

TITLE XII.

PUBLIC CONDUCT - OFFENSES
(Source: Ord. 602, Sec. 1 (2000))

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CHAPTER 12-01

INTRODUCTION

SECTIONS:

- 12-0101. Introduction.
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- 12-0108. Impersonating Officials.
- 12-0109. False Reports to Law Enforcement Officers.
- 12-0110. Fleeing a Peace Officer.
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12-0101. INTRODUCTION. Violations of any of the offenses set forth in this Chapter shall be considered criminal in nature, classified as misdemeanors, and subject to the imposition of penalties under Section 1-0211.

Source: Ord. 829, Sec. 1 (2008)

12-0102. CRIMINAL ATTEMPT.

1. A person is guilty of a 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 North Dakota Cent. Code Section 12.1-03-01 were the offense committed by the other person, even if the other is not guilty of committing or attempting the offense, for example, because he has a defense of justification or entrapment.
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.

12-0103. 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 prescribed 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 is otherwise not subject to justice.
5. Accomplice liability for offenses committed in furtherance of the conspiracy is to be determined as provided in North Dakota Century Code Section 12.1-03-01.
6. Conspiracy shall be subject to the same penalty as that provided for the offense or offenses constituting the objective of the conspiracy.

12-0104. 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.

12-0105. PUBLIC SERVANTS PERMITTING ESCAPE. A public servant concerned in official detention, as defined by North Dakota Cent. Code Section 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 he negligently permits an escape.

12-0106. 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 shall be deemed a prosecution for an offense for the purposes of North Dakota Cent. Code Chapters 12.1-01 through 12.1-05, North Dakota Cent. Code Chapter 12.1-32, and Article V 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 by him pursuant to the criminal contempt 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, in accordance with the prevailing usages of law and equity, including the power of detention.

12-0107. HINDERING PROCEEDINGS BY DISORDERLY CONDUCT.

1. A person is guilty of a class A misdemeanor if the person intentionally hinders an official proceeding by noise or violent or tumultuous behavior or disturbance.
2. A person is guilty of a class B misdemeanor if the person recklessly hinders an official proceeding by noise or violent or tumultuous behavior or disturbance.

12-0108. IMPERSONATING OFFICIALS.

1. A person is guilty of an offense if that person falsely pretends to be:
 - a. A public servant, other than a law enforcement officer, and acts as if to exercise the authority of such public servant.
 - a. A public servant or a former public servant and thereby obtains a thing of value.
 - a. A law enforcement officer.
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.
3. An offense under subdivision b or c of subsection 1 is a class A misdemeanor. An offense under subdivision a of subsection 1 is a class B misdemeanor.

12-0109. FALSE REPORTS TO LAW ENFORCEMENT OFFICERS. A person is guilty of an offense if he intentionally or knowingly provides or gives a false report or false information to a law enforcement officer, unless such false statement is given with the intent to falsely implicate another, or involves a false report of a crime calling for an emergency response in which case, such false report would be a Class A Misdemeanor.

12-0110. FLEEING A PEACE OFFICER. Any person, other than the driver of a motor vehicle under Section 39-10-71, North Dakota Cent. Code, who willfully fails or refuses to stop or who otherwise flees or attempts to elude, in any manner, a pursuing peace officer, when given a visual or audible signal to stop, is guilty of a class B misdemeanor for a first or second offense and a class A misdemeanor for a subsequent offense. A signal to stop complies with this section if the signal is perceptible to the person and:

1. If given from a vehicle, the signal is given by hand, voice, emergency light, or siren, and the vehicle is

appropriately marked showing it to be an official law enforcement vehicle; or

2. If not given from a vehicle, the signal is given by hand, voice, emergency light, or siren, and the officer is in uniform and prominently displays the officer's badge of office.

12-0111. 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.

CHAPTER 12-02

CRIMINAL OFFENSES - OFFENSES AGAINST
PERSONS AND PROPERTY

SECTIONS:

- 12-0201. Simple Assault.
- 12-0202. Harassment.
- 12-0203. Definitions.
- 12-0204. Consolidated Theft Offenses.
- 12-0205. Theft of Property.
- 12-0206. Theft of Services.
- 12-0207. Theft of Property Lost, Mislaid, or Delivered by Mistake.
- 12-0208. Thefts Punishable Under City Ordinance.
- 12-0209. Defenses and Proof As To Theft and Related Offenses.
- 12-0210. Theft of Cable Television Services.
- 12-0211. Making or Uttering Slugs.
- 12-0212. Criminal Mischief.
- 12-0213. Criminal Trespass.
- 12-0214. Aiding and Abetting Sexual Abuse - Penalty.

Source: Ord. 1142, Sec. 18 (2019)

12-0201. SIMPLE ASSAULT.

1. It is unlawful for any person to:
 - 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 to all persons injured by the conduct is a defense if:
 - a. The conduct and the injury are reasonably foreseeable hazards of joint participation in a lawful athletic contest or competitive sport; or
 - b. 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.

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 or harmfulness of the conduct charged to constitute the offense; or
 - c. It is induced by force, duress, or deception.

12-0202. HARASSMENT. (Source: Ord. 1026, Sec. 1 (2015))

1. A person is guilty of an offense if, with intent to frighten or harass another, the person:
 - a. Communicates in writing or by telephone a threat to inflict injury on any person, to any person's reputation, or to any property;
 - b. Makes a telephone call anonymously or in offensively coarse language;
 - c. Makes or causes to be transmitted repeated telephone calls, text messages, email communications, or other forms of electronic communication, whether or not a conversation ensues, with no purpose of legitimate communication; or
 - d. Communicates a falsehood in writing or by telephone and causes mental anguish.
2. The offense is a class A misdemeanor if it is under subdivision a of subsection 1 or subsection 4. Otherwise it is a class B misdemeanor.
3. Any offense defined herein and committed by use of a telephone may be deemed to have been committed at either the place at which the telephone call or calls, text message or messages, electronic mail or other forms of electronic communication were made or at the place where the telephone call or calls, text message or messages, electronic mail or other forms of electronic communication were received.
4. A person who telephones a 911 emergency line with the intent to annoy or harass another person or who makes a false 911 report is guilty of a class A misdemeanor.

- a. Intent to annoy or harass is established by proof of one or more calls with no legitimate 911 purpose.
 - b. Upon conviction of a violation of this subsection, a person is also liable for all costs incurred by any unnecessary emergency response.
5. Any offense defined herein is deemed communicated in writing if it is transmitted electronically, by electronic mail, facsimile, text message, or other similar means.

12-0203. DEFINITIONS. Applicable to Section 12-0204 to 12-0209.

1. "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 a 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 (1) where such instrument has been stolen, forged, revoked, or canceled, or where for any other reason its use by

the actor is unauthorized, and (2) where the actor does not have the intention and ability to meet all obligations to the issuer arising out of his use of the instrument; or

- g. Any other scheme to defraud. The term "deception" does not, however, include falsifications as to matters having no pecuniary significance, or puffing by 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.

2. "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.

3. "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.

4. "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.

5. "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.

6. "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.

7. "Property of another" means property in which a person other than the actor or in which a government has an interest which the actor is not privileged to infringe without consent, regardless of the fact that the actor also has an interest in the property and regardless of the fact that the other person or government might be precluded from civil recovery because the property was used in an unlawful transaction or was subject to forfeiture as contraband. Property in possession of the actor shall not be deemed property of another who has a security interest therein, even if legal title is in the creditor pursuant to a conditional sales contract or other security agreement. "Owner" means any person or a government with an interest in property such that it is "property of another" as far as the actor is concerned.
8. "Receiving" means acquiring possession, control, or title, or lending on the security of the property.
9. "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.
10. "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 Cent. Code Section 12.1-23-06.
11. "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 of 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 a strike, boycott, or other similar collective action to obtain property or deprive another of his property which is not demanded or received for the benefit of the group which the actor purports to represent; 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 himself initiated the scheme.

12-0204. CONSOLIDATED THEFT OFFENSES.

- 1. Conduct denominated theft in Sections 12-0205 to 12-0207 constitutes a single offense designed to include the separate offenses heretofore known as larceny, stealing, purloining, embezzling, obtaining money or property by false pretense, extorting, blackmailing, fraudulently converting, receiving stolen property, misappropriating public funds, swindling, and the like.
- 2. A charge of theft under Sections 12-0205 to 12-0207 which fairly apprises the defendant of the nature of the charges against him shall not be deemed insufficient

because it fails to specify a particular category of theft. The defendant may be found guilty of theft under such charge if his conduct falls under Section 12-0205 to 12-0207, so long as the conduct proved is sufficiently related to the conduct charged that the accused is not unfairly surprised by the case he must meet. Any person violating any provision of Sections 12-0205 to 12-0207 shall be guilty of a class B misdemeanor and subject to the imposition of penalties under Section 1-0211 of the Revised Ordinances of 1990 of the City of West Fargo.

SOURCE: Ord. 829, Sec. 2 (2008)

12-0205. THEFT OF PROPERTY. It is unlawful for any person to:

1. Knowingly takes or exercises unauthorized control over, or make an unauthorized transfer of an interest in, the property of another with intent to deprive the owner thereof;
2. Knowingly obtain the property of another by deception with intent to deprive the owner thereof, or intentionally deprive another of his property by deception; or
3. Knowingly receive, retain, or dispose of property of another which has been stolen, with intent to deprive the owner thereof.

12-0206. THEFT OF SERVICES. It is unlawful for any person to:

1. Intentionally obtain services, known to be available only for compensation, by deception, false token, or other means to avoid payment for services; or
2. Have control over the disposition of services of another to which the person is not entitled, knowingly divert those services to the person's 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.

12-0207. THEFT OF PROPERTY LOST, MISLAID, OR DELIVERED BY MISTAKE. It is unlawful for any person to:

1. Retain or dispose of property of another knowing it has been lost or mislaid; or

2. Retain or dispose of property of another knowing 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, the person fails to take readily available and reasonable measures to restore the property to a person entitled to have it.

12-0208. THEFTS PUNISHABLE UNDER CITY ORDINANCE. Theft under Sections 12-0205 to 12-0207 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 \$500, 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 a theft in the course of his 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 and 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 not a debit card, electronic fund transfer card, code, or other means of access to an account for the purposes of initiating electronic fund transfers; or
11. The property stolen is not a prescription drug as defined in Section 43-15.3-01, NDCC.

The provisions of Section 12-0208 shall be amended automatically to conform with any subsequent amendments to Section 12-23-05, North Dakota Cent. Code, dealing with the grading of theft offenses so that Section 12-0208 shall give the City jurisdiction of all class B misdemeanor theft offenses.

Source: Ord. 906, Sec. 2 (2011); Ord. 961, Sec. 4 (2013)

12-0209. DEFENSES AND PROOF AS TO THEFT AND RELATED OFFENSES.

1. It is a defense to a prosecution under Sections 12-0204 to 12-0209 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.
 - a. It shall be a prima facie case of theft under this chapter if it is shown that a public servant or an officer, director, agent, or 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.
 - b. It shall be prima facie evidence that the actor knows that property has been stolen if it is shown that, being a dealer, he acquired it for a consideration which he knew to be far below its reasonable value. "Dealer" means a person, whether licensed or not, who has repeatedly engaged in transactions in the type of property involved.

12-0210. THEFT OF CABLE TELEVISION SERVICES -- PENALTY. A person is guilty of a class B misdemeanor if the person:

1. Knowingly obtains or attempts to obtain cable television service from another by any means, artifice, trick, deception, or device without the payment to the cable television operator of all lawful compensation for each type of service obtained;
2. Knowingly assists or instructs any other person in obtaining or attempting to obtain any cable television service without the payment to the cable television operator of all lawful compensation for each type of service obtained or attempted to be obtained;
3. Knowingly tampers, diverts from, or connects to by any means, whether mechanical, electrical, acoustical or other means, any cables, wires, or other devices used for the distribution of cable television without authority from the cable television operator; or
4. Knowingly manufactures, imports into this state, distributes, sells, offers for sale or rental, possesses for sale, or advertises for sale, any device, plan or kit for a device, or printed circuit, designed to unlock, decode, descramble, or otherwise make intelligible any locked, encoded, scrambled, or other nonstandard signal carried by the cable television system, thereby facilitating the doing of any acts specified in subsections 1, 2, and 3.

12-0211. MAKING OR UTTERING SLUGS.

1. It is unlawful for any person to make or utter a slug or slugs which do not exceed fifty dollars in value with intent to deprive a supplier of property or service sold or offered by means of a coin machine or with knowledge of 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 (1) to receive a coin or bill of a certain denomination or a token made for the purpose; and (2) 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.

12-0212. CRIMINAL MISCHIEF. It is unlawful for any person to:

1. Willfully tamper with tangible property of another so as to endanger person or property; or
2. Willfully damage 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 the damage to tangible property of another are not by means of an explosive or a destructive devise.

12-0213. CRIMINAL TRESPASS. It is unlawful for any person to:

1. Knowing that the person is not licensed or privileged to do so, enter or remain 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; but the name of the person posting the premises must appear on each sign in legible characters; or
2. Remain upon the property of another after being requested to leave the property by a duly authorized person; but

if the place entered is a building, occupied structure, storage structure or separately secured or occupied portion thereof or is so enclosed as to manifestly exclude intruders or the person committing this offense has previously been convicted or pled guilty to a criminal trespass within two years from the date of the commission of this offense, then the offense shall be a class A misdemeanor and not within the purview of this ordinance.

12-0214. AIDING AND ABETTING SEXUAL ABUSE - PENALTY. Any individual who is a school district employee, contractor, or agent convicted of aiding and abetting sexual abuse as described in section 15.1-19-26 of the North Dakota Century Code is guilty of a class B misdemeanor.

Source: Ord. 1142, Sec. 18 (2019)

CHAPTER 12-03

CRIMINAL OFFENSES - OFFENSES AGAINST PUBLIC
ORDER, HEALTH AND SAFETY

SECTIONS:

- 12-0301. Engaging in a Riot.
- 12-0302. Disobedience of Public Safety Orders Under Riot Conditions.
- 12-0303. Disorderly Conduct.
- 12-0304. Defense When Conduct Consists of Speech or Other Expression.
- 12-0305. Prostitution.
- 12-0306. Discharge of Firearms or Dangerous Weapons.
- 12-0307. Possession of a Firearm at a Public Gathering.
- 12-0308. Carrying Loaded Firearms in Vehicle.
- 12-0309. Definitions.
- 12-0310. Producing License Upon Request. (Source: Ord. 1142, Sec. 19, 2019)
- 12-0311. Use and Possession of Imitation Controlled Substance.
- 12-0312. Volatile Chemicals--Inhalation of Vapors Prohibited--Definitions--Penalty
- 12-0313. REPEALED. (Ord. 1182, Sec. 9 [2021])
- 12-0314. Display of Objectionable Materials to Minors.
- 12-0315. Disturbance of a Public School.
- 12-0316. Surreptitious Intrusion or Interference with Privacy.

12-0301. 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 and violent conduct creates grave danger of damage or injury to property or persons or substantially obstructs law enforcement or other government function.
3. A person shall be convicted under Section 12-0102 or 12-0103 of attempt or conspiracy to commit an offense under this section only if he engages in the prohibited conduct under circumstances in which there is a substantial likelihood that his conduct will imminently produce a violation of this section. Mere presence at a riot is not an offense under this section.

12-0302. DISOBEDIENCE OF PUBLIC SAFETY ORDERS UNDER RIOT CONDITIONS. A person is guilty of an offense if, during a riot as defined in Section 12-0301.2, or when one is immediately impending, the 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.

12-0303. DISORDERLY CONDUCT.

1. A person is guilty of a class B misdemeanor if, with intent to harass, annoy, or alarm another person or in reckless disregard of the fact that another is harassed, annoyed or alarmed by his behavior, the person:
 - a. Engages in fighting, or in violent, tumultuous or threatening behavior;
 - b. In a public place, uses abusive or obscene language, knowingly exposes that individual's penis, vulva, or anus, or makes an obscene gesture;
 - c. Makes unreasonable noise;
 - 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, said person solicits such contact;
 - g. Creates a hazardous, physically offensive, or seriously alarming condition by any act which serves no legitimate purpose;
 - h. 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 offence; or
 - i. 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.
2. 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.

(Source North Dakota Century Code Section 12.1-31-01)

Source: Ord. 906, Sec. 3 (2011); Ord. 1182, Sec. 2 (2021)

12-0304. DEFENSE WHEN CONDUCT CONSISTS OF SPEECH OR OTHER EXPRESSION.

1. If conduct that would otherwise violate Section 12-0303.3 (unreasonable noise) or Section 12-0303.4 (obstructing traffic or public facility) consists of speech or other communication, of gathering with others to hear or observe such speech or communication, or of gathering with others to picket or otherwise express in a nonviolent manner a position on social, economic, political, or religious questions, the actor must be ordered to move, disperse, or otherwise remedy the violation prior to his arrest if he has not yet intentionally harmed the interests of others which those sections seek to protect.
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 12-0303.3 or 4:
 - 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.

12-0305. 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; or
 - 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 that spouse's prostitution.

3. In this section:

- a. "Sexual activity" means sexual act or sexual contact as those terms are defined in North Dakota Cent. Code Section 12.1-20-02.
- b. A "house of prostitution" is any place where prostitution is regularly carried on by a person under the control, management, or supervision of another.
- c. An "inmate" is a prostitute who acts as such in or through the agency of a house of prostitution.

12-0306. DISCHARGE OF FIREARMS OR DANGEROUS WEAPONS.

1. Except as provided herein, it is unlawful for any person to discharge a firearm or dangerous weapon within the city limits. Violation of this section is a class B misdemeanor.
2. This section does not apply to the lawful discharge of firearms or dangerous weapons by 1) law enforcement officers, 2) persons at an indoor or outdoor target range licensed or permitted by conditional use by the City Commission, 3) indoor target competition, which competition has been approved by the Police Department, or 4) the lawful discharge by persons in defense of a person or property.

Source: Ord. 694, Sec. 1 (2003), Ord. 1142, Sec. 4 (2019)

12-0307. POSSESSION OF A FIREARM AT A PUBLIC GATHERING.

1. An individual who possesses a firearm at a public gathering is guilty of an infraction. For the purpose of this section, "public gathering" includes athletic or sporting events, schools or school functions, political rallies or functions, musical concerts, and individuals in publicly owned parks where hunting is not allowed by proclamation and publicly owned or operated buildings.
2. This section does not apply to:
 - a. A law enforcement officer;
 - b. A member of the armed forces of the United States or national guard, organized reserves, state defense forces, or state guard organizations, when on duty;
 - c. A competitor participating in an organized sport shooting event;
 - d. A gun or antique show;

- e. A participant using a blank cartridge firearm at a sporting or theatrical event;
- f. A firearm or dangerous weapon carried in a temporary residence or motor vehicle;
- g. A student and an instructor at a hunter safety class;
- h. private security personnel while on duty;
- i. A state or federal park;
- j. An individual possessing a valid Class 1 concealed weapons license from this state or who has reciprocity under Section 62.1-04-03.1 of the North Dakota Century Code 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;
- k. 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; and
- 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.

Source: Ord. 970, Sec. 1 (2013); Ord. 1142, Sec. 5 (2019)

12-0308. CARRYING LOADED FIREARMS 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. An individual violating this section is guilty of an infraction.

2. This prohibition 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 organizations while possessing the firearm 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. An individual possessing a valid North Dakota concealed weapons license or a valid license issued by another state authorizing the individual to carry a firearm or dangerous weapon concealed if that state permits a holder of a valid North Dakota concealed weapons license to carry a firearm or dangerous weapon concealed in that state without obtaining a similar license from that state, except while that individual is in the field engaged in hunting or trapping activities.
 - d. An individual in the field engaged in lawful hunting or trapping of non-game species or furbearing animals.
 - e. A security guard or private investigator properly licensed to carry firearms.
 - f. An individual possessing a valid special permit issued pursuant to Section 20.1-02-05 of the North Dakota Century Code.

Source: Ord. 970, Sec. 2 (2013); Ord. 1142, Sec. 6, (2019)

12-0309. DEFINITIONS.

1. The definition of "firearms" and "dangerous weapons," for purposes of this Chapter, is as defined in Chapter 62.1-01 of the North Dakota Century Code.

Source: Ord. 970, Sec. 3 (2013); Ord. 1142, Sec. 7 (2019)

12-0310. PRODUCING LICENSE UPON REQUEST. Every individual while carrying a concealed firearm or dangerous weapon, for which a license to carry concealed is required, shall have on one's person the license issued by this or another state or a digital image of one's concealed firearm or dangerous weapon license issued by this state on an electronic device and shall give it to any active law enforcement officer for an inspection upon request by the officer. The failure of any individual to give the license or digital image

of the license to the officer is prima facie evidence the individual is illegally carrying a firearm or dangerous weapon concealed.

Source: Ord. 1142, Sec. 19 (2019)

12-0311. USE AND POSSESSION OF IMITATION CONTROLLED SUBSTANCE. A person is guilty of an offense if that person uses, or possesses with intent to use, an imitation controlled substance. It is not a defense that the person believed the substance actually to be a controlled substance.

12-0312. VOLATILE CHEMICALS -- INHALATION OF VAPORS PROHIBITED -- DEFINITIONS -- PENALTY. A person is guilty of a class B misdemeanor 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 process, balance, or coordination. This section does not apply to inhalations specifically prescribed for medical, dental, or optometric treatment purposes or to controlled substances described in chapter 19-03.1, North Dakota Cent. Code. For the purposes of this section, "volatile chemical" includes the following chemicals or their isomers:

3. Acetone.
4. Aliphatic hydrocarbons.
5. Amyl nitrite.
6. Butane
7. Butyl nitrite.
8. Carbon tetrachloride.
9. Chlorinated hydrocarbons.
10. Chlorofluorocarbons.
11. Chloroform.
12. Cyclohexane.
13. Diethyl ether.
14. Ethyl acetate.
15. Fluorocarbon.
16. Glycol ether inter solvent.
17. Glycol ether solvent.
18. Hexane.
19. Ketone solvent.
20. Methanol.
21. Methyl cellosolve acetate.
22. Methyl ethyl ketone.
23. Nitrous oxide.
24. Petroleum distillate.
25. Toluene.
26. Trichloroethane.
27. Trichloroethylene.
28. Xylol or xylene.

12-0313. RESERVED FOR FUTURE USE. (Repealed by Ord. 1182, Sec. 9 [2021])

12-0314. DISPLAY OF OBJECTIONABLE MATERIAL TO MINORS.

1. A person is guilty of a class B misdemeanor if that person 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 discernibly turgid state even if completely and opaquely covered.
 - a. "Where minors are or may be invited as a part of the general public" includes any public roadway or walkway.
 - a. The above shall not be construed to include a bona fide school, college, university, museum, public library, or art gallery.

12-0315. DISTURBANCE OF A PUBLIC SCHOOL. It is unlawful for any person to:

1. Willfully disturb a public school that is in session;
2. Willfully interfere with or interrupt the proper order or management of a public school by an act of violence, boisterous conduct, or threatening language; or
3. Rebuke, insult, or threaten a teacher in the presence of a student.

12-0316. SURREPTITIOUS INTRUSION OR INTERFERENCE WITH PRIVACY.

1. An individual is guilty of a class B misdemeanor if, with intent to intrude upon or interfere with the privacy of another, the individual:
 - a. Enters upon another's property and surreptitiously gazes, stares, or peeps into a house or place of dwelling of another; or

- b. Enters upon another's property and surreptitiously installs or uses any device for observing, photographing, recording, amplifying, or broadcasting sounds or events from a house or place of dwelling of another.
- 2. An individual is guilty of a class B misdemeanor if, with intent to intrude upon or interfere with the privacy of an occupant, the individual:
 - a. Surreptitiously gazes, stares, or peeps into a tanning booth, a sleeping room in a hotel, or other place where a reasonable individual would have an expectation of privacy; or
 - b. Surreptitiously installs or uses any device for observing, photographing, recording, amplifying, or broadcasting sounds or events from a tanning booth, a sleeping room in a hotel, or other place where a reasonable individual would have an expectation of privacy.

Source: Ord. 906, Sec. 9 (2011)

CHAPTER 12-04

CRIMINAL OFFENSES - POSSESSION OF MARIJUANA

SECTIONS:

- 12-0401. Definitions.
- 12-0402. Possession of Marijuana and Drug Paraphernalia.
- 12-0403. Jurisdiction.
- 12-0404. Burden of Proof.
- 12-0405. **Reserved for Future Use.** Repealed by Ord. 1142, Sec. 22 (2019)
- 12-0406. Procedure to Expunge Record of Conviction.
- 12-0407. Ingesting a Controlled Substance - Venue for Violation - Penalty

12-0401. DEFINITIONS. Source: Ord. 1102, Sec. 4 (2017)

1. "Cannabinoid" means a chemical compound that is one (1) of the active constituents of marijuana.
2. "Marijuana" means all parts of the plant cannabis whether growing or not; the seeds thereof; the resinous product of the combustion of the plant cannabis; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of mature stalks, fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.
3. "Medical marijuana" means a cannabinoid concentrate or a medical cannabinoid product.
4. "Medical use of marijuana" means the acquisition, use, and possession of usable marijuana to treat or alleviate a qualifying patient's debilitating medical condition.
5. "Qualifying patient" means an individual who has been diagnosed by a health care provider as having a debilitating medical condition.
6. "Usable marijuana" means a medical marijuana product or the dried leaves or flowers of the plant of the genus cannabis in a combustible delivery form. However, the term does not include the dried leaves or flowers unless authorized through a written certification and does not include a cannabinoid edible product. In the case of a registered qualifying patient who is a minor, "usable marijuana" is limited to pediatric medical marijuana.

12-0402. POSSESSION OF MARIJUANA AND DRUG PARAPHERNALIA.

1. It shall be unlawful to possess marijuana within the jurisdiction of the City of West Fargo, North Dakota, unless permitted under Chapter 19-24.1 of the N.D.C.C. For purposes of this section, possession includes actual or constructive possession. Constructive possession shall mean the power and capability to exercise dominion and control over the marijuana.
 - A. A person in possession of less than one-half ounce [14.175 grams] of marijuana is guilty of an infraction.
 - B. A person in possession of at least one-half ounce [14.175 grams] but not more than 500 grams of marijuana is guilty of a class B misdemeanor.
2. It shall be unlawful to use or possess with the intent to use drug paraphernalia to ingest, inhale, or otherwise introduce marijuana into the human body or possess with the intent to use drug paraphernalia to store or contain marijuana, unless permitted under Chapter 19-24.1 of the N.D.C.C. Any person violating this section shall be guilty of an infraction.

Source: Ord. 1041, Sec. 2 (2015); Ord. 1102, Sec. 5 (2017); Ord. 1142, Sec. 8 (2019); Ord. 1155, Sec. 2 (2020)

12-0403. JURISDICTION. The Municipal Court of the City of West Fargo shall have jurisdiction over persons possessing not more than 500 grams of marijuana, as defined in this chapter.

Source: Ord. 1041, Sec. 3 (2015); Ord. 1056, Sec. 1 (2016); Ord. 1142, Sec. 9 (2019)

12-0404. BURDEN OF PROOF. In all prosecutions under this chapter involving the analysis of a substance or sample thereof, a certified copy of the analytical report signed by the state toxicologist or the state laboratories director shall be accepted as prima facie evidence of the results of the analytical findings.

12-0405. RESERVED FOR FUTURE USE

SOURCE: Ord. 1142, Sec. 22 (2019)

12-0406. PROCEDURE TO EXPUNGE RECORD OF CONVICTION. Whenever a person pleads guilty or is found guilty of a first offense regarding the violation of this chapter, the court, upon motion, shall expunge that conviction from the record if that person is not subsequently convicted within two (2) years of the further violation of this chapter and has not been convicted of any other criminal offense.

12-0407. INGESTING A CONTROLLED SUBSTANCE - VENUE FOR VIOLATION - PENALTY. A person who is under twenty-one years of age and intentionally ingests, inhales, injects, or otherwise takes into the body a controlled substance that is marijuana, unless the substance was medical marijuana obtained in accordance with the law, is guilty of a class B misdemeanor. The venue for a violation of this section exists in either the jurisdiction in which the controlled substance was ingested, inhaled, injected, or otherwise taken into the body or the jurisdiction in which the controlled substance was detected in the body of the accused.

Source: Ord. 1114, Sec. 1 (2018); Ord. 1142, Sec. 10 (2019)

CHAPTER 12-05

CRIMINAL OFFENSES - PURCHASE OF ALCOHOLIC
BEVERAGES BY PERSON UNDER 21 YEARS OF AGE

SECTIONS:

- 12-0501. Individuals Under Twenty-One Years of Age Prohibited from Using Alcoholic Beverages or Entering Licensed Premises - Penalty. (Source: Ord. 1025, Sec. 1 [2015])
- 12-0502. Purchasing or Procuring for Persons Under 21 Years of Age Prohibited.
- 12-0503. Furnishing Money by Persons Under 21 Years of Age for Alcoholic Beverages Prohibited.
- 12-0504. Misrepresentation of Age to Gain Admission or to Purchase Alcoholic Beverages Prohibited.
- 12-0505. RESERVED FOR FUTURE USE.

12-0501. INDIVIDUALS UNDER TWENTY-ONE YEARS OF AGE PROHIBITED FROM USING ALCOHOLIC BEVERAGES OR ENTERING LICENSED PREMISES - PENALTY. Source: Ord. 1025, Sec. 1 (2015)

- 1. Except as permitted in this section and section 10-0116, an individual under twenty-one years of age may not manufacture or attempt to manufacture, purchase or attempt to purchase, consume or have recently consumed other than during a religious service, be under the influence of, be in possession of, or furnish money to any individual for the purchase of an alcoholic beverage.
- 2. An individual under twenty-one years of age may not enter any licensed premises where alcoholic beverages are being sold or displayed, except:
 - a. A restaurant if accompanied by a parent or legal guardian;
 - b. In accordance with section 10-0116;
 - c. If the individual is an independent contractor or the independent contractor's employee engaged in contract work and is not engaged in selling, dispensing, delivering, or consuming alcoholic beverages;
 - d. If the individual is a law enforcement officer or other public official who enters the premises in the performance of official duty; or

- e. If the individual enters the premises for training, education, or research purposes under the supervision of an individual twenty-one or more years of age with prior notification of the local licensing authority.
3. A violation of this section is a class B misdemeanor. For a violation of subsection 1 or 2, the court also shall sentence a violator to an evidence-based alcohol and drug education program under the rules adopted by the department of human services under section 50-06-44 of the North Dakota Century Code.

Source: Ord. 1142, Sec. 11 (2019)

4. The court, under this section, may refer the individual to an outpatient addiction facility licensed by the department of human services for evaluation and appropriate counseling or treatment.
5. The offense of consumption occurs in the county of consumption or the county where the offender is arrested.
6. An individual under twenty-one years of age is immune from criminal prosecution under this section if that individual contacted law enforcement or emergency medical services and reported that another individual under twenty-one years of age was in need of medical assistance due to alcohol consumption, provided assistance to the individual in need of medical assistance until assistance arrived and remained on the scene, or was the individual in need of medical assistance and cooperated with medical assistance and law enforcement personnel on the scene. The maximum number of individuals that may be immune for any one occurrence is five individuals.

12-0502. PURCHASING OR PROCURING FOR A PERSON UNDER 21 YEARS OF AGE PROHIBITED. It shall be unlawful for any person to purchase or procure for any person under the age of twenty-one (21) years any alcoholic beverages as defined in Section 10-0101 of the revised ordinances or to furnish or to deliver such alcoholic beverages as defined in Section 10-0101 of the revised ordinances to any person.

12-0503. FURNISHING MONEY BY PERSONS UNDER 21 YEARS OF AGE FOR ALCOHOLIC BEVERAGES PROHIBITED. It shall be unlawful for any person under the age of twenty-one (21) years to furnish money to any other person for the purpose of purchasing alcoholic beverages as defined in Section 10-0101 of the revised ordinances.

12-0504. MISREPRESENTATION OF AGE TO GAIN ADMISSION OR TO PURCHASE ALCOHOLIC BEVERAGES PROHIBITED. It shall be unlawful for any person under the age of twenty-one (21) years to make any false

statement or to furnish, present, or exhibit any false or fictitious registration card or other document or evidence for the purpose of gaining admission to any place where his or her presence is prohibited or for the purpose of procuring the sale to him or her of any alcoholic beverages as defined in Section 10-0101 of the revised ordinances.

12-0505. RESERVED FOR FUTURE USE.

(Repealed by Ordinance No. 961, Sec. 14 (2013))

CHAPTER 12-06

(Source: Ord 634, Sec. 1 [2002]; Ord. 997, Sec. 2 [2014]; Ord. 1155, Sec. 3 [2020])

SALE OF TOBACCO PRODUCTS AND USE BY PERSONS
UNDER THE AGE OF TWENTY-ONE PROHIBITED

SECTIONS:

- 12-0601. Procuring Tobacco Product for Persons Under Twenty-One Years of Age.
- 12-0602. Persons Under Twenty-One Years of Age Possessing Tobacco Products.
- 12-0603. Fee.
- 12-0604. Payment Procedure.
- 12-0605. Burden of Proof.
- 12-0606. Notice to Parent or Legal Guardian.
- 12-0607. Penalty for Contempt.

12-0601. PROCURING TOBACCO PRODUCT FOR PERSON UNDER TWENTY-ONE YEARS OF AGE. For the purpose of this section, the definitions in Section 10-0601 shall apply. It is an infraction for any person to sell or furnish to a person under twenty-one (21) years of age, or procure for a person under twenty-one (21) years of age, cigarettes, cigarette papers, cigars, e-cigarettes, electronic cigarettes, electronic smoking devices, snuff, or tobacco products in any other form in which it may be utilized for smoking or chewing. As used in this section, "sell" includes dispensing from a vending machine under the control of the actor.

12-0602. PERSON UNDER TWENTY-ONE YEARS OF AGE POSSESSING TOBACCO PRODUCTS.

1. It is a noncriminal offense for a person under twenty-one (21) years of age to purchase, possess, smoke, or use cigarettes, cigars, cigarette papers, e-cigarettes, electronic cigarettes, electronic smoking devices, snuff, or tobacco products in any form in which it may be utilized for smoking or chewing.
2. Subsection 1 shall not apply to an individual under twenty-one (21) years of age who may purchase and possess tobacco products 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 product retailer, or association of tobacco product retailers may also conduct compliance surveys, after coordination with the appropriate law enforcement authority.
3. Subsection 1 shall not apply to an employee less than twenty-one (21) years of age employed by a licensed

tobacco product dealer or distributor where said employee under the age of twenty-one (21) years handles tobacco products listed in this section as part of that employee's employment.

4. Subsection 1 shall not apply if the possession or use of tobacco products relates to a cultural or religious practice; including, without limitation, the use or possession of tobacco products during any religious or cultural ceremony.

12-0603. FEE. A fee of \$25 will be assessed for a person fourteen (14) years of age or older who has been charged with an offense under Section 12-0602 for the first offense. For a second offense within a year, a fee of \$50 and attendance at a tobacco cessation program approved by the West Fargo Municipal Court will be required. For third and subsequent offenses within a year the Municipal Court may impose a fee of up to \$250 and attendance at a tobacco cessation program. The failure to post a required bond or pay an assessed fee by an individual found to have violated the ordinance is punishable as a contempt of court, except a minor may not be imprisoned for contempt.

12-0604. PAYMENT PROCEDURE. A person fourteen (14) years of age or older found to have violated Section 12-0602 must pay a fee in the amount set out in Section 12-0603.

1. Any individual who has been cited for a violation of Section 12-0602 may appear before the West Fargo Municipal Court and pay the fee by the time scheduled for a hearing, or if bond has been posted, may forfeit the bond by not appearing at the scheduled time. An individual appearing at the time scheduled in the citation may make a statement in explanation of that individual's action and the judge may waive, reduce, or suspend the fee or bond, or both. If the individual cited fails to follow the procedures of this section, 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 is the same as the fee schedule set out in Section 12-0603. For a third or subsequent violation, the individual must appear before the Judge of the Municipal Court.
2. An 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 90 days later, set at that first appearance. At the time of a request for a hearing on the issue on commission of the violation, the individual cited shall deposit with the court an appearance bond equal to the fee for the violation cited.

3. The failure to post bond or to pay an assessed fee, or attend a tobacco cessation class when required to do so is punishable as a contempt of court, except a minor may not be imprisoned for the contempt.

12-0605. BURDEN OF PROOF. The prosecution must prove the commission of a cited violation under Section 12-0602 by a preponderance of the evidence.

12-0606. NOTICE TO PARENT OR LEGAL GUARDIAN. A law enforcement officer that cites a person under the age of eighteen (18) 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.

12-0607. PENALTY FOR CONTEMPT. A person adjudged guilty of contempt for failure to pay a fee or fine or to attend a tobacco cessation class when required to do so may be sentenced by the court to a sanction or order designed to ensure compliance with the payment of the fee or fine or attendance at a tobacco cessation class to an alternative sentence or sanction including community service.

CHAPTER 12-07

NON-CRIMINAL OFFENSES - BREACH OF
PEACE, ORDER
AND PUBLIC SAFETY

SECTIONS:

- 12-0701. **Repealed by Ordinance No. 1046, Sec. 1 (2015)**
- 12-0702. **Repealed by Ordinance No. 1046, Sec. 2 (2015)**
- 12-0703. Tampering with or Damaging Property of Public Service.
- 12-0704. Defense of Consent - Property of Another.
- 12-0705. Trespassing in Public Schools.
- 12-0706. Refrigerators Abandoned or Unattended Out of Doors.
- 12-0707. Urinating in Public.
- 12-0708. Littering and Open Burning Prohibited.
- 12-0709. Public Intoxication - Assistance.
- 12-0710. No Prosecution for Intoxication.
- 12-0711. Fireworks. Source: Ord. 991, Sec. 2 (2014)
- 12-0712. Noisy Parties and Gatherings. Source: Ord. 1054, Sec. 1 (2017)
- 12-0713. Aggressive Panhandling.

12-0701. RESERVED FOR FUTURE USE.

12-0702. RESERVED FOR FUTURE USE.

12-0703. TAMPERING WITH OR DAMAGING PROPERTY OF PUBLIC SERVICE. It is unlawful to negligently cause 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.

12-0704. DEFENSE OF CONSENT - PROPERTY OF ANOTHER. For prosecutions of criminal mischief under Section 12-0211 or tampering with or damaging a public service under Section 12-0703:

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.

12-0705. TRESPASSING IN SCHOOLS.

1. It is a misdemeanor for a person to enter or be found in a public or nonpublic elementary, middle, or secondary school building unless the person:
 - a. Is an enrolled student in that particular school, or an employee of the school or school district;
 - b. Has permission or an invitation from a school official to be in the building;
 - c. Is attending a school event, class, or meeting to which the person, the public, or a student's family is invited; or
 - d. Has reported the person's presence in the school building in the manner required for visitors to the school.
2. Reasonable notification of the requirements of this section shall be conspicuously posted at the entrance to every public or nonpublic elementary, middle, or secondary school building within the City of West Fargo, and no complaint for a violation of this section shall issue unless such notice is given.
3. A school principal or a school employee designated by the school principal to maintain order on school property, who has reasonable cause to believe that a person is violating this section may detain the person in a reasonable manner for a reasonable period of time pending the arrival of a peace officer. A school principal or designated school employee is not civilly or criminally liable for any action authorized under this paragraph if the person's action is based on reasonable cause.
4. A peace officer may arrest a person without a warrant if the officer has probable cause to believe the person violated this section within the preceding four hours. The arrest may be made even though the violation did not occur in the peace officer's presence.

Source: Ord. 990, Sec. 1 (2014)

12-0706. REFRIGERATORS ABANDONED OR UNATTENDED OUT OF DOORS.

1. The provisions of this ordinance shall apply to any ice box, refrigerator, freezer or ice chest, having a capacity of one and one half cubic feet or more, and any other airtight container in which a child could become entrapped and suffocate (hereinafter referred to in this

ordinance as a dangerous container). No person, firm, corporation or organization shall abandon any such refrigerator, freezer, ice box, ice chest or dangerous container any place in the city. No person shall leave any such refrigerator, freezer, ice box, ice chest or dangerous container unattended out of doors without first having removed the door or cover. The purpose of this ordinance is to prevent children from dying for lack of air as a result of being locked in such a refrigerator, ice chest, ice box, or dangerous container.

2. No refrigerator, freezer, ice chest or ice box with a capacity of one and one half cubic feet or more shall be left out of doors for the purpose of selling ice cubes, unless such device is designed so that there is no door large enough for a baby or child to enter or to be placed in the device, provided that the device may have one larger door that is locked and can be unlocked and opened only by an attendant, not by any customer.
3. In addition to the other penalties and remedies provided in this ordinance, any city officer or employee finding any freezer, refrigerator, ice box, ice chest or dangerous container covered by this ordinance unattended in any place out of doors or cover, in violation of this ordinance, shall immediately take steps to avoid the danger of a child being trapped inside. These steps shall include:
 - a. The door will be opened to see if any baby or child is inside.
 - b. If there is an owner, attendant or other person in charge at the premises, such person shall be notified that the device must be moved at once or the door or cover removed at once by removal of the hinges, latches or other such device.
 - c. If there is no owner, attendant or other person in charge at the premises, the front door or cover shall be removed by removing the hinges, latch, lock or similar devices holding the door in place. Provided, that a refrigerator held shut only by magnetism not jammed or stuck may have the hinges or latch left on temporarily if, in the opinion of the city employee or officer taking action under this ordinance, such temporary leaving of the condition creates no immediate danger to life.
 - d. If circumstances indicate that the device is abandoned, the city shall arrange to remove the same to a licensed landfill for disposal.

- e. If there is no owner, attendant or other person in charge on the premises where any action is taken under this section, the city officer or employee who took action under this section shall notify the owner, attendant or person in charge in writing as soon as possible. If the owner or attendant is unknown, or if no address is known for any owner, attendant or other person in charge, written notice shall be left on the premises where the refrigerator or other device is found to be in violation of the provisions of this ordinance.

12-0707. URINATING IN PUBLIC. It shall be unlawful to urinate or defecate on any public street, or upon any public sidewalk or in any other public place; in or on any vehicle in public or in any store, assembly hall, corridor, entryway or other place open to and used by the public, except in a restroom, and then only in a toilet or urinal or other fixture normally used for that purpose.

12-0708. LITTERING AND OPEN BURNING PROHIBITED.

1. A person may not discard and abandon any litter, furniture, or major appliances upon public property or upon private property not owned by that person, unless the property is designated for the disposal of litter, furniture, or major appliances and that person is authorized to use the property for that purpose.
2. A person may not engage in the open burning of solid waste, unless the burning is conducted in accordance with rules adopted by the department.
3. A person violating this section is guilty of an infraction for which a minimum fine of one hundred dollars (\$100) must be imposed, except if the litter discarded and abandoned amounted to more than one (1) cubic foot [0.0283 cubic meters] in volume or if the litter consisted of furniture or a major appliance, the offense is a class B misdemeanor.

Source: Ord. 906, Sec. 4 (2011)

12-0709. PUBLIC INTOXICATION - ASSISTANCE. As used in this section "intoxicated" means a state in which an individual is under the influence of alcoholic beverages, drugs, or controlled substances, or a combination of alcoholic beverages, drugs, and controlled substances. 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 that person or others, to a jail for purposes of detoxification. A duly licensed physician of a local hospital or a licensed addiction counselor of a detoxification center 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 make a reasonable effort to notify the intoxicated person's family as soon as possible. Any additional costs incurred by the City or county on account of an intoxicated person shall be recoverable from that person.

Source: Ord. 1142, Sec. 12 (2019)

12-0710. NO PROSECUTION FOR INTOXICATION. No person may be prosecuted in any court solely for public intoxication. Law enforcement officers may utilize standard identification procedures on all persons given assistance because of apparent intoxication.

12-0711. FIREWORKS. Source: Ord. 991, Sec. 2 (2014)

1. The Definition of "fireworks" for the purposes of this chapter means any substance or combination of substances or articles prepared for the purpose of producing a visible or an audible effect by explosion or detonation as defined by the North Dakota State Fire Marshall as 1.4G fireworks, including but not limited to: Star Light, helicopter flyers, cylindrical fountains, cone fountains, wheels, torches, colored fire, sparkler, dipped sticks, comets, shells, soft shell firecrackers not to exceed 1 ½" in length and ½" in diameter total pyrotechnic composition not to exceed 50 mg. each.
2. Except as otherwise provided in herein, it shall be unlawful for any person to offer for sale, expose for sale, sell at retail or wholesale, use, explode or possess any fireworks within the limits of the City of West Fargo. The Chief of the West Fargo Fire Department may grant permits for the sale of fireworks outside of the limits of the City of West Fargo, but within the City of West Fargo's extra-territorial zoning authority.
3. This section shall not prohibit supervised public displays of fireworks by any person, organization or association within the City for which a permit shall have been first obtained from the City Commission. The application for such permit, in such form as may be required by the City Commission, shall be filed with the City Administrator and referred to the Chief of the Fire Department for investigation to determine whether the operator of the display is competent and whether the display is of such character and is to be so located, discharged, or fired that it will not be hazardous to property or endanger any person. The Chief of the Fire Department shall report the results of his investigation

to the City Commission who shall determine whether such permit shall be issued or the application rejected. Nothing in this ordinance shall be construed to prohibit the use of fireworks by airplanes and railroads or other transportation agencies for signal purposes or illumination or the sale or use of blank cartridges or pyrotechnic special effects for a motion picture, television, show or theater, or sale or possession of powder for reloading cartridges or firearms used for hunting or trap shooting, or for signal or ceremonial purposes in athletics or sports, or for use by military organizations.

4. Any individual who is at least 12 years of age may use, explode or possess any retail fireworks within the limits of the City of West Fargo, commencing July 4 at 8:00 a.m. CST, and ending on July 4 at 11:59 p.m. CST, and commencing on December 31 at 8:00 p.m. CST, and ending on January 1 at 1:00 a.m. CST. The individual use, explosion, or possession of fireworks at any other time during the year is prohibited.
5. No person shall ignite, discharge or use fireworks on publicly owned or controlled property, including but not limited to, park property, city or county property, school property or federally owned property without prior written authorization from the governing board or authorized representative of the public entity, which owns or controls the property.
6. No person shall ignite, discharge or use fireworks on any property owned or controlled by another person or entity without the express permission of the owner or person or entity in control of the property.
7. The exception set forth in subsection 4 of this section, providing for use and possession of fireworks during specified dates and times may be suspended by the Chief of the West Fargo Fire Department when a burning ban has been issued for either the State of North Dakota, Cass County or the City of West Fargo. In the event, the Chief of West Fargo Fire Department suspends the use of fireworks, he shall notify the West Fargo Police Department and the Public. The purpose of this subsection is to protect the property and provide for the safety and well-being of the residents of West Fargo.
8. In addition to the penalty provided by section 01-0211, any violation of this section may result in the seizure or removal by the state fire marshal, sheriff, police officer, or local fire marshal, at the expense of the owner, of all fireworks or combustibles offered or exposed for sale, stored, or held.

12-0712. NOISY PARTIES AND GATHERINGS. Source: Ord. 1054, Sec. 1 (2017)

1. Prohibition. No person shall, between the hours of 10:00 p.m. and 8:00 a.m., subject to the exceptions set forth in subsection 4 below, congregate at, or participate in, any party or gathering of two (2) or more people from which noise emanates of a sufficient volume so as to disturb the peace, quiet, or repose of another person. No person shall knowingly remain at such a noisy party or gathering.
2. Duty to Disperse. When a police officer determines that a party or gathering is in violation of this section the officer may order all persons present at the premises where the violation is occurring, other than the owner or tenants of the premises, to disperse immediately. If an officer determines that a party or gathering is disruptive to the public, regardless of the time of day, the officer shall have discretion to order the party or gathering to disperse. No person shall knowingly remain at such a party or gathering.
3. Cooperation of Owner or Tenant. Every owner of such premises, or tenant in charge of such premises, who has knowledge of the disturbance, shall cooperate with such police officer or officers and shall make reasonable efforts to stop the disturbance and disperse the gathering.
4. Exceptions. The following are exempt from violation of this Section:
 - a. Activities which are duly authorized, sponsored or licensed by the City, so long as the activity is conducted pursuant to the conditions of the license, permit or contract authorizing such activity.
 - b. Church bells, chimes, or carillons.
 - c. Persons who have gone to a party for the sole purpose of abating the violation.
 - d. Sporting events held at athletic facilities owned by the City, the West Fargo Public School District, or any parochial schools in the City.
5. Prima Facie Evidence of Violation by Owner or Tenant of this Section:
 - a. As to tenants, and owner if owner resides on the premises, if twice or more on the same day, or if

on successive days, the West Fargo Police Department is called upon to enforce the terms of this Section either by citizen complaint or by personal investigation by a peace officer.

- b. As to the owner, if the owner does not reside at the premises, if after owner receives written notice of three (3) violations of this Section by his/her/its tenants at any premises owned by owner in the City within a six (6) month period, and after receipt of such written notice, the West Fargo Police Department is called upon to enforce this Section either by citizen complaint or by personal investigation of a peace officer.
- c. Noise of such volume as to be clearly audible at a distance of fifty feet (50') from the structure or building in which the party or gathering is occurring, or in the case of apartment buildings, in the adjacent hallway or apartment, shall be prima facie evidence of a violation of this Section.

- 6. A person violating this Section is guilty of an infraction for which a maximum fine of one thousand dollars (\$1,000) may be imposed.

12-0713. AGGRESSIVE PANHANDLING.

- 1. The purpose of this Section is to regulate certain acts done with the act of panhandling, rather than the status of the person.

Exclusion: The activities of panhandling do not include a person who passively stands or sits with a sign or other indication that one is seeking donations, without addressing any solicitation to any specific person other than in response to an inquiry by that person.

- 2. Definitions. For the purposes of this Section, certain terms shall have the meanings ascribed to them in this paragraph, unless the context clearly indicates that a different meaning is intended:
 - a. "Assault" means assaultive offenses as set out in statutes of the State of North Dakota, found in Chapter 12.1-17 of the North Dakota Century Code.
 - b. "Aggressively beg" means to beg with the intent to intimidate another person into giving money or goods.

- c. "Beg" means to ask for money or goods as a charity or gift, whether by words, bodily gesture, signs, or other means.
- d. "Donation" means any item of value, monetary or otherwise.
- e. "Exempt organizations" means any nonprofit, religious, civic or benevolent organization described in Section 501(c) of the Internal Revenue Code of the United States.
- f. "Intimidate" means to engage intentionally in conduct which would make a reasonable person fearful or feel compelled.
- g. "Obstruct pedestrian" or "vehicular traffic" means when a person without legal privilege intentionally, knowingly or recklessly walks, stands, sits, lies, or places an object in such manner as another person or a driver of a vehicle has to take evasive action to avoid physical contact.

Acts authorized as an exercise of one's constitutional right to picket, or to legally protest, and acts authorized by a permit issued pursuant to this Section shall not constitute obstruction of pedestrian or vehicular traffic.

- h. "Panhandler" is any person, other than an exempt organization, acting on his or her own behalf, requesting an immediate donation of money or exchange of any services; or any person, acting on his or her own behalf, attempting to sell an item for an amount far exceeding its value, or where said item is already offered free-of-charge to the general public, and a reasonable person would understand that the purchase is in substance a donation.
- i. "Pedestrian interference" means the obstruction of pedestrian or vehicular traffic by aggressively begging which impedes the lawful passage of a pedestrian or of a vehicle.
- j. "Permit" means the permit required under this Section.
- k. "Public place" means an area generally visible to public view and includes alleys, bridges, buildings, driveways, parking lots, parks, plazas, sidewalks and streets open to the general public,

and the doorways and entrances to buildings or dwellings and the grounds enclosing them.

3. Permit Required.
 - a. Any person panhandling within the below described geographical or restricted areas shall be required to have a permit, as issued by the permit office of the City, in his or her possession at all times, subject to exhibition demand to any city officer or employee, and shall be subject to conditions as set out in the following paragraphs 4, 5, 6, and 7.
 - b. Restricted geographical areas. Without a permit, persons shall be restricted from panhandling in the following geographical areas:
 - i. All public streets.
 - ii. Public parks, golf course, schools and playgrounds.
 - iii. Municipal or governmentally owned offices.
 - iv. Municipally owned recreational and exhibition buildings.
 - v. Public library facilities.
 - vi. Private properties or shopping malls, unless the owner, lessee, or person in charge has granted permission.
4. Time of Panhandling. No panhandling is allowed after sunset or before sunrise.
5. Place of Panhandling. No panhandling is allowed in any of the following places:
 - a. At any bus stop;
 - b. In any public transportation vehicle or facility, including loading and unloading areas;
 - c. In any vehicle on the street;
 - d. On private property, unless the panhandler has permission from the owner, occupant or person in charge of the private property.
6. Manner of Panhandling. No panhandling is allowed in any of the following ways or manner:

- a. By using profane or abusive language, either during the solicitation or following a refusal;
 - b. By panhandling in a group of two or more persons;
 - c. By any statement, gesture, or other communication that a reasonable person in the situation of the person solicited would perceive to be a threat;
 - d. By intimidating;
 - e. By obstructing pedestrian or vehicular traffic;
 - f. By assaulting or aggressively begging.
7. It shall be unlawful for any person to:
- a. Assault, aggressively beg, intimidate or accost other persons in any public place or in any place open to the public, for the purpose of panhandling or soliciting a donation for immediate payment.
 - b. Obstruct a pedestrian or a vehicle.
8. Penalty. Every person violating any of the provisions of this Section shall be guilty of a class B misdemeanor and subject to the imposition of penalties under Section 1-0211 of the Revised Ordinances of 1990 of the City of West Fargo; and the court to have power to suspend said sentence and to revoke the suspension thereof.

CHAPTER 12-08

Repealed by Ordinance No. 1054, Sec. 2 (2017)

RESERVED FOR FUTURE USE

CHAPTER 12-09

NON-CRIMINAL OFFENSES - CURFEW FOR MINORS

SECTIONS:

- 12-0901. Definitions
- 12-0902. Restrictions
- 12-0903. Exceptions.
- 12-0904. Enforcement.
- 12-0905. RESERVED FOR FUTURE USE.
- 12-0906. Severability.

12-0901. DEFINITIONS. In this section:

1. CURFEW HOURS means:
 - (a) 11:00 p.m. until 6:00 a.m. every day of the week.
2. EMERGENCY means an unforeseen combination of circumstances or the resulting state that calls for immediate action. The term includes, but is not limited to, a fire, a natural disaster, an automobile accident, or any situation requiring immediate action to prevent serious bodily injury or loss of life.
3. ESTABLISHMENT means any privately owned place of business operated for a profit to which the public is invited, including but not limited to any place of amusement or entertainment.
4. GUARDIAN means:
 - (a) a person who, under court order, is the guardian of the person of a minor; or
 - (b) a public or private agency with whom a minor has been placed by a court.
5. MINOR means any person under 16 years of age.
6. OPERATOR means any individual, firm, association, partnership, or corporation operating, managing, or conducting any establishment. The term includes the members or partners of an association or partnership and the officers of a corporation.
7. PARENT means a person who is:
 - (a) a natural parent, adoptive parent, or step-parent of another person; or

- (b) at least 18 years of age and authorized by a parent or guardian to have the care and custody of a minor.
- 8. PUBLIC PLACE means any place to which the public or a substantial group of the public has access and includes, but is not limited to, streets, highways, and the common areas of schools, hospitals, apartment houses, office buildings, transport facilities, and shops.
- 9. REMAIN means to:
 - (a) linger or stay; or
 - (b) fail to leave premises when requested to do so by a police officer or the owner, operator, or other person in control of the premises.
- 10. SERIOUS BODILY INJURY means bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

12-0902. RESTRICTIONS.

- 1. It shall be unlawful for any minor to remain in any public place or on the premises of any establishment within the city during curfew hours.
- 2. It shall be unlawful for any parent or guardian of a minor to knowingly permit, or by insufficient control allow, the minor to remain in any public place or on the premises of any establishment within the city during curfew hours. The term "knowingly" includes knowledge which a parent or guardian should reasonably be expected to have concerning the whereabouts of a minor in the legal custody of that parent or guardian.
- 3. It shall be unlawful for any owner, operator, or any employee of an establishment to knowingly allow a minor to remain upon the premises of the establishment during curfew hours.

12-0903. EXCEPTIONS.

- 1. The following shall constitute valid exceptions to the operation of the curfew. That the minor was:
 - (a) accompanied by the minor's parent or guardian;
 - (b) on an errand at the direction of the minor's parent or guardian, without any detour or stop;

- (c) in a motor vehicle involved in interstate travel;
- (d) engaged in an employment activity, or going or returning home from an employment activity, without any detour or stop;
- (e) involved in an emergency;
- (f) on the sidewalk abutting the minor's residence or abutting the residence of a next-door neighbor if the neighbor did not complain to the police department about the minor's presence;
- (g) attending an official school, religious, or other recreational activity supervised by adults and sponsored by the City of West Fargo, a civic organization, or another similar entity that takes responsibility for the minor, or going to or returning home from, without any detour or stop, an official school, religious, or other recreational activity supervised by adults and sponsored by the City of West Fargo, a civic organization, or another similar entity that takes responsibility for the minor;
- (h) exercising First Amendment rights protected by the United States Constitution, such as the free exercise of religion, freedom of speech, and the right of assembly; or
- (i) married or had been married.

2. It is a defense to prosecution under Section 12-0902 that the owner, operator or employee of an establishment promptly notified the police department that a minor was present on the premises of the establishment during curfew hours and refused to leave.

12-0904. ENFORCEMENT. Before taking any enforcement action under this section, a police officer shall ask the apparent offender's age and reason for being in the public place. The officer shall not issue a citation or make an arrest under this section unless the officer has probable cause to believe that an offense has occurred and that, based on any response and other circumstances, no defense in Section 12-0903 is present.

12-0905. RESERVED FOR FUTURE USE.
(Repealed by Ord. 961, Sec. 15 (2013))

12-0906. SEVERABILITY. If any provision of this ordinance is, for any reason, held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance.

It is intended that the curfew ordinance be held inapplicable in such cases, if any, where its application would be unconstitutional.

CHAPTER 12-10

RESERVED FOR FUTURE USE
(Repealed by Ord. 961, Sec. 16 (2013))

CHAPTER 12-11

LITTERING OF PUBLIC PLACES BY CONTRACTORS

Source: Ord. 613, Sec. 1 (2001)

SECTIONS:

- 12-1101. Unlawful Dumping and Littering by Contractors.
- 12-1102. Vehicles to be Clean Before Entering Public Street.
- 12-1103. Streets to be Maintained in a Litter-Free Condition.
- 12-1104. Liability of Contractor
- 12-1105. Cleaning Up Littered Streets.
- 12-1106. Exceptions.
- 12-1107. Penalty for Violation.

12-1101. UNLAWFUL DUMPING AND LITTERING BY CONTRACTORS. No contractor shall allow any vehicle to operate out of any construction site, regardless of whether the same shall be operated by the contractor, his agents, employees, or subcontractors, in such a manner as to dump, scatter, or deposit any rubbish, stones, wire, earth, ashes, cinders, sawdust, hay, glass, manure, filth, paper, snow, ice, dirt, grass, leaves, twigs, shrubs, construction waste, garbage, or other offensive or nauseous material on any street, alley, or public place. The Public Works Director shall be and hereby is empowered to order any contractor to take such precautions as he deems necessary to prevent any such foreign materials from being deposited on the street, alley, or public place and to remove all foreign material on the street, alley, or public place. If and in the event any contractor shall fail to comply with the order of the Public Works Director, said Director, or the Chief of Police, may order all construction stopped.

12-1102. VEHICLES TO BE CLEAN BEFORE ENTERING PUBLIC STREET. No contractor or other person shall permit a vehicle to enter upon a public street, alley, sidewalk, or other public place without first (a) having its tires and wheels cleaned so as not to litter or soil any street, alley, sidewalk, or other public place, and (b) having any material removed from the interior or exterior of vehicle body which might fall or be deposited upon any street, alley, sidewalk, or public place by normal movement of vehicle in traveling over such places.

12-1103. STREETS TO BE MAINTAINED IN A LITTER-FREE CONDITION. All streets, alleys, sidewalks, or public places adjacent to any building or construction site shall be maintained in a litter-free condition at all times. This shall include such soiling or littering caused by erosion, landslides, or general construction activities at any such site.

12-1104. LIABILITY OF CONTRACTOR. Whenever a contractor is engaged in any construction or maintenance activity, it shall be his responsibility to see that none of the provisions of this chapter are violated by himself, his agents, employees, subcontractors, or haulers of materials and supplies. If more than one contractor or any governmental unit is involved in work which contributes to the littering of streets, alleys, sidewalks, or other public places in the same site or area, they shall be separately and jointly responsible for compliance with the provisions of this article.

12-1105. CLEANING UP LITTERED STREETS. If a street, alley, sidewalk, or public place should become soiled or littered through any of the means outlined in Sections 12-1101 and 12-1103, the person or persons responsible shall cause such soiling or littering to be cleaned up forthwith. If and when the person or persons responsible fail to comply with any order of the Chief of Police or Public Works Director to clean up or take such precautions as the Chief of Police or Public Works Director deems necessary to prevent foreign materials from being deposited on any street, alley, or public place, then the Chief of Police or Public Works Director may order (in writing) all ingress and egress to the site or area involved stopped until compliance with the order is effected.

12-1106. EXCEPTIONS. The provisions of this chapter shall not apply to construction work within the barricaded area of work being done in the street right-of-way, pursuant to a City excavation permit authorizing the same or to certain emergency or other work being performed within a barricaded area pursuant to a City contract or by certain emergency forces, provided that excavated material stored temporarily within the barricaded area shall not be scattered or carried or allowed to accumulate outside of such area.

12-1107. PENALTY FOR VIOLATION. Every person, firm, association, or corporation convicted of a violation of any of the provisions of this chapter or of any failure to comply with any order of the Chief of Police or Public Works Director, shall be guilty of an infraction and shall be subject to the penalties set forth in Section 1-0211. Each day such violation continues shall be considered a separate offense.