



City Attorney

DATE: July 7, 2021
FROM: Jannelle Combs, City Attorney
ITEM: Ordinance 6472 regarding state law changes

REQUEST:

Consider introduction and call for a public hearing on Ordinance 6472 to amend Section 5, 6 and 12 to conform to state law.

Please place this item on the June 22, 2021 City Commission meeting agenda.

BACKGROUND INFORMATION:

Numerous state law changes occurred with the 2021 legislative session. The Attorney Department reviewed numerous lists and followed several session laws to insure that the city ordinances mirror state law. In addition, it was discovered that include 6-02-08 False Report to law Enforcement Officers is a Class A misdemeanor at the state level at some prior session but was never removed from our ordinances.

Several other laws were clarified based on the changes at state law. Electric bicycles were added into the code, clarification that roundabouts require a lane change to exit but a 100 foot distance for signaling is not required and clarification regarding passengers in OHVs with conflict with state child restraint law. At this time, the change to allow bicycles to not stop at stop signs is not made as further drafting is needed to insure it is clear in an urban setting when it appears to be drafted more for rural jurisdictions.

RECOMMENDED CITY COMMISSION ACTION:

First reading and introduction of Ordinance 6472 and call for a public hearing.

STAFF CONTACT INFORMATION:

CITY OF BISMARCK
ORDINANCE NO. 6472

<i>First Reading</i>	_____
<i>Second Reading</i>	_____
<i>Final Passage and Adoption</i>	_____
<i>Publication Date</i>	_____

AN ORDINANCE TO AMEND, RE-ENACT, ENACT AND REPEAL SECTIONS 5, 6 AND 12 OF THE CITY OF BISMARCK CODE OF ORDINANCES (1986 Rev.) BY AMENDING THE FOLLOWING.

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

Section 1. Amend. Section 05-01-04 of the Code of Ordinances of the City of Bismarck, North Dakota, relating to Classes of Retail Licenses, is hereby amended to read as follows:

5-01-04. Class of Retail Licenses.

* * * * *

q. Class Q. To any applicant for the sale at retail of "on-sale" and "off-sale", wine only. Class Q licenses shall be issued at the discretion of the City Commission and shall have an initial issuance fee of \$3000. New Class Q licenses or Class Q licenses that have been revoked or not renewed may be issued only by the City. A Class Q license is subject to the following conditions:

* * * * *

(10) A Class Q license may not sell wine before 8AM Monday through Saturday and ~~11~~8AM on Sunday and must cease wine sales by 9PM each day.

* * * * *

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(Ord. 4116, Sec. 1, 12-2-86; Ord. 4120, Sec. 1, 12-16-86; Ord. 4124, Sec. 1, 1-13-87; Ord. 4148, 5-12-87; Ord. 4179, 9-29-87; Ord. 4193, 2-2-88; Ord. 4211, 7-19-88; Ord. 4253, 4-25-89; Ord. 4380, 6-18-91; Ord. 4430, 3-31-92; Ord. 4596, 04-12-94; Ord. 4618, 6-21-94; Ord. 4657, 12-20-94; Ord. 4705, 07-11-95; Ord. 4725, 09-26-95; Ord. 4938, 08-25-98; Ord. 5141, 11-13-01; Ord. 5152, 01-08-02; Ord. 5454, 08-23-05; Ord. 5513, 06-13-06; Ord. 5600, 05-08-07; Ord. 5821, 05-24-11; Ord. 5839, 07-12-11; Ord. 5848, 10-11-11; Ord. 5860, 02-28-12; Ord. 5985, 07-09-13; Ord. 5991, 08-27-13; Ord. 5998, 08-27-13; Ord. 6005, 09-24-13; Ord. 6025, 01-14-14; Ord. 6053, 05-27-14; Ord. 6096, 12-23-14; Ord. 6097, 1-13-15; Ord. 6189, 2-9-16; Ord. 6242, 1-10-17; Ord. 6252, 4-25-17; Ord. 6258, 06-13-17; Ord. 6286, 9-26-17; Ord. 6293, 11-28-17; Ord. 6294, 12-12-17; Ord. 6379, 05-28-19; Ord. 6446, 03-30-21)

Section 2. Amend. Section 05-01-13 of the Code of Ordinances of the City of Bismarck, North Dakota, relating to Event Permits to Sell at Designated Locations, is hereby amended to read as follows:

5-01-13. Event Permits to Sell at Designated Locations.

* * * * *

6. The permit may authorize ~~persons~~ an individual under twenty-one years of age to ~~remain in the area of~~ attend the event, but may not authorize the consumption or possession of an alcoholic beverage by an individual under twenty-one years of age or a portion thereof, where beer, wine, or sparkling wine may be sold pursuant to the permit. However, this authorization is subject to the following conditions:

a. ~~The area where persons under twenty one years of age may remain must be specifically set forth in the permit;~~

b. ~~Only employees of the qualified alcoholic beverage licensee who are at least twenty-one years of age may deliver and sell the beer, wine, or sparkling wine;~~

e. ~~Subject to NDCC Section 5-02-06, provided the area where persons~~ an individual under twenty-one years of age may remain may not be the qualified alcoholic beverage licensee's fixed or permanent licensed premises as shown on the licensee's state and local alcoholic beverage licenses issued

pursuant to NDCC Section 5-02-01 and City Ordinance 5-01-06+ and

~~d. No person under twenty-one years of age within the area described in the permit may consume, possess, or receive alcoholic beverages.~~

(Ord. 4174, 9-15-87, Ord. 4381, 6-18-91; Ord. 4524, 07-06-93; Ord. 4720, 08-22-95; Ord. 4980, 05-25-99; Ord. 5397, 03-22-05; Ord. 6026, 01-28-14; Ord. 6112, 04-28-15; Ord. 6252, 04-25-17 Ord. 6324, 05-22-18)

Section 3. Repeal. Section 06-02-08 of the Code of Ordinances of the City of Bismarck, North Dakota, relating to False Report to Law Enforcement Officers, is hereby repealed to read as follows:

~~6-02-08. False Report to Law Enforcement Officers. A person is guilty of an offense if that person knowingly gives false information to a law enforcement officer with intent to falsely cause an official investigation to begin or to affect the course or outcome of an official investigation or the disposition of the matter or investigation for which given. Reference: NDCC Sec. 12.1 11-03 (1985)~~

Reference: NDCC Sec. 12.1 11-03 (1985)

Section 4: Amend. Section 06-08-02 of the Code of Ordinances of the City of Bismarck, North Dakota, relating to Possession of Firearm at Public Gathering, is hereby amended to read as follows:

6-08-02. Possession of Firearm at Public Gathering.

~~1. A person who possesses a firearm at a public gathering is guilty of an infraction. For the purpose of this section, "public gathering" means an athletic or sporting event, a school, a church and a publicly owned or operated building. An individual may not possess a firearm or dangerous weapon at:~~

~~a. A school or school-sponsored event on school property;~~

~~b. A church or other place of worship; or~~

c. A publicly owned or operated building.

2. This section does not apply to:

* * * * *

k. An individual possessing a valid class 1 concealed weapons license from this state who is authorized under section 62.1-04-02 to carry a firearm or dangerous weapon concealed or who has reciprocity under NDCC Section 62.1-04-03.1 authorizing the individual to carry a dangerous weapon concealed if the individual is in a church building or other place of worship and has the approval to carry in the church building or other place of worship by a primary religious leader of the church or other place of worship or the primary religious leader or the governing body of the church or other place of worship approves the individual or group of individuals to carry a firearm or dangerous weapon through a policy or any other means. If a church or other place of worship authorizes an individual to carry a concealed weapon, local law enforcement must be informed of the name of the authorized individual.

* * * * *

m. An individual authorized to carry a concealed weapon on school property under section 62.1-02-14.

3. An individual who knowingly violates this section is guilty of an infraction.

Reference: NDCC Sec. 62.1-02-05 (1985); (Ord. 6041, 04-22-14; Ord. 6128, 06-09-15; Ord. 6392, 07-23-19)

Section 5: Amend. Section 12-03-09 of the Code of Ordinances of the City of Bismarck, North Dakota, relating to Driving Without a License - License to be Carried and Exhibited on Demand, is hereby amended to read as follows:

12-03-09. Driving Without a License - License to be Carried and Exhibited on Demand.

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2. ~~Every licensee~~An individual licensed to operate a motor vehicle shall have ~~his or her~~the operator's license or permit in the individual's immediate possession at all times when operating a motor vehicle and shall ~~display~~surrender the ~~same~~operator's license, upon demand of any ~~district court, municipal court, a county court,~~ a patrolman, ~~peace~~police officer, or a field deputy or inspector of the highway department. However, ~~no person~~an individual charged with violating this section ~~shall~~may not be convicted or assessed any court costs if ~~he or she~~the individual produces ~~in court,~~ to the chief of police or in the office of the arresting officer within fourteen days to the office of the prosecutor where the matter is pending, a valid operator's license or permit issued to ~~him or her~~that individual and valid and not under suspension, revocation or cancellation at the time of arrest.

Reference: NDCC Sec. 39-06-01 (1985 Supp.)

Section 6. Amend. Section 12-03-11 of the Code of Ordinances of the City of Bismarck, North Dakota, relating to Registration Card to be Carried in Vehicle, is hereby amended to read as follows:

12-03-11. Registration Card to be Carried in Vehicle. The registration card issued for a vehicle must be carried in the driver's compartment of the motor vehicle at all times while the vehicle is being operated upon a highway within this state. The card is subject to inspection by any police officer. However, no person charged with violating this section shall be convicted or assessed any court costs if ~~he or she~~the individual within fourteen days after being cited, produces ~~in court,~~ to the office of the prosecutor where the matter is pending~~chief of police, or in the office of the arresting officer,~~ a registration card valid at the time the person was cited. A police officer, upon citing a person for violating this section, shall inform the person that a violation will be considered as not having occurred if the person produces and displays a valid registration card in the manner provided in this section.

Reference NDCC Section 39-04-55 (1993 Supp.)

Ord. 4624, 07-19-94)

Section 7: Amend. Section 12-06-07 of the Code of Ordinances of the City of Bismarck, North Dakota, relating to Turning Movements and Required Signals, is hereby amended to read as follows:

12-06-07. Turning Movements and Required Signals.

1. ~~A~~No person may ~~not~~ turn a vehicle, ~~or~~ move right or left upon a roadway, or merge into or from traffic unless and until such movement can be made with reasonable safety without giving an appropriate signal in the manner hereinafter provided;

2. A signal of intention to turn or move right or left ~~when required~~ shall be given continuously during not less than the last one hundred feet [30.48 meters] traveled by the vehicle before turning, moving right or left, or changing lanes, except when exiting a roundabout;

3. A signal of intention to exit a roundabout shall be given continuously during not less than the last fifty feet [15.24 meters] traveled by the vehicle before exiting the roundabout;

4. A person may not stop or suddenly decrease the speed of a vehicle without first giving an appropriate signal in the manner provided herein to the driver of any vehicle immediately to the rear when there is opportunity to give such signal; and

~~4~~5. The signals required on vehicles by subsection 2 of Section 12-06-08 may not be flashed on one side only on a disabled vehicle, flashed as a courtesy or "do pass" signal to operators of other vehicles approaching from the rear, or be flashed on one side only of a parked vehicle except as may be necessary for compliance with this section.

Reference: NDCC Sec. 39-10-38 (1980)

(Ord. 4503, 04-27-93)

Section 8. Amend. Section 12-09-05 of the Code of Ordinances of the City of Bismarck, North Dakota, relating to Drive on the Right Side of Roadway - Exceptions, is hereby amended to read as follows:

12-09-05. Drive on Right Side of Roadway - Exceptions.

* * * * *

4. The driver of a vehicle shall leave a safe distance when overtaking and passing a bicycle proceeding in the same direction on a roadway and shall maintain clearance until safely clear of the overtaken bicycle. "Safe distance" as used in this section means no less than three feet [0.91 meters] clearance.

Reference: NDCC Sec. 39-10-08 (1980); NDCC Sec 39-10-11.1 (2021)

Section 9. Amend. Section 12-09-42.1 of the Code of Ordinances of the City of Bismarck, North Dakota, relating to Rules for Operation of OHVs, is hereby amended to read as follows:

12-09-42.1. Rules for Operation of OHVs.

* * * * *

6. An individual may not operate an OHV in the following ways, which are declared to be unsafe and a public nuisance:

* * * * *

j. Any occupant must, while wearing the safety belt, be able to set their feet flat on the floor of the OHV and be able to simultaneously touch the grab bar attached to the roll cage.

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(Ord. 5417, 05-24-05; Ord. 6155, 08-11-15)

Section 10. Amend. Section 12-12-01 of the Code of Ordinances of the City of Bismarck, North Dakota, relating to Effect of Regulations, is hereby amended to read as follows:

12-12-01. Effect of Regulations.

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3. These regulations applicable to bicycles apply whenever a bicycle or an electric bicycle as defined in N.D.C.C. Ch. 39-10.1 is operated upon any highway or street or upon any path set aside for the exclusive use of bicycles subject to those exceptions stated in this chapter.

Reference: NDCC 39-10.1-01

Section 11. Amend. Section 12-17-01 of the Code of Ordinances of the City of Bismarck, North Dakota, relating to Halting Person for Violating Traffic Regulations; Duty of Officer Halting, is hereby amended to read as follows:

12-17-01. Halting ~~Person~~ **Individual** for Violating Traffic Regulations; Duty of Officer Halting.

1. Whenever ~~any person~~ an individual is halted for the violation of any of the provisions of NDCC Chapters 39-01 through 39-13, 39-18, 39-21, and 39-24, or of equivalent city ordinances, the officer halting ~~such person~~ the individual, except as otherwise provided in Section 13-18-03,

may:

1a. Take the name and address of ~~such person~~ the individual;

2b. Take the license number of ~~his~~ the individual's motor vehicle; and

3c. Issue a summons or otherwise notify ~~him~~ the individual in writing to appear at a time and place to be specified in such summons or notice.

2. A halting officer may not take a ~~person~~ an individual into custody or require ~~that person~~ the individual to proceed with the officer to any other location for the purpose of posting bond, whereif the traffic violation was a non-criminal offense under N.D.C.C. Section 39-06.1-02 or equivalent city ordinance. The officer shall offer to provide the ~~person~~ individual with an envelope for use by that person to mail the bond.

Reference: NDCC 39-07-07 (1985 Supp.)

Section 12. Severability. If any section, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent remaining portions of this ordinance.

Section 13. Effective Date. This ordinance shall take effect on August 1, 2021, after final passage, adoption and publication.