 in state statutes or the ordinances of this or any other North Dakota City 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. The penalties listed shall not be construed to prohibit the utilization of the sentencing alternatives, other than a fine or imprisonment, provided by Section 12-1-32-02 of the North Dakota Century Code and 13.0502, for the violation of a City ordinance, nor does this section limit the use of deferred or suspended sentences.

13.0502 Sentencing Alternatives

1. Every person convicted of an offense who is sentenced by the court must 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 or sentencing is deferred under Subsection 4:

A. Payment of the reasonable costs of the person's prosecution;

B. Probation;

C. A term of imprisonment, including intermittent imprisonment;

D. A fine;

E. Restitution for damages resulting from the commission of the offense;

F. Restoration of damaged property or other appropriate work detail;

G. Commitment to an appropriate licensed public or private institution for treatment of alcoholism, drug addiction or mental disease or defect.

H. Commitment to a sexual offender treatment program.

Sentences imposed under this Subsection shall not exceed in duration the maximum sentences of imprisonment provided in 13.0501 or as provided specifically in an ordinance defining an offense.

This Subsection shall not be construed as permitting the unconditional discharge of an offender following conviction. 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 13.0507, 13.0508, or 13.0509.

2. Credit against any sentence to a term of imprisonment must be given by the court to a defendant for all 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.

3. A court may suspend the execution of all or a part of the sentence imposed. The court shall place the defendant on probation during the term of suspension.

4. A court, upon application or its own motion, may defer imposition of sentence. The court must place the defendant on probation during the period of deferment. An order deferring imposition of sentence is reviewable upon appeal from a verdict or judgment. In any subsequent prosecution, for any other offense, the prior conviction for which imposition of sentence is deferred may be pleaded and proved, and has the same effect as if probation had not been granted or the information or indictment dismissed under Section 12.1-32-07.1 of the North Dakota Century Code.

5. A court may, prior to imposition of sentence, order the convicted offender committed to an appropriate licensed public or private institution for diagnostic testing for such period of time as may be necessary, but not to exceed thirty days. The court may, by subsequent order, extend the period of commitment for not to exceed thirty additional days. The court may also order such diagnostic testing without ordering commitment to an institution. Validity of a sentence must not be challenged on the ground that diagnostic testing was not performed pursuant to this Subsection.

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

7. If an offender is sentenced to a term of imprisonment, that term of imprisonment commences at the time of sentencing, unless, upon motion of the defendant, the court orders the term to commence at some other time.

13.0503 Procedure for Trial of Infraction – Incidence

1. 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 nor to have a trial by jury pursuant to North Dakota Century Code Section 40-18-19 unless he may be subject to a sentence of imprisonment under Subsection 2 of 13.0501.

2. Except as provided in North Dakota Century Code Title 12.1 or the ordinances of this 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.

3. Following conviction of an infraction, the offender may be sentenced in accordance with Subsection 1 of 13.0502, except that a term of imprisonment may not be imposed except in accordance with Subsection 3 of 13.0506 or Subsection 2 of 13.0501.

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

5. Except as provided in this Section, 13.0501 or 13.0502, or as the context may otherwise indicate differentiation between the infraction classification and the offense classification, the term “offense” refers to all violations of the ordinances of this City including infractions.

13.0504 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.

13.0505 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.

1. The defendant’s criminal conduct neither caused nor threatened serious harm to another person or his property.

2. The defendant did not plan or expect that his criminal conduct would cause or threaten serious harm to another person or his property.

3. The defendant acted under strong provocation.

4. There were substantial grounds which, though insufficient to establish a legal defense, tend to excuse or justify the defendant’s conduct.

5. The victim of the defendant’s conduct induced or facilitated its commission.

6. The defendant has made or will make restitution or reparation to the victim of his conduct for the damage or injury, which was sustained.

7. 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.

8. The defendant’s conduct was the result of circumstances unlikely to recur.

9. The character, history and attitudes of the defendant indicate that he is unlikely to commit another crime.

10. The defendant is particularly likely to respond affirmatively to probationary treatment.

11. The imprisonment of the defendant would entail undue hardship to himself or his dependents.

12. The defendant is elderly or in poor health.

13. The defendant did not abuse a public position of responsibility or trust.

14. The defendant cooperated with law enforcement authorities by bringing other offenders to justice, otherwise cooperated.

Nothing herein shall be deemed to require explicit reference to these factors in a presentence report or by the court at sentencing.

13.0506 Imposition of Fine – Response to Non-Payment

1. The court, in making a determination of the propriety of imposing a sentence to pay a fine, shall consider the following factors:

- A. The ability of the defendant to pay without undue hardship;
- B. Whether the defendant, other than a defendant organization, gained money or property as a result of commission;
- C. Whether the sentence to pay a fine will interfere with the defendant's capacity to make restitution;
- D. Whether a sentence to pay a fine will serve a valid rehabilitative purpose.

2. 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.

3. If the defendant does not pay any fine or costs imposed, or make any required partial payment, the courts, upon motion of the prosecuting attorney or on its own motion, may issue an order to show cause why the defendant shows that his 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 indigence. An order of commitment under this Subsection shall not be for a period in excess of thirty (30) days. As used in this Subsection, "fine" does not include a fee established pursuant to Section 9.2308 of these ordinances.

13.0507 Incidents of Probation

1. Unless terminated as provided in Subsection 2, the period during which a sentence to probation shall remain conditional and be subject to revocation is two (2) years.

2. The court may terminate a period of probation and discharge the defendant at any time earlier than that provided in Subsection 1 if warranted by the conduct of the defendant and the ends of justice.

3. Notwithstanding the fact that a sentence to probation can subsequently be modified or revoked, a judgment, which includes such a sentence, constitutes a final judgment for all other purposes.

13.0508 Conditions of Probation – Revocation

1. The conditions of probation must 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 the defendant to do so. The court shall provide as an explicit condition of every probation that the defendant not commits another offense during the period for which the probation remains subject to revocation.

2. 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:

- A. Work faithfully at a suitable employment or faithfully pursue a course of study or of vocational training that will equip the defendant for suitable employment;
- B. Undergo available medical or psychiatric treatment and remain in a specified institution if required for that purpose;
- C. Attend or reside in a facility established for the instruction, recreation or residence of persons on probation;
- D. Support the defendant's dependents and meet other family responsibilities;
- E. Make restitution or reparation to the victim of the defendant's damage or injury, which was sustained, or perform other reasonable assigned work. When restitution, reparation or assigned work is a condition of probation the court shall proceed as provided in 13.0509;
- F. Pay a fine imposed after consideration of the provisions of 13.0506;
- G. Refrain from excessive use of alcohol, or any use of narcotics or of another dangerous or abusive drug without a prescription.
- H. Permit the probation officer to visit the defendant at reasonable times at the defendant's home or elsewhere.
- I. Remain within the jurisdiction of the court, unless granted permission to leave by the court or the probation officer.
- J. Answer all reasonable inquiries by the probation officer and promptly notify the probation officer of any change in address or employment.
- K. Report to a probation officer at reasonable times as directed by the court or the probation officer.
- L. Submit to a medical examination or other reasonable testing for the purpose of deterring the defendant's use of narcotics, marijuana, or other controlled substance whenever required by a probation officer.
- M. Refrain from associating with known users or traffickers in narcotics, marijuana, or other controlled substances.
- N. Submit the defendant's person, place of residence, or vehicle to search and seizure by a probation officer at any time of the day or night, with or without a search warrant.
- O. Serve a term of imprisonment of up to one-half of the maximum term authorized for the offense of which the defendant was convicted or one year, whichever is less.
- P. Reimburse the costs and expenses determined necessary for the defendant's adequate defense when counsel is appointed for the defendant. When reimbursement of indigent defense costs and expenses is imposed as a condition of probation, the court shall proceed as provided in Subsection 3 of Section 12.1-32-08 North Dakota Century Code.
- Q. Provide community service for the number of hours designated by the court.
- R. Refrain from any subscription to, access to, or use of the Internet.

3. When a defendant is sentenced to probation, the defendant must be given a certificate explicitly setting forth the conditions on which he is being released.

4. The court, upon notice to the probationer may modify or enlarge the conditions of 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 before the expiration or termination of the period, the court may continue the defendant on the existing probation with or without modifying or enlarging the conditions, or may revoke the probation and impose any other sentence that was available under 13.0502 at the time for the initial sentencing.

5. Jurisdiction over a probationer may be transferred from the court that imposed the sentence to another court of this state, with the concurrence of both courts. Retransfer of jurisdiction may also occur in the same manner. The court to which jurisdiction has been transferred under this Subsection exercise all powers permissible under this chapter over the defendant.

13.0509 Restitution or Reparation – Procedures

1. 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:

- A. The reasonable damages sustained by the victim or victims of the criminal offense, which damages must be limited to those directly related to the criminal offense and expenses actually incurred as a direct result of the defendant's criminal action;
- B. 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;
- C. The likelihood that attaching a condition relating to restitution or reparation will serve a valid rehabilitation purpose in the case of the particular offender considered.

The court shall fix the amount of restitution or reparation, which may not exceed an amount the defendant can or will be able to pay, and 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 must 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, unless the court directs otherwise, be filled, 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.

2. 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 a private individual other than the victim.

13.0510 Merger of Sentences – Sentencing for Multiple Offenses

1. 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.

2. A defendant may not be consecutively sentenced to more than one year.

ARTICLE 6 – Penalties

Any person who is convicted of violating or of failing to comply with any of the provisions of the ordinances contained in this chapter for which a penalty is not specifically set forth, may be punished by a fine of not more than one thousand dollars (\$1,000.00) or by imprisonment not to exceed thirty (30) days, or both.