TITLE XII.

PUBLIC CONDUCT - OFFENSES

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CHAPTER 12-01

CRIMINAL OFFENSES - GENERAL

SECTIONS:

12-0101. Criminal Attempt.
12-0102. Criminal Conspiracy.
12-0103. Aiding Consummation of a Crime.

12-0101. **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 N.D. Cent. Code § 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.

12-0102. **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 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 N.D. Cent. Code § 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.

12-0103. **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 or otherwise profits from the offense.

CHAPTER 12-02

OBSTRUCTION OF GOVERNMENT OPERATIONS AND LAW ENFORCEMENT.

SECTIONS:

12-0201. Public Servants Permitting Escape.
12-0202. Criminal Contempt.
12-0203. Hindering Proceedings by Disorderly Conduct.
12-0204. Impersonating Officials.
12-0205. False Reports to Law Enforcement Officers.

12-0201. **PUBLIC SERVANTS PERMITTING ESCAPE**. A public servant concerned in official detention, as defined by N.D. Cent. Code § 12.1-08-06(3), pursuant to process issued by a court, judge, or magistrate is guilty of an offense against the ordinances of this city if he negligently permits an escape.

12-0202. **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 N.D. Cent. Code Chapters 12.1-01 through 12.1-05, N.D. 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.

12-0203. **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.

12-0204. **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.

12-0205. **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.

CHAPTER 12-03

CIVIL RIGHTS

SECTIONS:

12-0301. Discrimination in Public Places.
12-0302. Preventing Exercise of Civil Rights.

12-0301. **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.

12-0302. **PREVENTING EXERCISE OF 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.

CHAPTER 12-04

OFFENSES AGAINST PERSONS

SECTIONS:

12-0401. Simple Assault.
12-0402. Harassment.

12-0401. **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 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.

12-0402. **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.

CHAPTER 12-05

OFFENSES AGAINST PROPERTY

SECTIONS:

12-0501. Criminal Mischief.
12-0502. Tampering with or Damaging Property of Public Service.
12-0503. Defense of Consent - Property of Another.
12-0504. Criminal Trespass.
12-0505. Registration in Public Schools.

12-0501. **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 damage to tangible property of another are not by means of an explosive or a destructive devise.

12-0502. **TAMPERING WITH OR DAMAGING PROPERTY OF 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.

12-0503. **DEFENSE OF CONSENT - PROPERTY OF ANOTHER**. For prosecutions of criminal mischief under Section 12-0501 or tampering with or damaging a public service under Section 12-0502:

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.

12-0504. **CRIMINAL TRESPASS**. A person is guilty of an offense if:

1. 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; but the name of the person posting the premises must appear on each sign in legible characters; or

2. He remains 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.

12-0505. **REGISTRATION IN PUBLIC SCHOOLS**. During such time as regularly scheduled classes are in session, no person shall enter or remain in any public elementary or secondary school building within the City of Mapleton without first registering in the main office of said school; provided, however, this section shall not apply to members of the School Board of the Mapleton School District, faculty and employees of the Mapleton School District, and students enrolled in that school.

Reasonable notification of the requirements of this section shall be conspicuously posted at the entrance to every public elementary and secondary school within the City of Mapleton, and no complaint for a violation of this section shall issue unless such notice is given.

CHAPTER 12-06

THEFT AND RELATED OFFENSES

SECTIONS:

12-0601. Consolidated Theft Offenses.
12-0602. Theft of Property.
12-0603. Theft of Services.
12-0604. Theft of Property Lost, Mislaid, or Delivered by Mistake.
12-0605. Thefts Punishable Under City Ordinance.
12-0606. Defenses and Proof As To Theft and Related Offenses.
12-0607. Definitions.
12-0608. Making or Uttering Slugs.

12-0601. **CONSOLIDATED THEFT OFFENSES**.

1. Conduct denominated theft in Sections 12-0602 to 12-0604 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 12-0602 to 12-0604 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 12-0602 to 12-0604, 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 12-0602 to 12-0604 is guilty of a class B misdemeanor.

12-0602. **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.

12-0603. **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 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 or making provision to pay is prima facie evidence that the services were obtained by deception.

12-0604. **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.

12-0605. **THEFTS PUNISHABLE UNDER CITY ORDINANCE**. Theft under Sections 12-0602 to 12-0604 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 12-0605 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 12-0605 shall give the City jurisdiction of all class B misdemeanor theft offenses.

Source: Ord. 216-13, Sec. 7 (2015)

12-0606. **DEFENSES AND PROOF AS TO THEFT AND RELATED OFFENSES**.

1. It is a defense to a prosecution under Section 12-0601 to 12-0607 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.

12-0607. **DEFINITIONS**. Applicable to Section 12-0601 to 12-0606.

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 N.D. Cent. Code § 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.

12-0608. **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 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.

CHAPTER 12-07

OFFENSES AGAINST PUBLIC ORDER, HEALTH, SAFETY AND SENSIBILITIES

SECTIONS:

12-0701. Engaging in a Riot.
12-0702. Disobedience of Public Safety Orders Under Riot Conditions.
12-0703. Disorderly Conduct.
12-0704. Defense When Conduct Consists of Speech or Other Expression.
12-0705. Prostitution.
12-0706. Refrigerators Abandoned or Unattended Out of Doors.
12-0707. Urinating in Public.

12-0701. **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 Section 12-0101 or 12-0102 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.

12-0702. **DISOBEDIENCE OF PUBLIC SAFETY ORDERS UNDER RIOT CONDITIONS**. A person is guilty of an offense if, during a riot as defined in Section 12-0701.2, 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. 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.

12-0703. **DISORDERLY CONDUCT**. A person is guilty of violating the ordinances of this City if, with intent to harass, annoy, or alarm another person or in reckless disregard of the fact that another is harassed, annoyed or alarmed by his behavior, he:

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

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

3. Makes unreasonable noise;

4. Obstructs vehicular or pedestrian traffic, or the use of a public facility;

5. Persistently follows a person in or about a public place or places;

6. While loitering in a public place for the purpose of soliciting sexual contact, he solicits such contact;

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

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

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

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

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

12. Creates, by chemical means, a noxious and unreasonable odor in a public place.

12-0704. **DEFENSE WHEN CONDUCT CONSISTS OF SPEECH OR OTHER EXPRESSION**.

1. If conduct that would otherwise violate Section 12-0703.3 (unreasonable noise) or Section 12-0703.4 (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 an 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 12-0703.3 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.

12-0705. **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 N.D. Cent. Code § 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.

12-0706. **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 pubic 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.

CHAPTER 12-08

NOISE VIOLATIONS

SECTIONS:

12-0801. Definitions.
12-0802. Unnecessary Noise Prohibited.
12-0803. Unlawful Noise - Determination.
12-0804. Motorized Vehicles.
12-0806. Aircraft.
12-0807. Exemptions.
12-0808. Application for Special Permit.
12-0809. Enforcement.
12-0809. Penalty.
12-0810. Severability.

12-0801. **DEFINITIONS**. For purposes of this chapter certain words and phrases used herein are defined as follows:

1. "Ambient noise" is the all-encompassing noise associated with a given environment, being usually composite of sounds from many sources, near and far.

2. "'A' band level" is the total sound level of all noise as measured with a sound level meter using the "A" weighing network. The unit measurement is the dB(A). "dB" is the abbreviation for the decibel. "dB(A)" is a weighted decibel which closely approximates the human ear response to sound.

3. "Bel" is the common logarithmic value of any sound intensity as related to the standard threshold of audibility (minimum detectable sound 10-12 watts per square meter).

4. "Decibel" is one-tenth (1/10) of a bel as measured on the "A" scale of a standard sound meter.

5. "Cycle" is the complete sequence of value of a periodic quantity that occur during a period.

6. "Frequency" of a function periodic in time is the reciprocal of the primitive period. The unit is the cycle per unit time and must be specified.

7. "Sound-level meter" is an instrument including a microphone, an amplifier, an output meter, and frequency weighing networks for the measurement of noise and sound levels in a specified manner.

8. "Person" is a person, person's firm, association, co-partnership, joint venture, corporation or any entity public or private in nature.

9. "Emergency work" is work made necessary to restore property to a safe condition following a public calamity or work required to protect persons or property from an imminent exposure to danger.

10. "Emergency vehicles" are those vehicles such as ambulance, fire, police, and other city vehicles operating in time of emergency.

12-0802. **UNNECESSARY NOISE PROHIBITED**. It shall be unlawful for any person to make any loud, unnecessary or unusual noise or any noise which either annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of others within the limits of the City of Mapleton.

12-0803. **UNLAWFUL NOISE - DETERMINATION**. The standards which shall be considered in determining whether a violation of Section 12-0802 exists shall include, but shall not be limited, to the following:

1. The volume of the noise.

2. The intensity of the noise.

3. Whether the nature of the noise is usual or unusual.

4. Whether the origin of the noise is natural or unnatural.

5. The volume and intensity of the background noise, if any.

12-0804. **MOTORIZED VEHICLES**. It shall be unlawful to operate a motorized vehicle within the city limits which creates a noise or sound which exceeds the noise level limits set out in Table 1, as follows:

TABLE 1. LIMITING NOISE LEVELS FOR MOTOR VEHICLES

1. Trucks, buses, construction equipment, or any motor vehicle with a gross weight rating of ten thousand (10,000) pounds or more:
   Maximum allowable limit: 88 dB(A) measured at or corrected to 25 feet.

2. Passenger cars, pickups, vans, motorcycles, snowmobiles, or any motor vehicle with a gross weight rating less than ten thousand (10,000) pounds:
   Maximum allowable limit: 80 dB(A) measured at or corrected to 25 feet.

3. Interstate Motor Carrier:
   Maximum allowable limit:
   a. 92 dB(A) measured at or corrected to 25 feet when traveling on roadways with speed limits of 35 mph or less.

b. 92 dB(A) measured at or corrected to 25 feet when traveling on roadways with speed limits of more than 35 mph.

12-0805. **AIRCRAFT**. It shall be unlawful for any person to operate or cause to be operated any type of aircraft over the city which produces noise levels exceeding eighty-eight (88) dB(A) within the city.

12-0806. **EXEMPTIONS**. The following uses and activities shall be exempt from noise level regulations:

1. Noises of safety signals, warning devices, and emergency relief valves.

2. Noises resulting from any authorized emergency vehicles, when responding to an emergency call or acting in time of emergency.

3. Noises resulting from emergency work as defined in Section 12-0801.9.

4. Any construction or maintenance activities at the construction or maintenance site.

5. Any other noise resulting from activities of a temporary duration permitted by law and for which a license or permit therefor has been granted by the city in accordance with Section 12-0806.

6. Any aircraft operated in conformity with, or pursuant to, federal law, federal air regulations, and air traffic control instruction used pursuant to and with the duly adopted federal air regulations shall be exempt from the provisions of Section 12-0805 as well as other regulations of this Section. Any aircraft operating under technical difficulties, in any kind of distress, under emergency orders of aid traffic control or being operated pursuant to and subsequent to the declaration of an emergency under federal air regulations shall also be exempt from the provisions of Section 12-0805 as well as the other regulations of this Section.

7. Any regulation of railroad noise will be subject to the following:

   Title 40, Code of Federal Regulations, part 201:

   1. 201.1 (c), (m), (p) , (t), (aa), (dd), (ee)
   2. 201.10
   3. 201.11 (a), (b)
   4. 201.12 (a), (b)
   5. 201.13
   6. 201.22, 201.23, 201.24

12-0807. **APPLICATION FOR SPECIAL PERMIT**. Applications for a permit for relief from the noise level designated in this Section on the basis of undue hardship may be made to the city engineer or his duly authorized representative. Any permit granted by the city engineer hereunder shall contain all conditions upon which said permit has been granted and shall specify

a reasonable time that the permit shall be effective. The city engineer, or his duly authorized representative, may grant the relief as applied for if he finds:

1. That additional time is necessary for the applicant to alter or modify his activity or operation to comply with this Section; or

2. The activity, operation or noise source will be of temporary duration, and cannot be done in a manner that would comply with other subsections of this Section; and

3. That no other reasonable alternative is available to the applicant; and

4. The city engineer may prescribe any conditions or requirements he deems necessary to minimize adverse effects upon the community or the surrounding neighborhood.

12-0808. **ENFORCEMENT**. Whenever any peace officer determines that there has been a violation of the provisions of this chapter, and the violation involves a gathering of people at a premise, the officer may order all persons present, other than the owner or tenant of the premise where the disturbance is occurring, to disburse immediately. Any person refusing to leave the premises after being ordered to do so by the peace officer is subject to the penalty provisions of this chapter. The officer shall cite, if present, the owner of the premises, or the tenant of such premises, or in the absence of the above two, any person in charge of the premises for violation of the provisions of this chapter. This Section, in no way limits the authority of an officer to cite other persons for violation of the provisions of this chapter.

12-0809. **PENALTY**. Any person violating any section of this chapter 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.

12-0810. **SEVERABILITY**. Should any part or provision of this ordinance by declared by a court of competent jurisdiction to be invalid, the same shall not affect the validity of the ordinance as a whole, or any part thereof, other than the part declared to be invalid.

CHAPTER 12-09

POSSESSION OF MARIJUANA

SECTIONS:

12-0901. Definitions.
12-0902. Possession of Marijuana.
12-0903. Jurisdiction.
12-0904. Burden of Proof.
12-0905. Penalty.
12-0906. Procedure to Expunge Record of Conviction.

12-0901. **DEFINITIONS**.

1. "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.

12-0902. **POSSESSION OF MARIJUANA**. It shall be unlawful to possess marijuana within the jurisdiction of the City of Mapleton, North Dakota. 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.

12-0903. **JURISDICTION**. The Municipal Court of the City of Mapleton shall have jurisdiction over persons possessing not more than one-half (1/2) ounce (14.175 grams) of marijuana, as defined in this chapter, and who are not operating a motor vehicle.

12-0904. **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.

12-0905. **PENALTY**. Every person, firm or corporation violating any of the provisions of this article shall upon conviction be punished by a fine not to exceed $1,500 or by imprisonment not to exceed thirty days, or both such fine and imprisonment, in the discretion of the court; and the court to have power to suspend said sentence and to revoke the suspension thereof.

Source: Ord. 216-13, Sec. 8 (2015)

12-0906. **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.

CHAPTER 12-10

PURCHASE OF ALCOHOLIC BEVERAGES BY PERSONS
UNDER 21 YEARS OF AGE

SECTIONS:

12-1001. Persons Under 21 Years of Age Prohibited from Purchasing, Consuming or Possessing Alcoholic Beverages.
12-1002. Purchasing or Procuring for Persons Under 21 Years of Age Prohibited.
12-1003. Furnishing Money by Persons Under 21 Years of Age for Alcoholic Beverages Prohibited.
12-1004. Misrepresentation of Age to Gain Admission or to Purchase Alcoholic Beverages Prohibited.
12-1005. Penalty.

12-1001. **PERSONS UNDER 21 YEARS OF AGE PROHIBITED FROM PURCHASING, CONSUMING OR POSSESSING ALCOHOLIC BEVERAGES**. It shall be unlawful for any person under the age of twenty-one (21) years to purchase, attempt to purchase, consume or have in his or her possession alcoholic beverages as defined in Section 10-0101 of the Revised Ordinances of 2000 of the City of Mapleton, North Dakota. This Section shall not apply to a person 19 years of age or older who is serving alcoholic beverages in a restaurant pursuant to the provisions and restrictions set out in Section 10-0116.5 of the Revised Ordinances of 2000 of the City of Mapleton, North Dakota. 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 alcoholic beverage.

12-1002. **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.

12-1003. **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.

12-1004. **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.

12-1005. **PENALTY**. Any person violating any provision of this chapter shall be subject to a fine of not more than $1,500 or a jail sentence of not more than 30 days or both.

Source: Ord. 216-13, Sec. 9 (2015)

CHAPTER 12-11

POSSESSION OF CIGARETTES AND TOBACCO PRODUCTS

SECTIONS:

12-1101. Definitions.
12-1102. Sale of Cigarettes and Tobacco Products to Minors Prohibited.
12-1103. Possession and Use of Cigarettes and Tobacco Products by Minors Prohibited.

12-1101. **DEFINITIONS**. Source: Ord. 220-14, Sec. 2 (2014)

1. "Cigarette and tobacco products" means any product that is made from or derived from tobacco, which contains nicotine or a similar substance, and is intended for human consumption or is likely to be consumed, whether smoked, heated, chewed, absorbed, dissolved, inhaled or ingested by any other means, including, but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, snus, e-cigarette, electronic cigarette, or an electronic smoking device. Tobacco product also includes pipes and rolling papers, but does not include any product specifically approved by the U.S. Food and Drug Administration for legal sale as a tobacco cessation product and is being marketed and sold solely for that approved purpose.

2. "Constructive possession" means the power and capability to exercise dominion and control over cigarette and tobacco products.

3. "Sell," includes dispensing from a vending machine under the control of the actor.

12-1102. **SALE OF CIGARETTES AND TOBACCO PRODUCTS TO MINORS PROHIBITED**. It is a class B misdemeanor for any person to sell or furnish to a minor or procure for a minor cigarettes and tobacco products.

12-1103. **POSSESSION AND USE OF CIGARETTES AND TOBACCO PRODUCTS BY MINORS PROHIBITED**. It is a class B misdemeanor for a minor to smoke, use, or possess cigarette and tobacco products. Possession shall, for purposes of this section, include actual and constructive possession.

CHAPTER 12-12
CURFEW FOR MINORS

SECTIONS:

12-1201. Definitions
12-1202. Restrictions
12-1203. Exceptions.
12-1204. Enforcement.
12-1205. RESERVED FOR FUTURE USE.
12-1206. Severability.

12-1201. **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.

12-1202. **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.

12-1203. **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 a law enforcement officer about the minor's presence;

(g) attending an official school, religious, or other recreational activity supervised by adults and sponsored by the City of Mapleton, 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 Mapleton, 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 12-1202 that the owner, operator or employee of an establishment promptly notified a law enforcement officer that a minor was present on the premises of the establishment during curfew hours and refused to leave.

12-1204. **ENFORCEMENT**. Before taking any enforcement action under this section, a peace 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 12-1203 is present.

12-1205. **RESERVED FOR FUTURE USE**. Source: Ord. 216-13, Sec. 12 (2015)

12-1206. **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.