



## City Attorney

**DATE:** April 19, 2022  
**FROM:** Janelle Combs, City Attorney  
**ITEM:** Ordinance 6501 regarding hate crime ordinances

**REQUEST:**

Consider introduction and call for a public hearing on Ordinance 6501 to enact new Bismarck Ordinances for hate crimes.

Please place this item on the April 26, 2022, City Commission meeting agenda.

**BACKGROUND INFORMATION:**

Commissioner Guy requested that ordinances to add hate crimes to the existing Simple Assault, Harassment, Criminal Mischief and Disorderly Conduct ordinances be provided for the Commission to act upon. Fargo and Grand Forks added similar language to some similar crimes.

**RECOMMENDED CITY COMMISSION ACTION:**

First reading and introduction of Ordinance 6501 and call for a public hearing.

**STAFF CONTACT INFORMATION:**

Janelle Combs | City Attorney | 701.355.1340 | [jcombs@bismarcknd.gov](mailto:jcombs@bismarcknd.gov)

**CITY OF BISMARCK**  
**ORDINANCE NO.6501**

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

AN ORDINANCE TO ENACT PORTIONS OF TITLE 6 OF THE CITY OF BISMARCK CODE OF ORDINANCES (1986 Rev.), AS AMENDED, RELATING TO HATE CRIMES.

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

Section 1. Enact. Section 6-03-01.1 of the Code of Ordinances of the City of Bismarck, North Dakota, relating to Simple Assault-Hate Crimes is hereby enacted to read as follows:

6-03-01.1. Simple Assault-Hate Crime. A person is guilty of an offense if that person, except when the victim is a peace officer or correctional institution employee acting in an official capacity, which the actor knows to be a fact; a person engaged in a judicial proceeding; or a member of a municipal or volunteer fire department or emergency medical services personnel unit or emergency department worker in the performance of the member's duties:

1. Willfully causes bodily injury to another human being; or 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, and

2. Causes bodily injury to another in whole or in part because of the victim's actual or perceived race, color, religion, gender, disability, sexual orientation, gender identity, national origin, or ancestry.

\* \* \* \* \*

Section 2. Enact. Section 6-03-03.1 of the Code of Ordinances of the City of Bismarck, North Dakota, relating to Harassment-Hate Crimes is hereby enacted to read as follows:

6-03-03.1. Harassment-Hate Crime. A person is guilty of an offense if, with intent to frighten or harass another and in whole or in part because of the victim's actual or perceived race, color, religion, gender, disability, sexual orientation, gender identity, national origin, or ancestry, that person:

1. Makes a telephone call anonymously, or using offensively coarse language or, using other electronic communication, communicates offensive material with no purpose of legitimate communication;

2. Makes repeated telephone calls, or other electronic communication, whether or not conversation ensues, with no purpose of legitimate communication; or

3. Communicates a falsehood by telephone or by electronic communication and causes mental anguish.

\* \* \* \* \*

Section 3. Enact. Section 6-04-01.1 of the Code of Ordinances of the City of Bismarck, North Dakota, relating to Criminal Mischief-Hate Crimes is hereby enacted to read as follows:

6-04-01.1. Criminal Mischief-Hate Crime. A person is guilty of an offense if that person:

1. Willfully tampers with tangible property of another so as to endanger person or property; or willfully damages tangible property of another; and;

2. The tampering or damaging is in whole or in part because of the victim's actual or perceived race, color, religion, gender, disability, sexual orientation, gender identity, national origin, or ancestry.

Conduct is punishable as criminal mischief under this ordinance when any pecuniary loss if intentionally caused is not in excess of one hundred dollars; if recklessly caused is not in excess of two thousand dollars; and if other damages to tangible property of another are not caused by means of an explosive or a destructive device.

The penalty for the offense of criminal mischief may not exceed a fine of one thousand dollars, imprisonment for thirty days, or both such fine and imprisonment.

Section 4. Enact. Section 6-05-01.1 of the Code of Ordinances of the City of Bismarck, North Dakota, relating to Disorderly Conduct-Hate Crimes is hereby enacted to read as follows:

6-05-01. Disorderly Conduct-Hate Crime. A person is guilty of an offense 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, and is in whole or in part because of the victim's actual or perceived race, color, religion, gender, disability, sexual orientation, gender identity, national origin, or ancestry. that person:

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, or makes an obscene gesture, which language or gesture by its very utterance or gesture inflicts injury or tends to incite an immediate breach of the peace;
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 or she solicits such contact;
7. Creates a hazardous, physically offensive or serious alarming condition by any act which serves no legitimate purpose;
8. 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.

9. Uses a fixed optical device that enhances or records a visual occurrence to view through any window of another person's property; or uses a surveillance camera to capture an image from the dwelling or accessory structure of another person; however, an individual using a surveillance camera has seven days from notice by a law enforcement officer to direct or shield the camera so as to not capture an image from another person's dwelling or accessory structure before there is an offense.

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.

*Reference: NDCC Sec. 12.1-31-01 (1985)*

Section 5. 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 6. Effective Date. This ordinance shall take effect after final passage, adoption and publication.