

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 5 (ALCOHOLIC BEVERAGES), ARTICLE I (IN GENERAL), SECTIONS 5-5, 5-6, 5-8; ARTICLE II (LICENSES), SECTIONS 5-17, 5-40; AND CHAPTER 23 (OFFENSES - MISCELLANEOUS), ARTICLE I (IN GENERAL), SECTION 23-1, ARTICLE II (TRADITIONAL OFFENSES), SECTION 23-15, AND ARTICLE III (SUMPTUARY OFFENSES), SECTION 23-33 AND SECTION 23-34

WHEREAS, the City of Minot enacted various Ordinances relating to the sale, use and consumption of alcoholic beverages, tobacco, and marijuana, possession of firearms, and petty theft; and

WHEREAS, the 67th North Dakota Legislative Assembly passed the following bills this session, relating to the sale, use, and consumption of alcoholic beverages, tobacco, and marijuana, possession of firearms, and petty theft:

HB 1124	Makes evidence-based drug and alcohol education program discretionary for those convicted of a first offense of being under 21 years of age and possessing of alcohol, consuming alcohol, or being on a licensed premises where alcoholic beverages are being sold.
HB 1184	Allows liquor license holder to allow someone under 21 years of age to be in the area of a restaurant where opening and mixing of alcohol occurs if accompanied by a parent or guardian, is not seated within three feet of bar counter, and it is not later than 10 p.m.
HB 1223	Changes offense level from class B misdemeanor to infraction for alcohol provisions under 21 years of age.
HB 1284	Modifies special event alcohol permit requirements to remove requirement that an area where persons under 21 years of age may remain must be set out on the permit.
HB 1293	Allows loaded rifles or shotguns in a vehicle if the individual has a valid concealed weapons permit.
HB 1297	Removes the term “public gathering” and clarifies that dangerous weapons cannot be possessed at school or school sponsored events on school property.
SB 2156	Changes age for purchase and consumption of tobacco products from eighteen to twenty-one years of age.
SB 2166	Adds a definition for shoplifting and limits municipal jurisdiction to a first offense in three years. Sentence must include statement from court providing notice of enhanced penalty for subsequent offense.
SB 2220	Moves Sunday alcohol on and off sale opening to 8 a.m.
SB 2264	Makes evidence-based drug and alcohol education program mandatory for those convicted of a second or subsequent offense of being under 21 years of age and possessing of alcohol, consuming alcohol, or being on a licensed premises where alcoholic beverages are being sold. Makes evidence-based drug and alcohol education program discretionary for those convicted of a first offense of being under 21 years of age and possessing one-half ounce or less of marijuana. Makes evidence-based drug and alcohol education program mandatory for those convicted of a second or subsequent offense of being under 21 years of age and possessing one-half ounce of less of marijuana.

WHEREAS, the City of Minot desires to adopt and implement the aforementioned statutory changes made by the 67th North Dakota Legislative Assembly; and

WHEREAS, the City of Minot desires to amend the City's ordinances to make them more consistent with state law; and

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MINOT:

§1. That Section 5-5, of Chapter 5, Article I of the Code of Ordinances, City of Minot, North Dakota, is hereby amended to read as follows:

Sec. 5-5. Unlawful possession or use of alcoholic beverages.

- (a) Except as permitted in this section or by state law, No no person under twenty-one (21) years of age shall manufacture or attempt to manufacture, purchase or attempt to purchase, consume or have recently consumed other than during a religious service, be under the influence of, be in possession of, or furnish money to any individual for the purchase of possess or consume alcoholic beverages.
- (b) The elements of criminal scienter and the defenses to a charge under this section shall be as provided in state law with respect to the cognate offense established therein.
- (c) An individual who violates this section is guilty of an infraction.
 - (1) For a violation of section 5-5, the court also may sentence a violator to an evidence-based alcohol and drug education program operated under the rules adopted by the department of human services under North Dakota Century Code Section 50-06-44.
 - (2) For a second or subsequent violation of section 5-5, the court shall sentence a violator to an evidence-based alcohol and drug education program operated under the rules adopted by the department of human services under North Dakota Century Code Section 50-06-44.
 - (3) The court, under this section, may refer the individual to an outpatient addiction facility licensed by the department of health and human services for evaluation and appropriate counseling or treatment.
 - (4) An individual under twenty-one years of age is immune from criminal prosecution under this section if that individual contacted law enforcement or emergency medical services and reported that another individual under twenty-one years of age was in need of medical assistance due to alcohol consumption, provided the assistance to the individual in need of medical assistance until assistance arrived and remained on the scene, or was the individual in need of medical assistance and cooperated with medical assistance and law enforcement personnel on the scene. The maximum number of individuals who may be immune for any one occurrence is five individuals.

§2. That Section 5-6, of Chapter 5, Article I of the Code of Ordinances, City of Minot, North Dakota, is hereby amended to read as follows:

Sec. 5-6. Persons under twenty-one not to enter upon licensed premises; exceptions.

- (a) Except as otherwise provided in this chapter, or under state law, no person under the age of twenty-one (21) ~~shall be allowed in or upon~~ may enter any premises licensed for the sale of alcoholic beverages. An individual who violates this section is guilty of an infraction.
- (1) For a violation of subsection 5-6(a), the court may sentence a violator to an evidence-based alcohol and drug education program operated under the rules adopted by the department of human services under North Dakota Century Code Section 50-06-44.
 - (2) For a second or subsequent violation of section 5-6(a), the court shall sentence a violator to an evidence-based alcohol and drug education program operated under the rules adopted by the department of human services under North Dakota Century Code Section 50-06-44.
 - (3) The court, under this section, may refer the individual to an outpatient addiction facility licensed by the department of health and human services for evaluation and appropriate counseling or treatment.
 - (4) An individual under twenty-one years of age is immune from criminal prosecution under this section if that individual contacted law enforcement or emergency medical services and reported that another individual under twenty-one years of age was in need of medical assistance due to alcohol consumption, provided the assistance to the individual in need of medical assistance until assistance arrived and remained on the scene, or was the individual in need of medical assistance and cooperated with medical assistance and law enforcement personnel on the scene. The maximum number of individuals who may be immune for any one occurrence is five individuals.
- (b) No person in charge of a licensed premises shall permit any person under the age of twenty-one (21) to enter upon or to remain upon licensed premises within his control, subject to the following exceptions and any other exception provided in state law:
- (1) A person under the age of twenty-one (21) years of age may remain in a restaurant if the restaurant is separated from the ~~room~~ designated area in which alcoholic beverages are opened or mixed and if gross sales of food are at least equal to gross sales of alcoholic beverages which are consumed in the dining area;
 - (2) A person under the age of twenty-one (21) years of age may remain in a restaurant if the person is employed by the restaurant as a food waiter, food waitress, busboy or busgirl, ~~and is under the~~ direct supervision of ~~someone~~ an individual twenty-one (21) years of age or older, and does not engage in the sale, dispensing, delivery, or consumption of alcoholic beverages;
 - (3) A person who is eighteen (18) years of age or older but under the age of twenty-one (21) when employed by a restaurant licensed to sell alcoholic beverages to serve and collect money for alcoholic beverages, if the person is under the direct supervision of a person twenty-one (21) or more years

of age, but such person may not be engaged in mixing, dispensing, or consuming alcoholic beverages;

- (4) A person who is under twenty-one (21) years of age may enter and remain on the licensed premises if the individual is an independent contractor or the independent contractor's employee engaged in contract work and is not engaged in selling, dispensing, delivering, or consuming alcoholic beverages;
 - (5) A person who is under twenty-one (21) years of age may enter and remain on the licensed premises if the individual is a law enforcement officer or other public official who enters the licensed premises in the performance of official duty;
 - (6) Notwithstanding any other ordinance or state statute to the contrary, a person under the age of twenty-one (21) cooperating with and under control of a law enforcement officer may enter a licensed premises for the purposes of a compliance check on whether the licensee is complying with the laws prohibiting the sale of alcoholic beverages to a person under twenty-one (21) years of age; and
 - (7) A person who is under twenty-one (21) years of age may ~~enter and remain in an area of a site where beer, wine, or sparkling wine is sold~~ attend an event where alcoholic beverages are sold in accordance with the conditions of an event permit issued pursuant to section 5-40.
 - (8) At the discretion of the owner of the licensed premises, an individual under twenty-one years of age may be permitted to enter and remain in a restaurant where alcoholic beverages are being sold and in the area of the restaurant designated for the opening or mixing of alcoholic beverages if the individual:
 - i. Is accompanied by a parent or guardian;
 - ii. Is not seated at or within three feet [0.91 meters] of the bar counter;
and
 - iii. Does not enter or remain in the designated area after ten p.m.
- (c) The elements of criminal scienter and the defenses to a charge under this section shall be as provided in state law with respect to the cognate offenses established therein.
- (d) Nothing herein shall be construed to prohibit the consumption (as opposed to the sale) of alcoholic beverages in bowling centers under the following circumstances:
- (1) The licensee owning or controlling the bowling center must approve to such consumption;
 - (2) There must be a designated area where beverages are purchased, served, and/or mixed and persons under twenty-one (21) years of age may not enter that designated area of the licensed premises;
 - (3) The designated area must be separated from the rest of the establishment by a permanent partition/barrier which is at least three (3) feet in height.
 - (4) Alcoholic beverages purchased within the designated area may be consumed in the bowling area and concourse adjacent to the bowling area.

§3. That Section 5-8, of Chapter 5, Article I of the Code of Ordinances, City of Minot, North Dakota, is hereby amended to read as follows:

Sec. 5-8. Licensee to close at certain times.

- (a) No one shall dispense or permit the consumption of alcoholic beverages on a licensed premises between 2:00 a.m. and ~~11:00 a.m. on Sundays, between the hours of 2:00 a.m. and 8:00 a.m. on all other days of the week,~~ on Christmas Day, or after 6:00 p.m. on Christmas Eve, or after 2:00 a.m. on Easter Day. In addition, a person may not provide off sale after 2:00 a.m. on Thanksgiving Day or between 2:00 a.m. and ~~noon~~ 8:00 a.m. on Sundays.
- (b) During such time of each day when, pursuant to subsection (a), the sale or consumption of alcoholic beverages is not allowed on licensed premises, it shall be unlawful for any person to enter upon or to remain on licensed premises, except for:
 - (1) The licensee;
 - (2) Employees of the licensee and employees of a permitted gaming operation on the licensed premises while they are actively carrying on their duties with regard to the licensed business or gaming operation;
 - (3) A bona fide independent contractor who has entered into a contract with the licensee to perform work on the licensed premises, while actively performing such contract; and
 - (4) Persons who are on the licensed premises pursuant to a special permit issued by the city council (which permit may contain such limitations and conditions as the council deems appropriate to impose).

§4. That Section 5-17, of Chapter 5, Article II of the Code of Ordinances, City of Minot, North Dakota, is hereby amended to read as follows:

Sec. 5-17, - Additional requirements for restaurants serving individuals under twenty-one.

- (a) If any licensee's premises includes a restaurant and the licensee allows persons under twenty-one (21) to enter the licensed premises, the licensee must comply with the following restrictions:
 - (1) The restaurant shall be separated from the designated area ~~room~~ in which alcoholic beverages are opened or mixed; and
 - (2) Gross sales of food shall be at least equal to gross sales of alcoholic beverages which are consumed in the dining area. To verify this provision, a licensee operating a restaurant in which individuals under twenty-one (21) years of age remain, shall file with the application for license renewal a statement by a certified public accountant indicating that he or she has examined and tested the books and records of the licensee and that the licensee's previous year's gross sales from the sale of food are equal to or exceed the gross sales from the sale of alcoholic beverages in the dining room. At the option of the licensee, in lieu of a certified public accountant's statement, licensee may furnish to the city clerk a certified copy of the licensee's sales tax returns for the most recent twelve-month period prior to renewal. The city council may, in its discretion, require the licensee to

provide such additional proof of the licensee's compliance with this section as the city council deems necessary. The city council may also, in its discretion, conduct an independent investigation of the sales ratio of food to alcoholic beverages and for such purpose, the licensee agrees to allow inspection of its business records.

- (b) In the event that any licensee for a licensed premises which includes a restaurant does not comply with the restrictions in subsection (a), the licensee shall suspend persons under the age of twenty-one (21) from entering the establishment.

§5. That Section 5-40, of Chapter 5, Article II of the Code of Ordinances, City of Minot, North Dakota, is hereby amended to read as follows:

Sec. 5-40. Special permits; fees.

- (a) A permit issued pursuant to Section 5-02-01.1, N.D.C.C. to allow a licensee to operate at premises other than the licensed premises to which the license relates, shall be issued administratively by the city clerk upon the following terms and conditions:
 - (1) The payment by the applicant of a nonrefundable fee of twenty-five dollars (\$25.00).
 - (2) The submission of an application to the city clerk, at least seven (7) days prior to the event (not including the day of the event), by the applicant, with any information required by the city clerk and a brief narrative explaining:
 - a. The nature of the occasion for the permit (e.g., wedding dance, trade show or promotion, etc.); and
 - b. The steps which will be undertaken by the permittee to restrict the sale to, and consumption of, alcoholic beverages by person under twenty-one (21) years of age at such occasion.
 - (3) The written approval by the chief of police of the issuance of the permit. The chief of police may police the event(s) covered by the special permit. The chief of police may determine the number, if any, of police officers or licensed private security officers needed to police the event(s). If the chief of police determines police officer or licensed private security officers are needed to police the event(s), the licensee shall hire the required number of off-duty police officers or licensed private security officers to police the event(s). If the licensee retains off-duty police officers to police the event(s), the written approval for the special permit shall be contingent on the licensee paying the Minot Police Department the expense of any off-duty police officer required for the proper policing of the event(s) prior to the event(s) occurrence. No special event(s) shall be permitted to proceed unless the required number of police officers or licensed private security officers are present.
 - (4) A permit issued pursuant to this subsection may not be used for the off-sale of alcoholic beverages.
 - (5) The city council may authorize an individual under twenty-one years of age to attend the special event, but may not authorize the consumption or possession of an alcoholic beverage by an individual under twenty-one years of age.

Each month the chief of police shall submit a report to the city council concerning the permits allowed and the permits denied under this subsection subsequent to the last prior such report. Applications, whether granted or not, shall be retained by the city clerk for no less than three (3) years.

§6. That Section 23-1, of Chapter 23, Article I of the Code of Ordinances, City of Minot, North Dakota, is hereby amended to include the following definition (after “*Sexual conduct*” and before “*Sidearm*”) to read as follows:

Shoplifting means to willfully take possession of any merchandise owned, held, offered, or displayed for sale, by a merchant, store, or other mercantile establishment, with the intent to deprive the owner of the merchandise. The term includes:

- a. Removing merchandise from a store or other mercantile establishment without paying for the merchandise;
- b. Concealing a nonpurchased good or merchandise;
- c. Altering, transferring, or removing a price marking on a good or merchandise;
- d. Transferring a good from one container to another; and
- e. Causing the amount paid for a good or merchandise to be less than the stated retail price.

§7. That Section 23-15, of Chapter 23, Article II of the Code of Ordinances, City of Minot, North Dakota, is hereby amended to read as follows:

Sec. 23-15. Petty theft.

No person shall:

- (1) Knowingly take or exercise unauthorized control over, or make an unauthorized transfer of an interest in, the property of another with intent to deprive the owner thereof;
- (2) Knowingly obtain the property of another by deception with intent to deprive the owner thereof, or intentionally deprive another thereof of his property by deception;
- (3) Knowingly receive, retain or dispose of property of another which has been stolen with intent to deprive the owner thereof;
- (4) Intentionally obtain services known to him to be available only for compensation, by deception, false token, or other means to avoid payment for the services;
 - a. 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.
- (5) Having control over the disposition of services of another to which he is not entitled, knowingly divert those services to his own benefit or to the benefit of another not entitled thereto;
 - a. 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.

- (6) Retain or dispose of property of another when he knows it has been lost or mislaid; or
- (7) Retain or dispose 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 ~~in either case a or b~~ with intent to deprive the owner of it, fail to take readily available and reasonable measures to restore the property to a person entitled to have it.

Theft under this section of property or services of a value not exceeding five hundred dollars, or amount as the same is determined pursuant to subsection 5 of 12.1-23-05, N.D.C.C., is a class b misdemeanor for a first offense occurring within three years if:

- (1) The theft was committed by shoplifting; or
- (2) The following three factors are met:
 - a. The theft was not committed by threat;
 - b. The theft was not committed by deception by one who stood in a confidential or fiduciary relationship to the victim of the theft; and
 - c. The defendant was not a public servant or an officer or employee of a financial institution who committed the theft in the course of official duties.

Provided that, however, this section 23-15 shall only apply if the property is less than five hundred dollars (\$500.00) in value or amount as the same is determined pursuant to subsection 5 of 12.1-23-05, N.D.C.C.

§8. That Section 23-33, of Chapter 23, Article III of the Code of Ordinances, City of Minot, North Dakota, is hereby amended to read as follows:

Sec. 23-33. Sale of tobacco to minors and use by minors prohibited; placement of tobacco vending machines.

- (a) As used in this section, the following words or terms have the following meanings.

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

Tobacco product 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 tobacco, snuff, snus, 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 as a tobacco cessation product and is being marketed and sold solely for that approved purpose.

Tobacco vending machine means a machine containing a mechanism which dispenses a tobacco product to the purchaser of such product upon the payment of consideration by the purchaser for the purchase.

Alternative nicotine product means any noncombustible product containing nicotine that is intended for human consumption, whether chewed, absorbed, dissolved, or ingested by any other means. The term does not include any cigarette, cigar, snuff, tobacco in any other form in which it may be utilized for smoking or chewing, any electronic smoking device, or any product regulated as a drug or device by the United States food and drug administration under chapter V of the Federal Food, Drug, and Cosmetic Act [21 U.S.C 501 et seq.].

Electronic smoking device means any electronic product that delivers nicotine or other substances to the individual inhaling from the device, including, an electronic cigarette, e-cigar, e-pipe, vape pen, or e-hookah. Electronic smoking device includes any component, part, or accessory of such a product, whether or not sold separately. Electronic smoking device does not include drugs, devices, or combination products approved for sale by the United States food and drug administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act [52 Stat. 1040; 21 U.S.C. 301 et seq.].

Self-service display means a display that contains cigarettes, cigarette papers, cigars, snuff, tobacco in any other form which it may be utilized for smoking or chewing, electronic smoking devices, or alternative nicotine products and is located in an area that is openly accessible to the retailer's customers, and from which customers can readily access those products without the assistance of a salesperson. A display case that holds those products behind locked doors does not constitute a self-service display.

Tobacco specialty store means a retail store that: (1) Derives at least seventy-five percent of its revenue from the sale of cigarettes, cigarette papers, cigars, snuff, tobacco in any other form in which it may be utilized for smoking or chewing, electronic smoking devices, or alternative nicotine products; and (2) Does not permit minors to enter the premises unless accompanied by a parent or legal guardian.

Vending machine means a machine, appliance, or other mechanical device operated by currency, token, debit card, credit card, or other means of payment that is designed or used for vending purposes, including machines or devices that use remote control locking mechanisms.

- (b) ~~No person shall sell or deliver to a minor cigarettes, including clove cigarettes, cigarette papers, cigars, e-cigarettes, snuff, or tobacco products in any other form in which it may be utilized for smoking or chewing. The sale or delivery includes those accomplished by means of a tobacco vending machine. The sale or delivery also includes those accomplished by means of subsection (f). This shall be a strict liability offense.~~

It is an infraction for any person to sell or furnish to an individual under twenty-one years of age, or procure for an individual under twenty-one years of age, cigarettes, cigarette papers, cigars, snuff, tobacco in any other form in which it may be utilized for smoking or chewing, electronic smoking devices, or alternative nicotine products. As used in this subdivision, "sell" includes dispensing from a vending machine under the control of the actor.

- (c) ~~No seller of tobacco products shall use a tobacco vending machine to accomplish the sale of tobacco products, except if, at the time of sale, the tobacco vending machine is located upon premises from which a person under the age of twenty one (21) years of age is barred by NDCC 5-01-08 and NDCC 5-02-06.~~

It is an infraction for any person to display or offer for sale cigarettes, cigarette papers, cigars, snuff, tobacco in any other form in which it may be utilized for smoking or chewing, electronic smoking devices, or alternative nicotine products through a self-service display. This subdivision does not apply to a: (1) Vending machine or other coin-operated machine that is permitted under section 12.1-31-03.1; or (2) Self-service display that is located in a tobacco specialty store.

- (d) ~~In determining under subsection (c) whether a person under the age of twenty one (21) is barred from certain premises, the fact that NDCC 5-01-08 and NDCC 5-02-06 provide certain limited exceptions to the general rule laid down therein, which exceptions relate to law enforcement officers, food and drink service workers, cashiers, and musicians who are under the age of twenty one (21), shall be disregarded.~~

It is a noncriminal offense for an individual under twenty-one years of age to purchase, possess, smoke, or use cigarettes, cigars, cigarette papers, snuff, tobacco in any other form in which it may be utilized for smoking or chewing, electronic smoking devices, or alternative nicotine products. However, an individual under twenty-one years of age may purchase and possess tobacco, electronic smoking devices, or alternative nicotine products as part of a compliance survey program when acting with the permission of the individual's parent or guardian and while acting under the supervision of any law enforcement authority. A state agency, city, county, board of health, tobacco, electronic smoking devices, or alternative nicotine products retailer, or association of tobacco, electronic smoking devices, or alternative nicotine products retailers may also conduct compliance surveys, after coordination with the police department.

- (e) ~~If the owner of a tobacco vending machine which is used to make sales of tobacco products is not also the owner of the premises upon which the machine is placed in order to accomplish such sales, then both the owner of the tobacco vending machine and the owner of the premises shall be considered independently from one another to be the seller of tobacco products for purposes of subsection (c).~~

Subsections (b), (c), and (d) do not apply to an individual under twenty-one years of age who possesses cigarettes, cigarette papers, cigars, snuff, tobacco in any other form in which it may be used for smoking or chewing, electronic smoking devices, or alternative nicotine products when required in the performance of the individual's duties as an employee.

- (f) ~~Except on licensed alcohol premises, or in a place which is closed to people under eighteen (18) years of age, no electronic cigarettes or tobacco products may be stored or displayed in a retail outlet in an area or in a manner which allows for self-service access by customers. A violation of this paragraph is an offense that shall be treated as a violation of subsection (b).~~

It is a noncriminal offense for an individual under twenty-one years of age to present or offer to another individual a purported proof of age which is false, fraudulent, or not actually that individual's own proof of age, for the purpose of attempting to purchase or possess cigarettes, cigars, cigarette papers, snuff, tobacco in any other

form in which it may be utilized for smoking or chewing, electronic smoking devices, or alternative nicotine products.

- (g) ~~No minor shall purchase, possess, or use cigarettes, including clove cigarettes, cigarette papers, cigars, e-cigarettes, snuff, or tobacco products in any other form in which it may be utilized for smoking or chewing, nor shall a minor enter into or remain upon the age-restricted self-service area (which area is provided for and required in section 18-68) of a tobacco retailer's business premises.~~

The minimum mandatory penalty for a violation of subsections (b) and (c) shall be a fine of fifty dollars (\$50.00), unless the defendant has committed the same offense once previously within the prior twelve (12) months, in which case the minimum mandatory penalty shall be a fine of one hundred fifty dollars (\$150.00), or unless the defendant has committed the same offense twice or more times previously within the prior twelve (12) months, in which case the minimum mandatory penalty shall be a fine of three hundred dollars (\$300.00). The failure to post a required bond or pay an assessed fee by an individual found to have violated the ordinance or resolution is punishable as a contempt of court, except an individual under twenty-one years of age may not be imprisoned for the contempt.

- ~~(h) The minimum mandatory penalty for a violation of subsection (b) shall be a fine of fifty dollars (\$50.00), unless the defendant has committed the same offense once previously within the prior twelve (12) months, in which case the minimum mandatory penalty shall be a fine of one hundred fifty dollars (\$150.00), or unless the defendant has committed the same offense twice or more times previously within the prior twelve (12) months, in which case the minimum mandatory penalty shall be a fine of three hundred dollars (\$300.00).~~

The minimum mandatory penalty for a violation of subsections (d) and (f) which is the defendant's first offense shall be a fine of seventy-five dollars (\$75.00). However, fifty dollars (\$50.00) of such fine shall be remitted to the defendant by the clerk of municipal court if, within sixty (60) days of the defendant's conviction, the defendant and his or her parent or parents, or the defendant and his or her legal guardian, participate in a tobacco education program authorized by the municipal court and provide certification of such attendance to the clerk of municipal court. The minimum mandatory penalty for a violation of subsections (d) and (f) which is the defendant's second offense shall be a fine of seventy-five dollars (\$75.00), and, in the event that such violation is an offense subsequent to the second offense, then the minimum mandatory penalty shall be a fine of one hundred dollars (\$100.00). In either event the partial remission of the fine provided for in this section for a first offense shall not be available for a second violation of subsections (d) and (f). The failure to post a required bond or pay an assessed fee by an individual found to have violated the ordinance or resolution is punishable as a contempt of court, except an individual under twenty-one years of age may not be imprisoned for the contempt.

- ~~(i) The minimum mandatory penalty for a violation of subsection (g) which is the defendant's first offense shall be a fine of seventy-five dollars (\$75.00). However, fifty dollars (\$50.00) of such fine shall be remitted to the defendant by the clerk of municipal court if, within sixty (60) days of the defendant's conviction, the defendant and his or her parent or parents, or the defendant and his or her legal guardian, participate in a tobacco education program authorized by the municipal court and provide certification of such attendance to the clerk of municipal court.~~

An individual who has been cited for a violation of subsections (d) and (f) may appear before a court of competent jurisdiction and pay the fee by the time scheduled for a hearing, or if bond has been posted, may forfeit the bond by not appearing at the scheduled time. An individual appearing at the time scheduled in the citation may make a statement in explanation of that individual's action and the judge may waive, reduce, or suspend the fee or bond, or both. If the individual cited follows the procedures of this subdivision, that individual has admitted the violation and has waived a right to a hearing on the issue of commission of the violation. The bond required to secure appearance before the court must be identical to the fee. This subdivision does not allow a citing officer to receive the fee or bond. The failure to post a required bond or pay an assessed fee by an individual found to have violated the ordinance or resolution is punishable as a contempt of court, except an individual under twenty-one years of age may not be imprisoned for the contempt.

- (j) The minimum mandatory penalty for a violation of subsection (g) which is the defendant's second offense shall be a fine of seventy five dollars (\$75.00), and, in the event that such violation is an offense subsequent to the second offense, then the minimum mandatory penalty shall be a fine of one hundred dollars (\$100.00). In either event the partial remission of the fine provided for in subsection (i) shall not be available.

If an individual cited for a violation of subsections (d) and (f) does not choose to follow the procedures provided under subdivision (i), that individual may request a hearing on the issue of the commission of the violation cited. The hearing must be held at the time scheduled in the citation or at some future time, not to exceed ninety days later, set at that first appearance. At the time of a request for a hearing on the issue on commission of the violation, the individual cited shall deposit with the court an appearance bond equal to the fee for the violation cited. The failure to post a required bond or pay an assessed fee by an individual found to have violated the ordinance or resolution is punishable as a contempt of court, except an individual under twenty-one years of age may not be imprisoned for the contempt.

- (k) The prosecution must prove the commission of a cited violation under subsections (d) and (f) by a preponderance of the evidence.
- (l) 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 days of the citation.
- (m) A person adjudged guilty of contempt for failure to pay a fee or fine may be sentenced by the court to a sanction or order designed to ensure compliance with the payment of the fee or fine or to an alternative sentence or sanction including community service.
- (n) It is an infraction for any person to sell or furnish cigarettes, cigarette papers, cigars, snuff, tobacco in any other form in which it may be utilized for smoking or chewing, electronic smoking devices, or alternative nicotine products through a vending machine, except this prohibition does not apply to:
- (1) A vending machine that is located in an area in which individuals under twenty-one years of age are not permitted access; or
 - (2) A vending machine that dispenses cigarettes, cigarette papers, cigars, snuff, tobacco in any other form in which it may be utilized for smoking or chewing, electronic smoking devices, or alternative nicotine products through the operation of a device that requires a salesperson to control the dispensation of such product.

(o) It is an infraction for any person to sell or furnish cigarettes, cigarette papers, cigars, snuff, tobacco in any other form in which it may be utilized for smoking or chewing, electronic smoking devices, or alternative nicotine products through any vending machine, if those products are placed together with any nontobacco product, other than matches, in the vending machine.

§9. **That Section 23-34, of Chapter 23, Article III of the Code of Ordinances, City of Minot, North Dakota, is hereby amended to read as follows:**

Sec. 23-34. Possession of marijuana.

It shall be unlawful to possess marijuana within the corporate limits of the city, unless the marijuana was obtained in accordance with Chapter 19-24.1 N.D.C.C. A person violating this section by possessing marijuana in an amount of less than one-half (½) ounce [14.175 grams] is guilty of an infraction.

A person violating this section by possessing at least one-half (½) ounce [14.175 grams] but not more than five hundred (500) grams of marijuana is guilty of a class B misdemeanor.

If an individual under the age of twenty-one pleads guilty or is found guilty of a first offense regarding possession of one-half ounce [14.175 grams] or less of marijuana, the court also may sentence the individual to an evidence-based alcohol and drug education program operated under the rules adopted by the department of human services under N.D.C.C. Section 50-06-44. For a second or subsequent offense regarding possession of one-half ounce [14.175 grams] or less of marijuana, the court also shall sentence the individual to an evidence-based alcohol and drug education program operated under the rules adopted by the department of human services under N.D.C.C. Section 50-06-44.

§10. **That Section 23-57, of Chapter 23, Article IV, Division 1, of the Code of Ordinances, City of Minot, North Dakota, is hereby amended to read as follows:**

**Sec. 23-57. Possession of a firearm or dangerous weapon at a public gathering—
Penalty—Application.**

- (a) An individual ~~who knowingly possesses a firearm or dangerous weapon at a public gathering is guilty of a class B misdemeanor. For the purpose of this section, "public gathering" means~~ may not possess a firearm or dangerous weapon at a place or event described in N.D.C.C. section 62.1-02-05, subdivision 1.
- (b) This section does not apply to exceptions described in N.D.C.C. section 62.1-02-05, subdivision 2.
- (c) An individual who knowingly violates this section is guilty of an infraction.

§11. **That Section 23-58, of Chapter 23, Article IV, Division 1, of the Code of Ordinances, City of Minot, North Dakota, is hereby amended to read as follows:**

**Sec. 23-58. Carrying loaded firearm in certain vehicles prohibited—Penalty—
Exceptions.**

- (a) An individual may not keep or carry a loaded firearm in or on any motor vehicle, including an off-highway vehicle or snowmobile.
- (b) This section does not apply to the exceptions provided in N.D.C.C. section 62.1-02-10.
- (c) An individual violating this section is guilty of an infraction.

§12. This Ordinance shall become effective immediately upon the City Council’s approval on second reading.

PASSED FIRST READING: _____

PASSED SECOND READING: _____

ATTEST:

APPROVED:

Kelly Matalka, City Clerk

Shaun Sipma, Mayor