

ORDINANCE NO. 1525

An ordinance amending Chapter 21 of the Code of the City of Jamestown, North Dakota, by amending Section 21-04 relating to the criminalization of driving under the influence.

WHEREAS, the North Dakota Legislative Assembly has amended N.D.C.C. § 39-08-01 which accounts for the recent North Dakota Supreme Court Decisions.

WHEREAS, to be in conformance with the new provisions the City Code of the City of Jamestown requires updating.

NOW, THEREFORE, be it ordered by the City Council of the City of Jamestown, North Dakota, that Chapter 21, Section 04-06 be amended and re-enacted as follows:

Sec. 21-04-06. - Persons under the influence of intoxicating liquor or any other drugs or substances not to operate vehicle; penalty.

(1) A person may not drive or be in actual physical control of any vehicle upon a street or upon public or private areas to which the public has right of access for vehicular use in this city if any of the following apply:

- (a) That person has an alcohol concentration of at least eight one-hundredths (.08) of one percent by weight at the time of performance of a chemical test within two (2) hours after the driving or being in actual physical control of a vehicle.
- (b) That person is under the influence of intoxicating liquor.
- (c) That person is under the influence of any drug or substance or combination of drugs or substances to a degree which renders that person incapable of safely driving.
- (d) That person is under the combined influence of alcohol and any other drugs or substances to a degree which renders that person incapable of safely driving.
- (e) That individual refuses to submit to any of the following:
 - (i) A chemical test, or tests, of the individual's blood, breath, or urine to determine the alcohol concentration or presence of other drugs, or combination thereof, in the individual's blood, breath, or urine, at the direction of a law enforcement officer under section 39-06.2-10.2 of the North Dakota Century Code if the individual is driving or is in actual physical control of a commercial motor vehicle; or
 - (ii) A chemical test, or tests, of the individual's blood, breath, or urine to determine the alcohol concentration or presence of other drugs, or combination thereof, in the individual's blood, breath, or urine, at the direction of a law enforcement officer under section 39-20-01 of the North Dakota Century Code.
- (f) Subdivision (e) does not apply to an individual unless the individual has been advised of the consequences of refusing a chemical test consistent with the Constitution of the United States and the Constitution of North Dakota.

The fact any person charged with violating this section is or has been legally entitled to use alcohol or other drugs or substances is not a defense against any charge for violating this section. It is an affirmative defense that a drug was used only as directed or cautioned by a practitioner who legally prescribed or dispensed the drug to that person.

(2) An individual who operates a motor vehicle on a highway or on public or private areas to which the public has a right of access for vehicular use in this state who refuses to submit to a chemical test, or tests, required under sections 39-06.2-10.2 or 39-20-01 of the North Dakota Century Code, is guilty of an offense under this section.

(3) An individual violating 39-08-01 of the North Dakota Century Code or equivalent ordinance is guilty of a Class B misdemeanor for the first or second offense in a seven-year period. The minimum penalty for violating this section is as provided in subsection (5). The court shall take judicial notice of the fact that an offense would be a subsequent offense if indicated by the records of the director of the North Dakota Department of Transportation or may make a subsequent offense finding based on other evidence.

(4) Upon conviction of a second or subsequent offense within seven (7) years under 39-08-01 of the North Dakota Century Code or equivalent ordinance, the court may order the motor vehicle number plates of all of the motor vehicles owned and operated by the offender at the time of the offense to be destroyed by the office of the police officer that made the arrest. The offender shall deliver the number plates to the court without delay at a time certain as ordered by the court following the conviction. The court shall deliver the number plates to the office and notify the department of the order. An offender who does not provide the number plates to the court at the appropriate time is subject to revocation of probation. The court may make an exception to this subsection, on an individual basis, to avoid undue hardship to an individual who is completely dependent on the motor vehicle for the necessities of life, including a family member of the convicted individual and a co-owner of the motor vehicle, or if the offender is participating in the twenty-four seven sobriety program.

(5) A person convicted of violating this section must be sentenced in accordance with 39-08-01 of the North Dakota Century Code or any amendments thereto.

(a):

(i) For a first offense, the sentence must include both a fine of at least five hundred dollars (\$500.00) and an order for addiction evaluation by an appropriate licensed addiction treatment program.

(ii) In addition, for a first offense when the convicted person has an alcohol concentration of at least sixteen one-hundredths (.16) of one percent by weight, the offense is an aggravated first offense and the sentence must include a fine of at least seven hundred fifty dollars (\$750.00) and at least two (2) days' imprisonment.

(b) For a second offense within seven (7) years, the sentence must include at least ten (10) days imprisonment, of which forty-eight (48) hours must be served consecutively; a

fine of at least one thousand five hundred dollars (\$1,500.00); and an order for addiction evaluation by an appropriate licensed addiction treatment program; and at least three hundred and sixty days' participation in the twenty-four seven sobriety program under chapter 54-12 as a mandatory condition of probation.

(c) The imposition of sentence under this section may not be deferred under subsection 4 of Chapter 12.1-32-02 of the North Dakota Century Code for an offense subject to this section.

(d) If the offense is subject to subdivision a or b, a municipal court or district court may not suspend a sentence, but may convert each day of a term of imprisonment to ten hours of community service for an offense subject to paragraph 2 of subdivision a.

(e) For purposes of this section, conviction of an offense under a law or ordinance of another state which is equivalent to this section must be considered a prior offense if such offense was committed within the time limitations specified in this section.

(f) If the penalty mandated by this section includes imprisonment or placement upon conviction of a violation of this section or equivalent ordinance, and if an addiction evaluation has indicated that the defendant needs treatment, the court may order the defendant to undergo treatment at an appropriate licensed addiction treatment program under subdivision g of subsection 1 of section 12.1-32-02 of the North Dakota Century Code and the time spent by the defendant in the treatment must be credited as a portion of a sentence of imprisonment or placement under this section. A court may not order the department of corrections and rehabilitation to be responsible for the costs of treatment in a private treatment facility.

(g) If the individual has participated in the twenty-four seven sobriety program as a condition of pretrial release or for the purpose of receiving a temporary restricted operator's license under section 39-06.1-11 of the North Dakota Century Code, the sentencing court may give credit for the time the individual has already served on the twenty-four seven sobriety program when determining the amount of time the individual must serve on the twenty-four seven sobriety program for the purposes of probation, if that individual has not violated the twenty-four seven sobriety program before sentencing.

(6) As used in subdivision b of subsection 5, the term "imprisonment" includes house arrest. As a condition of house arrest, a defendant may not consume alcoholic beverages. The house arrest must include a program of electronic home detention and the defendant shall participate in the twenty-four seven sobriety program. The defendant shall defray all costs associated with the electronic home detention. For an offense under subdivision b of subsection 5, no more than ninety percent of the sentence may be house arrest.

(7) As used in this title, participation in the twenty-four seven sobriety program under chapter 54-12 means compliance with sections 54-12-27 through 54-12-31 of the North Dakota Century Code, and requires sobriety breath testing twice per day seven days per week or electronic alcohol monitoring, urine testing, or drug patch testing. The offender is responsible for all twenty-four seven sobriety program fees and the court may not waive the fees. For purposes of this section, the twenty-four seven sobriety program is a condition of probation and a court may not order participation in the program as part of the sentence. If an individual ordered to participate in the twenty-four seven program is not a resident of this state, that individual shall enroll in a twenty-four seven program or an alcohol compliance program if available in that individual's state of residence and shall file proof of such enrollment.

ATTEST:

APPROVED:

Sarah Hellekson
City Administrator

Dwaine Heinrich
Mayor

Introduced by Council Member Brubakken
Seconded by Council Member Phillips
First Reading: March 2, 2020
Second Reading: April 6, 2020
Final Passage: April 6, 2020
Roll Call No. 4 showed: 5 ayes, 0 nays, 0 absent