

ORDINANCE NO. 1409

An ordinance amending Chapter 21 of the Code of the City of Jamestown, North Dakota by amending Section 21-04-06 which sets forth regulations governing persons operating a motor vehicle under the influence of intoxicating liquor, drugs or other substances in the City of Jamestown.

WHEREAS, the North Dakota Legislative Assembly has enacted new regulations to the offense of driving under the influence of intoxicating liquor or any other drugs or substances;

WHEREAS, to allow enforcement of 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 21-04-06, 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; or

- (iii) An onsite screening test, or tests, of the individual's breath for the purpose of estimating the alcohol concentration in the individual's breath upon the request of a law enforcement officer under Section 39-20-14 of the North Dakota Century Code.

The fact that 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, unless a drug which predominately caused impairment 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 subject to a chemical test, or tests, required under sections 39-06.2-10.2, 39-20-01, or 39-20-14 of the North Dakota Century Code, is guilty of an offense under this section.

(3) An individual violating this section 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 or may make a subsequent offense finding based on other evidence.

(4) Upon conviction of a second or subsequent offense within five (5) years under this section 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.

(4.1) Upon conviction of a second or subsequent offense within seven (7) years under this section 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 impounded for the duration of the period of suspension or revocation of the offender's driving privilege by the licensing authority. The impounded number plates must be sent to the director who must retain them for the period of suspension or revocation, subject to their disposition by the court. 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 this subsection. For purposes of this subsection, unless the context otherwise requires, "drug court program" means a district court-supervised treatment program approved by the supreme court which combines judicial supervision with alcohol and drug testing and chemical addiction treatment in a licensed treatment program. The supreme court may adopt rules, including rules of procedure, for drug courts and the drug court program.

- (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 twelve months' 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 court sentences an individual to the legal and physical custody of the department of corrections and rehabilitation, the department may place the individual in an alcohol treatment program designated by the department. Upon the individual's successful completion of the alcohol treatment program, the department shall release the individual from imprisonment to serve the remainder of the sentence of imprisonment on probation, which may include placement in another facility or treatment program. If an individual is placed in another facility or treatment program after release from imprisonment the remainder of the individual's sentence of imprisonment must be considered time spent in custody.

(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.

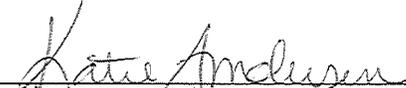
(7) As used in this title, participation in the twenty-four seven sobriety program under Chapter 54-12 means compliance with Sections 54-12-27 through 54-12-31 of the North Dakota Century Code, and requires sobriety breath testing twice per day seven days per week or electronic alcohol monitoring, urine 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.

(8) 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 Section 39-06.2-10.2, 39-20-01, or 39-20-14 of the North Dakota Century Code, is guilty of an offense under this section.

ATTEST:

APPROVED:

  
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Jeff Fuchs, City Administrator

  
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Katie Andersen, Mayor

Introduced by Council Member Brubakken  
Seconded by Council Member Kourajian  
First Reading: July 1, 2013  
Second Reading: July 26, 2013  
Final Passage: July 26, 2013

Consent Roll Call No. 1, Item 9, showed: 3 ayes, 0 nays, 2 absent.