CHAPTER 16

OFFENSES

Article 1
In General

Division 1. Offenses of General Applicability

16.0101 Criminal Attempt

1. A person is guilty of criminal attempt if, acting with the kind of culpability otherwise required for commission of an offense, he intentionally engages in conduct which, in fact, constitutes a substantial step toward commission of the offense. A "substantial step" is any conduct which is strongly corroborative of the firmness of the actor's intent to complete the commission of the offense. Factual or legal impossibility of committing the offense is not a defense, if it could have been committed had the attendant circumstances been as the actor believed them to be.

2. A person who engages in conduct intending to aid another to commit an offense is guilty of criminal attempt if the conduct would establish his complicity as an accomplice under NDCC § 12.1-03-01 were the offense committed by the other person, even if the other is not guilty of committing or attempting the offense, for example, because he has a defense of justification or entrapment.

3. Criminal attempt is an offense if the crime attempted is an offense, except that whenever it is established by a preponderance of the evidence at sentencing that the conduct constituting the attempt did not come dangerously close to commission of the offense, an attempt to commit an offense shall be punished as an infraction. Criminal attempt to commit an infraction is an infraction.

(Source: NDCC § 12.1-06-01)

16.0102 Criminal Conspiracy

1. A person commits conspiracy if he agrees with one or more persons to engage in or cause conduct which, in fact, constitutes an offense or offenses proscribed by the ordinances of this city, and any one or more of such persons does an overt act to effect an objective of the conspiracy. The agreement or the overt act must occur within the city. The agreement need not be explicit, but may be implicit in the fact of collaboration or existence of other circumstances.

2. If a person knows or could expect that one with whom he agrees has agreed or will agree with another to effect the same objective, he shall be deemed to have agreed with the other, whether or not he knows the other's identity.

3. A conspiracy shall be deemed to continue until its objectives are accomplished, frustrated, or abandoned. "Objectives" includes escape from the scene of the crime, distribution of booty, and measures, other than silence, for concealing the crime or obstructing justice in relation to it. A conspiracy shall be deemed abandoned if no overt act to effect its objectives has been committed by any conspirator during the applicable period of limitations.

4. It is no defense to a prosecution under this section that the person with whom such person is alleged to have conspired has been acquitted, has not been prosecuted or convicted, has been convicted of a different offense, is immune from prosecution, or is otherwise not subject to justice.

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

6. Conspiracy shall be subject to the same penalty as that provided for the offense or offenses constituting the objective of the conspiracy.

(Source: NDCC § 12.1-06-04)

Division 2. Integrity and Effectiveness of Government Operation

16.0103 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 of otherwise profits from the offense.

(Source: NDCC § 12.1-08-04)

16.0104 Public Servants Permitting Escape

A public servant concerned in official detention, as defined by NDCC § 21.1-08-06(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.

(Source: NDCC § 12.1-08-07)

16.0105 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 NDCC chapters 12.1-01 through 12.1-05, NDCC chapters 12.1-32, and Article 5 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.

16.0106 Hindering Proceedings by Disorderly Conduct

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

16.0107 Impersonating Officials

A person is guilty of an offense if he falsely pretends to be a public servant of this city and acts as if to exercise the authority of such public servant.

Division 3. Civil Rights

16.0108 Discrimination in Public Places

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

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

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

(Source: NDCC § 12.1-14-04)

16.0109 Preventing Exercise of Civil Rights - Hindering or Preventing Another Abiding Third Person to Exercise Civil Rights

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

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

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

(Source: NDCC § 12.1-14-05)

Article 2
Offenses Against Persons

16.0201 Simple Assault

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

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

   b. Negligently causes bodily injury to another human being by means of a firearm, destructive device, or other weapon, the use of which against a human being is likely to cause death or serious bodily injury.

2. Consent to the conduct causing bodily injury by all persons injured by the conduct is a defense if:

   a. 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 inducted by force, duress, or deception.

16.0202 Sexual Assault

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

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

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

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

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

(Source: NDCC § 12.1-20-07)

16.0203 Harassment

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

1. Makes a telephone call anonymously or in offensively coarse language; or

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

3. Communicate a falsehood by telephone and causes mental anguish.

(Source: NDCC § 12.1-17-07(1)(b)&(c))

Article 3
Offenses Against Property

Division 1. Property Destruction and Criminal Intrusion

16.0301 Criminal Mischief

A person is guilty of an offense if he:

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

2. Willfully damages tangible property of another.

Conduct is punishable as criminal mischief under this ordinance when any pecuniary loss if intentionally caused is not in excess of one hundred dollars; if recklessly caused is not in excess of two thousand dollars; and if the damages to tangible property of another are not by means of an explosive or a destructive device.

3. The penalty for the offense of criminal mischief may not exceed a fine of one thousand dollars, imprisonment for thirty days, or both such fine and imprisonment.

(Source: NDCC § 12.1-21-05 & NDCC § 40-05-06)

16.0302 Tampering With or Damaging a Public Service

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

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.

(Source: NDCC § 12.1-21-06)

16.0303 Consent as a Defense and Definition of "Of Another" for Criminal Mischief or Tampering With or Damaging a Public Service

For prosecution of criminal mischief under 16.0301 or tampering with or damaging a public service under 16.0302:

1. Whenever it is an element of the offense that the property is of another, it is a defense to a prosecution under those sections that the other has consented to the actor's conduct with respect to the property.

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

(Source: NDCC § 12.1-21-07 & 08(2))

16.0304 Criminal Trespass

A person is guilty of an offense if, knowing that he is not licensed or privileged to do so, he enters or remains in any place as to which notice against trespass is given by actual

communication to the actor by the person in charge of the premises or other authorized person or by posting in a manner reasonably likely to come to the attention of intruders.

(Source: NDCC § 12.1-22-03(3))

Division 2. Theft and Related Offenses

16.0305 Consolidated Theft Offenses

1. Conduct denominated theft in 16.0306 to 16.0308 constitutes a single offense designed to include the separate offenses heretofore known as larceny, stealing, purloining, embezzlement, obtaining money or property by false pretense, extortion, blackmail, fraudulent conversion, receiving stolen property, misappropriation of public funds, swindling, and the like.

2. A charge of theft under 16.0306 to 16.0308 which fairly apprises the defendant of the nature of the charges against him shall not be deemed insufficient because it fails to specify a particular category of theft. The defendant may be found guilty of theft under such a charge if his conduct falls under 16.0306 to 16.0308, so long as the conduct proved is sufficiently related to the conduct charged that the accused is not unfairly surprised by the case he must meet.

(Source: NDCC § 12.1-23-01)

16.0306 Theft of Property

A person is guilty of theft if he:

1. Knowingly takes or exercises unauthorized control over, or makes an unauthorized transfer of an interest in, the property of another with intent to deprive the owner thereof;

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

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

(Source: NDCC § 12.1-23-02)

16.0307 Theft of Services

A person is guilty of theft if:

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

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

Where compensation for services is ordinarily paid immediately upon their rendition, as in the case of hotels, restaurants, and comparable establishments, absconding without payment services were obtained by deception.

(Source: NDCC § 12.1-23-03)

16.0308 Theft of Property Lost, Mislaid, or Delivered by Mistake

A person is guilty of theft if he:

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

2. Retains or disposes of property of another when he knows it has been delivered under a mistake as to the identity of the recipient or as to the nature or amount of the property,

and with intent to deprive the owner of it, he fails to take readily available and reasonable measures to restore the property to a person entitled to have it.

(Source: NDCC § 12.1-23-04)

16.0309 Thefts Punishable Under City Ordinance

Theft under 16.0306 to 16.0308 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 fifty dollars, and if:

1. The theft was not committed by threat;

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

3. The defendant was not a public servant or an officer or employee of a financial institution who committed the theft in the course of his 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 association with the preparation of any money, stamp, bond, or other document, instrument, or obligation of the State of North Dakota;

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

9. The property stolen does not consist of a key or other implement of uniquely suited to provide access to property the theft of which would be a felony and was not stolen to gain such access.

(Source: NDCC § 12.1-23-05)

16.0310 Defrauding Secured Creditors

1. A person is guilty of an offense if he destroys, removes, conceals, encumbers, transfers, or otherwise deals with property subject to a security interest with intent to prevent collection of the debt represented by the security interest or if he makes false statements at the time of sale as to the existence of security interests or as to the ownership or location of such property in the certificate provided under 41-09-28; and

2. The offense is a class C felony if the property has a value exceeding Five Hundred Dollars and a class A misdemeanor in all other cases.

(Source: NDCC § 12.1-23-08)

16.0311 Retail Theft - Shoplifting

1. Presumption. Any person concealing upon his person or among his belongings, or causing to be concealed upon the person or among the belongings of another, unpurchased merchandise displayed, held, offered, or stored for sale in a mercantile establishment and removing it to a point beyond the last station for receiving payments in that retail mercantile establishment shall be prima facie presumed to have so concealed such merchandise with the intention of permanently depriving the merchant of possession or of the full retail value of such merchandise.

2. Detention of Suspect - Procedure. Any peace officer or merchant who reasonably believes that a person has committed, or is in the process of committing theft, may detain such person, on or off the premises of a retail mercantile establishment, in a reasonable manner and for a reasonable length of time for all or any of the following purposes;

   a. To require the person to identify himself.

   b. To verify such identification.

c. To determine whether such person has in his possession unpurchased merchandise, and, if so, to recover such merchandise.

d. To inform a peace officer of the detention of the person and surrender custody of that person to a peace officer.

e. In the case of a minor, to inform a peace officer, the parents, guardian, or other private person interested in the welfare of that minor of this detention and to surrender custody of said minor to the person informed.

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

a. "Merchandise" means any item of tangible personal property, and specifically includes shopping carts.

b. "Merchant" means an owner or operator of any retail mercantile establishment or any agent, employee, lessee, cosignee, officer, franchisee, or independent contractor or such owner or operator.

c. "Retail mercantile establishment" means any place where merchandise is displayed, held, offered, or stored for sale to the public.

d. "Premises of a retail mercantile establishment" includes, but is not limited to, the retail mercantile establishment, any common use areas in shopping centers, and all parking areas set aside by a merchant, or on behalf of a merchant, for the parking of vehicles for the convenience of the patrons of said retail mercantile establishment.

e. "Person" means any natural person or individual.

f. "Full retail value" means the merchant's stated or advertised price of the merchandise.

g. "Shopping cart" means those push carts of the type or types which are commonly provided by grocery stores, drugstores, or other retail mercantile establishments for the use of the public in transporting commodities in stores and markets and, incidentally, from the stores to a place outside the stores.

h. An item is "concealed" within the meaning of this section if, even though there is some notice of its presence, the item itself is not visible through ordinary observation.

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

16.0312 Defenses and Proof as to Theft and Related Offenses

1. It is a defense to a prosecution under 16.0305 to 16.0313 that:

   a. The actor honestly believed that he had a claim to the property or services involved which he was entitled to assert in the manner which forms the basis for the charge against him; or

   b. The victim is the actor's spouse, but only when the property involved constitutes household or personal effects or other property normally accessible to both spouses and the parties involved are living together. The term "spouse", as used in this section, includes persons living together as husband and wife.

2. It does not constitute a defense to a prosecution for conduct constituting an offense in violation of 16.0305 to 16.0313 that:

   a. Stratagem or deception, including the use of an undercover operative or law enforcement officer, was employed;

   b. A facility or an opportunity to engage in such conduct, including offering for sale property not stolen as if it were stolen, was provided; or

   c. Mere solicitation that would not induce an ordinary law-abiding person to engage in such conduct was made by a law enforcement officer to gain evidence against a person predisposed to engage in such conduct.

3. a. It shall be a prima facie case of theft under 16.0305 to 16.0313 if it is shown that a public servant or an officer, director, agent, employee of, or a person connected in any capacity with a financial institution has failed to pay or account upon lawful demand for money or property entrusted to him as part of his official duties or if an audit reveals a shortage or falsification of his accounts.

   b. Proof of the purchase or sale of stolen property at a price substantially below its fair market value, unless satisfactorily explained, gives rise to an inference that the person buying or selling the property was aware of the risk that it had been stolen.

   c. Proof of the purchase or sale of stolen property by a dealer in property, out of the regular course of business, or without the usual indicia of ownership other than mere possession, unless satisfactorily explained, gives rise to an inference that the person buying or selling the property was aware of the risk that it had been stolen.

(Source: NDCC § 12.1-23-09)

16.0313 Definitions

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 cancelled, 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 mans 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 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 si "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 form a person who is then in violation of NDCC § 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 it; or

    k. Cause anyone to be dismissed form his employment, unless the property demanded or obtained for lawful union purposes; or

    l. Do any other act which would not in itself substantially benefit to 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. "Traffic" means:

a. To sell, transfer, distribute, dispense or otherwise dispose to another person; or

b. To buy, receive, possess, or obtain control or, with intent to sell, transfer, distribute, dispense or otherwise dispose of to another person.

13. "Dealer in property" means a person who buys or sells property as a business.

16.0314 Making or Uttering Slugs

1. A person is guilty of an offense if he makes or utters a slug or slugs which do not exceed fifty dollars in value with intent to deprive a supplier of property or service sold or offered by means of a coin machine or with knowledge that he is facilitating such a deprivation by another person.

2. In the 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 of 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.

(Source: NDCC § 12.1-24-05)

Article 4
Offenses Against Public Order, Health, Safety and Sensibilities

Division 1. Riot

16.0401 Engaging in a Riot

1. A person is guilty of an offense if he 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 16.0101 or 16.0102 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.

(Source: NDCC § § 12.1-25-01(2) & 03)

16.0402 Disobedience of Public Safety Orders Under Riot Conditions

A person is guilty of an offense if, during a riot as defined in 16.0401(2), or when one is immediately impending, he disobeys a reasonable public safety order to move, disperse, or refrain from specified activities in the immediate vicinity of the riot. Public safety order is an order designed to prevent or control disorder, or promote the safety of persons or property, issued by the senior law enforcement official on the scene.

(Source: NDCC § 12.1-25-04)

Division 2. Disorderly Conduct and Loitering

16.0403 Disorderly Conduct

1. A person is guilty of violating the ordinances of this City if, with intent to harass, annoy, or alarm another person or in reckless disregard of the fact that another is harassed, annoyed or alarmed by his behavior, he:

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

   b. In a public place, uses abusive, insulting, or offensive language, or an abusive, insulting, or offensive gesture, under circumstances in which such language by its very utterance, or gesture, is likely to cause or provoke a disturbance or breach of the peace;

   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, he solicits such contact;

   g. Creates a hazardous or seriously alarming condition by any act which he is not licensed or privileged to do;

   h. Enters on the property of another and for a lewd or unlawful purpose looks into a dwelling on the property through any window or other opening in the dwelling;

i. Not being a peace officer, discharges a firearm or displays a deadly weapon in a public place;

j. Exposes his genitals under circumstances in which, in fact, his conduct is likely to be observed by a person who would be offended alarmed, and with intent to arouse or gratify the sexual desire of any person, including the actor;

k. Throws any missile in a public place or in any place where there is any person to be endangered thereby, although no injury to any person ensues;

l. Creates, by chemical means, a noxious and unreasonable odor in a public place; or

m. Uses a BB-gun or sling shot within the city limits.

2. A person whose conduct violates subdivisions (a) through (g) of subsection 1 is guilty of an offense. A person whose conduct violates subdivisions (h) through (m) of subsection 1 is guilty of an infraction.

3. Prosecution under subdivisions (b), (e), and (f) of subsection 1 shall be instituted only upon complaint to a law enforcement officer by someone other than a law enforcement officer.

16.0403A <u>Indecent exposure; public nudity</u>

AN ORDINANCE PROVIDING FOR THE REGULATION AND CONTROL OF INDECENT EXPOSURE AND PUBLIC NUDITY.

WHEREAS, the City Council of the City of Thompson, North Dakota, has authority under North Dakota Century Code section 40-05-01(1) to enact ordinances that the general welfare of the municipality may require and has specific authority under North Dakota Century Code to regulate indecent exposure and public nudity of ones person; and

WHEREAS, the City Council recognizes that expressive conduct within the perimeters of the First Amendment of the Constitution is protected and further recognizes that freedom of speech is among our most precious and highly protected rights, and wishes to act consistently with those rights; and

WHEREAS, however, the City Council is aware that there is convincing documented evidence that indecent exposure and public nudity create secondary effects which this Council believes are detrimental to the public health, safety, and welfare to the citizens of Thompson; and

WHEREAS, there are communities with sexually oriented businesses where indecent exposure and public nudity has existed or the cities have experienced documented secondary effects that include: lowered property values, deterioration of businesses and residential areas, exposure of children to negative behaviors, littering, traffic problems, disorderly conduct, criminal activity (both sexual and non-sexual), violence, sexual harassment, spread of sexually transmitted diseases, prostitution, and negative impressions of the community; and

WHEREAS, some of this evidence indicates that the secondary effects of sexually oriented businesses and activities allowing indecent exposure and public nudity will be magnified in smaller towns; and

WHEREAS, some of these negative effects are already occurring in Thompson including, disorderly conduct, traffic problems, a negative impression of the community, and stunted community growth in the area of a sexually oriented business.

WHEREAS, the City Council enacts the following ordinance to minimize, prevent, and control the aforementioned secondary effects and thus protect the health, safety, and general welfare of the citizens of Thompson; and

WHEREAS, however, this ordinance is not intended to suppress any speech protected by the First Amendment; this content neutral ordinance aims only to address the secondary effects of indecent exposure and public nudity.

THEREFORE, the City Council of the City of Thompson, North Dakota, hereby ordains the following:

(1) It is unlawful for any person to:

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

b. Masturbate in a public place.

(2) It is unlawful for any person to appear on any street, avenue, highway, road, park, sidewalk, bike path, beach, beach front, or waterway located in the city, or appear in any public place, store, or business in said city, in a state of nudity. A person shall be deemed to be in a state of nudity when his or her clothing or absence of clothing completely exposes to public view a person's penis, vulva, anus, or female breast or breasts. Nudity is defined as (1) the appearance of a human bare buttock, anus, male genitals, female genitals, or female breasts; or (2) a state of dress which fails to opaquely cover a human buttock, anus, male genitals, female genitals, or areola of the female breasts. An exception to this prohibition is provided for persons appearing in a state of nudity in "any theatrical production performed in a theater by a professional or amateur theatrical or musical company which has serious artistic merit".

(3) Anyone found guilty of a violation of indecent exposure or public nudity as defined herein shall be charged with a Class B Misdemeanor as defined under the laws of the State of North Dakota.

(4) Effective Date. This Ordinance shall take effect upon passage and publication as required by law.

16.0403B <u>Obscene and Immoral Literature. Pictures, etc., Unlawful</u>

No person shall within the city, in any public or private place open to the view of any class or collection of persons, post up, place, write, mark, draw, cut or make any obscene, lewd or indecent notice, handbill, advertisement, picture, drawing, sentence, work, design, or figure.

April 8, 2001

16.0403C Same: Exhibiting or Selling to Child

No person shall sell, lend, give away or show to a child; have in his possession with intent to sell, lend, give away or show to a child; advertise or otherwise offer for loan, gift or distribution to a child; exhibit upon any street or highway or at any place within the view of a child; hire out or employ a child to sell, give away or in any manner to distribute; or having the care, custody or control of a child, permit such child to sell, give away or in any manner distribute any work, pamphlet, magazine, newspaper, story paper or other print or publication devoted to the dissemination or principally made up criminal news, police reports, or accounts of criminal deeds or pictures and accounts or stories of deeds of

bloodshed, lust or crime, or pictures, stories, illustrations of an obscene, salacious or lustful character. The term "child" as used in this ordinance means any person not exceeding eighteen years of age.

16.0403D Same: Penalty for Violation

Violation of Section 16.0403B and 16.0403C shall be punishable by a fine of not to exceed five hundred dollars ($500), or by imprisonment not to exceed thirty (30) days, or by both such fine and imprisonment in the discretion of the court.

16.0404 Defense When Conduct Consists of Speech or Other Expression

1. If conduct that would otherwise violate 16.0403(1)(c) (unreasonable noise) or 16.0403(1)(d) (obstructing traffic or public facility) consists of speech or other communication, of gathering with others to hear or observe such speech of 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 16.0403(1)(c) or 16.0403(1)(d):

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

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

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

(Source: Tax. Penal Code § 42.04)

16.0405 Loitering

1. A person commits an infraction if he:

   a. Loiters in a place, at a time, or in a manner not usual for law abiding individuals under circumstances that warrant alarm for the safety of persons or property in the vicinity. Among the circumstances which may be considered in determining whether such alarm is warranted is the fact that the actor takes flight upon appearance of a peace officer, refuses to identify himself, or manifestly tries to conceal himself or any object.

   b. Loiters in or about a school, college, or university building or grounds, not having any reason or relationship involving custody of, or responsibility for, a pupil or student, or any other specific, legitimate

reason for being there, and not having written permission from a school administrator or other person authorized to grant such permission.

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

3. Unless flight by the actor or other circumstance makes it impracticable, a peace officer shall prior to any arrest for an infraction under this section, afford the actor an opportunity to dispel any alarm which would otherwise be warranted, by requesting him to identify himself and explain his presence and conduct.

4. No person shall be convicted of an offense under this section if the peace officer did not comply with subsection 3, or if it appears at trial that the explanation given by the actor was true and, if believed by the peace officer at the time, would have dispelled the alarm.

5. It shall be an affirmative defense that the defendant's acts were lawful and he was exercising his right of lawful assembly as a part of peaceful and orderly petition for the redress of grievances, either in the course of labor disputes or otherwise.

Division 3. Gambling

16.0406 Gambling

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

2. "Gambling" means risking any money, credit, deposit, or other thing of value for gain, contingent, wholly or partially, upon lot, chance, the operation of gambling apparatus, or the happening or outcome of an event, including an election or sporting event, over which the person taking the risk has no control. Gambling does not include:

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

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

3. "Gambling apparatus" means any device, machine, paraphernalia, or equipment that is used or usable in playing phases of any gambling activity, whether that activity consists of gambling between persons, or gambling by a person involving the playing of a machine. Gambling apparatus does not include an amusement game or device as defined in NDCC § 53-03-01.

(Source: NDCC § 12.1-28-01 & 02)

Division 4. Sexual Offenses

16.0407 Prostitution

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

   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 NDCC § 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.

16.0408 Unlawful Cohabitation

A person is guilty of an offense if he or she lives openly and notoriously with a person of the opposite sex as a married couple without being married to the other person.

(Source: NDCC § 12.1-20-10)

Division 5. Sunday Business or Labor

16.0409 Business or Labor on Sunday

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

2. Except for items sold at hobby shows, craft shows, fairs, exhibits, occasional rummage sales including garage sales or other sales for which a sales tax permit is not required, and tourist attractions that derive at least fifty percent

(50%) of their annual gross sales from seasonal or tourist customers, the sale or rental of any of the following items on Sunday is prohibited:

a. Clothing other than work gloves and infant supplies;

b. Clothing accessories;

c. Wearing apparel other than that sold to a transient traveler under emergency conditions;

d. Footwear;

e. Headwear;

f. Home, business, office or outdoor furniture;

g. Kitchenware;

h. Kitchen utensils;

i. China;

j. Home appliances;

k. Stoves;

l. Refrigerators;

m. Air conditioners;

n. Electric fans;

o. Radios;

p. Television sets;

q. Washing machines;

r. Dryers;

s. Cameras;

t. Hardware other than emergency plumbing, heating, cooling or electrical repair or replacement parts and equipment;

u. Tools other than manually driven hand tools;

v. Jewelry;

w. Precious or semiprecious stones;

x. Silverware;

y. Watches;

z. Clocks;

aa. Luggage;

bb. Motor vehicles other than the daily rental of vehicles by business whose sole activity is automobile rental;

cc. Musical instruments;

dd. The sale of audio or video recordings, records or tapes. Rental of these items is permitted;

ee. Toys other than those customarily sold as novelties or souvenirs;

ff. Mattresses;

gg. Bed coverings;

hh. Household linens;

ii. Floor coverings;

jj. Lamps;

kk. Draperies;

ll. Blinds;

mm. Curtains;

nn. Mirrors;

oo. Cloth piece goods;

pp. Lawnmowers;

qq. Sporting or recreational goods other than those sold or rented on the premises where sports or recreational activities are conducted;

rr. Paint and building and lumber supplies.

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

a. Restaurants, cafeterias or other prepared food service organizations;

b. Hotels, motels and other lodging facilities;

c. Hospitals and nursing homes, including the sale of giftware on the premises;

d. Dispensaries of drugs and medicines;

e. Ambulance and burial services;

f. Generation and distribution of electric power, water, steam, natural gas, oil or other fuel used as a necessary utility;

g. Distribution of gas, oil and other fuels;

h. Telephone, telegraph and messenger services;

i. Heating, refrigeration and cooling services;

j. Railroad, bus, trolley, subway, taxi and limousine services;

k. Water, air and land transportation services and attendant facilities;

l. Cold storage warehouse;

m. Ice manufacturing and distribution facilities and services;

n. Minimal maintenance of equipment and machinery;

o. Plant and industrial protection services;

p. Industries where continuous processing or manufacturing is required by the very nature of the process involved.

q. Newspaper publication and distribution;

r. Newsstands;

s. Radio and television broadcasting;

t. Motion picture, theatrical and musical performances;

u. Motor vehicle service stations that sell motor fuel and motor oil, and that customarily provide daily repair services or products for any of the following systems or parts of a motor vehicle:

    i. Air conditioning system;

    ii. Batteries;

    iii. Electrical system;

iv. Engine cooling system;

v. Exhaust system;

vi. Fuel system

vii. Tires and tubes;

viii Emergency work necessary for the safe and lawful operation of the motor vehicle.

v. Athletic and sporting events;

w. Parks, beaches and recreational facilities;

x. Scenic, historic and tourist attractions;

y. Amusement centers, fairs, zoos and museums;

z. Libraries;

aa. Educational lectures, forums and exhibits;

bb. Service organizations (USO, YMCA, etc.);

cc. Coin-operated laundry and dry-cleaning facilities;

dd. Food stores operated by an owner or manager in addition to not more than six employees working in the store at one time on a Sunday;

ee. Bait shops for the sale of live bait and fishing tackle;

ff. From April 1st through June 15th, floral nurseries for the sale of bedding plants and nursery stock;

gg. From November 20th through December 25th, Christmas tree stands;

hh. Hobby shows, craft shows, fairs, exhibits;

ii. Occasional rummage sales, including garage sales or other sales for which a sales tax permit is not required;

jj. Community festivals licensed or authorized by the governing body of a city or the board of county commissioners;

kk. Premises licensed to dispense beer and alcoholic beverages within the limits prescribed in North Dakota Century Code Sections 5-02-05 and 5-02-05.1.

Division 6. Cruelty to Animals

16.0410 Cruelty to Animals

1. It is an offense for any person to:

   a. Overdrive, overload, torture, cruelly beat, neglect or unjustifiably injure, maim, mutilate or kill any animal, or cruelly work any animal when unfit for labor;

   b. Deprive any animal over which he has charge or control of necessary food, water or shelter;

   c. Keep any animal in any enclosure without exercise and wholesome change of air;

   d. Abandon any animal;

   e. Allow any maimed, sick, infirm or disabled animal of which he is the owner, or of which he has custody, to lie in any street, road or other public place for more than three (3) hours after notice;

   f. No person shall willfully instigate, or in any way further, any act of cruelty to any animal or animals, or any act tending to produce such cruelty.

   g. Cage any animal for public display except as allowed by North Dakota Century Code Section 36.21.1-02(7);

   h. Administer or expose any known poisonous substance or noxious drug, whether mixed with meat or other food or not, which may be eaten by any domestic animal.

2. The word "animal" includes every living animal except the human race; the word "torture" or "cruelty", includes every act, omission, or neglect whereby unnecessary or unjustifiable pain, suffering, or death shall be caused or permitted.

Division 7. Alcohol Related Offenses

16.0411 Persons Less than Twenty-One (21) Years Prohibited - Exceptions

1. Any person under twenty-one (21) years of age purchasing, attempting to purchase, or being in possession of alcoholic beverages, or furnishing money to any person for such purchase, or entering any licensed premises where such beverages are being sold or displayed, except as provided by Subsection 2, is guilty of an offense and shall, if a fine is imposed, be fined not less than Three Hundred and no/100 Dollars ($300.00). The court may, under this Section, refer the person to an outpatient addiction facility licensed by the Department of Health for evaluation and appropriate counseling or treatment.

2. Except as permitted in this Section, any licensee who dispenses alcoholic beverages to a person under twenty-one (21) years of age, or who permits such a person to remain on the licensed premises while alcoholic beverages are being sold or displayed, is guilty of a class A misdemeanor, subject to the provisions of Sections 5-01-08, 5-01-08.1 and 5-01-08.2. Any person under twenty-one (21) years of age may remain in a restaurant where alcoholic beverages are being sold if the restaurant is separate from the room in which alcoholic beverages are opened or mixed, if gross sales of food are at least equal to gross sales of alcoholic beverages which are consumed in the dining area, or if (a) employed by the restaurant as a food waiter, food waitress, busboy or busgirl, under the direct supervision of a person twenty-one (21) or more years of age, and not engaged in the sale, dispensing, deliver or consumption of alcoholic beverages, or (b) if the person is a law enforcement officer entering the premises in the performance of official duty. Any establishment where alcoholic beverages are sold may employ persons from eighteen (18) to twenty-one (21) years of age to work in the capacity of musicians under the direct supervision of a person over twenty-one (21) years of age.

(Source: NDCC § § 5-01-08 & 5-02-08)
& 5-02-06

16.0412 Misrepresentation of Age - Obligations of Licensee

Any person who shall misrepresent or misstate his age or the age of any other person, or shall misrepresent his age through presentation of any document purporting to show such person to be of legal age to purchase alcoholic beverages shall be guilty of an offense. Every licensee shall be required to keep a book which such licensee and his employees shall require anyone who has shown documentary proof of his age, which substantiates his age to allow the purchase of alcoholic beverages, to sign such book if the age of such person is in question. Such book shall show the date of the purchase, the identification used in making the purchase and the appropriate numbers of such identification, the address of the purchaser, and his signature.

(Source: NDCC § 5-01-08.1)

16.0413 Bottle Clubs Prohibited

Any person operating an establishment whereby persons are allowed to bring their own alcoholic beverages on the premises where the proprietor sells soft drinks, mix, ice, or charges for bringing such beverages on the premises, is guilty of an offense.

(Source: NDCC § 5-01-10)

16.0414 Public Intoxication - Assistance - Medical Care

A peace officer shall have authority to take any apparently intoxicated person to his home, to a local hospital, or, whenever such person constitutes a danger to himself or others, to a jail for the purposes of detoxification. A duly licensed physician of such local hospital shall have authority to hold such person for treatment up to seventy-two hours. Such intoxicated person shall not be held in jail because of intoxication more than twenty-

four hours. An intoxicated person shall not be placed in a jail unless a jailer is constantly present within hearing distance and medical services are provided when the need is indicated. Upon placing such person in a hospital or jail, said peace officer shall notify the intoxicated person's family as soon as possible. Any additional costs incurred by the city on account of an intoxicated person shall be recoverable from such person.

(Source: NDCC § 5-01-05.1)

16.0415 No Prosecution for Intoxication

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

(Source: NDCC § 5-01-05.2)

Division 8. Protection of Minors

16.0416 Objectionable Materials or Performance - Display to Minors - Definitions - Penalty

1. A person is guilty of an offense if he willfully displays at newsstands or any other business establishment frequented by minors, or where minors are or may be invited as a part of the general public, any photograph, book, paperback book, pamphlet, or magazine, the exposed cover or available content of which exploits, is devoted to, or is principally made up of depictions of nude or partially denuded human figures posed or presented in a manner to exploit sex, lust, or perversion for commercial gain.

2. As used in this section:

   a. "Nude or partially denuded human figures" means less than completely and opaquely covered human genitals, pubic regions, female breasts or a female breast, if the breast or breasts are exposed below a point immediately above the top of the areola, or human bottocks; and includes human male genitals in a discernibly turgid state even if completely and opaquely covered.

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

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

(Source: NDCC § 12.1-27.1-03.1)

Division 9. Regulation of Minors

16.0417 Curfew, General Regulations - Penalty

1. As used in this section, unless the context or subject matter otherwise requires:

   a. "Juvenile" for the purpose of this ordinance means a person less than sixteen (16) years of age.

   b. "Parents" means the legally appointed father and/or mother, or the natural father and/or mother, or the person or persons in charge of or in control of said juvenile as herein defined including a bona fide employer of said juvenile.

   c. "Curfew hour" means the time of night which is designated as 9:00 o'clock p.m., the standard time in Thompson, North Dakota, from September 1st to June 1st, except Friday and Saturday nights, which is 10:00 o'clock p.m., and except during those times between the change to daylight savings time in the spring to the change back to central standard time in the fall of the year, the curfew shall be 10:00 o'clock p.m.

   d. "Sounding of the curfew" means the sound emitted by a single blast of the fire siren, sounded at the curfew hour.

2. Each night of the year there shall be a sounding of the curfew at the curfew hour. It shall be unlawful for any juvenile as herein defined to be abroad upon the streets, alleys, public grounds of the City of Thompson, public places of amusement or retail or wholesale business establishments, between the curfew hour and 5:00 o'clock a.m. of the following day unless accompanied by a parent as defined herein; and any juvenile violating this provision of this ordinance in addition to the other punishments prescribed in this ordinance, shall be detained by the authorities until picked up by parent as defined herein.

   It shall be unlawful for any parents to allow their juveniles as herein defined to be abroad upon the streets, alleys, public grounds of the City of Thompson, public places of amusement or retail or wholesale business establishments between the curfew hour and 5:00 o'clock a.m. of the following day unless accompanied by a parent as herein defined.

   It shall be unlawful for any persons owning, keeping or managing any public place of amusement or retail or wholesale business establishment to allow any juvenile on the premises between the curfew hour and 5:00 a.m. of the following day unless accompanied by a parent as herein defined.

3. A violation of this section shall be an infraction. Any person, firm or corporation violating any of the terms or provisions of this article shall, upon conviction thereof, be punished by a fine not to exceed Five Hundred and no/100 Dollars ($500.00).

16.0418 Public Intoxication - Assistance - Medical Care

A peace officer shall have authority to take any apparently intoxicated person to his home, to a local hospital, or, whenever such person constitutes a danger to himself or others, to a jail for the purposes of detoxification. A duly licensed physician of such local hospital shall have authority to hold such person for treatment up to seventy-two (72) hours. Such intoxicated person shall not be held in jail because of intoxication more than twenty-four (24) hours. An intoxicated person shall not be placed in a jail unless a jailer is constantly present within hearing distance and medical services are provided when the need is indicated. Upon placing such person in a hospital or jail, said peace officer shall notify the intoxicated person's family as soon as possible. Any additional costs incurred by the city on account of an intoxicated person shall be recoverable from such person.

(Source: NDCC § 5-01-05.1)

16.0419 No Prosecution for Intoxication

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

(Source: NDCC § 5-01-05.2)

16.0420 Penalty

Any person violating the provisions of section 16.0417 or 16.0418 shall be subject to punishment by a fine in the amount of $25.00.

Division 10. Tobacco/Vaping Related Offenses

16.0421 Prohibited Purchases or Sales of Tobacco/Vaping Products

1. The intent and purpose of this section is to preserve and protect the public's health, safety, and welfare from the inherent risks and dangers of tobacco use by prohibiting the sale of tobacco from vending machines, the sale or distribution of tobacco products to minors, and the purchase of tobacco products by minors.

2. The following words and terms, as used in this section, shall be defined as follows:

   a. "City" shall mean the City of Thompson.

   b. "Distribute" shall mean to give tobacco and/or vaping products to the general public at no cost or at nominal cost for product promotional purposes.

   c. "E-cigarette, electronic cigarette or smoking devices" shall mean any electronic oral device, such as one composed of a heating element, battery and/or electronic circuit, which provides a vapor of nicotine or other substances, and the use or inhalation of which simulates smoking. The term shall include any device, whether manufactured, distributed, marketed or sold as an e-cigarette, e-cigar, e-pipe or under any other product, name or descriptor, and also includes any cartridge or other component of the device.

d. "Minor" shall mean any person, regardless of gender, who has not yet reached the age of twenty-one (21).

e. "Person" shall mean any individual, partnership, corporation, or other business or legal entity.

f. "Sell" shall mean, in addition to its ordinary meaning, to dispense from a vending machine.

g. "Tobacco products" shall mean any product that contains tobacco, is derived from tobacco or contains nicotine or other similar substances, that is intended for human consumption, or is likely to be consumed whether smoked, heated, inhaled, chewed, absorbed, dissolved, or ingested by any other means. The term includes, but is not limited to, cigarettes, cigars, smokeless tobacco, tobacco snuff, chewing tobacco, and other kinds and forms of tobacco, prepared in such a manner as to be suitable for chewing, smoking, inhaling, or ingested by any other means. The term shall also include e-cigarettes and other electronic smoking devices, pipes and rolling papers. The term does not, however, include any product approved by the United States Food and Drug Administration for the legal sale as a tobacco cessation product and which is being marketed and sold solely for the approved purpose.

h. "Vaping" means the use of an electronic cigarette or e-cigarette, which is a handheld battery-powered vaporizer that simulates smoking and provides some of the behavioral aspects of smoking, including the hand-to-mouth action of smoking, but without burning tobacco. Using an e-cigarette is known as "vaping" and the user is referred to as a "vaper".

i. "Vending machine" shall mean any kind of device which, upon the insertion of a coin or coins, tokens, or other objects will release tobacco products in packages or otherwise.

16.0422 <u>Sale of Tobacco/Vaping Products Through Vending Machines Prohibited</u>

It is unlawful for any person to sell or dispense any tobacco/vaping product through the use of a vending machine, except from a vending machine located in a licensed on-sale alcoholic beverage establishment or a licensed off-sale alcoholic beverage establishment where the vending machine is located within the immediate vicinity, plain view, and control of a responsible employee, so that all tobacco/vaping purchases will be readily observable by that employee. The vending machine shall not be located in any coatroom, restroom, unmonitored hallway, outer waiting area, or similar unmonitored area; nor shall the vending machine be accessible to the public when the establishment is closed.

16.0423 <u>Behind the Counter Sale of Tobacco/Vaping Products</u>

No tobacco/vaping product may be stored or displayed in a retail outlet in an area or in a manner which allows for self-service access by customers.

16.0424 Sale of Tobacco/Vaping Products to Minors Prohibited

It is unlawful for any person to sell or distribute tobacco/vaping products to a minor.

16.0425 Purchase and Possession of Tobacco/Vaping Products by Minors Prohibited

It is unlawful for any person under the age of twenty-one (21) years to possess, purchase, attempt to purchase, sell, smoke or use tobacco/vaping products. This section shall not apply to a person under the age of twenty-one (21) years who purchases or attempts to purchase tobacco or tobacco/vaping products while under the direct supervision of the police department or the city attorney's office for training, education, research, or enforcement purposes. Further, this section shall not apply to an employee under twenty-one (21) years of age whose possession of tobacco/vaping products is incidental to employment by a licensed retail tobacco dealer in the course of a retail sale.

16.0426 Violation - Penalty

1. Any person violating the provisions of Section 16.0424 of this chapter shall, upon conviction, be subject to a penalty of Five Hundred Dollars ($500). Each day that a violation is permitted to exist shall constitute a separate punishable offense.

2. Any person violating the provisions of Section 16.0425 of this chapter shall, upon conviction, be subject to a penalty of Fifty Dollars ($50.00).

3. Any person violating the provisions of Sections 16.0422 and 16.0423 of this chapter shall be subject to a penalty of a fine of up to Five Hundred Dollars ($500.00) for each violation.

June 1, 2020

Article 5
Sentencing

16.0501 Classification of Offenses

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

1. Offense, for which a maximum penalty of thirty days imprisonment, a fine of five hundred dollars, or both, may be imposed.

2. Infraction, for which a maximum fine of five hundred dollars may be imposed. Any person convicted of an infraction who has, within one year prior to commission of the infraction of which he was convicted, been previously convicted of an offense classified as an infraction of state

statutes or the ordinances of this or any other North Dakota Municipality, may be sentenced as though convicted of an offense. If the prosecution contends that the infraction is punishable as an offense, the complaint shall so specify unless the prosecution is unable with reasonable effort to learn of the prior conviction prior to execution of the complaint.

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

4. Section 40-05-06 shall not be construed to prohibit the utilization of the sentencing alternatives, other than a fine or imprisonment, provided by Section 12.1-32-02 for the violation of a city ordinance, nor shall this section limit the use of deferred or suspended sentences pursuant to Chapter 12-53.

(Source: NDCC § 12.1-32-01)

16.0502 <u>Sentencing Alternatives</u>

1. Every person convicted of an offense who is sentenced by the court shall be sentenced to one or a combination of the following alternatives, unless the sentencing alternatives are otherwise specifically provided in the statute defining the offense:

   a. Payment of the reasonable costs of his prosecution.

   b. Probation.

   c. A term of imprisonment, including intermittent imprisonment.

   d. A fine.

   e. Restitution for damages resulting from the commission of the offense.

   f. Restoration of damaged property, or other appropriate work detail.

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

   h. Commitment to any other facility or program deemed appropriate for the treatment of the individual offender, including available community-based programs

Sentences imposed under this subsection shall not exceed in duration the maximum sentences provided in 16.0501, or as provided specifically in an ordinance defining an offense.

This subsection shall not be construed as not permitting the unconditional discharge of an offender following conviction. Sentences under subdivisions (e) or (f) shall be imposed in the manner provided in 16.0509. This subsection shall not be

construed to prohibit utilization of NDCC § 40-18-13 relating to suspension of sentence, nor shall this subsection limit the conditions which can be imposed on a probationer under 16.0507.

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

3. Superseded by N.P.R. Crim. P., Rule 35.

4. A court may refer a person convicted of driving while under the influence of an intoxicating liquor or a narcotic drug, prior to sentencing, to an approved treatment facility for diagnosis. Upon receipt of the results of this diagnosis, the court may impose a sentence as prescribed in 16.1901 of Chapter 1 or it may sentence the person to treatment in a facility approved by the State division of alcoholism and drug abuse.

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

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

(Source: NDCC § 12.1-32-02)

16.0503 <u>Procedure for Trial of Infraction – Incidents</u>

1. Except as provided in this subsection, all procedural provisions relating to the trial of criminal cases as provided in the statutes or rules relating to criminal procedure shall apply to the trial of a person charged with an infraction. A person charged with an infraction is not entitled to be furnished counsel at public expense nor to have a trial by jury pursuant to NDCC § 40-18-19 unless he may be subject to a sentence of imprisonment under subsection 2 of 16.0501.

2. Except as provide din NDCC Title 12.1 or the ordinances of this City, all provisions of law and rules of criminal procedure relating to offenses shall apply to infractions, including, but not limited to, the powers of law enforcement officers, the periods for commencing action and bringing a case to trial, and the burden of proof.

3. Following conviction of an infraction, the offender may be sentenced in accordance with subsection 1 of 16.0502, except that a term of imprisonment may not be imposed except in accordance with subsection 3 of 16.0506, or subsection 2 of 16.0501.

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

5. Except as provided in this section, 16.0501 or 16.0502, or as the context may otherwise indicate a differentiation between the infraction classification and the offense classification, the term "offense" refers to all violations of the ordinances of this city including infractions.

(Source: NDCC § 12.1-32-03.1)

16.0504 Special Sanction for Organizations

When an organization is convicted of an offense, the court may, in addition to any other sentence which may be imposed, require the organization to give notice of its conviction to the persons or class of persons ostensibly harmed by the offense, by mail or by advertising in designated areas or by designated media or otherwise.

(Source: NDCC § 12.1-32-03)

16.0505 Factors to be Considered in Sentencing

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

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

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

3. The defendant acted under strong provocation.

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

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

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

7. The defendant has no history of prior delinquency or criminal activity, or has led a law-abiding life for a substantial period of time before the commission of the present offense.

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

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

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

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

12. The defendant is elderly or in poor health.

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

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

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

(Source: NDCC § 12.1-32-04)

16.0506 Imposition of Fine - Response to Non-Payment

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

   a. The ability of the defendant to pay without undue hardship.

   b. Whether the defendant, other than a defendant organization, gained money or property as a result of commission.

   c. Whether the sentence to pay a fine will interfere with the defendant's capacity to make restitution.

   d. Whether a sentence to pay a fine will serve a valid rehabilitative purpose.

2. The court may allow the defendant to pay any fine or costs imposed in installments. When a defendant is sentenced to pay a fine or costs, the court shall not impose at the same time an alternative sentence to be served in the event that the fine or costs are not paid.

3. If the defendant does not pay any fine or costs imposed, or make any required partial payment the court, upon motion of the prosecuting attorney or on its own motion, may issue an order to show cause why the defendant should not be imprisoned for nonpayment. Unless the defendant shows that his default is excusable, the court may, after hearing, commit him to imprisonment until the fine, or costs, or both, are fully paid or discharged by law as provided in NDCC § 40-18-12.

The court may not commit a person under this section when the sole reason for his nonpayment is his indigency. An order of commitment under this subsection shall not be for a period in excess of thirty days.

(Source: NDCC § 12.1-32-05 & § 40-11-12)

16.0507 Incidents of Probation

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

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

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

(Source: NDCC § 12.1-32-06)

16.0508 <u>Conditions of Probation – Revocation</u>

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

2. When imposing a sentence of probation, the court may impose such conditions as it deems appropriate, and may include any one or more of the following:

   a. Work faithfully at a suitable employment or faithfully pursue a course of study or of vocational training that will equip him for suitable employment;

   b. Undergo available medical or psychiatric treatment and remain in a specified institution if required for that purpose;

   c. Attend or reside in a facility established of the instruction, recreation, or residence of persons on probation;

   d. Support his dependents and meet other family responsibilities;

   e. Make restitution or reparation to the victim of his conduct for the damage or injury which was sustained, or perform other reasonable assigned work. When restitution, reparation, or assigned work is a condition of the sentence, the court shall proceed as provided in 16.0509;

   f. Pay a fine imposed after consideration of the provisions of 16.0506;

   g. Refrain from possessing a firearm, destructive device, or other dangerous weapon unless granted written permission by the court;

   h. Refrain from excessive use of alcohol, or any use of narcotics or of another dangerous or abusable drug without a prescription;

   i. Promptly notify the court of any change in address or employment;

   j. Remain within the jurisdiction of the court, unless granted permission to leave by the court; and

   k. Refrain from associating with known users or traffickers in narcotics, marijuana, or other controlled substances.

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

4. The court may, upon notice to the probationer, modify or enlarge the conditions of a sentence to probation at any time prior to the expiration or termination of the period for which the sentence remains conditional. If the defendant violates a condition at any time prior to the expiration or termination of the period, the court may, pursuant to the procedure specified in N.D.R. Crim. P. 32(f), continue him on the existing sentence, with or without modifying or enlarging the conditions, or if such continuation, modification, or enlargement is not appropriate, may impose any other sentence that was available under 16.0502 at the time of initial sentencing.

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

(Source: NDCC § 12.1-32-07)

16.0509 <u>Restitution or Reparation – Procedures</u>

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

   a. The reasonable damages sustained by the victim or victims of the criminal offense, which damages shall be limited to fruits of the criminal offense and expenses actually incurred as a direct result of the defendant's criminal action;

   b. The ability of the defendant to restore the fruits of the criminal action or to pay monetary reparations, or to otherwise take action to restore the victim's property; and

   c. The likelihood that attaching a condition relating to restitution or reparation will serve a valid rehabilitational purpose in the case of the particular offender considered.

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

2. The court may order the defendant to perform reasonable assigned work as a condition of probation, which assigned work need not be related to the offense charged, but must not be solely for the benefit of a private individual other than the victim.

(Source: NDCC § 12.1-32-08)

16.0510 Merger of Sentences - Sentencing for Multiple Offenses

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

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

(Source: NDCC § 12.1-32-11)

Article 6
Penalties

Any person who is convicted of violating or of failing to comply with any of the provisions of the ordinances contained in this chapter for which a penalty is not specifically set forth, may be punished by a fine or imprisonment not to exceed thirty days or both; EXCEPT that any person who is convicted of the offense of criminal mischief or of retail theft - shoplifting may be punished by a fine of not more than One Thousand Dollars or by imprisonment not to exceed thirty days or both.