

CHAPTER 10

PUBLIC SAFETY, MORALS AND WELFARE

Article

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ARTICLE 10-01

RESTRAINT OF MINORS

Section

10-0101	Persons under the age of 21 years prohibited from purchasing, possessing or consuming alcoholic beverages.
10-0102	Unlawful for minors to enter liquor or beer establishments.
10-0103	Sale of tobacco to minors and use and possession by minors prohibited.
10-0104	Curfews.

10-0101. Persons under the age of 21 years prohibited from purchasing, possessing or consuming alcoholic beverages.--Except as permitted in this section and § 25-1509 of the Fargo Municipal Code, it shall be unlawful for any person under the age of 21 years to purchase, attempt to purchase, have in his possession, consume or have recently consumed other than during a religious service, or to be under the influence of alcoholic beverages, or furnish money to any person for such purchase, within the city limits of the city of Fargo. Consumption for purposes of this ordinance shall also include consumption of alcoholic beverages whether within or without the limits of the city of Fargo if the arrest occurs within the city of Fargo.

Source: 2508 (1989), 2585 (1991), 4018 (2000).

10-0102. Unlawful for minors to enter liquor or beer establishments.--It shall be unlawful for any person under the age of 21 years to enter, or attempt to enter, any establishment in the city where intoxicating liquor or beer is sold, served, or dispensed.

Source: 2508 (1989).

10-0103. Sale of tobacco to minors and use and possession by minors prohibited.--

- A. No person shall sell or furnish to a minor, or procure for a minor, cigarettes, including clove cigarettes, cigarette papers, cigars, snuff, or tobacco in any other form in which it may be utilized for smoking or chewing. As used in this section, "sell" includes dispensing from a vending machine under the control of the vendor. It shall be a defense to this subsection if the person furnishing tobacco to a minor did so as part of a cultural or religious practice; provided, however, that in no event shall any sale or other exchange for value be lawful. A person in violation of this subsection shall be guilty of an infraction.
- B. No person under the age of 18 shall sell, possess, purchase, attempt to purchase, smoke, or use cigarettes, including clove cigarettes, cigars, cigarette papers, snuff, or tobacco in any other form in which it may be utilized for smoking or chewing.
1. Subsection (B) shall not apply to persons under the age of 18 who purchase or attempt to purchase said tobacco products listed in this subsection while under the direct supervision of the police department, the city health department, or the city attorney's office, for training, education, research, or enforcement purposes.
 2. Subsection (B) shall further not apply to an employee less than 18 years of age employed by a licensed tobacco dealer or distributor where said employee under the age of 18 years handles tobacco products listed in this subsection as part of that the employee's employment.
 3. It shall be a defense to subsection (B), above, if the minor's possession or use of tobacco relates to a cultural or religious practice; including, without limitation, the use or possession of tobacco during any religious or cultural ceremony.
 4. Non-criminal violation. Minors fourteen (14) years of age or older found to have violated subsection (B), above, must pay a fee of \$25 and must attend and complete within sixty (60) days of the date of offense a tobacco education program approved by the Fargo Municipal Court. Minors fourteen (14) years of age or older found to have violated subsection (B), above, three times within any twelve-consecutive-month period may be ordered by the court to attend a tobacco cessation program instead of a tobacco education program.
 5. Payment procedure. Any individual who has been cited for a violation of subsection (B) must post bond in the amount stated on the citation within fourteen (14) days of the date of the citation and must also, within said fourteen (14) day period, notify the Fargo Municipal Court whether he or she requests a hearing before one of the judges of the Fargo

Municipal Court. At such hearing, the individual who has been cited for a violation of subsection (B) may make a statement in explanation of that individual's action and the judge may waive, reduce, or suspend the fee or bond, or both. If the individual cited elects to forfeit the bond or fails to appear before the Fargo Municipal Court at a time scheduled for a hearing, that individual has admitted the violation and has waived the right to a hearing on the issue of commission of the violation. The bond required to secure appearance before the court is the same as the fee schedule set forth in subparagraph 4, above. This section does not allow a citing officer to receive the fee or bond.

(a) If an individual cited for a violation of subsection (B) requests a hearing on the issue of the commission of the violation cited, the clerk of court will schedule a hearing date no later than 90 days after the citation was issued. If said individual has not already done so, at the time of a request for a hearing on the issue on commission of the violation, the individual cited shall deposit with the court an appearance bond equal to the fee for the violation cited.

(b) The failure to post bond or to pay an assessed fee, or attend a tobacco education or tobacco cessation class when required to do so is punishable as contempt of court. Such person adjudged guilty of contempt for failure to pay a fee or fine or to attend a tobacco education class or tobacco cessation class when required to do so may be sentenced by the court to a sanction or order designed to ensure compliance with the payment of the fee or fine or attendance at a tobacco education class or tobacco cessation class, to an alternative sentence or a sanction including community service. A minor may not be imprisoned for the contempt.

6. Burden of proof. The prosecution must prove the commission of a cited violation under subsection (B), above, by a preponderance of the evidence.
7. Notice to parent or legal guardian. A law enforcement officer that cites a minor for violation of this section shall mail a notice of the violation to the parent or legal guardian of the minor within ten (10) days of the citation.
8. Penalty for contempt. A person adjudged guilty of contempt for failure to pay a fee or fine or to attend a tobacco education class or tobacco cessation class when required to

do so may be sentenced by the court to a sanction or order designed to ensure compliance with the payment of the fee or fine or attendance at a tobacco cessation class to an alternative sentence or sanction including community service and may require the person to pay an additional fee or fine of up to \$500.

Source: 2779 (1996), 3021 (1999), 4265 (2002).

10-0104. Curfews--Definitions, restrictions, exceptions and enforcement.--

- A. In this section, unless the context or subject otherwise requires:
1. "Curfew hours" means 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, for the purposes of this ordinance, 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.

B. Restrictions during curfew hours.

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.

C. Exceptions to curfew.

1. The following shall constitute valid exceptions to the operation of the curfew. That the minor was:
 - a. accompanied by the minor’s parent or guardian;
 - b. on an errand at the direction of the minor’s parent or guardian, without any detour or stop;
 - c. in a motor vehicle involved in interstate travel;
 - d. engaged in an employment activity, or going or returning home from an employment activity, without any detour or stop;
 - e. involved in an emergency;
 - f. on the sidewalk abutting the minor’s residence or abutting the residence of a next-door neighbor if the neighbor did not complain to the police department about the minor’s presence;
 - g. attending an official school, religious, or other recreational activity supervised by adults and sponsored by 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 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 (B) that the owner, operator or employee of an establishment promptly notified the police department that a minor was present on the premises of the establishment during curfew hours and refused to leave.
- D. Enforcement of curfew. Before taking any enforcement action under this section, a police officer shall ask the apparent offender's age and reason for being in the public place. The officer shall not issue a citation or make an arrest under this section unless the officer has probable cause to believe that an offense has occurred and that, based on any response and other circumstances, no defense in section (C) is present.
- Source: 2778 (1996).

ARTICLE 10-02

REGULATION OF DECENCY

Section

- 10-0201 Indecent exposure.
- 10-0202 Indecent, disorderly persons.
- 10-0203 Public intoxication--Assistance--Medical care.

10-0201. Indecent exposure.--No person shall engage in the following:

- A. Knowingly exposing one's penis, vulva, or anus with the intent to annoy, harass, or alarm another person.
- B. Masturbating with the intent to annoy, harass, or alarm another person.

Source: 2508 (1989), 2743 (1995).

10-0202. Indecent, disorderly persons.--No person shall appear in any street, alley, building, or public place within the city and there conduct himself or herself in a tumultuous, riotous, indecent, or disorderly manner, or commit any lewd, lascivious, immoral, or indecent act.

Source: 2508 (1989).

10-0203. Public intoxication--Assistance--Medical care.--A police officer shall have authority to take any apparently intoxicated person to said person's home, to a local hospital, or, whenever such person constitutes a danger to himself or others, to a jail for purposes of

detoxification. A duly licensed physician of such local hospital shall have authority to hold such person for treatment up to 72 hours. Such intoxicated person shall not be held in jail because of intoxication more than 24 hours. An intoxicated person shall not be placed in jail unless a jailer is constantly present within hearing distance and medical services are provided when the need is indicated. Upon placing such intoxicated person in a hospital or jail, said police 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. Said intoxicated person shall not be prosecuted in any court solely for public intoxication. The police department and officers thereof, may utilize standard identification procedures on all persons given assistance because of apparent intoxication.

Source: 2508 (1989).

ARTICLE 10-03 BREACHES OF PEACE AND ORDER

Section	
10-0301	Disorderly conduct.
10-0302	Making a false report to police unlawful.
10-0303	Obstructing public officers in discharge of their duties.
10-0304	Carrying weapons prohibited--How firearms may be carried.
10-0305	Persons lying in wait to commit crime.
10-0306	Throwing missiles against buildings or motor vehicles or at persons.
10-0307	Persons using streets not to be molested.
10-0308	Disturbing religious meetings.
10-0309	Assemblies on streets prohibited.
10-0310	Disturbing public assemblage.
10-0311	Panhandling.
10-0312	Posting handbills or advertisements on private or public property.
10-0312.1	Signs advertising sales--Date--Removal.
10-0313	False fire or police alarms--Interference with alarm systems, apparatus, or equipment.
10-0314	Barbed wire fences prohibited.
10-0315	Regulations for national defense.
10-0316	Sale and use of fireworks in the city.
10-0317	Unlawful to resist police officer.
10-0318	State of emergency--[Declaration and duration.]
10-0319	Incendiary devices.
10-0320	Registration in public schools.
10-0321	Criminal mischief.
10-0322	Harassment.
10-0323	Simple assault.
10-0324	Aiding and abetting violation.
10-0325	Criminal trespass.

10-0301. Disorderly conduct.--

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

1. Engages in fighting, or in violent, tumultuous or threatening behavior;
2. Makes unreasonable noise;
3. In a public place uses abusive or obscene language, knowingly exposes that individual's penis, vulva, or anus, or makes an obscene gesture;
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 contacts;
7. Makes any threatening or intimidating telephone calls;
8. Creates a hazardous, physically offensive, or seriously alarming condition by any act which serves no legitimate purpose; or
9. 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.

B. 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.

If any section, sentence, paragraph or provision of this ordinance shall be held invalid or unconstitutional, such shall not affect the validity of any other section, sentence, paragraph or provision hereof.

Source: 2508 (1989), 2747 (1995), 4518 (2006).

10-0302. Making a false report to police unlawful.--It shall be unlawful for any person knowingly to make or submit to the police department of the city or any officer or employee thereof any report or complaint of the violation of any law of this state or of the United States or any ordinance of the city, which report or complaint shall be in fact false or untrue, and known to the person making or submitting the same to be false and untrue.

Source: 2508 (1989).

10-0303. Obstructing public officers in discharge of their duties.--Every person who willfully delays or obstructs a public officer in the discharge or attempt to discharge any duty of his office shall, upon conviction thereof, be punished as herein provided.

Source: 2508 (1989).

10-0304. Carrying, possession, discharge of dangerous weapons.—

- A. No person, except as authorized by law, shall carry concealed about his person firearms of any description, any electronic stun gun or similar device designed to deliver an electronic charge or shock, or any sharp or dangerous weapon such as is usually employed in attack or in defense of the person.
- B. Except as otherwise authorized by law, it also shall be unlawful for any person to carry or have in his possession upon the streets, alleys, or in any public place within the limits of the city any gun, firearm, air gun, stun gun or similar electronic device designed to deliver an electronic charge or shock, slingshot, bow, bow and arrow, or other similar device, unless the same shall be enclosed in a case regularly provided therefor or securely wrapped in such a manner as will not permit of the firing or discharging of the same.
- C. Except as otherwise authorized by law, or as permitted under the Land Development Code (Chapter 20) of the Fargo Municipal Code, it shall be unlawful within the limits of the city for anyone except law enforcement officers in the performance of their duty to fire off, discharge, or activate any gun, firearm, air gun, electronic stun gun or similar electronic device designed to deliver an electronic charge or shock, slingshot, bow, bow and arrow, or other similar device. This subsection shall not apply to persons lawfully participating in a management plan or program approved by the board of city commissioners for the control of deer or other animals within the city limits.

Source: 2508 (1989), 2632 (1992), 4074 (2000), 4487 (2005), 4519 (2006).

10-0305. Persons lying in wait to commit crime.--No person shall lurk, lie in wait, or conceal himself in any house or other building or in any yard or other place within the limits of the city with intent to do any mischief, or pilfer, or commit any crime or misdemeanor whatever.

Source: 2508 (1989).

10-0306. Throwing missiles against buildings or motor vehicles or at persons.--No person shall throw or cast, or encourage, aid, or assist others in throwing or casting, any stone or other missiles into, upon, or against any buildings, erection, motor vehicles, or other public or private property, or at any person or persons in any street, alley, or any enclosed or unenclosed place within the city.

Source: 2508 (1989).

10-0307. Persons using streets not to be molested.--Every person who shall, while tarrying or walking upon any of the streets, sidewalks, or public ways in the city or at any entrance to any place of business, meetinghouse, hall, or church, wrongfully hinder or impede the passage of any person, or who shall, by rude, obscene, vulgar, indecent, or threatening language, or by any indecent act, gesture, or noise molest, annoy, insult, or put in fear any person passing or attempting to pass upon such sidewalk, way, street, or entrance shall be guilty of a misdemeanor.

Source: 2508 (1989).

10-0308. Disturbing religious meetings.--No person shall disquiet or disturb any congregation or assembly, meeting for religious purposes, by making any noise or committing any rude or indecent behavior, or making disorderly or profane discourse within the place of worship or so near the same as to disturb the order and solemnity of the meeting.

Source: 2508 (1989).

10-0309. Assemblies on streets prohibited.—Except as authorized under sections 18-0307 through 18-0317 herein, it shall be unlawful for any number of persons to assemble upon any sidewalk, bridge, street, alley, or public way in the city in any way or in a manner which may tend to hinder or impede free public travel thereon or hinder or impede free egress or ingress to and from any place of business, public hall, church, or other buildings; and any of the persons so assembled who shall refuse or neglect to move away, depart, and give free passage, after being requested to do so by the chief of police or any police officer or by the owner, occupant, or manager of any such place of business, hall, or church obstructed as aforesaid, shall be guilty of a misdemeanor.

Source: 2508 (1989), 4377 (2004).

10-0310. Disturbing public assemblage.--No person shall, in this city, interfere with or disturb any lawful assemblage or association of people by rude or indecent behavior or by any other means.

Source: 2508 (1989).

10-0311. Panhandling.--

A. Definitions.

1. “Aggressive behavior” means engaging in any conduct with the intention of intimidating another person into giving away money or goods, including but not limited to, intentionally approaching, speaking to or following a person in a manner that would cause a reasonable person to fear imminent physical injury or the imminent commission of a criminal act upon the person or upon the property in the person’s immediate possession; intentionally touching another person without consent; or intentionally blocking or interfering with the free passage of a person.

2. “Panhandling” means begging, soliciting, or asking for any item of value; attempting to sell or obtain compensation for an item or a service for an amount that is at least twice its value, or an item or a service that is already offered or available at no charge to the general public; or attempting to sell or obtain compensation for item or service under circumstances that would leave a reasonable person to conclude that the payment is in substance a donation.

B. It shall be unlawful for any person to aggressively panhandle in any area within the city of Fargo.

C. Within an area bounded by a line described more fully herein, no person shall be in a public place, or place of business, and while there solicit

contributions of money, or goods, or services to be used for the pecuniary gain or support of the solicitor or another. The provisions of this ordinance do not apply to a person representing a bona fide charitable organization. No person while soliciting such contributions shall continue to seek contributions from a person who has expressed a desire not to contribute. A bona fide charitable organization shall include any organization recognized by 501(c) of the Internal Revenue Code [29 U.S.C. 501(c)].

The area which is the subject of this prohibition on panhandling is described as follows: Beginning at the corner of Second Street and Seventh Avenue North; thence westerly along Seventh Avenue North to its intersection with Tenth Street; thence southerly along Tenth Street to its intersection with Fifth Avenue South; thence easterly along Fifth Avenue South (which becomes Sixth Avenue South as it runs along the south of Island Park) until its intersection with Fourth Street; thence northerly to its intersection with Second Street South; thence east and northerly along Second Street South to the point of beginning. The boundary line described herein shall run along the outermost edge of the rights-of-way corresponding with the streets and avenues described herein, and shall include all the right-of-way identified herein.

Source: 2508 (1989), 4006 (2000), 4212 (2002).

10-0312. Posting handbills or advertisements on private or public property.--No person shall, without first obtaining the consent of the owner or proprietor, post handbills, placards, or posters, or make, print, or mark any word, letter, or advertisement of any kind upon any private house, store or other building, or upon any fence, railing, wall, vehicle, or other property; nor shall any person make, print, post or mark any word, character or advertisement upon any public building, bridge, fence, railing, sidewalk, utility pole, vehicle or other public or private property within the city. This section shall not be construed to prohibit the placement of pamphlets, handbills or other written material on the exterior of public or private property, including vehicles; provided, that such placement does not require alteration or defacement of the property or vehicle by use of nails, tacks, tape or any other fastening device or material.

Source: 2508 (1989).

10-0312.1 Signs advertising sales--Date--Removal.--No person shall post any handbill, placard, poster or sign of any kind advertising any auction sale, rummage sale, garage sale or similar activity unless such sign indicates the date or dates of the sale. Such sign shall be removed no later than midnight on the date following the last date of the sale.

Source: 2473 (1989).

10-0313. False fire or police alarms--Interference with alarm systems, apparatus, or equipment.--No person shall give, or cause to be given, any false fire alarm or police alarm with

intent to deceive; or tamper with or set off any fire alarm or police alarm or signal box with like intent; or tamper, meddle, and interfere with any such police or fire alarm box, or intentionally cut, break, deface or remove any of such boxes or any of the wires or supports thereof connecting with the fire alarm system or the police alarm system; or intentionally interfere with, or injure any portion of, such system or systems; or, in any manner whatever, intentionally interfere with or injure any property of any kind belonging to or used by the fire department or police department; or hinder or delay any apparatus or equipment or vehicle belonging to the fire department or the police department.

Source: 2508 (1989).

10-0314. Barbed wire fences prohibited.--No person or persons shall, within the limits of the city, erect, construct, or maintain any fence or enclosure on any premises or piece or parcel of ground with what is known as barbed wire; provided, however, that such part of any fence so erected which is eight feet or more above the ground may be erected or constructed of barbed wire; and provided further, that no part of such barbed wire shall be permitted to extend beyond the lot line of the property upon which the same is so erected or constructed.

Source: 2508 (1989).

10-0315. Regulations for national defense.--The president of the board of city commissioners shall proclaim and publish, five days in advance of any national defense activities hereinafter mentioned, rules and regulations, which shall have the force and effect of law, for the conduct and cooperation of citizens in connection therewith. Such activities may include air raid and blackout plans, trial blackouts, emergency fire, police and health department activities, including trial emergency periods involving plans for the protection of public peace, health, and safety in times of national emergency; and in connection with the powers vested in him by the laws of the state of North Dakota, the president of the board of city commissioners may call on male inhabitants of the city over the age of 18 years to aid in enforcing such rules and regulations; and further in such connection, he may call for assistance upon organizations such as the local chapter of the American Red Cross, the National Defense Council, local posts of the American Legion and of the Veterans of Foreign Wars, and other national and local organizations, for special duties in connection with the carrying out of plans for the national defense as may be set forth in such rules and regulations.

It shall be unlawful to willfully refuse or neglect to obey such rules and regulations as proclaimed by the president of the board of city commissioners, or to willfully refuse or neglect to obey any order issued by him in connection therewith, or any call made upon any citizen for aid in enforcing the same.

This section shall constitute an exercise by the city of its governmental functions for the protection of public peace, health, and safety, and a violation of or failure to comply with any of the provisions of this section or of the rules and regulations proclaimed by the president of the board of city commissioners in connection therewith shall constitute a misdemeanor, and shall be punishable by a fine of not exceeding \$100, or by imprisonment in the city jail not exceeding 90 days, or by both such fine and imprisonment.

Source: 2508 (1989).

10-0316. Sale and use of fireworks in the city.--As used in this section the term "fireworks"

means any substance or combination of substances or articles prepared for the purpose of producing a visible or an audible effect by combustion, explosion, deflagration, or detonation and includes blank cartridges, toy cannons, and toy canes in which explosives are used, the type of balloons which require fire underneath to propel them, firecrackers, torpedoes, sky rockets, Roman candles, daygo bombs, sparklers, or other fireworks containing any explosive or inflammable compound, or any tablets or other devices containing any explosive substance and commonly known as fireworks. The term "fireworks" shall not include toy paper caps containing not more than .25 of a grain of explosive composition per cap.

Except as otherwise provided in this ordinance, it shall be unlawful for any person to offer for sale, expose for sale, sell at retail or wholesale, use, explode or possess any fireworks within the limits of the city of Fargo.

In the event an existing location for the retail or wholesale sale of fireworks becomes annexed into the city of Fargo, the chief of the fire department shall be authorized to grant a permit to possess and sell at retail or wholesale fireworks within the limits of the city of Fargo provided the following are met:

- A. The permit may only be granted for the next period for sale of fireworks of June twenty-seventh through July fifth as defined in N.D.C.C. Section 23-15-01.
- B. Any enclosure in which fireworks are stored or from which fireworks are sold must be at least 1,000 feet from the nearest single or multiple residential (SR or MR) zoning district.
- C. Any enclosure in which fireworks are stored or from which fireworks are sold must be at least 1,000 feet from the nearest residential building.
- D. In order to qualify for such permit, the said person, firm or other entity requesting the permit shall have obtained a Temporary Use Permit, under Section 20-0404 of the Land Development Code, for the prior period for sale of fireworks of June twenty-seventh through July fifth as defined in N.D.C.C. Section 23-15-01.
- E. The said person, firm or other entity requesting the permit shall obtain a Temporary Use Permit, under Section 20-0404 of the Land Development Code for the next and upcoming period for sale of fireworks of June twenty-seventh through July fifth as defined in N.D.C.C. Section 23-15-01. The zoning administrator shall be authorized to issue a Temporary Use Permit, under Section 20-0404, as though said person, firm or other entity were still located outside city limits..
- F. The applicant shall display a sign at each check-out stand where retail fireworks are sold indicating that possession of fireworks within Fargo city limits is unlawful and that purchases of fireworks from the applicant must be removed from city limits within one hour of purchase. Such sign shall be displayed in a location which may be viewed and easily read by any customer purchasing fireworks.
- G. Any person in possession of fireworks purchased at a fireworks stand within Fargo city limits which has obtained permission from the fire chief, as described herein, shall not be in violation of this ordinance prohibiting such

possession during a period of one hour from the time such purchase is made.

This ordinance shall not prohibit supervised public displays of fireworks by any organization or association within the city for which a permit shall have been first obtained from the Fargo fire department. The application for such permit shall be made with the fire department for investigation to determine whether the operator of the display is competent and whether the display is of such character and is to be so located, discharged, or fired that it will not be hazardous to property or endanger any person. The chief of the fire department shall determine whether such permit shall be issued or the application rejected. In issuing such permit, the city assumes no liability for any damage to persons or property resulting from such displays.

Nothing in this section shall be construed to prohibit the use of fireworks by airplanes and railroads or other transportation agencies for signal purposes or illumination; or the sale or use of blank cartridges for a show or theater, or for signal or ceremonial purposes in athletics or sports, or for use by military organizations.

Source: 2508 (1989), 4318 (2003).

10-0317. Unlawful to resist police officer.--It shall be unlawful for any person by the use of force, violence, or flight to resist knowingly any police officer in the performance of his duties.

Source: 2508 (1989).

10-0318. State of emergency--[Declaration and duration].--

A. The president of the city commission or commissioner acting for the president, is authorized, if he finds that the city or any part thereof is suffering or is in imminent danger of suffering civil disturbance, disorder, riot or other occurrence which will seriously and substantially endanger the health, safety and property of the citizens, to declare a STATE OF EMERGENCY and take the following specified measures throughout the city or any part thereof; the declaration shall be made in a proclamation which shall be delivered to the chief of police, who shall then see that said proclamation is delivered to the news media within the city and who shall use public address systems throughout the city and immediately notify the public of said proclamation and warn the public that any violation shall be deemed a misdemeanor and violators will be arrested.

1. Require evacuation of all or any portion of the city.
2. Prohibit or limit the number of persons who may gather or congregate upon the public highways or public sidewalks, or in any outdoor place, except persons who are awaiting transportation, engaging in recreational activities at a usual and customary place, or peaceably entering or leaving buildings.
3. Halt access or exit upon public highways to or from the city or any part thereof.
4. Suspend operations at municipal airport.
5. Halt the movement of trains, or other vehicles into, within, or from the city.

6. Establish a curfew limiting the hours when persons may go upon or travel the public streets.
 7. Require the closing of taprooms and bars and prohibit the sale or service of alcoholic beverages in any hotel, restaurant, club or other establishment.
 8. Prohibit the sale of gasoline or other flammable liquids.
 9. Prohibit the sale, carrying or possession on the public sidewalks or public streets, or in any public park, of weapons including, but not limited to, firearms, bows and arrows, air rifles, slingshots, knives, razors, or missiles of any kind.
 10. The chief of police shall have the authority to close any and all streets, alleys and other public ways in the city of Fargo to the public whenever, in the opinion of the chief of police, it is necessary in order to maintain the peace of the community.
 11. Every person remaining present at the place of any riot or unlawful assembly after the same has been ordered to disperse by the police or any other lawful authority, except the public officers and persons assisting them in the dispersing of same, shall be guilty of a misdemeanor.
- B. Duration. The STATE OF EMERGENCY declared by the president of the city commission shall exist for the period set forth in the proclamation but not in excess of two weeks. However, the STATE OF EMERGENCY may be extended for additional periods of two weeks.

Source: 2508 (1989).

10-0319. Incendiary devices.--No person or groups of persons shall own, manufacture, sell, transfer, use or possess any incendiary device or similar device or parts thereof including, but not limited to a "molotov cocktail". An incendiary device is defined as any flammable liquid enclosed in a readily breakable container that can be equipped with an igniter of any type.

- A. Exception. This ordinance shall not apply to authorized personnel of the United States government or of the state of North Dakota who use incendiary devices as part of their duties.

Source: 2508 (1989).

10-0320. Registration in public schools.--During such time as regularly scheduled classes are in session, no person shall enter and remain in any public elementary or secondary school building within the city of Fargo without first registering in the main office of said school; provided, however, this section shall not apply to members and staff of the board of education of the city of Fargo, faculty and employees of the Fargo public schools 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 Fargo and no complaint for a violation of this section shall issue unless such notice is given.

Source: 2508 (1989).

10-0321. Criminal mischief.--A person is guilty of criminal mischief if he commits any of the following acts:

- A. Willfully tampers with tangible property of another so as to endanger person or property.
- B. Willfully damages tangible property of another. The court may, in addition to assessing any penalty for violation of this ordinance as permitted by law, order reimbursement or restitution by the offender to the person whose property has been damaged or destroyed.

Source: 2508 (1989).

10-0322. Harassment.--

- A. 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;
 - 2. Makes repeated telephone calls, whether or not a conversation ensues, with no purpose of legitimate communication; or
 - 3. Communicates a falsehood in writing or by telephone and causes mental anguish.
- B. Any offense defined herein and committed by use of a telephone may be deemed to have been committed at either the place at which the telephone call or calls were made, or at the place where the telephone call or calls were received.

Source: 2508 (1989).

10-0323. Simple Assault.--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.

Source: 2468 (1989).

10-0324. Aiding or abetting violation.--Every person who aids, abets, counsels, encourages, hires, commands, induces, or otherwise procures another to violate any of the provisions of this chapter shall be guilty of an offense.

Source: 2654 (1993).

10-0325. Criminal trespass.--A person is guilty of criminal trespass, a class B misdemeanor, if:

- A. Knowing that the person is not licensed or privileged to do so, that person enters or remains in any place as to which notice against trespass is given by actual communication to the actor by the person in charge of the premises or other authorized person or by posting in a manner reasonably likely to come to the attention of intruders. The name of the person posting the premises must appear on

- each sign in legible characters, or
- B. That person remains upon the property of another after being requested to leave the property by a duly authorized person.

Source: 3089 (1999).

ARTICLE 10-04

PROHIBITED KNIVES AND OTHER DEVICES

Section

- 10-0401 Possession or sale of switchblades or butterfly knives illegal.
- 10-0402 Possession shall be evidence of unlawful intent.
- 10-0403 Destruction of switchblade or butterfly knives by chief of police.
- 10-0404 "Person" defined.
- 10-0405 Aiding or abetting violation--Repealed.

10-0401. Possession or sale of switchblade or butterfly knives illegal.--It shall be unlawful within the corporate limits of the city for any person to sell, offer or expose for sale, give away, or have in possession any knife, dagger, stiletto, or other similar device of the type commonly known as a switchblade knife, springblade knife, butterfly knife, or push-button knife.

Source: 2508 (1989).

10-0402. Possession shall be evidence of unlawful intent.--Possession of any one of the types of knives, daggers, or stilettos defined by § 10-0401 shall be prima facie evidence that such possession is unlawful and that such possession is had for the purpose and with the intent to violate this article.

Source: 2508 (1989).

10-0403. Destruction of switchblade or butterfly knives by chief of police.--If the defendant in any action, proceeding, prosecution, or trial shall plead guilty to, or be found guilty of, violating this article, any device found in his possession and similar to that described in § 10-0701 shall be destroyed by the chief of police or by someone under his direction, such destruction to be by burning with an acetylene torch or by some similar method which will insure complete destruction of the device.

Source: 2508 (1989).

10-0404. "Person" defined.--The term "person" as used in this article shall mean and include individuals, partnerships, associations, corporations, trustees, or receivers.

Source: 2508 (1989).

10-0405. Aiding or abetting violation.--

Source: 2508 (1989), repealed by Ord. No. 2654 (1993).

ARTICLE 10-05

FALSE IDENTIFICATION AS TO AGE

Section

10-0501 Unlawful to display or possess false identification as to age.

10-0501. Unlawful to display or possess false identification as to age.--It shall be unlawful for any person to display, or cause or permit to be displayed, or have in his possession any identification card, document, paper, instrument, or thing of any kind which falsely or incorrectly shows, portrays, or represents said person's birth date or age in years to be anything other than his true and correct birth date or age in years.

Source: 2508 (1989).

ARTICLE 10-06

THEFT AND SHOPLIFTING

Section

10-0601 Commission of shoplifting or retail theft unlawful.

10-0602 Commission of theft unlawful.

10-0601. Commission of shoplifting or retail theft unlawful.--The commission of shoplifting or retail theft as referred to in chapter 51-21 of the North Dakota Century Code within the jurisdiction of the city of Fargo is unlawful and prohibited. Shoplifting or retail theft shall be subject to the following:

- A. 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 retail mercantile establishment and removing it to a point beyond the last station for receiving payments in that retail mercantile establishment shall be prima facie presumed to have so concealed such merchandise with the intention of permanently depriving the merchant of possession of the full retail value of such merchandise, all as provided in § 51-21-02 of the North Dakota Century Code.
- B. Definitions.--For purposes of this section, all of the definitions contained in § 51-21-01 of the North Dakota Century Code are hereby adopted by reference.
- C. Detention of Suspect.--Procedure--Immunity.--The provisions of §§ 51-21-03 and 51-21-04 of the North Dakota Century Code are hereby adopted by reference.

Source: 2508 (1989), 2633 (1992).

10-0602. Commission of theft unlawful.-- The commission of theft as defined by chapter 12.1-23 of the North Dakota Century Code within the jurisdiction of the city of Fargo is unlawful and prohibited.

Source: 2605 (1992), 2633 (1992).

ARTICLE 10-07

NOISY PARTIES

Section

10-0701	Noisy parties prohibited.
10-0702	Order to disperse--Refusal prohibited.
10-0703	Tenant or owner--Cooperation required.
10-0704	Violations--Prima facie evidence.

10-0701. Noisy party or gathering prohibited.—No person shall participate in any party or gathering consisting of two or more people when such party or gathering occurs in residentially zoned or used areas or buildings between the hours of 10:00 p.m. and 6:00 a.m. (subject to the exception set forth hereinafter) and when said party or gathering gives rise to unreasonable noise likely to cause significant discomfort or annoyance to a reasonable person of normal sensitivities present in the area, in consideration of the time of day and the residential character of said area or building. The 10:00 p.m. closing time may be extended by special permit secured from the board of city commissioners. Violation of this section shall be an infraction.

Source: 2508 (1989), 2653 (1993), 3029 (1999), 4393 (2004).

10-0702. Order to disperse--Refusal prohibited.--When a police officer determines that a party or other gathering of people is creating such unreasonable noise, disturbing the peace, or is disturbing the quiet or repose of another person, the officer may order all persons present, other than the owner or tenant of the premises where the disturbance is occurring, to disperse immediately. No person shall refuse to leave the premises after being ordered by a police officer to do so.

Source: 2508 (1989), 2653 (1993).

10-0703. Tenant or owner--Cooperation required.--Every owner of such premises, or tenant in charge of such premises, who has knowledge of the disturbance shall cooperate with such police officer and shall make reasonable effort to stop the disturbance.

Source: 2508 (1989).

10-0704. Violations--Prima facie evidence.--The following shall be prima facie evidence in any prosecution under this article:

- A. As to tenants, and owner if owner resides on the premises, if twice or more on the same day or if on successive days, the Fargo police department is called upon to enforce the terms of this ordinance either by citizen complaint

- or by personal investigation of peace officer.
- B. As to the owner if the owner does not reside at the premises, if after owner receives written notice of three violations of this ordinance by his tenants at any premises owned by owner in the city of Fargo within a six-month period, and after receipt of such written notice, the Fargo police department is called upon to enforce this ordinance either by citizen complaint or by personal investigation of a peace officer.
 - C. Noise of such volume as to be clearly audible at a distance of 50 feet from the structure or building in which the party or gathering is occurring, or in the case of apartment buildings, in the adjacent hallway or apartment, shall be prima facie evidence of unreasonable noise in violation of this article.
- Source: 2508 (1989), 3029 (1999).

ARTICLE 10-08

PICKETING

Note: Article 8 of chapter 10 (Sections 10-0801 to 10-0804) was repealed by Ord. No. 2843 (1998).

Source: 2190 (1985), 2508 (1989), 2640 (1993), 2707 (1994), 2716 (1994), 2843 (1998).

ARTICLE 10-09

SUNDAY LAWS

Section
10-0901 Business on Sunday--Food stores--Number of employees.

10-0901. Business on Sunday--Food stores--Number of employees.--Food stores may be operated on Sunday as provided in subsection 30 of § 12.1-30-03 of the North Dakota Century Code, without limitation as to the number of employees working.

Source: 2454 (1989).

ARTICLE 10-10

TOBACCO VENDING MACHINES

Section
10-1001 Definitions.
10-1002 Sale of tobacco products through vending machines limited.

10-1001. Definitions.--

1. "Minor" shall mean any person who has not reached the age of 18 years.
2. "Person" shall mean any individual, partnership, corporation or other legal entity.
3. "Tobacco products" shall mean, 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 or smoking in a pipe or cigarette papers.
4. "Vending machine" shall mean any kind of device or mechanical machine which, upon the insertion of a coin or coins, tokens or other objects, will release tobacco products in packages or otherwise.

Source: 2621 (1992).

10-1002. Sale of tobacco products through vending machines limited.--No person shall sell or dispense any tobacco product through the use of a vending machine, except as follows:

- A. A vending machine may be used to dispense tobacco products on the premises of an establishment licensed to sell alcoholic beverages, either on-sale or off-sale; provided, that if an on-sale establishment is also a restaurant where minors are permitted as provided in § 25-1509(C) of the Fargo Municipal Code, a vending machine located in that portion of the premises where minors are allowed must be operable only by activation of an electronic switch operated by an employee of the establishment before each sale, or by insertion of tokens provided by an employee of the establishment before each sale.
- B. A vending machine which was in place prior to August 1, 1992, may be used to dispense tobacco products in an area within a factory, business, office or other place not open to the general public or to which persons under 18 years of age are not generally permitted access.

In the event of violation of this ordinance, the owner of the vending machine and the owner of the premises where the vending machine is located will both be deemed to have committed an infraction, as defined in § 1-0301 of Fargo Municipal Code.

Source: 2621 (1992).

ARTICLE 10-11

SMOKING IN PUBLIC PLACES

10-1101	Smoking in enclosed bar areas
10-1102	Smoking in designated truckers' smoking area
10-1103	Smoking in public indoor workplaces
10-1104	Definitions
10-1105	Penalties For Violation
10-1106	Effective Date

10-1101. Smoking in enclosed bar areas--Smoking shall be specifically allowed in all enclosed bar areas that restrict any and all customers under the age of twenty one (21) years from entry.

Source: Initiated Ordinance #4427 (2004).

10-1102. Smoking in designated truckers' smoking area--Smoking shall be specifically allowed in a designated truckers' smoking area of a truck stop business. Said designated truckers' smoking area shall be limited to the use by professional truck drivers with a valid Commercial Drivers License and any adult companions.

Source: Initiated Ordinance #4427 (2004).

10-1103. Smoking in public indoor workplace prohibited--

- A. No person shall smoke, possess or carry a lighted cigarette, cigar, pipe or other tobacco products in a public indoor workplace except the public indoor workplace of an enclosed bar area that prohibits customers under the age of twenty one (21) from entry AND designated truckers' smoking area restricted to professional truck drivers and any adult companions.
- B. The owner or other person in charge of a public indoor workplace subject to the provisions of this section must (i) post signs indication "no smoking" or containing the international no smoking symbol; (ii) ensure that ash trays, lighters and matchbooks are not provided in areas where smoking is prohibited; and (iii) ask any person violating this section to refrain from smoking, possessing or carrying a lighted cigarette, cigar, pipe or other tobacco products on the premises, and if the person does not so refrain after being asked to do so, ask the person to leave the premises immediately.

Source: Initiated Ordinance #4427 (2004).

10-1104. Definitions--

- A. "Indoor Public Workplace" means any enclosed, indoor facility, business or establishment used by the general public, or used as a place of work, including, but not limited to, restaurants, retail stores, offices and other commercial establishments, public conveyances, bars, lodges or clubs, hospitals, auditoriums, arenas, meeting rooms and common areas of hotels

and motels. Specifically exempted are hotel or motel rooms as designated by the operator, as well as private homes and dwelling units.

- B. “Enclosed Bar Area” means an entirely enclosed area with walls that extend from floor to ceiling and solid doors at all points of customer entry and/or exit AND alcoholic beverages are sold within said enclosed bar area.
- C. “Designated Truckers’ Smoking Area” means a designated area within a business that engages in the sale of products including diesel fuel products to semi-tractor-trailer operators and which maintains at least four diesel pumping islands established exclusively to refuel semi-tractor-trailers and other large vehicles and which maintains on-site shower facilities for drivers.

Source: Initiated Ordinance #4427 (2004).

10-1105. Penalties For Violation--Every person, firm or corporation violating an ordinance which is punishable as an infraction shall be punished by a fine not to exceed \$500.00; the court to have power to suspend said sentence and to revoke the suspension thereof.

Source: Initiated Ordinance #4427 (2004).

10-1106. Effective Date--This ordinance shall be in full force and effect from the earliest possible date after its passage, approval and publication.

Source: Initiated Ordinance #4427 (2004).

The foregoing initiated ordinance enacting Article 10-11 of Chapter 10 of the Fargo Municipal Code resulted from an initiated measure under the Fargo Home Rule Charter. The measure was entitled “Initiated Ordinance #2 -- Freedom of Choice for Adults.” Said caption was contained on a petition entitled “PETITION TO REFER AN INITIATED ORDINANCE TO A VOTE OF THE PEOPLE, WHICH ORDINANCE WOULD AMEND THE FARGO MUNICIPAL CODE TO ALLOW SMOKING IN ALL ENCLOSED BAR AREAS PROVIDED SAID BAR AREA PROHIBITS ENTRY OF ANY AND ALL CUSTOMERS UNDER THE AGE OF TWENTY ONE (21) YEARS AND TO ALLOW SMOKING IN A DESIGNATED AREA OF TRUCK STOPS RESTRICTED FOR THE USE OF PROFESSIONAL DRIVERS AND THEIR ADULT COMPANIONS ONLY. ALL OTHER PUBLIC INDOOR WORKPLACES SHALL PROHIBIT SMOKING BY ANY AND ALL PERSONS”. Said initiated ordinance was submitted to the voters; at the General Election held November 2, 2004; and adopted by the voters of the City of Fargo. Said initiated ordinance was one of three initiated ordinances concerning smoking in public places. The effective date on the initiated ordinance indicated it was to be in full force and effect from the earliest possible date after its passage, approval and publication. Pursuant to the Home Rule Charter, initiated ordinances are effective ten (10) days after the vote on the same has been certified. Publication of this penalty ordinance will be arranged for November 15, 2004, and pursuant to the Home Rule Charter, the ten days from certification of the vote will make the effective date of the ordinance November 19, 2004.