

ORDINANCE NO. 1182

AN ORDINANCE TO AMEND AND REENACT SECTIONS 10-0132 (RELATING TO PUBLIC CONSUMPTION OF ALCOHOLIC BEVERAGES), 12-0203 (RELATING TO DISORDERLY CONDUCT), 13-0203 (RELATING TO PERSONS UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR NARCOTIC DRUGS NOT TO OPERATE VEHICLE), 13-0309 (RELATING TO CARELESS DRIVING), 13-1401 (RELATING TO IMMEDIATE NOTICE OF ACCIDENTS), 13-1625 (RELATING TO PENALTY), AND CHAPTER 13-18 (RELATING TO BICYCLES), TO CREATE SECTION 11-0111 (RELATING TO UNATTENDED ANIMAL IN MOTOR VEHICLE), AND TO REPEAL SECTION 12-0303 (RELATING TO INDECENT EXPOSURE) OF THE REVISED ORDINANCES OF 1990 OF THE CITY OF WEST FARGO.

BE IT ORDAINED BY THE BOARD OF CITY COMMISSIONERS OF THE CITY OF WEST FARGO, NORTH DAKOTA:

SECTION 1. Section 10-0132 of the Revised Ordinances of 1990 of the City of West Fargo is hereby amended and reenacted to read as follows:

10-0132. PUBLIC CONSUMPTION OF ALCOHOLIC BEVERAGES RESTRICTED.

1. A person may not consume alcoholic beverages upon streets, avenues, alleys, sidewalks, stairways, thoroughfares, or other public property in an area zoned commercial within the City, nor in or upon the parking areas of private shopping centers, hotels, motels, licensed liquor establishments, restaurants, clubs, religious institutions, or similar establishments, unless such areas have been designated as part of an on-sale licensed premise, or granted a special event permit under Section 10-0129, or granted a permit by the Liquor Control Board for a special event. Any person violating the terms of this section is guilty of an infraction.

SECTION 2. Section 12-0203 of the Revised Ordinances of 1990 of the City of West Fargo is hereby amended and reenacted to read as follows:

12-0303. DISORDERLY CONDUCT.

1. A person is guilty of a class B misdemeanor if, with intent to harass, annoy, or alarm another person or in reckless disregard of the fact that another is harassed, annoyed or alarmed by his behavior, the person:
 - a. Engages in fighting, or in violent, tumultuous or threatening behavior;

- b. In a public place, uses abusive or obscene language, knowingly exposes that individual's penis, vulva, or anus, or makes an obscene gesture;
 - c. Makes unreasonable noise;
 - d. Obstructs vehicular or pedestrian traffic, or the use of a public facility;
 - e. Persistently follows a person in or about a public place or places;
 - f. While loitering in a public place for the purpose of soliciting sexual contact, said person solicits such contact;
 - g. Creates a hazardous, physically offensive, or seriously alarming condition by any act which serves no legitimate purpose;
 - h. Uses a fixed optical device that enhances or records a visual occurrence to view through any window of another person's property; or uses a surveillance camera to capture an image from the dwelling or accessory structure of another person; however, an individual using a surveillance camera has seven days from notice by a law enforcement officer to direct or shield the camera so as to not capture an image from another person's dwelling or accessory structure before there is an offence; or
 - i. Engages in harassing conduct by means of intrusive or unwanted acts, words, or gestures that are intended to adversely affect the safety, security, or privacy of another person.
2. This section does not apply to constitutionally protected activity. If an individual claims to have been engaged in a constitutionally protected activity, the court shall determine the validity of the claim as a matter of law and, if found valid, shall exclude evidence of the activity.

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

SECTION 3. Section 13-0203 of the Revised Ordinances of 1990 of the City of West Fargo is hereby amended and reenacted to read as follows:

13-0203. PERSONS UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR NARCOTIC DRUGS NOT TO OPERATE VEHICLE - PENALTY.

1. A person may not drive or be in actual physical control of any vehicle upon a highway or upon public or private areas to which the public has a right of access for vehicular use in this state if any of the following apply:
 - a. That person has an alcohol concentration of at least eight one hundredths of one percent (.08) by weight at the time of the performance of a chemical test within two hours after the driving or being in actual physical control of a vehicle.
 - b. That person is under the influence of intoxicating liquor.
 - c. That person is under the influence of any drug or substance or combination of drugs or substances to a degree which renders that person incapable of safely driving.
 - d. That person is under the combined influence of alcohol and any other drugs or substances to a degree which renders that person incapable of safely driving.
 - e. That individual refuses to submit to any of the following:
 - (1) A chemical test, or tests, of the individual's blood, breath, or urine to determine the alcohol concentration or presence of other drugs, or combination thereof, in the individual's blood, breath, or urine, at the direction of a law enforcement officer under Section 39-06.2-10.2, NDCC, if the individual is driving or is in actual physical control of a commercial motor vehicle; or
 - (2) A chemical test, or tests, of the individual's blood, breath, or urine to determine the alcohol concentration or presence of other drugs, or combination thereof, in the individual's blood, breath, or urine, at the direction of a law enforcement officer under Section 39-20-01, NDCC.
 - f. Subdivision e does not apply to an individual unless the individual has been advised of the consequences of refusing a chemical test consistent

with the Constitution of the United States and the Constitution of North Dakota.

The fact that any person charged with violating this section is or has been legally entitled to use alcohol or other drugs or substances is not a defense against any charge for violating this section. It is an affirmative defense that a drug was used only as directed or cautioned by a practitioner who legally prescribed or dispensed the drug to that person. If the individual violated subdivisions a, b, c, or d of this subsection and subdivision e of this subsection and the violations arose from the same incident, for purposes of suspension or revocation of an operator's license, the violations are deemed a single violation and the court shall forward to the department of transportation only the conviction for driving under the influence or actual physical control.

2. An individual who operates a motor vehicle on a highway or on public or private areas to which the public has a right of access for vehicular use in this state who refuses to submit to a chemical test, or tests, required under Section 39-06.2-10.2 or 39-20-01, NDCC, is guilty of an offense under this section.
3. An individual violating this section or equivalent ordinance is guilty of a class B misdemeanor for the first or second offense in a seven-year period, of a class A misdemeanor for a third offense in a seven-year period, and of a class C felony for any fourth or subsequent offense within a fifteen-year period. The minimum penalty for violating this section is as provided in subsection 5. The court shall take judicial notice of the fact that an offense would be a subsequent offense if indicated by the records of the director or may make a subsequent offense finding based on other evidence.
4. Upon conviction of a second or subsequent offense within seven years under this section or equivalent ordinance, the court may order the motor vehicle number plates of all the motor vehicles owned and operated by the offender at the time of the offense to be destroyed by the office of the police officer that made the arrest. The offender shall deliver the number plates to the court without delay at a time certain as ordered by the court following the conviction. The court shall deliver the number plates to the office and notify the department of the order. An offender who does not provide the number plates to the court at the appropriate time is subject to revocation of probation. The court may make an exception to this subsection, on an individual basis, to avoid undue hardship to an individual who is completely

dependent on the motor vehicle for the necessities of life, including a family member of the convicted individual and a co-owner of the motor vehicle, or if the offender is participating in the twenty-four seven sobriety program.

5. A person convicted of violating this section, or an equivalent ordinance, must be sentenced in accordance with this subsection.
 - a. (1) For a first offense, the sentence must include both a fine of at least five hundred dollars and an order for addiction evaluation by an appropriate licensed addiction treatment program.
 - (2) In addition, for a first offense when the convicted person has an alcohol concentration of at least sixteen one-hundredths of one percent by weight, the offense is an aggravated first offense and the sentence must include a fine of at least \$750 and at least 2 days' imprisonment.
 - b. For a second offense within seven years, the sentence must include at least ten days' imprisonment, of which forty-eight hours must be served consecutively; a fine of one thousand five hundred dollars; an order for addiction evaluation by an appropriate licensed addiction treatment program; and at least three hundred sixty days' participation in the twenty-four seven sobriety program under Chapter 54-12, NDCC, as a mandatory condition of probation.
 - c. For a third offense within seven years, the sentence must include at least one hundred twenty days' imprisonment; a fine of at least two thousand dollars; an order for addiction evaluation by an appropriate licensed addiction treatment program; at least three hundred sixty days' supervised probation; and at least three hundred sixty days' participation in the twenty-four seven sobriety program under Chapter 54-12, NDCC, as a mandatory condition of probation.
 - d. For a fourth or subsequent offense within fifteen years, the sentence must include at least one year and one day's imprisonment, a fine of at least two thousand dollars, and an order for addition evaluation by an appropriate licensed treatment program; at least two years' supervised probation;

and participation in the twenty-four seven sobriety program under Chapter 54-12, NDCC, as a mandatory condition of probation.

- e. The imposition of sentence under this section may not be deferred under subsection 4 of Section 12.1-32-02 of the North Dakota Century Code for an offense subject to this section.
- f. If the offense is subject to subdivision a or b, a municipal court or district court may not suspend a sentence, but may convert each day of a term of imprisonment to ten hours of community service for an offense subject to paragraph 2 of subdivision a. If the offense is subject to subdivision c, the district court may suspend a sentence, except for sixty days' imprisonment, under subsection 3 of Section 12.1-32-02, NDCC, on the condition that the defendant first undergo and complete an evaluation for alcohol and substance abuse treatment and rehabilitation. If the offense is subject to subdivision d, the district court may suspend a sentence, except for one year's imprisonment, under subsection 3 of Section 12.1-32-02, NDCC, on the condition that the defendant first undergo and complete an evaluation for alcohol and substance abuse treatment and rehabilitation. If the defendant is found to be in need of alcohol and substance abuse treatment and rehabilitation, the district court may order the defendant placed under the supervision and management of the Department of Corrections and Rehabilitation and is subject to the conditions of probation under Section 12.1-32-07, NDCC. The district court may require the defendant to complete alcohol and substance abuse treatment and rehabilitation under the direction of the drug court program as a condition of probation in accordance with rules adopted by the Supreme Court. The district court may terminate probation under this section when the defendant completes the drug treatment program. If the district court finds that a defendant has failed to undergo an evaluation or complete treatment or has violated any condition of probation, the district court shall revoke the defendant's probation and shall sentence the defendant in accordance with this subsection.
- g. For purposes of this section, conviction of an offense under a law or ordinance of another state which is equivalent to this section must be considered a prior offense if such offense was

committed within the time limitations specified in this section.

- h. If the penalty mandated by this section includes imprisonment or placement upon conviction of a violation of this section or equivalent ordinance, and if an addiction evaluation has indicated that the defendant needs treatment, the court may order the defendant to undergo treatment at an appropriate licensed addiction treatment program under subdivision g of subsection 1 of Section 12.1-32-02, NDCC, and the time spent by the defendant in the treatment must be credited as a portion of a sentence of imprisonment or placement under this section. A court may not order the Department of Corrections and Rehabilitation to be responsible for the costs of treatment in a private treatment facility.
- i. If the court sentences an individual to the legal and physical custody of the Department of Corrections and Rehabilitation, the Department may place the individual in an alcohol treatment program designated by the Department. Upon the individual's successful completion of the alcohol treatment program, the Department shall release the individual from imprisonment to begin the court-ordered period of probation. If there is not any court-ordered period of probation, the court may order the individual to serve the remainder of the sentence of imprisonment on supervised probation and the terms and conditions must include participation in the twenty-four seven sobriety program and any terms and conditions of probation previously imposed by the court. Probation under this subsection may include placement in another facility or treatment program. If an individual is placed in another facility or treatment program after release from imprisonment, the remainder of the individual's sentence of imprisonment must be considered time spent in custody. Individuals incarcerated under this section subsequent to a second probation revocation are not eligible for release from imprisonment upon the successful completion of treatment.
- j. If the individual has participated in the twenty-four seven sobriety program as a condition of pretrial release or for the purpose of receiving a temporary restricted operator's license under

section 39-06.1-11, NDCC, the sentencing court may give credit for the time the individual has already served on the twenty-four seven sobriety program when determining the amount of time the individual must serve on the twenty-four seven sobriety program for the purposes of probation, if that individual has not violated the twenty-four seven sobriety program before sentencing.

6. As used in subdivisions b and c of subsection 5, the term "imprisonment" includes house arrest. As a condition of house arrest, a defendant may not consume alcoholic beverages. The house arrest must include a program of electronic home detention and the defendant shall participate in the twenty-four seven sobriety program. The defendant shall defray all costs associated with the electronic home detention. For an offense under subdivision b or c of subsection 5, no more than ninety percent of the sentence may be house arrest.
7. As used in this chapter, participation in the twenty-four seven sobriety program under NDCC Chapter 54-12 means compliance with sections 54-12-27 through 54-12-31, NDCC, and requires sobriety breath testing twice per day seven days per week or electronic alcohol monitoring, urine testing, or drug patch testing. The offender is responsible for all twenty-four seven sobriety program fees and the court may not waive the fees. For purposes of this section, the twenty-four seven sobriety program is a condition of probation and a court may not order participation in the program as part of the sentence. If an individual ordered to participate in the twenty-four seven program is not a resident of this state, that individual shall enroll in a twenty-four seven program or an alcohol compliance program if available in that individual's state of residence and shall file proof of such enrollment.

(Source North Dakota Century Code Section 39-08-01)

SECTION 4. Section 13-0309 of the Revised Ordinances of 1990 of the City of West Fargo is hereby amended and reenacted to read as follows:

13-0309. CARELESS DRIVING. No person may drive a vehicle at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then

existing. Consistent with the foregoing, every person shall drive at a safe and appropriate speed when approaching and crossing an intersection or railroad grade crossing, when approaching and going around a curve, when approaching a hill crest, when traveling upon any narrow or winding roadway, and when special hazards exist with respect to pedestrians or other traffic or by reason of weather or highway conditions. Any person who drives a vehicle upon a highway or private or public property open to the public for the operation of motor vehicles without heed to the requirements or restrictions of this section has committed careless driving.

SECTION 5. Section 13-1401 of the Revised Ordinances of 1990 of the City of West Fargo is hereby amended and reenacted to read as follows:

13-1401. IMMEDIATE NOTICE OF ACCIDENTS. The driver of a vehicle involved in an accident resulting in injury to or death of any person or damage of at least four thousand dollars shall immediately give notice of the accident to the local Police Department if the accident occurs within a municipality, otherwise to the office of the County Sheriff or the State Highway Patrol. The name of the motor vehicle insurance policy carrier and the policy number of the driver, or if the driver is not the owner of the vehicle, then the motor vehicle insurance policy carrier and the policy number of the owner of the vehicle, must be furnished to the law enforcement officer investigating the accident. If the driver does not have the required information concerning insurance to furnish to the investigating law enforcement officer, then within five (5) days of the accident the driver shall supply that information to the Driver's License Division in the form the division requires.

(Source: North Dakota Century Code Section 39-08-09)

SECTION 6. Section 13-1625 of the Revised Ordinances of 1990 of the City of West Fargo is hereby amended and reenacted to read as follows:

13-1625. PENALTY. Violations of the provisions of this chapter shall be a fine in the amount set by resolution of the City Commission.

SECTION 7. Chapter 13-18 of the Revised Ordinances of 1990 of the City of West Fargo is hereby amended and reenacted to read as follows:

CHAPTER 13-18

BICYCLES

SECTIONS:

- 13-1801. Effective Regulations.
- 13-1802. License Application - Bicycle License Not Required.
- 13-1803. Issuance of License.
- 13-1804. Transfer of Ownership.
- 13-1805. Traffic Laws Apply to Persons Riding Bicycle or Tricycle.
- 13-1806. Traffic - Control Devices: Obedience to.
- 13-1807. Riding on Bicycles.
- 13-1808. Riding on Roadways and Bicycle Paths.
- 13-1809. Speed.
- 13-1810. Emerging from Alley or Driveway.
- 13-1811. Carrying Articles.
- 13-1812. Parking.
- 13-1813. Riding on Sidewalks.
- 13-1814. Lamps and Other Equipment on Bicycles.
- 13-1815. Bicycles May be Impounded if Operated in Violation of Ordinances: Impound Fee.
- 13-1816. Bicycle Accidents.
- 13-1817. Peace Officer Operating Bicycle.

13-1801. EFFECTIVE REGULATIONS.

1. It is an infraction for any person to do any act forbidden or fail to perform any act required in this title.
2. The parent of any child and the guardian of any ward shall not authorize or knowingly permit any child or ward to violate any provisions of this title.
3. These regulations are applicable to bicycles and tricycles shall apply whenever a bicycle or tricycle is operated upon any street or highway or upon any path set aside for the exclusive use of bicycles or tricycles subject to those exceptions stated herein.

13-1802. LICENSE APPLICATION - BICYCLE LICENSE NOT REQUIRED. A license is not required to operate a bicycle in the City of West Fargo. A license may be obtained at the option of the owner. Application for bicycle license and license plate shall be made upon a form provided by the City and shall be made to the Police Department. A license fee of one dollar (\$1.00) shall be paid to the City before each license or renewal thereof is granted.

13-1803. ISSUANCE OF LICENSE.

1. The Chief of Police, or his delegated agent, upon receiving proper application therefor is authorized to issue a bicycle license. A receipt shall be issued with each license.
2. The Chief of Police, or his delegated agent, shall not issue a license for any bicycle when he knows or has reasonable ground to believe that the applicant is not the owner of or entitled to the possession of such bicycle.
3. The Chief of Police, or his delegated agent, shall keep a record of the number of each license, the date issued, the name and address of the person to whom issued, and the number of the frame of the bicycle for which issued, and a record of all bicycle license fees collected.

13-1804. TRANSFER OF OWNERSHIP. Upon the sale or other transfer of a licensed bicycle, it shall be the responsibility of the purchaser to make proper application to the police department for new ownership registration.

13-1805. TRAFFIC LAWS APPLY TO PERSONS RIDING BICYCLE OR TRICYCLE. Every person riding a bicycle or tricycle upon a roadway shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle by the laws of this state, declaring rules of the road applicable to vehicle or by the traffic ordinances of this city applicable to the driver of a vehicle, except as to special regulations in this chapter and exempt as to those provisions of laws and ordinances which by their nature have no application.

13-1806. TRAFFIC - CONTROL DEVICES: OBEDIENCE TO.

1. Any person operating a bicycle or tricycle shall obey the instructions of the official traffic-control signals, signs and other control devices applicable to vehicles, unless otherwise directed by a police officer;
2. Whenever authorized signs are erected indicating that no right or left or "U" turn is permitted, no person operating a bicycle or tricycle shall disobey the direction of any sign, except where such person dismounts from the bicycle or tricycle to make any such turn, in which event such person shall then obey the regulations applicable to pedestrians.

13-1807. RIDING ON BICYCLES.

1. A person propelling a bicycle shall not ride other than astride a permanent and regular seat attached thereto;

2. No bicycle shall be used to carry more persons at one time than the number which it is designed or equipped.

13-1808. RIDING ON ROADWAYS AND BICYCLE PATHS.

1. Every person operating a bicycle or tricycle upon a roadway shall ride as near to the right side of the roadway as practicable, exercising due care when passing a standing vehicle or one proceeding in the same direction;
2. Persons riding bicycles or tricycles upon a roadway shall not ride more than two abreast except on paths or parts of roadways set aside for the exclusive use of bicycles or tricycles;
3. Wherever a usable path for bicycles or tricycles has been provided adjacent to a roadway, bicycle or tricycle riders shall use such path and shall not use the roadway.

13-1809. SPEED. No person shall operate a bicycle at a speed greater than is reasonable and prudent under the conditions then existing.

13-1810. EMERGING FROM ALLEY OR DRIVEWAY. The operator of a bicycle emerging from an alley, driveway or building, upon approaching a sidewalk or the pedestrians approaching on said sidewalk or sidewalk area, and upon entering the roadway, shall yield right-of-way to all vehicles approaching on said roadway.

13-1811. CARRYING ARTICLES. No person operating a bicycle shall carry a package, bundle or article which prevents the rider from keeping at least one hand upon the handlebars, or carry any package, bundle or article which prevents the forward vision of the operator.

13-1812. PARKING. No person shall park a bicycle upon a street other than upon the roadway against the curb or upon the sidewalk in a rack to support the bicycle or against a building or at the curb, in such manner as to afford the least obstruction to pedestrian traffic.

13-1813. RIDING ON SIDEWALKS.

1. No person shall ride a bicycle upon a sidewalk within a business district;
2. No person 12 or more years of age shall ride any bicycle upon any sidewalk in any district, except those persons engaged in delivering newspapers and except those persons who are riding with a child under 12 years of age for the

purpose of supervision and guidance may ride their bicycle upon a sidewalk outside the business district during working hours only in order to complete delivery of their newspapers;

3. No person shall ride a bicycle upon a sidewalk which is within or part of an underpass;
4. Whenever any person is riding a bicycle upon a sidewalk, such person shall yield the right-of-way to any pedestrian and shall give audible signal before over-taking and passing such pedestrian.

13-1814. LAMPS AND OTHER EQUIPMENT ON BICYCLES.

1. Every bicycle when in use at night time shall be equipped with a lamp on the front of which shall emit a white light visible from a distance of at least five hundred feet to the front and with a red reflector on the rear of a type approved by the Motor Vehicle Department. A lamp emitting red light visible from a distance of five hundred feet to the rear may be used in addition to the red reflector.
2. Every bicycle shall be equipped with a brake which will enable the operator make the braked wheel skid on dry, level and clean pavement.

13-1815. BICYCLES MAY BE IMPOUNDED IF OPERATED IN VIOLATION OF ORDINANCES: IMPOUND FEE. The Police Department of the City of West Fargo or any of the members thereof, may impound and retain possession of any bicycle operated in violation of any of the ordinances of the City of West Fargo and retain possession of the same until all impound fees and fines have been paid. Impound fees may be set by resolution of the City Commission.

13-1816. BICYCLE ACCIDENTS. A driver of a bicycle involved in an accident with another bicycle, motor vehicle or with a pedestrian shall immediately stop such bicycle, motor vehicle or with a pedestrian shall immediately stop such bicycle at the scene of the accident and shall give his name, age and address to other person or persons involved. He shall also give immediate notice of the accident to the police department and shall file a report with the police department regarding the accident. In the event said accident is investigated at the scene by the police, then it is not necessary for the driver to file an individual report.

13-1817. PEACE OFFICER OPERATING BICYCLE. The provisions of this section governing the operation of bicycles do not apply to bicycles operated by peace officers while performing their duties.

SECTION 8. Section 11-0111 of the Revised Ordinances of 1990 of the City of West Fargo is hereby created and enacted to read as follows:

11-0111. UNATTENDED ANIMAL IN MOTOR VEHICLE.

1. An individual may not leave an animal unattended in a motor vehicle without ensuring that the animal's health and safety is not endangered.
2. An individual who violates this section is guilty of an infraction.
3. A law enforcement officer may use reasonable means to enter a motor vehicle and remove an animal left in violation of this section.

(Source NDCC 36-21.2-12)

SECTION 9. Section 12-0313 of the Revised Ordinances of 1990 of the City of West Fargo is hereby repealed in its entirety.

SECTION 10. Effective Date. This ordinance shall be in full force and effect from and after the date of its final passage and publication.

President of Board of City
Commissioners of the City of
West Fargo, North Dakota

ATTEST:

City Auditor

Date of First Reading:

Date of Second Reading:

Date of Publication: