

ORDINANCE

AN ORDINANCE TO CREATE AND ENACT AN ORDINANCE OF THE CITY OF BUFFALO, NORTH DAKOTA, RELATING TO THE CREATION OF A MUNICIPAL COURT.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BUFFALO, NORTH DAKOTA:

SECTION 1. The following Ordinance of the City of Buffalo is hereby created and enacted to read as follows:

1. Creating of Municipal Court. The City of Buffalo hereby deems it desirable to create a municipal court to help ensure the peace and tranquility in the City of Buffalo and to assist in the enforcement of its ordinances. To this end, the City may, pursuant to Section 40-18-03 of the North Dakota Century Code, appoint and confirm, by resolution duly passed, a municipal judge, who shall than be subject to election thereafter at the next regularly-scheduled City election.

2. Term of Municipal Judge. Pursuant to Section 40-14-02 of the North Dakota Century Code, the term of office of the Buffalo Municipal Judge shall be four (4) years.

3. Appointment of Municipal Clerk and Alternate Municipal Judge. Pursuant to the provisions of Sections 40-18-06.1 and 40-18-03 of the North Dakota Century Code, the City Council of the City of Buffalo may, be resolution, appoint an alternative municipal judge and a municipal court clerk.

4. Convening of the Court. The municipal court of the City of Buffalo shall convene at such time and for such duration as is necessary to conduct and transact the business of the municipal court.

5. Place Convened. The municipal court of the City of Buffalo shall convene and sit at the Community Center in the City of Buffalo, State of North Dakota, or such other place as may be designated by the municipal judge.

6. Jurisdiction. The municipal court shall have such jurisdiction and authority as is authorized by the laws of the State of North Dakota and the ordinances of the City of Buffalo.

7. Penalties - Fines. Any violation of an ordinance of the City of Buffalo shall be an infraction unless another penalty is specifically provided for, or unless state law defines an offense in language substantially similar to the ordinance as a class B misdemeanor, in which case the violation of the ordinance shall be penalized as a class B misdemeanor. An infraction may be punished by a maximum fine of \$500 or whatever amount is the maximum penalty

allowed by Section 12.1-32-01 of the North Dakota Century Code, whichever is greater. The municipal judge shall have the discretion to sentence for an infraction up to, but not exceeding the maximum limit. The court shall have discretion within this maximum limit, even if the ordinance incorporates a specific section of the state statutes which sets a specific penalty for violation of that state statute. Any person convicted of an infraction who has, within one year prior to the commission of the infraction of which he was convicted, been previously convicted of an offense classified as an infraction, may be sentenced as though convicted of a class B misdemeanor. If the prosecution contends that the infraction is punishable as a class B misdemeanor, the complaint or citation shall specify that the offense is a misdemeanor. A class B misdemeanor may be punished by a maximum fine of \$1,000 or 30 days of imprisonment, or both, or whatever fine and imprisonment are the maximum penalty allowed by Section 12.1-32-01 of the North Dakota Century Code.

8. Sentencing Alternatives.

- A. Every person convicted of an offense who is sentenced by the court shall be sentenced to one or a combination of the following alternatives, unless the sentencing alternatives are otherwise specifically provided in the ordinance defining the offense:
- a. Payment of the reasonable costs of his prosecution.
  - b. Probation.
  - c. A term of imprisonment, including intermittent imprisonment.
  - d. A fine.
  - e. Restitution for damages resulting from a commission of the offense.
  - f. Restoration of damaged property.
  - g. Work detail.
  - h. Commitment to an appropriate licensed public or private institution for treatment of alcoholism, drug addiction, or mental disease or defect.

Sentences imposed under this subsection shall not exceed in duration the maximum sentences provided in Section 7 hereof, or as provided specifically in an ordinance defining an offense.

This subsection shall not be construed as not permitting the unconditional discharge of an offender following conviction. Sentences under subdivisions (e) or (f) shall be imposed in the manner provided in this section. This subsection shall not be construed to prohibit utilization of suspension of sentence, nor shall this subsection limit the conditions which can be imposed on a probationer under this section.

- B. Credit against any sentence to a term of imprisonment shall be given by the court to a defendant for all time

spent in custody as a result of the criminal charge for which the sentence was imposed, or as a result of the conduct by which such charge was based. "Time spent in custody" shall include time spent in custody in a jail or mental institution for the offense charged, whether that time is spent prior to trial, during trial, pending sentence, or pending appeal.

- C. A court may, at any time prior to the time custody of a convicted offender is transferred to a penal institution or institution for treatments, suspend all or a portion of any sentence imposed pursuant to this section.
- D. A court may at any time prior to imposition of sentence, refer a person convicted of driving while under the influence of an intoxicating liquor or a narcotic drug, to an approved treatment facility for diagnosis. Upon receipt of the result of this diagnosis, the court may impose a sentence as prescribed in this section of this ordinance or it may sentence the person to treatment in a facility approved by the State's Division of Alcoholism and Drug Abuse.
- E. All sentences imposed shall be accompanied by a written statement by the court setting forth the reasons for imposing a particular sentence. The statement shall become part of the record of the case.
- F. If an offender is sentenced to a term of imprisonment, that term of imprisonment commences at the time of sentencing, unless, upon motion of defendant, the Court orders the term to commence at some other time.

9. Factors to be Considered in Sentencing. The following factors, or the converse thereof where appropriate, while not controlling the discretion of the court, shall be accorded weight in making determinations regarding the desirability of sentencing an offender to imprisonment:

- A. The defendant's criminal conduct neither caused nor threatened serious harm to another person or his property.
- B. The defendant did not plan or expect that his criminal conduct would cause or threaten serious harm to another person or his property.
- C. The defendant acted under strong provocation.
- D. There were substantial grounds which, though insufficient to establish a legal defense, tend to execute or justify the defendant's conduct.

- E. The victim of the defendant's conduct induced or facilitated its commission.
- F. The defendant has made or will make restitution or reparation to the victim of his conduct for the damage or injury which was sustained.
- G. The defendant has no history of prior delinquency or criminal activity, or has led a law abiding life for a substantial period of time before the commission of the present offense.
- H. The defendant's conduct was the result of circumstances unlikely to recur.
- I. The character, history, and attitudes of the defendant indicate that he is unlikely to commit another crime.
- J. The defendant is particularly likely to respond affirmatively to probationary treatment.
- K. The imprisonment of the defendant would entail undue hardship to himself or his dependents.
- L. The defendant is elderly or in poor health.
- M. The defendant did not abuse a public position of responsibility or trust.
- N. The defendant cooperated with law enforcement authorities by bringing other offenders to justice, or otherwise cooperated.

Nothing herein shall be deemed to require explicit reference to these factors in a presentence report or by the court at sentencing.

10. Special Sanctions for Organizations. When an organization is convicted of an offense, the court may, in addition to any other sentence which may be imposed, require the organization to give notice of its conviction to the persons or class of persons ostensibly harmed by the offense, by mail or by advertising in designated areas or by designated media or otherwise.

11. Imposition of Fine - Response to Non-Payment.

- A. The court, in making a determination of the propriety of imposing a sentence to pay a fine, shall consider the following factors:
  - a. The ability of the defendant to pay without undue hardship.

- b. Whether the defendant, other than a defendant organization, gained money or property as a result of commission.
  - c. Whether the sentence to pay a fine will interfere with the defendant's capacity to make restitution.
  - d. Whether a sentence to pay a fine will serve a valid rehabilitative purpose.
- B. The court may allow the defendant to pay any fine or costs imposed in installments. When a defendant is sentenced to pay a fine or costs, the court shall not impose at the same time an alternative sentence to be served in the event that the fine or costs are not paid.
- C. If the defendant does not pay any fine or costs imposed, or make any required partial payment, the court, upon motion of the prosecuting attorney or on its own motion, may issue an order to show cause why the defendant should not be imprisoned for nonpayment. Unless the defendant shows that his default is excusable, the court may, after hearing, commit him to imprisonment until the fine, or costs, or both, are fully paid or discharged by labor as provided in N.D. Cent. Code § 40-18-12.

The court may not commit a person under this section when the sole reason for his nonpayment is his indigency. An order of commitment under this subsection shall not be for a period in excess of thirty (30) days.

12. Incidents of Probation.

- A. Unless terminated as provided in subsection 2, the period during which a sentence to probation shall remain conditional and be subject to revocation is two (2) years.
- B. The court may terminate a period of probation and discharge the defendant at any time earlier than that provided in subsection 1 if warranted by the conduct of the defendant and the ends of justice.
- C. Notwithstanding the fact that a sentence to probation can subsequently be modified or revoked, a judgment which includes such a sentence shall constitute a final judgment for all other purposes.

13. Conditions of Probation - Revocation.

- A. The conditions of probation shall be such as the court in its discretion deems reasonably necessary to ensure that the defendant will lead a law abiding life or to assist him to do so. The court shall provide as an explicit condition of every sentence to probation that the

defendant not commit another offense during the period for which the sentence remains subject to revocation.

- B. When imposing a sentence to probation, the court may impose such conditions as it deems appropriate, and may include any one or more of the following:
- a. Work faithfully at a suitable employment or faithfully pursue a course of study or of vocational training that will equip him for suitable employment;
  - b. Undergo available medical or psychiatric treatment and remain in a specified institution if required for that purpose;
  - c. Attend or reside in a facility established for the instruction, recreation, or residence of persons on probation;
  - d. Support his dependents and meet other family responsibilities;
  - e. Make restitution or reparation to the victim of his conduct for the damage or injury which was sustained, or perform other reasonable assigned work. When restitution, reparation, or assigned work is a condition of the sentence, the court shall proceed as provided in Section 1-0811;
  - f. Pay a fine imposed after consideration of the provisions of Section 1-0808;
  - g. Refrain from possessing a firearm, destructive device, or other dangerous weapon unless granted written permission by the court;
  - h. Refrain from excessive use of alcohol, or any use of narcotics or of another dangerous or abusable drug without a prescription;
  - i. Promptly notify the court of any change in address or employment;
  - j. Remain within the jurisdiction of the court, unless granted permission to leave by the court; and
  - k. Refrain from associating with known users or traffickers in narcotics, marijuana, or other controlled substances.
- C. When a defendant is sentenced to probation, he shall be given a certificate explicitly setting forth the conditions on which he is being released.
- D. The court may, upon notice to the probationer, modify or enlarge the conditions of a sentence to probation at any time prior to the expiration or termination of the period for which the sentence remains conditional. If the defendant violates a condition at any time prior to the expiration or termination of the period, the court may, pursuant to the procedure specified in N.D.R. Crim. P. 32(f), continue him on the existing sentence, with or

without modifying or enlarging the conditions, or, if such continuation, modification, or enlargement is not appropriate, may impose any other sentence that was available under Section 1-0805 at the time of initial sentencing.

- E. Jurisdiction over a probationer may be transferred from the court which imposed the sentence to another court of this state, with the concurrence of both courts. Retransfers of jurisdiction may also occur in the same manner. The court to which jurisdiction has been transferred under this subsection shall be authorized to exercise all powers permissible under this chapter over the defendant.

14. Restitution or Reparation - Procedures.

- A. Prior to imposing restitution or reparation as a sentence or condition of probation, the court shall hold a hearing on the matter with notice to the prosecuting attorney and to the defendant as to the nature and amount thereof. At or following the hearing, the court shall make determinations as to:
  - a. The reasonable damages sustained by the victim or victims of the criminal offense, which damages shall be limited to fruits of the criminal offense and expenses actually incurred as a direct result of the defendant's criminal action;
  - b. The ability of the defendant to restore the fruits of the criminal action or to pay monetary reparations, or to otherwise take action to restore the victim's property; and
  - c. The likelihood that attaching a condition relating to restitution or reparation will serve a valid rehabilitational purpose in the case of the particular offender considered.

The court shall fix the amount of restitution or reparation, which shall not exceed an amount the defendant can or will be able to pay, and shall fix the manner of performance of any condition or conditions of probation established pursuant to this subsection. Any payments made pursuant to such order shall be deducted from damages awarded in a civil action arising from the same incident. An order that a defendant make restitution or reparation as a sentence or condition of probation may, if the court directs, be filed, transcribed, and enforced by the person entitled to the restitution or reparation in the same manner as civil judgments rendered by the courts of this state may be enforced.

B. The court may order the defendant to perform reasonable assigned work as a condition of probation, which assigned work need not be related to the offense charged, but must not be solely for the benefit of a private individual other than the victim.

15. Merger of Sentences - Sentencing for Multiple Offenses.

A. Unless the court otherwise orders, when a person serving a term of commitment is committed for another offense or offenses, the shorter term or the shorter remaining term shall be merged in the other term. When a person on probation or parole for an offense committed in this state is sentenced for another offense or offenses, the period still to be served on probation or parole shall be merged in any new sentence of commitment or probation. When the court merges sentences under this subsection it shall forthwith furnish each of the other courts previously involved and the penal facility in which the defendant is confined under sentence with authenticated copies of its sentence, which shall cite the sentences being merged. If the court has imposed a sentence which is merged pursuant to this subsection, it shall modify such sentence in accordance with the effect of the merger.

B. A defendant may not be consecutively sentenced to more than one year.

16. Failure to Pay Fine or Appear in Court -- Criminal Offense. If a defendant willfully fails to pay any part of any fines, fees, costs, or restitution imposed by the Municipal Court of the City of Buffalo, or if a defendant fails to appear for any scheduled court appearance before the Municipal Court of the City of Buffalo, then, in addition to the procedures and penalties set forth in Section 11 hereof, the defendant shall be guilty of a separate offense pursuant to this section. Any person convicted under this section is guilty of a class B misdemeanor, regardless of whether the offense for which the defendant failed to pay any fines, fees, costs, or restitution, or for which the defendant failed to appear, is an infraction or a misdemeanor.

SECTION 2. Effective Date. This ordinance shall be in full force and effect from and after the date of its final passage and publication.

  
\_\_\_\_\_  
Mayor



ATTEST:

*Anita Howland*

City Auditor

Date of First Reading: *April 8, 2002*

Date of Second Reading: *May 6, 2002*

Date of Publication: *June 5, 2002*