

City Commission meetings are broadcast live on TV Fargo Channel 56 and online at www.FargoND.gov/streaming. They are rebroadcast Mondays at 5:00 p.m., Thursdays at 7:00 p.m. and Saturdays at 8:00 a.m. They are also included in the video archive at www.FargoND.gov/citycommission.

- A. Pledge of Allegiance.
- B. Roll Call.
- C. Approve Order of Agenda.
- D. Minutes (Regular Meeting, June 1, 2020).

CONSENT AGENDA – APPROVE THE FOLLOWING:

- 1. 2nd reading and final adoption of the following Ordinances; 1st reading, 6/1/20:
 - a. Rezoning Certain Parcels of Land Lying in the Proposed Simonson Companies Second Addition.
 - b. Rezoning a Certain Parcel of Land Lying in Osgood Townsite Eleventh Addition and Osgood Townsite Twelfth Addition.
 - c. Rezoning Certain Parcels of Land Lying in the Proposed Four Walls Addition.
 - d. Rezoning Certain Parcels of Land Lying in Egbert, O'Neil and Haggart's Addition.
 - e. Rezoning Certain Parcels of Land Lying in Brandt Crossing 14th Addition and Brandt Crossing 6th Addition.
 - f. Rezoning Certain Parcels of Land Lying in Asleson Industrial Park Third Addition.
 - g. Rezoning Certain Parcels of Land Lying in the Proposed Golden Valley Fourth Addition.
 - h. Rezoning Certain Parcels of Land Lying in Valley View Estates Addition.
- 2. Findings of Fact and Order, and Notice of Entry of Order for 114 15th Street South.
- 3. Site Authorizations for Games of Chance:
 - a. Prairie Public Broadcasting, Inc. at Slammer's Sports Bar and Grill.
 - b. Fargo Metro Baseball Association at Specks Bar.
- 4. Application for Games of Chance for United Way of Cass-Clay for a raffle board on 7/17/20.
- 5. Purchase Agreement with Barry N. Nelson (Project No. FM-19-A).
- 6. Change Order No. 3 for an increase of \$14,790.55 for Project No. SL-19-A1.
- 7. Rental Agreement with Fargo Moorhead Trailbuilders.
- 8. Amendment to Lease with the Fargo Park District (FM-16-A1).
- 9. North/South arterial band south of 52nd Avenue South for 38th Street South, as described.
- 10. Receive and file General Fund – Budget to Actual through May 2020 (unaudited).

- Page 12. Change in financial reporting for major operating funds from quarterly reporting to monthly reporting and receive and file the Financial Status Report through 5/31/20.
12. Purchase of Service Agreement with Northern Cass Public School District.
 13. Purchase of Service Agreement with Fargo Public School District.
 14. Notice of Grant Award – Restricted Funding with the ND Department of Health for PHEP – Statewide Response Team (CFDA #93.069).
 15. Notice of Grant Award – Restricted Funding with the ND Department of Health for PHEP/City Readiness Initiative (CFDA #93.069).
 16. Notice of Grant Award – Restricted Funding with the ND Department of Health for PHEP – EPR All Hazards Allocation (CFDA #93.069).
 17. Notice of Grant Award with the ND Department of Health for Local Public Health Unit Tobacco Prevention and Control Program.
 18. Subrecipient Agreement with Family HealthCare.
 19. Resolution Approving Contract Between MDM Construction, LLC and the City of Fargo on Gladys Ray Shelter Facilities Improvements Community Development Block Grant (HUD) and Contract with MDM Construction, LLC.
 20. Resolutions approving Plats for the following:
 - a. Aldevron First Addition.
 - b. Tice Addition.
 - c. Brunsdale Second Addition.
 21. Bid award for one loader mounted snow blower (RFP20107).
 22. Amendment to Contract No. 38191046 with the ND Department of Transportation for an extension of the completion date to 6/30/21.
 23. Contract for Services with Sentry Security, Inc.
 24. Change Order No. 1 for a time extension to 8/31/20 for Project No. WW1701.
 25. Sewer Agreement, Petition for Annexation and Memorandum of Sewer Agreement (Connection to Sewer Main of SE Cass Water Resource District and for Annexation into City of Fargo) with Rodney D. Ballinger and Susan N. Ballinger.
 26. Bills.
 27. Estimated payment in the amount of \$221,804.00 to Cass County Electric for the relocation of the utilities (Improvement District No. BN-21-A1).
 28. Change Order No. 1 for an increase of \$16,287.13 and time extension to the interim phase dates for Improvement District No. BR-20-E1.
 29. Change Order No. 4 for an increase of \$9,240.00 for Improvement District No. BN-19-F1.

- Page 30. Change Order No. 9 for an increase of \$43,641.91 and time extension to 7/31/18 for Improvement District No. BN-17-B1.
31. Negative Final Balancing Change Order No. 9 in the amount of -\$78,130.19 for Improvement District No. BN-17-A1.
 32. Negative Final Balancing Change Order No. 10 in the amount of -\$86,574.75 for Improvement District No. BN-17-B1.
 33. Bid award for Improvement District Nos. BN-20-H1, BN-20-K1 and SL-20-A1.
 34. Create Improvement District No. AN-20-B.
 35. Contracts and bonds for Improvement District Nos. BN-20-E1, BN-20-F1 and SL-20-E1.

REGULAR AGENDA:

36. COVID-19 Update:
 - a. Health Update.
37. Public Hearings - 5:15 pm:
 - a. WITHDRAWN - Hearing on a dangerous building located at 1007 8th Avenue North; continued from the 5/18/20 and 6/1/20 Regular Meetings.
 - b. Text Amendment to amend Section 20-0402(T)(3) and repeal Section 20-0403(C)(5)(e) of the Fargo Municipal Code (Land Development Code) relating to the prohibition of firearm and ammunition sales as a non-farm commercial use or as a home occupation; denial recommended by the Planning Commission on 5/5/20.
 - c. Amendments to the 2019 Action Plan/HOME Investment Partnerships Program.
 - d. Amendments to the 2018 Action Plan Community Development Block Grant (CDBG).
 - e. CONTINUE to 6/29/20 - Application for the Elliott Place 4 and 9 for a payment in lieu of tax exemption (PILOT) for a project located at 4462 30th Avenue South, which the applicant will use in the operation of providing affordable senior living rental property, serving low income households.
 - f. Application filed by Great Plains Kesler South Holdings, LLC for a payment in lieu of tax exemption (PILOT) for a project located at 617-621 1st Avenue North, which the applicant will use in the operation of leasing of residential apartments and commercial space.
38. Recommendation for the process of selecting the Fargo Police Chief.
39. Remarks and presentation from Commissioner Grindberg.

People with disabilities who plan to attend the meeting and need special accommodations should contact the Commission Office at 701.241.1310. Please contact us at least 48 hours before the meeting to give our staff adequate time to make arrangements.

Minutes are available on the City of Fargo website at www.FargoND.gov/citycommission.



Fargo Inspections

City of Fargo
225 Fourth Street North
701-241-1561
fax 701-241-1526



Memorandum

DATE: June 10, 2020
TO: Mayor Mahoney and Board of City Commissioners
FROM: Bruce Taralson, Inspections Director
SUBJECT: Dangerous Building Notice and Order at 1007 8 Avenue N., Fargo, ND

This memorandum is notification that the Owner of 1007 8 Avenue N., Fargo, is compliant with my order and has secured all necessary building permits to repair this structure. The original hearing was scheduled for 5/18/2020, a hearing continuance was granted to 6/1/2020 and again to 6/15/2020. Please consider this action as complete, no further action is required.

376

City of Fargo Staff Report			
Title:	Text Amendment	Date:	4-28-2020
Location:	N/A	Update:	6-11-2020
Owner(s)/Applicant:	City of Fargo/Zoning Administrator/Peter McDonald	Staff Contact:	Aaron Nelson
Engineer:	N/A		
Entitlements Requested:	Text Amendment (amend Section 20-0402(T)(3) and repeal Section 20-0403(C)(5)(e) of the Fargo Municipal Code (Land Development Code) relating to the prohibition of firearm and ammunition sales as a non-farm commercial use or as a home occupation)		
Status:	City Commission Public Hearing: June 15, 2020		

Proposed Text Amendment

The proposed text amendment would amend Section 20-0402(T)(3) and repeal Section 20-0403(C)(5)(e) of the Fargo Municipal Code (Land Development Code) relating to the prohibition of firearm and ammunition sales as a non-farm commercial use or as a home occupation. Specifically, the following edits are proposed to Section 20-0402.T of the LDC:

- 3. Prohibited Uses.** Dispatch Centers, ~~Firearms and Ammunition Sales~~ and Adult Entertainment Centers Uses as defined in Section 20-0403.C.5 are prohibited uses.

And the following edits are proposed to Section 20-0403.C of the LDC:

5. Prohibited Uses

a. Vehicle and Large Equipment Repair

Any type of repair or assembly of vehicles or equipment with internal combustion engines (such as autos, motorcycles, scooters, snowmobiles, outboard marine engines, lawn mowers, chain saws, and other small engines) or of large appliances (such as washing machines, dryers, and refrigerators) or any other work related to automobiles and their parts is prohibited.

b. Dispatch Centers

Dispatch centers, where employees come to the site to be dispatched to other locations, are not allowed as home occupations.

c. Mortuaries

Mortuaries are not allowed as home occupations.

d. Animal Care, Grooming, or Boarding Facilities

Animal care or boarding facilities are not allowed as home occupations. This includes animal hospitals, kennels, stables and all other types of animal boarding and care facilities. Dog grooming services are also included as prohibited animal care or boarding facilities; however, to the extent such services would otherwise qualify as a Minor Home Occupation, dog grooming services may be allowed upon application as provided in paragraph 2, regarding Minor Home Occupations, above. In no event may dog grooming be allowed as a Major Home Occupation.

~~e. Firearms and Ammunition Sales~~

~~The sale of firearms and/or ammunition, and the production of ammunition for sale or resale are prohibited as home occupations.~~

f. Adult Entertainment Center Uses

Entertainment or sale of goods defined as adult bookstore, adult cinema, adult entertainment facility, or adult entertainment center as defined in Sec. 20-1202 are not allowed as a home occupation.

Background

In order for an individual to legally sell firearms or ammunition, they must first obtain a Federal Firearms License (FFL) from the US Bureau of Alcohol, Tobacco, Firearms, & Explosives (ATF). The ATF administers the FFL application and approval process, and provides oversight for compliance with federal firearms regulations, including the Gun Control Act of 1968. The application review process involves background checks and interviews, among other things. While local jurisdictions do not approve or deny FFL applications, the ATF can deny an FFL application for failure to comply with state or local laws, including zoning laws.

On multiple occasions in past years, the City of Fargo has received requests from individuals seeking documentation of zoning compliance as part of the FFL application process. Based on the Fargo Land Development Code's prohibition of firearms and ammunition sales as a home occupation, staff has denied such requests for confirmation of zoning approval when such requests are for a private residence.

On one such occasion in 2016, an FFL applicant appealed staff's decision not to provide confirmation of zoning compliance for a firearm business as a home occupation. The appellant claimed that State law prohibits the City's ability to regulate firearm sales as a home occupation, citing North Dakota Century Code §62.1-01-03 (this section of the North Dakota Century Code is discussed further within the Staff Analysis section of this report, below).

This appeal of administrative decision was heard by the Fargo Board of Adjustment on May 24, 2016. For this appeal, the City Attorney provided a legal opinion regarding the appellant's claim. In summary, the City Attorney opined that under the current ordinance, the City of Fargo is exercising its right to regulate land use through zoning controls, which includes regulation of where various uses (including firearm sales) are allowed to take place, which is different than an ordinance directly regulating the sale of firearms and ammunition more restrictively than State law. A copy of this legal opinion is attached for reference. The Board of Adjustment ultimately denied the appeal, thus affirming staff's decision.

More recently, the question as to the validity of the City's prohibition of firearm and ammunition sales as a home occupation in relation to State law was raised by Commissioner Gehrig at the January 27, 2020 City Commission meeting. Some of the Commissioners noted having received calls and inquiries regarding this zoning provision. After some discussion, the Commission voted 3-2 to direct the Planning Department and City staff to review the history of this ordinance and to initiate an LDC text amendment to remove this prohibition on firearm and ammunition sales from the LDC.

Around this same time, the City of Fargo also received an LDC text amendment application from Peter McDonald to remove the prohibition on firearm and ammunition sales from the LDC. As such, this text amendment proposal is both City-initiated and citizen-initiated, with the City of Fargo and Mr. McDonald being co-applicants.

Upon initial review of the LDC in relation to the current prohibition of firearm and ammunition sales as a home occupation, staff found that a similar prohibition exists for non-farm commercial uses within the AG (Agricultural) zoning district, as outlined earlier in this staff report. As they are similar prohibitions with similar concerns, staff has included both of these sections within the proposed text amendment to remove these prohibitions from the LDC.

History of the Existing Ordinances:

The current Land Development Code was rewritten and adopted by the City in 1998. Within the LDC, home occupations are considered to be an accessory use that is subordinate to the principle use of household living. While there is no list of specific allowable home occupations, the LDC contains *performance standards*, which outline specific limitations and parameters that home occupations must abide by. For example, limitations on hours of operation, customers, employees, exterior appearance of the home, etc. Additionally, the 1998 Land Development code expressly prohibited four different uses from being operated as a home occupation:

- 1) Vehicle and large equipment repair;
- 2) Dispatch centers;
- 3) Mortuaries; and

4) Animal care or boarding facilities.

Any other uses would have been allowed as a home occupation as long as the use complied with all of the home occupation performance standards of the LDC and any other applicable regulations.

In the years following the adoption of the LDC, there were many text amendments made as the new code was implemented and problem areas were ironed out. One such problem area was related to the large number of applications for home occupations that the City was receiving and processing via Conditional Use Permit (CUP). At the time, a CUP was required if a home occupation were to have any customers coming to the home.

Consequently, in 2000-2001, there was an effort to modify the home occupation regulations of the LDC to allow more types of home occupations by right, without requiring a CUP and the associated public hearing process. This effort culminated primarily in the adoption of Ordinance No. 4180. Specifically, this ordinance allowed home occupations a limited number of customer visits, by right, and also added two new uses to the list of prohibited home occupations:

- 1) Firearms and Ammunition Sales; and
- 2) Adult Entertainment Center Uses.

A copy of Ordinance No. 4180 is attached to this staff report, along with the cover memo that accompanied the amendment application at the time. Meeting minutes from the first reading of the ordinance at the July 9, 2001 City Commission meeting and the June 13, 2001 Planning Commission meeting, where this text amendment was discussed, do not specifically reference firearms and ammunition sales.

A few years later, in 2007, there was a push to review policies and regulation regarding development within the City's extraterritorial area in order to allow additional flexibility and oversight for limited development within the City's growth area. This effort resulted in the adoption of Ordinance No. 4613, which added the "non-farm commercial" use category to the LDC. In summary, that ordinance provided an option for commercial use within the AG (Agricultural) zoning district via the Conditional Use Permit process. Along with establishing the non-farm commercial use category, the ordinance also included a list of prohibited uses, including:

- 1) dispatch centers;
- 2) firearms and ammunition sales; and
- 3) adult entertainment centers.

The meeting minutes of the June 13, 2007 Planning Commission meeting and the July 2, 2007 City Commission meeting contain no reference to any discussion relating to the prohibition of firearms and ammunition sales. A copy of Ordinance No. 4613 is attached to this staff report, along with the staff report that accompanied the amendment application for the July 2, 2007 City Commission meeting.

Staff Analysis:

In reviewing the proposed LDC text amendment, staff has reached out to the Bureau of Alcohol, Tobacco, Firearms, & Explosives (ATF) regarding federal firearm and ammunition sales regulations. According to the ATF:

- The Gun Control Act of 1968 is administered by the ATF, including regulation of federal firearm licenses (FFL) for firearm and ammunition sales.
- Under federal law, any person who engages in the business of dealing in firearms must be licensed.
- In some limited cases, an FFL is not required for an individual to sell a firearm. For example, an individual who occasionally sells a firearm from their personal collection. (Similar to how individuals might occasionally sell a personal used car, but are not considered to be used car dealers.)
- FFL is required even if only dealing in firearms over the internet or at temporary locations such as gun shows.
- FFL applicants are required to supply photos and fingerprints, undergo an on-site inspection of the business premises, interview, complete an acknowledgement of federal firearm regulations with the ATF, and undergo a background check through the Federal Bureau of Investigation's (FBI) National Instant Criminal Background Check System (NICS).
- FFLs can be denied by the ATF for non-compliance with state or local laws. (Although confirming zoning compliance with the local zoning authority may be a relatively newer practice.)
- FFLs must be renewed with the ATF every three years.

- There are approximately seven home based FFL's currently in Fargo—one of which dates back to 1976.

In speaking with a representative of the ATF, when asked, the only two considerations they suggested for home-based sales versus retail-based sales relate to 1) gun storage and security and 2) manufacturing of ammunition. It was noted that gun theft from home invasion is one of the ways in which firearms are illegally obtained. Some states have regulations for gun storage and security associated with retail stores, but most often those same regulations don't apply to non-retail sales. The ATF does require secure gun storage or safety devices for all FFL dealers, which can include something like a trigger lock or a gun safe. Regarding ammunition manufacturing, it was noted that due to the presence of explosive material, there should be some consideration regarding Fire Code provisions.

The Fargo Police Chief noted that the Police Department has had zero issues with FFL dealers in the past, and that the Police Department has no concerns if the City were to approve this text amendment removing the prohibition of firearm and ammunition sales for the LDC. It was noted that most of the FFL dealer's business is related to the paperwork involved in transfer of ownership and that these individuals are extensively backgrounded by the federal government.

During the initial review of the proposed LDC text amendment, the Building Inspections and Fire departments both raised concerns regarding the potential for storage of large quantities of explosive materials associated with ammunition manufacturing. It was discussed that these safety concerns exist regardless of whether or not the ammunition manufacturing is taking place for purpose of sales to the public or for personal use. The manufacturing or reloading of ammunition for personal use would not be considered a home occupation and would not require an FFL from the ATF. The Fire Code currently contains provisions for the handling and storage of explosive materials, including limitations on the quantities that may be within the property. One concern raised is that existing Fire Code regulations such as these are much easier to inspect and enforce in a retail setting as opposed to a home-business setting, where there is a higher expectation of privacy. The Fire Department does not conduct routine inspections of home occupation business, except where required for certain types of licensing. However, those conducting business from their home need to be aware that these Fire Codes still apply.

In addition to City staff, the ATF plans on having a representative attend the June 15 City Commission meeting. Additionally, the ATF has provided a number of resources for additional information, one of which is attached for reference.

Discussion on the Second Amendment, State Law, the LDC, & Restrictive Covenants

Second Amendment

The Second Amendment to the United States Constitution reads:

"A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."

It should be noted that zoning regulations affecting firearm and ammunition sales do not regulate individual rights to own firearms and ammunition. US Courts have drawn a distinction between regulating the use of property for sales versus Second Amendment rights to keep and bear arms. Specifically, the US Court of Appeals for the Ninth Circuit, in *Teixeira v. County of Alameda*, held that zoning requirements of Alameda County, CA regarding suitable locations for gun shops did not infringe on Second Amendment rights of their potential customers, and that there is no freestanding right conferred by the Constitution on commercial proprietors to sell firearms.

State Law

As has been noted by many parties in recent years, North Dakota Century Code §62.1-01-03 places limitations on the authority of political subdivisions, such as the City of Fargo, to enact any ordinance relating to the sale of firearms and ammunition, stating:

“62.1-01-03. Limitation on authority of political subdivision regarding firearms.

A political subdivision, including home rule cities or counties, may not enact any ordinance relating to the purchase, sale, ownership, possession, transfer of ownership, registration, or licensure of firearms and ammunition which is more restrictive than state law. All such existing ordinances are void.”

The question as to this statute’s implications on the LDC’s regulation on the location of firearm and ammunition sales was evaluated by staff, the City Attorney, and the Board of Adjustment in 2016, as detailed in the previous section, above.

Land Development Code

The Land Development Code currently regulates all home occupations, as described within Section 20-0403.C. This section contains performance requirements for all home occupations, including limitations on number of customers, exterior appearance, outdoor activities, signage, deliveries, vehicles, and operational impacts to adjacent properties. It should be noted that this section includes the following language: “No hazardous substances may be used or stored in conjunction with a home occupation.” While there is no definition of “hazardous substance” within the LDC, this term would be interpreted by staff to include gunpowder and similar explosive substances involved in the manufacturing of ammunition. In which case, manufacturing of ammunition would still be prohibited as a home occupation even if the proposed text amendment were to be approved. As such, if the intent is to allow the manufacturing of ammunition as a home occupation, there would need to be additional amendments made to the current text of the LDC.

The LDC contains two classifications of home occupations: *minor* home occupations and *major* home occupations. The primary difference between the two is that major home occupations require approval of the Fargo Planning Commission via Conditional Use Permit in order to exist, whereas minor home occupations are permitted by right, provided they comply with all of the performance standards outlined within the LDC. Major home occupations are allowed some additional latitude in terms of a non-resident employee and additional number of customer visits per day.

If the proposed text amendment were to be approved, the sale of firearms and ammunition from a residence would be considered a home occupation and would still need to meet all of the performance standards outlined within the LDC, just like any other home-based business would. Additionally, firearm and ammunition sales would be eligible as a conditional use within the AG (Agricultural) zoning district, as a type of non-farm commercial use. It should be noted that other types of retail sales are not prohibited as a home occupation or non-farm commercial use, and that the LDC does not regulate the number of firearms or the amount of ammunition that individuals or households privately own or store within their home.

Restrictive Covenants

Lastly, it should be mentioned that private agreements, such as development covenants, conditions, or restrictions, are a form of property rights that are often used to control allowable land uses, among other things. As such, these types of private agreements are another avenue by which the sale of firearms and ammunition might be regulated, independent from municipal ordinance.

Discussion on Staff Recommendations

Staff has prepared this staff report based on direction from the City Commission at their regular meeting of January 27, 2020. The criteria and recommendation below are formatted in such a way so that the Planning Commission and City Commission are able to take action to approve this amendment to the LDC if so desired.

However, it is recognized that there are multiple positions and options available regarding this topic. As such, staff has identified a few such alternative options for consideration here as well:

- Amend the LDC to remove the prohibition of firearm and ammunition sales as outlined within this staff report
- Amend the LDC to remove specific references to firearm and ammunition sales, and to add language relating to specific safety concerns, such as explosive materials.
- Leave the LDC as-is and continue to use zoning to regulate the land use of firearm and ammunition sales.

Regardless of which direction the Planning Commission or City Commission would like to go, staff is available to provide any additional research, resources, or alternative LDC language for additional consideration.

Approval Criteria

In accordance with §20-0904.E Review Criteria of the Land Development Code, proposed text amendments that satisfy all of the following criteria may be approved.

- 1. The amendment must be consistent with the purpose of this Land Development Code;**
Section 20-0104 of the LDC stipulates that the purpose and intent of the Land Development Code is to implement Fargo's Comprehensive Plan and related policies in a manner that protects the health, safety, and general welfare of the citizens of Fargo. The ability to establish zoning regulations to protect health, safety, and general welfare is granted to the City by the State of North Dakota. The proposed amendment is consistent with the intent and purpose of the LDC because it seeks to align the LDC with State statutes regarding the sale of firearms and ammunition. **(Criteria Satisfied)**
- 2. The amendment must not adversely affect the public health, safety, or general welfare;**
Staff finds that the amendment does not adversely affect the public health, safety, or general welfare. The proposed amendment is intended to align the LDC with State statutes regarding the sale of firearms and ammunition. Staff has no evidence to suggest the proposed amendment would adversely affect the public health, safety, or general welfare. **(Criteria Satisfied)**
- 3. The amendment is necessary because of changed or changing social values, new planning concepts or other social or economic conditions in the areas affected.**
Staff finds that the proposed amendment is necessary because of social values and conditions relating to State law. As described above, the proposed amendment seeks to align the LDC with State statutes regarding the sale of firearms and ammunition. **(Criteria Satisfied)**

Update 6/11/20:

At the May 5, 2020 Planning Commission meeting there was much discussion regarding the proposed LDC text amendment, including comments from the public. During the public hearing, comments were heard from five interested citizens. The three individuals in favor of the proposed text amendment (including the co-applicant) currently held, or were looking to acquire, an FFL. They emphasized the services provided by individual FFL holders that are not provided by retail FFL holders, such as facilitating shipping of internet sales, processing of sales between individuals, processing of firearm transfers from an estate or inheritance, etc. Additionally, regarding concerns raised in relation to neighboring residents, it was noted that existing retail firearm sales businesses within Fargo (e.g. Scheels, Fleet Farm, Walmart) are located adjacent to high-density residential neighborhoods, and it was asserted that three quarters of FFLs in North Dakota are home-based. Lastly, there were concerns regarding the legality of the City's current prohibition on firearm and ammunition sales in relation to the North Dakota Century Code.

Two citizens provided comments in opposition to the proposed text amendment, and raised concerns regarding safety. Specifically, comments related to not wanting to make it more convenient to acquire firearms, concerns with home invasion or accidents associated with FFL home occupations, and questions as to the types of weapons that could be sold, types of customers coming to the home, and proximity to schools. A written copy of this comment is attached. In addition, after the Planning Commission meeting, staff received a letter of opposition to the proposed

text amendment from the Fargo Neighborhood Coalition and the Downtown Neighborhood Association, which is also attached to this staff report.

In follow up to concerns raised regarding the legality of existing ordinances, the City Attorney sought additional legal analysis on this matter from Greene Espel Law Firm. Attorneys with this law firm opined that the current prohibition on firearm and ammunition sales as a home occupation likely does not violate the North Dakota Century Code or the Second Amendment, and that modifications to the current ordinance also would not violate these laws. Their legal analysis is outlined within the attached memorandum.

In terms of discussion amongst the Planning Commissioners at the May 5 meeting, one topic of particular interest was in regards to the manufacturing and sale of ammunition. Specifically, Planning Commissioners seemed to express a higher level of concern relating to the manufacturing of ammunition (as opposed to sales of firearms), due to the presence of explosive material. To this end, staff seeks to provide further clarity in terms of recommended action. As noted within this staff report, the existing home occupation section of the LDC states that, "No hazardous substances may be used or stored in conjunction with a home occupation." Since the term "hazardous substances" is not defined within the LDC, an administrative determination is necessary as it relates to firearms and ammunition. While there is no definition with the LDC, staff has found one such definition within Chapter 19-21 (Labeling of Hazardous Substances) of the North Dakota Century Code, in addition to similar definitions for "Hazardous Materials" and "Physical Hazard" within the Fire Code:

HAZARDOUS MATERIALS: Those chemicals or substances which are physical hazards or health hazards as defined and classified in this chapter, whether the materials are in usable or waste condition.

PHYSICAL HAZARD: A chemical for which there is evidence that it is a combustible liquid, cryogenic fluid, explosive, flammable (solid, liquid or gas), organic peroxide (solid or liquid), oxidizer (solid or liquid), oxidizing gas, pyrophoric (solid, liquid or gas), unstable (reactive) material (solid, liquid or gas) or water-reactive material (solid or liquid).

Lastly, "substance" can be defined as, "a particular kind of matter with uniform properties." Based on these definitions, staff would consider gunpowder to be a "hazardous substance" and therefore prohibited from being used or stored in conjunction with a home occupation. This means that staff would not permit the manufacturing of ammunition as a home occupation, since it involves the handling of gun powder—a hazardous substance.

Regardless of the wording or interpretation of the current ordinance, staff would emphasize that any proposed text amendment would be tailored to match the specific desires of the City Commission. To this end, staff would recommend that discussion be focused primarily on what type of activities the City would like to allow as a home occupation.

In closing, staff would note that the Planning Commission recommends that the proposed text amendment be denied by the City Commission. Despite the Planning Commission's recommendation, the review criteria and staff recommendation within this staff report have been formatted in such a way so that the City Commission is able to take action to approve this amendment to the LDC if so desired.

Staff Recommendation:

Suggested Motion "To accept the findings and recommendations of staff and hereby approve the proposed text amendment to Section 20-0402(T)(3) and Section 20-0403(C)(5)(e) of the Fargo Municipal Code (Land Development Code) relating to the prohibition of firearm and ammunition sales as a non-farm commercial use or as a home occupation, as the proposal meets the approval criteria of §20-0904.E(1-3) of the Land Development Code, and hereby direct the City Attorney to draft the text amendment ordinance."

Planning Commission Recommendation: May 5, 2020

On May 5, 2020, by a vote of 5-3 with 2 Commissioners absent, the Planning Commission recommended denial to the City Commission of the proposed text amendment to Section 20-0402(T)(3) and Section 20-0403(C)(5)(e) of

the Fargo Municipal Code (Land Development Code) relating to the prohibition of firearm and ammunition sales as a non-farm commercial use or as a home occupation.

Attachments:

1. Section 20-0402.T & 20-043.C of the Land Development Code with proposed amendments
2. Item 30 from the Jan 27, 2020 City Commission meeting materials relating to discussion on the current restrictions on firearm and ammunition sales within the LDC
3. City Attorney's legal opinion from 2016 Appeal of Administrative Decision relating to firearm sales as a home occupation
4. Ordinance No. 4180 & Staff Cover Memo from 2001 relating to Home Occupations
5. Ordinance No. 4613 & Staff Report from 2007 relating to Non-farm Commercial Uses
6. ATF Publication – *Do I need a license to buy and sell firearms?*
7. Memo from Greene Espel Law Firm
8. Planning Department FAQs
9. Public Comments

§20-0402 - Use Standards

T. Non-farm Commercial Uses

1. A Non-farm Commercial Use shall not be allowed unless it has been reviewed and approved in accordance with the Conditional Use Review procedures of Sec. 20-0909. In acting upon Conditional Use Permit requests for such use, the Planning Commission shall consider the following factors:
 - a. The factors identified in Section 20-0909 (Conditional Use Permits).
 - b. Whether adequate facilities and services including, but not limited to, sewage and waste disposal, domestic water, building construction and inspection, flood protection, gas, electricity, police and fire protection, and roads, as may be applicable are adequate under the circumstances. As part of the application for the Conditional Use Permit, the Zoning Administrator may require the applicant to obtain written comment from such facility and service providers as may be applicable.
2. The City Planner shall provide written notice of the Planning Commission public hearing in accordance with Section 20-0901-F except that the written notice shall be mailed to property owners within one (1) mile of the subject property. Notice of the Planning Commission's public hearing shall be published in accordance with Section 20-0901-F.
3. **Prohibited Uses.** Dispatch Centers, ~~Firearms and Ammunition Sales~~ and Adult Entertainment Centers Uses as defined in Section 20-0403.C.5 are prohibited uses.
4. Unless otherwise expressly stated, Conditional Use Permits for Non-farm Commercial uses granted pursuant to Section 20-0909 shall automatically terminate upon sale or transfer of the property.

§20-0403 – Accessory Uses

C. Home Occupations

Many types of work can be conducted at home with little or no effect on the surrounding neighborhood. The home occupation regulations of this section are intended to permit residents to engage in home occupations, while ensuring that home occupations will not be a detriment to the character and livability of the surrounding neighborhood. The regulations require that home occupations (an accessory use) remain subordinate to the allowed principal use (household living) and that the residential viability of the dwelling unit is maintained.

1. **Types of Home Occupations**
There are two types of home occupations - Major Home Occupations and Minor Home Occupations. Both types are considered an accessory use to an allowed household living use. Unless otherwise expressly stated, the regulations of this Land Development Code apply to both types of home occupations.
2. **Minor Home Occupations - Defined**
A Minor Home Occupation is one in which residents use up to 25 percent of the floor area of their home as a place of work, but in which no employees come to the site. Minor Home Occupations allow up to four customers per day, with a maximum of 12 customers per week, only between the hours of 7:00 a.m. and 9:00 p.m. No more than one customer is permitted on the site at any given time. Examples include, but are not limited to, artists, crafts people, writers, professional consultants personal care and grooming services, and employees of off-site businesses who work from their home. In addition, tutors, such as

piano or other music teachers, who provide lessons to no more than 60 students per week and do not have non-resident employees coming to the site, shall be deemed minor home occupations. In addition, dog grooming services that would qualify as a Minor Home Occupation as a result of percentage of floor area of the home, customer activity and hours of operation may be allowed after it has been reviewed and approved in accordance with Conditional Use Review procedures of Sec. 20-0909. Unless otherwise expressly stated, any Conditional Use Permit for such dog grooming service granted pursuant to Section 20-0909 shall automatically terminate upon sale or transfer of the property. For purposes of calculating floor area of a minor or major home occupation in which the home occupation occupies a garage that is attached or detached from the primary home structure, the sum of the home and garage square footage shall be included in the total square footage from which the 25 percent maximum floor area is computed.

3. **Major Home Occupations - Defined**

A Major Home Occupation is one in which residents use up to 25 percent of the floor area of their home as a place of work and that has a nonresident employee and/or customers coming to the site. Examples are counseling, tutoring, and hair cutting and styling.

4. **Allowed Uses**

The home occupation regulations of this Land Development Code establish performance standards for accessory home occupations rather than defining a list of allowed home occupations. Uses that comply with all of the standards of this section will be allowed as home occupations unless they are specifically prohibited.

5. **Prohibited Uses**

a. **Vehicle and Large Equipment Repair**

Any type of repair or assembly of vehicles or equipment with internal combustion engines (such as autos, motorcycles, scooters, snowmobiles, outboard marine engines, lawn mowers, chain saws, and other small engines) or of large appliances (such as washing machines, dryers, and refrigerators) or any other work related to automobiles and their parts is prohibited.

b. **Dispatch Centers**

Dispatch centers, where employees come to the site to be dispatched to other locations, are not allowed as home occupations.

c. **Mortuaries**

Mortuaries are not allowed as home occupations.

d. **Animal Care, Grooming, or Boarding Facilities**

Animal care or boarding facilities are not allowed as home occupations. This includes animal hospitals, kennels, stables and all other types of animal boarding and care facilities. Dog grooming services are also included as prohibited animal care or boarding facilities; however, to the extent such services would otherwise qualify as a Minor Home Occupation, dog grooming services may be allowed upon application as provided in paragraph 2, regarding Minor Home Occupations, above. In no event may dog grooming be allowed as a Major Home Occupation.

~~e. **Firearms and Ammunition Sales**~~

~~The sale of firearms and/or ammunition, and the production of ammunition for sale or resale are prohibited as home occupations.~~

f. **Adult Entertainment Center Uses**

Entertainment or sale of goods defined as adult bookstore, adult cinema, adult entertainment facility, or adult entertainment center as defined in Sec. 20-1202 are not allowed as a home occupation.

6. **Signs**

No more than one sign shall be allowed on the site of a home occupation. The maximum

size of the sign shall be one square foot. It may not be illuminated, and it must be attached to the dwelling unit.

7. **Outdoor Activities**

All activities and storage areas must be conducted in completely enclosed structures.

8. **Exterior Appearance**

There may be no change in the exterior appearance of the dwelling unit that houses the home occupation or the site upon which it is conducted that will make the dwelling appear less residential in nature or function. Examples of such prohibited alterations include construction of parking lots, paving of required setbacks, or adding commercial-like exterior lighting. There may be no visible evidence of the conduct of a home occupation when viewed from the street right-of-way or from an adjacent lot.

9. **Operational Impacts**

No home occupation or equipment used in conjunction with a home occupation may cause odor, vibration, noise, electrical interference or fluctuation in voltage that is perceptible beyond the lot line of the lot upon which the home occupation is conducted. No hazardous substances may be used or stored in conjunction with a home occupation.

10. **Trucks and Vehicles**

No truck or van with a payload rating of more than 1 ton may be parked at the site of a home occupation, and no more than one truck or van with a payload rating of less than 1 ton is allowed at the site of a home occupation.

11. **Deliveries**

Deliveries or pick-ups of supplies or products associated with business activities are allowed only between 8 a.m. and 6 p.m. Vehicles used for delivery and pick-up are limited to those normally servicing residential neighborhoods.

12. **Major Home Occupations**

The following regulations apply only to Major Home Occupations.

a. **Conditional Use Permits**

No Major Home Occupation is allowed unless it has been reviewed and approved in accordance with Conditional Use Review procedures of Sec. 20-0909. Unless otherwise expressly stated, any Conditional Use Permit for such Major Home Occupation granted pursuant to Section 20-0909 shall automatically terminate upon sale or transfer of the property.

b. **Employees**

A maximum of one nonresident employee is allowed with a Major Home Occupation provided no customers come to the site. Major Home Occupations that have customers coming to the site are not allowed to have nonresident employees. For the purpose of this provision, the term "nonresident employee" includes an employee, business partner, co-owner, or other person affiliated with the home occupation, who does not live at the site, but who visits the site as part of the home occupation.

c. **Customers**

Customers may visit the site only during the hours of 7 a.m. to 9 p.m., and no more than 12 customers or clients may visit the site in any single day.

d. **Number**

No more than one Major Home Occupation may be conducted on a single site. A Minor Home Occupation may be conducted on the site of a Major Home Occupation.



(30)

Office of the City Attorney

City Attorney
Erik R. Johnson

Assistant City Attorney
Nancy J. Morris

January 23, 2020

Board of City Commissioners
City Hall
225 4th Street North
Fargo, ND 58102

RE: Proposed elimination of Firearm and Ammunition Sales as prohibited home occupation

Dear commissioners,

The City's Land Development Code (LDC) currently prohibits the sale of firearms as a home occupation. Commissioner Gehrig has received inquiry regarding this prohibition and he asks that the City Commission review this particular provision of the LDC, and consider repealing the prohibition. Of course, such repeal would occur by an amendment of the LDC by the City Commission after the Planning Commission has held a public hearing on the matter and submitted its recommendation to the City Commission. Commissioner Gehrig asked that I placed this letter before you for your consideration.

Traditional, old-style city zoning laws prohibit virtually all commercial activities in residentially-zoned areas with certain professions being carved out as a permitted "accessory use" to the residential use of the property. Thus, dentists, doctors, chiropractors, massage therapists, lawyers, morticians and such were able to practice their profession out of their personal residences under the traditional "home occupation" definition. You are probably aware that the City undertook a major re-write of the City's zoning laws and subdivision requirements in the mid-1990s, culminating in the adoption of the Land Development Code in 1998. With the new LDC, the City's "home occupation" rules were converted from the traditional model to a more "functional assessment" model--one by which home occupations were placed into one of two categories: Minor Home Occupations and Major Home Occupations. A Minor Home Occupations allowed use of the home for any occupation so long as no employees or customers come to the site and provided the occupation consumed less than one-fourth of the floor area of the home. Such Minor Home Occupations were permitted by right--there was no need for a hearing or special approval in advance. Home occupations other than "Minor" fell into the Major Home Occupation category. Major Home Occupations



must first be approved by the Planning Commission, after an application is filed, notice is given to neighboring property owners and a public hearing is held. Certain occupations are completely prohibited. Those include vehicle repair, dispatch centers, mortuaries and animal care and boarding facilities. In 2001, the City's Home Occupation law was revised and firearm sales and ammunition sales were added to the list of prohibited occupations. City of Fargo Ordinance No. 4180 (Aug. 6, 2001).

The City's current home occupation law is set forth in the appendix to this letter, attached with the relevant portion, dealing with firearms and ammunition sales, being provided as follows:

5. Prohibited Uses

* * *

- e. Firearms and Ammunition Sales. The sale of firearms and/or ammunition, and the production of ammunition for sale or resale are prohibited as home occupations.

Should the City Commission wish to review the treatment of firearms and or ammunition sales as a prohibited home occupation, I recommend that the Commission refer the matter to the Planning Department as a proposed text amendment to the Land Development Code (as provided under LDC §20-0904) and to direct the City Attorney to work with the Planning Department regarding such process.

SUGGESTED MOTION: I move to authorize and direct the Planning Department to initiate a text amendment to the Land Development Code to amend Fargo Municipal Code (LDC) Section 20-0403, regarding Accessory Uses, to revise or eliminate the prohibition of firearms and ammunition sales as a home occupation and to direct the City Attorney to work with the Planning Department for such purposes.

Sincerely,



Erik R. Johnson

Enclosure

APPENDIX TO CITY ATTORNEY LETTER TO CITY COMMISSION

LDC §20-0403. Accessory Uses.

* * *

C. Home Occupations

Many types of work can be conducted at home with little or no effect on the surrounding neighborhood. The home occupation regulations of this section are intended to permit residents to engage in home occupations, while ensuring that home occupations will not be a detriment to the character and livability of the surrounding neighborhood. The regulations require that home occupations (an accessory use) remain subordinate to the allowed principal use (household living) and that the residential viability of the dwelling unit is maintained.

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There are two types of home occupations - Major Home Occupations and Minor Home Occupations. Both types are considered an accessory use to an allowed household living use. Unless otherwise expressly stated, the regulations of this Land Development Code apply to both types of home occupations.

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Any type of repair or assembly of vehicles or equipment with internal combustion engines (such as autos, motorcycles, scooters, snowmobiles, outboard marine engines, lawn mowers, chain saws, and other small engines) or of large appliances (such as washing machines, dryers, and refrigerators) or any other work related to automobiles and their parts is prohibited.

b. Dispatch Centers

Dispatch centers, where employees come to the site to be dispatched to other locations, are not allowed as home occupations.

c. Mortuaries

Mortuaries are not allowed as home occupations.

d. Animal Care, Grooming, or Boarding Facilities

Animal care or boarding facilities are not allowed as home occupations. This includes animal hospitals, kennels, stables and all other types of animal boarding and care facilities. Dog grooming services are also included as prohibited animal care or boarding facilities; however, to the extent such services would otherwise qualify as a Minor Home Occupation, dog grooming services may be allowed upon application as provided in paragraph 2, regarding Minor Home Occupations, above. In no event may dog grooming be allowed as a Major Home Occupation.

e. Firearms and Ammunition Sales

The sale of firearms and/or ammunition, and the production of ammunition for sale or resale are prohibited as home occupations.

f. Adult Entertainment Center Uses

Entertainment or sale of goods defined as adult bookstore, adult cinema, adult entertainment facility, or adult entertainment center as defined in Sec. 20-1202 are not allowed as a home occupation.

6. Signs

No more than one sign shall be allowed on the site of a home occupation. The maximum size of the sign shall be one square foot. It may not be illuminated, and it must be attached to the dwelling unit.

7. Outdoor Activities

All activities and storage areas must be conducted in completely enclosed structures.

8. Exterior Appearance

There may be no change in the exterior appearance of the dwelling unit that houses the home occupation or the site upon which it is conducted that will make the dwelling appear less residential in nature or function. Examples of such prohibited alterations include construction of parking lots, paving of required setbacks, or adding commercial-like exterior lighting. There may be no visible evidence of the conduct of a home occupation when viewed from the street right-of-way or from an adjacent lot.

9. Operational Impacts

No home occupation or equipment used in conjunction with a home occupation may cause odor, vibration, noise, electrical interference or fluctuation in voltage that is perceptible beyond the lot line of the lot upon which the home occupation is conducted. No hazardous substances may be used or stored in conjunction with a home occupation.

10. Trucks and Vehicles

No truck or van with a payload rating of more than 1 ton may be parked at the site of a home occupation, and no more than one truck or van with a payload rating of less than 1 ton is allowed at the site of a home occupation.

11. Deliveries

Deliveries or pick-ups of supplies or products associated with business activities are allowed only between 8 a.m. and 6 p.m. Vehicles used for delivery and pick-up are limited to those normally servicing residential neighborhoods.

12. Major Home Occupations

The following regulations apply only to Major Home Occupations.

a. Conditional Use Permits

No Major Home Occupation is allowed unless it has been reviewed and approved in accordance with Conditional Use Review procedures of Sec. 20-0909. Unless otherwise expressly stated, any Conditional Use Permit for such Major Home Occupation granted pursuant to Section 20-0909 shall automatically terminate upon sale or transfer of the property.

b. Employees

A maximum of one nonresident employee is allowed with a Major Home Occupation provided no customers come to the site. Major Home Occupations that have customers coming to the site are not allowed to have nonresident employees. For the purpose of this provision, the term "nonresident employee" includes an employee, business partner, co-owner, or other person affiliated with the home occupation, who does not live at the site, but who visits the site as part of the home occupation.

c. Customers

Customers may visit the site only during the hours of 7 a.m. to 9 p.m., and no more than 12 customers or clients may visit the site in any single day.

d. Number

No more than one Major Home Occupation may be conducted on a single site. A Minor Home Occupation may be conducted on the site of a Major Home Occupation.



Office of the City Attorney

City Attorney
Erik R. Johnson

Assistant City Attorney
Nancy J. Morris

April 18, 2016

Jim Gilmour
Director of Planning and Development
City Hall
200 Third Street North
Fargo, ND 58102

RE: Appeal to Andrew Curtis to Board of Adjustment-Home Occupations

Dear Mr. Gilmour:

This opinion concerns Andrew Curtis' appeal to the Board of Adjustment of the City of Fargo, North Dakota, to hear and decide an appeal of a decision made by an administrative official of the City of Fargo.

Factual and Procedural Background

Andrew Curtis is a Fargo resident residing at 3420 Birdie Street North in the City of Fargo. Mr. Curtis is attempting to obtain a federal firearm license from the Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF") in order to process internet firearm sale transactions from his residence in the City of Fargo. Mr. Curtis has described the contemplated business operating in the following manner: a buyer would order the firearm online and the firearm would be shipped to the Mr. Curtis's residence. The buyer would then proceed to Mr. Curtis's residence where the buyer would complete necessary paperwork and a background check for the firearm transaction. Once all of the paperwork and other federal requirements were satisfied, Mr. Curtis would provide the buyer with the firearm at his residence. In short, Mr. Curtis wishes to sell firearms out of his residence in the City of Fargo.

The ATF raised concerns to Mr. Curtis about the City of Fargo's zoning ordinances prohibiting the home occupation of selling firearms. Thereafter, Mr. Curtis requested



permission from a City of Fargo administrative official to operate his contemplated business as a home occupation (i.e., from his residence). The administrative official informed Mr. Curtis that Mr. Curtis cannot operate an internet firearm sales business from his residence as Fargo Municipal Code Ordinance § 20-0403(C)(5)(e) prohibits the sale of firearms and/or ammunition as a home occupation.

On March 9, 2016, Mr. Curtis filed an Appeal of an Administrative Decision which appealed the administrative official's decision that he could not operate an internet firearm sales business out of his residence in the City of Fargo. Mr. Curtis argues in his Appeal that North Dakota Century Code provision 62.1-01-03 prohibits the City of Fargo from enacting a zoning ordinance such as Fargo Municipal Code section 20-0403(C)(5)(e). For the reasons set forth below, it is my opinion that the City of Fargo had the authority to enact Fargo Municipal Code § 20-0403(C)(5)(e) and that the Board of Adjustment should affirm the administrative official's decision to not allow Mr. Curtis to operate his contemplated business at his residence in the City of Fargo.

Opinion

Municipalities, such as the City of Fargo, are allowed under North Dakota law to enact zoning ordinances for the purpose of promoting health, safety, morals, or the general welfare of the community. See N.D.C.C. § 40-47-01; see also N.D.C.C. § 40-05.1-06(11)(providing that cities such as Fargo have the power to provide for zoning, planning, and subdivision of public or private property within city limits). Municipalities may regulate and restrict the location and use of buildings, structures, and land for trade, industry, residence, or other purposes. N.D.C.C. § 40-47-01. All zoning ordinances must be designed to promote the health and general welfare of the community. N.D.C.C. § 40-47-03(3). All zoning ordinances must also be reasonable. Mertz v. City of Elgin, Grand County, 2011 ND 148, ¶ 7, 800 N.W.2d 710. A zoning ordinance will be invalidated if it bears no reasonable relationship to a legitimate government purpose, that is arbitrary, or that deprives a property owner of all or substantially all reasonable uses of land. Id. Unless shown to be unreasonable or arbitrary, an ordinance is presumed to be valid. Id.

Fargo Municipal Code section 20-0403(C) provides use regulations for areas zoned as residential. Specifically, the section provides home occupation regulations which are intended to permit residents to engage in home occupations, while ensuring that home occupations will not be a detriment to the character and livability of the surrounding neighborhood. There are specific home occupation uses which are prohibited under section 20-0403(C)(5). Namely, as it relates to this matter, section 20-0403(C)(5)(e) provides:

e. Firearms and Ammunition Sales

The sale of firearms and/or ammunition, and the production of ammunition for sale or resale are prohibited as home occupations.

Effectively, section 20-0403(C)(5)(e) prohibits Mr. Curtis from operating his contemplated business selling firearms from his residence in the City of Fargo. While Mr. Curtis appears to acknowledge that section 20-0403 prohibits his intended use of his residence to sell firearms, he believes that section 20-0403 is invalid pursuant to North Dakota Century Code provision 62.1-01-03. That provision provides:

A political subdivision, including home rule cities or counties, may not enact any ordinance relating to the purchase, sale, ownership, possession, transfer of ownership, registration, or licensure of firearms and ammunition which is more restrictive than state law. All such existing ordinances are void.

Mr. Curtis's argument is that Fargo Municipal Code section 20-0403(C)(5)(e) which prohibits the sale of firearms as a home occupation is an ordinance relating to the purchase and sale of firearms which is more restrictive than state law and therefore the ordinance is void.

Mr. Curtis does not point to any state statute that would permit him to sell firearms as a home occupation out of his residence. Instead, as laid out above, the North Dakota legislature has expressly provided authority to municipalities, such as the City of Fargo, to enact zoning ordinances which restrict the use of home residences. Fargo Municipal Code section 20-0403(C)(5)(e) promotes the health, safety, and general welfare of the community by not allowing residents to have the home occupation of selling firearms. The City of Fargo, in enacting the ordinance, did not act arbitrarily and the ordinance bears a reasonable relationship to a legitimate government interest (the health, safety, and general welfare of the community). Further, the ordinance does not deprive Mr. Curtis of all or substantially all reasonable uses of his land, as Mr. Curtis may use the land as his residence.

This opinion is supported by other jurisdictions who have considered similar situations with nearly identical state statutes. For instance, in a Kentucky case, a firearms dealer argued that a city zoning ordinance which prevented him from obtaining licenses to establish gun shops at certain locations within commercial districts was preempted by a state statute providing that no city could occupy any part of the field of regulations of the transfer of firearms. See Peter Garrett Gunsmith, Inc. v. City of Dayton, 98 S.W.3d 517, 518-19 (Ky. Ct. App. 2002). The court found that the city zoning ordinance was valid because zoning ordinances which regulation the locations where gun shop businesses may operate, do not occupy any part of the field of regulation of the transfer, ownership, possession, carrying or

Jim Gilmour

Page 4 of 4

transportation of firearms. Id. at 520. Instead, zoning ordinances represent regulations in the field of land use which is a field of regulation that cities have authority to control. Id.

Likewise, in a case in Michigan federal court, a firearms dealer sought review of an ATF decision denying his application for a federal firearms license upon the ground that dealing firearms from a dealer's home would have been prohibited by the city's zoning laws. Morgan v. U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms & Explosives, 473 F.Supp.2d 756 (E.D. Mich. Feb. 9, 2007). The firearms dealer argued that a Michigan statute which provided that a local unit of government shall not impose, enact, or enforce any ordinance or regulation pertaining to, or regulate in any other manner the ownership, registration, purchase, sale, transfer, transportation, or possession of pistols or other firearms except as provided by federal or state law prohibited the city from passing zoning ordinances which had the effect of not allowing him to sell firearms from his residence. Id. at 768. The Court disagreed with the firearms dealer and found that the city had the power, despite the Michigan state law, to pass zoning ordinances which had the effect of prohibiting the firearm dealer from selling firearms from his residence. Id. at 768-69.

In sum, the North Dakota Century Code provides that municipalities, such as the City of Fargo, have the power to enact zoning ordinances for the purpose of promoting health, safety, morals, or the general welfare of the community. Further, there is no North Dakota law which permits a person to operate a firearm selling business from his residence or to have firearm sales as a home occupation. It is my opinion that Fargo Municipal Code section 20-0403(C)(5)(e) is valid and not prohibited by state law.

Sincerely,

A handwritten signature in blue ink, appearing to read 'ERJ', with a stylized flourish extending to the right.

Erik R. Johnson

ERJ/lmw

MEMORANDUM

To: Mayor Furness and City Commissioners
From: Cindy Gray, Senior Planner
Date: July 3, 2001
Subject: Land Development Code Text Amendments – Sidewalk Marketing Area, Traffic Impact Studies, and Home Occupations

Over the past few months, the Planning Commission has had numerous discussions that deal with the Sidewalk Marketing Area, Traffic Impact Studies, and Home Occupations. All of the proposed amendments received a recommendation for approval at the June 13, 2001 Planning Commission meeting. I will summarize the text amendments below. The attached document is the text that was approved by the Planning Commission and used by the City Attorney's office to prepare the ordinances.

Sidewalk Marketing Area

The amendments to this portion of the Code were requested by the Downtown Community Partnership. The current language refers to the Downtown Business Association, which is no longer in existence. A number of other changes were made to better address sign size, sign spacing limitations, insurance requirements, and the application and permitting process.

In addition, a section of code was added to allow for tables and chairs in the sidewalk marketing ordinance, and to set up some limitations for the amount of sidewalk that must remain open for pedestrian circulation and accessibility purposes. This change needed to be accompanied by an amendment to a section of the Fargo Municipal Code, which prohibits sales on the sidewalk. Tables and chairs in the Sidewalk Marketing Area (Downtown Mixed Use zone) were simply excluded to address this issue.

Planning Commission Recommendation on Sidewalk Marketing Area text amendment – Eight votes in favor, one vote opposed (Syverson), and two absent (Millerhagen and Nelson)

Suggested Motion: “To approve the text amendment repealing Section 20-0707 of the Land Development Code regarding Sidewalk Marketing Area, and re-enacting article 20-0707 as presented, and amending Section 20-1202 to add the definition of Pedestrian Sign, and amending Section 18-0304 of the Fargo Municipal Code to exclude tables and chairs on the sidewalk as a prohibited within the Sidewalk Marketing Area, and to make this the first reading of the ordinances.”

Traffic Impact Studies

Over the past few years, the Planning Commission has been very interested in establishing requirements for traffic impact studies. Staff prepared the text amendment based on the types and/or sizes of development that typically result in a measurable impact. However, it was important to allow for some flexibility. We accomplished this by:

- 1) allowing the City Engineer to waive the requirement for a traffic impact study if it is determined that it is not needed or has already been analyzed as part of a larger corridor study, and
- 2) allowing the City Engineer to identify other conditions which warrant a traffic impact study even if a development does not fall specifically into one of the more predictable categories of development that warrants a study.

Adoption of this text amendment must be followed by the development of a policy that specifies the minimum requirements of a traffic impact study, and the process of hiring a consultant to complete the studies.

Planning Commission Recommendation on the text amendment regarding Traffic Impact Studies – Unanimous recommendation for approval with nine present, two absent (Millerhagen and Nelson).

Suggested Motion: “To approve the text amendment that adds Subsection 20-0701 (L), Traffic Impact Studies to the Land Development Code, and to make a related amendment to Section 20-0401 to make reference to the traffic impact study requirements and to make this the first reading of the ordinances.”

Home Occupations

Approximately a year ago, the City Commission and Planning Commission held a joint discussion regarding home occupations and whether or not there was any opportunity to allow home occupations as permitted uses under certain conditions. After a number of discussions and references to requirements of other cities, the Planning Commission recommended approval of the attached language. The amendment would allow a home occupation as a permitted use with up to a maximum of 4 customers per day with a maximum of 12 customers per week. This allows a certain amount of flexibility, and still keeps the traffic generated to the dwelling unit at a level that will be very residential in nature.

In addition, two uses were added to the list of prohibited home occupations. They include adult entertainment type uses and firearm and ammunition sales. These uses are prohibited as home occupations along with several others under any circumstances.

Planning Commission Recommendation regarding the proposed text amendment to Home Occupations – Unanimous recommendation for approval with nine present and two absent (Nelson and Millerhagen).

Suggested Motion: “To approve the proposed amendments to Subsections 2 and 5 of Section 20-0403 of the Land Development Code to modify the requirements for Minor Home Occupations and to increase the number of prohibited uses as home occupations, and to make this the first reading of the ordinance.”

Please let me know if you have any questions about these proposed changes.

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. 4180

AN ORDINANCE AMENDING SECTION 20-0403 OF ARTICLE 20-04 OF CHAPTER 20
OF THE FARGO MUNICIPAL CODE
(LAND DEVELOPMENT CODE) RELATING TO
HOME OCCUPATIONS

Be It Ordained by the Board of City Commissioners of the City of Fargo:

Section 1. Amendment.

Subsection 20-0403 of Article 20-04 of Chapter 20 of the Fargo Municipal Code (Land Development Code) is hereby amended as follows:

§20-0403 Accessory Uses

* * *

§20-0403.C. – Home Occupations

* * *

2. Minor Home Occupations

A Minor Home Occupation is one in which residents use up to 25 percent of the floor area of their home as a place of work, but in which no employees or customers come to the site. Minor Home Occupations allow up to two four customers per day, with a maximum of 12 customers per week, only between the hours of 7:00 AM and 9:00 PM. No more than one customer is permitted on the site at any given time. Examples include, but are not limited to artists, crafts people, writers, professional consultants, personal care and grooming services, massage therapists, single chair beauty salons and barber shops, and employees of off-site businesses who work from their home. In addition, tutors, such as piano or other music teachers, who provide lessons to no more than 60 students per week and do not have non-resident employees coming to the site, shall be deemed minor home occupations.

* * *

5. Prohibited Uses

* * *

d. Animal Care, Grooming, or Boarding Facilities

* * *

e. Firearms and Ammunition Sales and Servicing of Firearms

The sale of firearms and/or ammunition, and the production or ammunition for sale or resale are prohibited as home occupations.

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. 4180

f. Adult Entertainment Center Uses

Entertainment or sale of goods defined as adult bookstore, adult cinema, adult entertainment facility, or adult entertainment center as defined in §20-1202 are not allowed as a home occupation.

Section 2. Penalty. Every person, firm or corporation violating an ordinance which is punishable as an infraction shall be punished by a fine not to exceed \$500.00; the court to have power to suspend said sentence and to revoke the suspension thereof.

Section 3. Effective Date.

This ordinance shall be in full force and effect from and after its passage, approval and publication.


Bruce W. Furness, Mayor

(SEAL)

Attest:


Steven Sprague, City Auditor

First Reading: 7-9-01
Second Reading: 7-23-01
Final Passage: 7-23-01
Publication: 8-6-01

Item No.		Date: June 26, 2007
Title: A Text Amendment via the Conditional Use Permit process to allow non-farm commercial within the Ag zone district		Report Author: Jim Hinderaker
Applicable Regulation: This application relates to Chapter 20 of the Municipal Code (Land Development Code) Adding Section 20-0402.S (1-4) and 20-1203.D.10 (a-d)		
Petitioner/Applicant: City of Fargo Planning Department		Engineer: N/A
Reason For Request: Allow opportunities for review of proposed non-farm commercial uses within the Ag zone district		
Status: City Commission: July 2, 2007		
Existing		Proposed
Land Use: N/A	Land Use: N/A	
Zoning: N/A	Zoning: N/A	
Uses Allowed: N/A	Uses Allowed: N/A	
Maximum Density Allowed: N/A	Maximum Density Allowed: N/A	
Proposed Text Amendment: Adding Section 20-0402.S and 20-1203.D.10 (a-b)		
<p>▪ <u>Section 20-0402.S Non-farm Commercial Uses</u></p> <p><u>In acting upon Conditional Use Permit requests for Non-farm commercial uses within the Agricultural zoning district, the Planning Commission shall consider the following factors:</u></p> <ol style="list-style-type: none"> <u>1. No Non-farm commercial use is allowed unless it has been reviewed and approved in accordance with the Conditional Use Review procedures of Sec. 20-0909. Unless otherwise expressly stated, any Conditional Use Permit for such Non-Farm Commercial Use granted pursuant to Section 20-0909 shall automatically terminate upon sale or transfer of the property.</u> <u>2. To ensure that adequate facilities and services are available, written comment from facility and service providers (including, but not necessarily limited to, sewage and waste disposal, domestic water, flood protection, gas, electricity, police and fire protection, and roads, as applicable) addressing the adequacy of service shall be provided.</u> <u>3. The written notice requirements of 20-0901 shall be extended to landowners within one (1) mile of the subject property.</u> <u>4. Prohibited Use</u> <p><u>Dispatch Centers</u> – Dispatch centers, where employees come to the site to be dispatched to other location, are not allowed.</p> <p><u>Firearms and Ammunition Sales</u> – The sale of firearms and /or ammunition, and the production</p> 		

of ammunition for sale or resale are prohibited.

Adult Entertainment Centers Uses – Entertainment or sale of goods defined as adult bookstore, adult cinema, adult entertainment facility, or adult entertainment center as defined in Sec. 20-1202 are not allowed.

▪ **20-1203 Use Categories**

D. Commercial Use Categories

10. Non-farm commercial

a. Characteristics

Non-farm commercial uses are characterized by commonly known commercial uses of property and activities similar to those described in (D)(1) through (D)(9) (i.e., entertainment, office, commercial parking facilities, outdoor recreation and entertainment, retail sales and services, self-storage facilities, and vehicle service and repair shops), but which are normally located within the city limits and not typically located in rural, agriculturally zone areas.

b. Accessory Uses

Accessory activities may include any of the accessory uses listed under the particular uses described in 20-1203(D)(1) through (D)(9).

c. Examples

Examples include any of those examples listed under the particular uses described in 20-1203(D)(1), including, but not limited to, stadiums, sports arenas, exhibition and meeting areas, offices for professional services, clinics, sales offices, commercial parking facilities, amusement parks, theme parks, golf driving ranges, miniature golf facilities, zoos, stores selling, leasing, or renting consumer, home and business goods (dry goods, gifts, groceries, hardware, household products, vehicles), personal service-oriented (branch banks, hair, personal care services), entertainment oriented (restaurants, cafes, delicatessens, bars and taverns), self-storage areas, mini-warehouses, vehicle repair, auto body shops, auto repair and tire shops.

d. Exceptions

Any of the exceptions listed under the particular uses described in 20-1203(D)(1) through (D)(9) shall likewise be listed as Exceptions for purposes of obtaining a condition use permit for a Non-farm commercial use.

Staff Analysis:

The City of Fargo is experiencing pressure to review its policies and regulation regarding development within the City's extraterritorial area. Some property owners within the extraterritorial area, having expressed a desire to develop (zone and subdivide) their property, have indicated to the Planning Department that they have ultimately abandoned their plans because they feel that the City's policies are too restrictive and cumbersome. Current policy (Page 20 of the Growth Plan for the Urban Fringe and Extraterritorial Area of the City of Fargo) dictates that the city should "prevent leapfrog development from occurring both within the City and in the extraterritorial area" as these types of developments have proven problematic. The Planning Department has consistently informed property owners interested in developing property within the extraterritorial areas of the City that they must demonstrate how they will be able to provide adequate facilities and services to the property while ensuring that the development will fit into the urban environment once the City grows into these areas.

The following chart lists which services are provided by the City and which are provided by others:

Responsibility of City Includes	Responsibility of City Does Not Include	Responsibility of Township and/or County
<ul style="list-style-type: none"> • Land Use Planning • Zoning of Land • Subdivision • On-site Wastewater treatment (septic systems or holding tanks) • Zoning Enforcement • Building Permits • Building Inspection 	<ul style="list-style-type: none"> • Road Maintenance • Flood Protection • City Fire Protection • City Police Protection • City Water Provision • Drainage of land or ditches 	<ul style="list-style-type: none"> • Road and Ditch Maintenance – County maintains County highways, Townships maintain local/township roads. • Fire Protection • Police Protection • Cass Rural Water Users (CRWU)

In an effort to address these concerns and also take into account the policies of the City. Staff has developed a Conditional Use Permit (CUP) process that allows the review of proposed development on a case by case basis. The CUP process allows the City to engage in a higher level of review than a zone change, which may allow a use by right that is deemed incompatible with the existing development. The CUP process also allows the City to solicit comments from specific review agencies to ensure that adequate levels of services are available based on the scope and intensity of a proposed development. Ultimately the CUP process allows the City to ensure that development patterns within the extraterritorial area do not result in the occurrence of urban sprawl that could preclude redevelopment of the property/surrounding area at urban densities.

Text Amendments are subject to three review criteria per the LDC. The criteria are as follows:

1. Is the amendment consistent with the purpose of this Land Development Code?

The Purpose and Intent (Section 20-0104) of the LDC is stated as follows: "This land development code is intended to implement Fargo's Comprehensive Plan and related policies in a manner that protects the health, safety, and general welfare of the citizens of Fargo." The proposed text amendment will allow property owner within the Ag zoning district an opportunity for review of proposals. The approval criteria set forth within the proposed text amendment ensures that the implementation of Fargo's Comprehensive Plan and related policies protect the health, safety, and general welfare of the citizens of Fargo. **(Criterion Satisfied)**

2. Will the amendment adversely affect the public health, safety, or general welfare?

Staff contends that this amendment will not have an adverse affect on the public health, safety or general welfare. The text amendment allows a process for property owners within the Ag zoning district to request additional non-farm commercial land uses through the Conditional Use Permit process. A thorough review of the proposal will take place to ensure that adequate facilities and services are in place and that the proposed use is compatible to surrounding land uses, thus ensuring public health, safety and general welfare of the citizens of Fargo. **(Criterion Satisfied)**

3. Is the amendment necessary because of changed or changing social values, new planning concepts or other social or economic conditions in the areas affected?

Some property owners have claimed that the current regulations are too restrictive and that there should be a process in place for review of land use proposals that would not adversely affect the public health, safety of general welfare of the citizens of Fargo. In addition, during 2007 North Dakota Legislative Session, legislation was approved (HB 1321) that would reduce the Extraterritorial Zoning jurisdiction of the municipalities. **(Criterion Satisfied)**

Planning Commission Recommendation: (Public Hearing on June 13, 2007) In a 8-1 decision, the Planning Commission moved to recommend approval of the proposed text amendment to the City Commission as presented by staff with the following added stipulations:

1. Written comment from facility and service providers, addressing the adequacy of facilities and service shall be provided.
2. The written notice requirements of 20-0901 shall be extended to landowners within one (1) mile of the subject property.

Suggested Motion: “ To accept the findings and recommendation of staff and the Planning Commission and hereby approve the proposed text amendment and make this the first reading of the Ordinance.”

City Commission Decision: July 2, 2007

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. 4613

AN ORDINANCE AMENDING SECTION 20-0401, 20-0402, AND 20-1203
OF ARTICLES 20-04 AND 20-12 OF CHAPTER 20
OF THE FARGO MUNICIPAL CODE (LAND DEVELOPMENT CODE)
RELATING TO NON-FARM COMMERCIAL USES

WHEREAS, the electorate of the City of Fargo has adopted a home rule charter in accordance with Chapter 40-05.1 of the North Dakota Century Code; and

WHEREAS, Section 40-05.1-06 of the North Dakota Century Code provides that the City shall have the right to implement home rule powers by ordinances; and

WHEREAS, Section 40-05.1-05 of the North Dakota Century Code provides that said home rule charter and any ordinances made pursuant thereto shall supersede state laws in conflict therewith and shall be liberally construed for such purposes; and

WHEREAS, the Board of City Commissioners deems it necessary and appropriate to implement such authority by the adoption of this ordinance;

NOW, THEREFORE,

Be it ordained by the Board of City Commissioners of the City of Fargo:

Section 1. Amendment.

Section 20-0401, of Article 20-04 of Chapter 20 of the Fargo Municipal Code (Land Development Code) is hereby amended to read as follows:

Table 20-0401, as amended, is attached and incorporated as if fully set forth herein..

Section 2. Amendment.

Section 20-0402 of Article 20-04 of Chapter 20 of the Fargo Municipal Code (Land Development Code) is hereby amended to add a subsection T to read as follows:

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. 4613

§20-0402 Use Standards

...

T. Non-farm Commercial Uses

1. A Non-farm Commercial Use shall not be allowed unless it has been reviewed and approved in accordance with the Conditional Use Review procedures of Sec. 20-0909. In acting upon Conditional Use Permit requests for such use, the Planning Commission shall consider the following factors:
 - a. The factors identified in Section 20-0909 (Conditional Use Permits).
 - b. Whether adequate facilities and services including, but not limited to, sewage and waste disposal, domestic water, building construction and inspection, flood protection, gas, electricity, police and fire protection, and roads, as may be applicable are adequate under the circumstances. As part of the application for the Conditional Use Permit, the Zoning Administrator may require the applicant to obtain written comment from such facility and service providers as may be applicable.
2. The City Planner shall provide written notice of the Planning Commission public hearing in accordance with Section 20-0901-F except that the written notice shall be mailed to property owners within one (1) mile of the subject property. Notice of the Planning Commission's public hearing shall be published in accordance with Section 20-0901-F.
3. **Prohibited Uses.** Dispatch Centers, Firearms and Ammunition Sales and Adult Entertainment Centers Uses as defined in Section 20-0403.C.5 are prohibited uses.
4. Unless otherwise expressly stated, Conditional Use Permits for Non-farm Commercial uses granted pursuant to Section 20-0909 shall automatically terminate upon sale or transfer of the property.

Section 3. Amendment.

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. 4613

Section 20-1203.D. of Article 20-12 of Chapter 20 of the Fargo Municipal Code (Land Development Code) is hereby amended to add a subparagraph D to read as follows:

§20-1203 Use Categories

* * *

D. Commercial Use Categories

* * *

10. Non-farm Commercial

a. Characteristics

Non-farm Commercial uses are those commercial uses identified in subparagraphs (D)(1) through (D)(9), hereof, but which occur in an AG, Agricultural District.

b. Accessory Uses

Accessory activities described in subparagraphs (D)(1) through (D)(9), hereof, is also a Conditional Use, permitted only after approval pursuant to Section 20-0909.

c. Examples

Examples include any of those examples listed under the particular uses described in subparagraphs (D)(1) through (D)(9), hereof.

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. 4613

d. Exceptions


Any of the exceptions listed under the particular uses described in subparagraphs (D)(1) through (D)(9), hereof, shall also be exceptions for purposes of a Non-farm Commercial use.

Section 4. Effective Date.

This ordinance shall be in full force and effect from and after its passage, approval and publication.

Section 5. Penalty.

Every person, firm or corporation violating an ordinance which is punishable as an infraction shall be punished by a fine not to exceed \$500.00; the court to have power to suspend said sentence and to revoke the suspension thereof.


Dennis R. Walaker, Mayor

(SEAL)
Attest:

First Reading: 07-02-2007
Second Reading: 07-16-2007
Final Passage: 07-16-2007
Publication: 07-30-2007


Steven Sprague, City Auditor

Table 20-0401

Use Category	Definition (Excerpt; See Sec. 20-01203)	Specific Use Type	Zoning Districts																			
			A G	S R 0	S R 1	S R 2	S R 3	S R 4	M R 1	M R 2	M R 3	M H P	N O	N C	G O	L C	D M U	G C	L I	G I	P I	
Residential																						
Household Living	residential occupancy of a dwelling unit by a "household"	House, Detached	P	P	P	P	P	P	P	P	P	P	P	P	C	C	P/C [E]	C	-	-	-	
		House, Attached	-	-	-	-	P	P	P	P	P	P	P	P	C	C	P/C [E]	C	-	-	-	
		Duplex	-	-	-	-	P	P	P	P	P	P	P	P	C	C	P/C [E]	C	-	-	-	
		Multi-Dwelling Structure	-	-	-	-	-	-	P	P	P	P	P	P	C	C	P/C [E]	C	-	-	-	
		Mobile Home Park	-	-	-	-	-	-	-	-	-	P	-	-	-	-	-	-	-	-	-	
Group Living	residential occupancy of a structure by a group of people who do not meet the definition of "Household Living"		C	C	C	C	C	C	P	P	P	P	C	C	C	C	C/C [E]	C	-	-	-	
Bed and Breakfast	a facility of residential character that provides sleeping accommodations and breakfast		C	C	C	C	C	C	C	C	C											
Institutional																						
College	colleges and institutions of higher learning		C	C	C	C	C	C	C	C	C	C	C	C	P	P	P	P	P	-	P/C [G]	
Community Service	public, nonprofit, or charitable uses, generally providing a local service to the community		C/C [C]	C/C [C]	C/C [C]	C/C [C]	C/C [C]	C/C [C]	P/C [C]	P/C [C]	P/C [C]	P/C [C]	P/C [C]	P/C [C]	P	P	P/C [C]	P	P	-	P/C [G]	
Day Care	care, protection and supervision for children or adults on a regular basis away from their primary residence for less than 24 hours per day	1-7 children or adults [1]	P/C [D]	P/C [D]	P/C [D]	P/C [D]	P/C [D]	P/C [D]	P/C [D]	P/C [D]	P	P	P	P	P	P	P	P	P	-	P/C [G]	
		8-12 children or adults [1]	P/C [D]	P/C [D]	P/C [D]	P/C [D]	P/C [D]	P/C [D]	P/C [D]	P/C [D]	P/C [D]	P	P	P	P	P	P	P	P	P	-	P/C [G]
		13+ children or adults	-	-	-	-	-	-	-	C [D]	C [D]	C [D]	C [D]	C [D]	C [D]	P [D]	P [D]	P [D]	P [D]	P [D]	-	P/C [G]

[1] Not including the children or parents of the day care provider.

P = Use Permitted By-Right ■ P/C = Use Permitted By-Right But Subject to Use-Specific Standards of Sec. 20-0402

; = Conditional Use, Subject to Procedures of Sec. 20-0909 ■ Some uses also Subject to Site Plan Review (See Sec. 20-0910) or to a Traffic Impact Study as required by Sec. 20-0701L.

Use Category	Definition (Excerpt; See Sec. 20-01203)	Specific Use Type	Zoning Districts																		
			A G	S R 0	S R 1	S R 2	S R 3	S R 4	M R 1	M R 2	M R 3	M H P	N O	N C	G O	L C	D M U	G C	L I	G I	P I
Detention Facilities	facilities for the detention or incarceration of people		C	-	-	-	-	-	C	C	C	-	-	-	C	C	C	P	P	P	P/C [G]
Health Care Facility	medical or surgical care to patients, with overnight care		C	C	C	C	C	C	C	C	C	C	-	-	P	P	P	P	P	P	P/C [G]
Parks and Open Areas	natural areas consisting mostly of vegetative landscaping or outdoor recreation, community gardens, etc.,		P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	-	P/C [G]
Religious Institution	meeting area for religious activities	≤ 500 seating capacity	-	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	-	P/C [G]
		501+ seating capacity	-	P/C [H]	P/C [H]	P/C [H]	P/C [H]	P/C [H]	P	P	P	P	P	P	P	P	P	P	P	-	P/C [G]
Safety Services	public safety and emergency response services		P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P/C [G]
Schools	schools at the primary, elementary, middle, junior high, or high school level		-	P/C [I]	P/C [I]	P/C [I]	P/C [I]	P/C [I]	P/C [I]	P/C [I]	P/C [I]	-	-	-	C	C	C	C	C	-	P/C [G]
Utilities, Basic	infrastructure services that need to be located in or near the area where the service is provided		P [K]	P [K]	P [K]	P [K]	P [K]	P [K]	P [K]	P [K]	P [K]	P [K]	P [K]	P [K]	P [K]	P [K]	P [K]	P [K]	P [K]	P [K]	P/C [K] [G]
Commercial																					
Adult Entertainment Center	an adult bookstore, adult cinema or adult entertainment facility		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	P/C [A]	P/C [A]	P/C [A]	-
Office	activities conducted in an office setting and generally focusing on business, government, professional, medical, or financial services		C	-	-	-	-	-	-	-	-	-	P	P	P	P	P	P	-	P/C [G]	
Off-Premise Advertising Signs	billboard		C	-	-	-	-	-	-	-	-	-	-	-	P/C [B]	P/C [B]	P/C [B]	P/C [B]	P [B]	P	-

P = Use Permitted By-Right ■ P/C = Use Permitted By-Right But Subject to Use-Specific Standards of Sec. 20-0402

= Conditional Use, Subject to Procedures of Sec. 20-0909 ■ Some uses also Subject to Site Plan Review (See Sec. 20-0910) or to a Traffic Impact Study as required by Sec. 20-0701L.

Use Category	Definition (Excerpt; See Sec. 20-01203)	Specific Use Type	Zoning Districts																		
			A G	S R 0	S R 1	S R 2	S R 3	S R 4	M R 1	M R 2	M R 3	M H P	N O	N C	G O	L C	D M U	G C	L I	G I	P I
Parking, Commercial	parking that is not accessory to a specific use...fees may or may not be charged		C	-	-	-	-	-	-	-	-	-	-	-	P	P	P	P	P	P	P/C [G]
Recreation and Entertainment, Outdoor	large, generally commercial uses that provide continuous recreation or entertainment- oriented activities		C	-	-	-	-	-	-	-	-	-	-	-	-	C	C	P	P	-	P/C [G]
Retail Sales and Service	firms involved in the sale, lease or rental of new or used products to the general public...they may also provide personal services or entertainment, or provide product repair or services for consumer and business goods		C	-	-	-	-	-	-	-	-	-	-	P	-	P	P	P	P	-	-
Self-Service Storage	uses providing separate storage areas for individual or business uses		C	-	-	-	-	-	-	-	-	-	-	-	-	P/C [J]	-	P	P	-	-
Vehicle Repair	service to passenger vehicles, light and medium trucks and other consumer motor vehicles ...generally, the customer does not wait at the site while the service or repair is being performed		C	-	-	-	-	-	-	-	-	-	-	-	-	P/C [L]	P/C [L]	P	P	-	-
Vehicle Service, Limited	direct services to motor vehicles where the driver or passengers generally wait in the car or nearby while the service is performed		C	-	-	-	-	-	-	-	-	-	-	-	-	P	P/C [M]	P	P	-	-
Non-farm Commercial	<u>Commercial Uses defined in Section 20-1203D occurring in AG, Agricultural Districts</u>		C	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-

□ = Use Permitted By-Right ■ P/C = Use Permitted By-Right But Subject to Use-Specific Standards of Sec. 20-0402

□ = Conditional Use, Subject to Procedures of Sec. 20-0909 ■ Some uses also Subject to Site Plan Review (See Sec. 20-0910) or to a Traffic Impact Study as required by Sec. 20-0701L.

Industrial																						
Industrial Service	firms engaged in the repair or servicing of industrial, business or consumer machinery, equipment, products or by-products		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	C Q	-	P [F]	P	P/C [G]
Manufacturing and Production	firms involved in the manufacturing, processing, fabrication, packaging, or assembly of goods		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	C	C	P	P	P/C [G]
Warehouse and Freight Movement	firms involved in the storage, or movement of goods		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	C	P	P	P	P/C [G]
Waste-Related Use	uses that receive solid or liquid wastes from others for disposal on the site or for transfer to another location, uses that collect sanitary wastes, or uses that manufacture or produce goods or energy from the composting of organic material		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	C	P/C [G]
Wholesale Sales	firms involved in the sale, lease, or rental of products primarily intended for industrial, institutional, or commercial businesses		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	C	P	P	P	-

■ = Use Permitted By-Right ■ P/C = Use Permitted By-Right But Subject to Use-Specific Standards of Sec. 20-0402

■ = Conditional Use, Subject to Procedures of Sec. 20-0909 ■ Some uses also Subject to **Site Plan Review** (See Sec. 20-0910) or to a Traffic Impact Study as required by Sec. 20-0701L.

Other																					
Agriculture	raising, producing or keeping plants or animals	Animal Confinements	C	C [1]															C	P/C [G]	
		Farming/Crop Production	P	C	-	-	-	-	-	-	-	-	-	-	-	-	-	-	P	P/C [G]	
Aviation	facilities for the landing and takeoff of flying vehicles, including loading and unloading areas		C	C	-	-	-	-	-	-	-	-	-	-	C	C	C	C	P	P	P/C [G]
Surface Transportation			-	-	-	-	-	-	-	-	-	-	-	-	C	C	C	P C	P	P	P/C [G]
Entertainment Event, Major	activities and structures that draw large numbers of people to specific events or shows		C	-	-	-	-	-	-	-	-	-	-	-	-	C	C	C	-	P/C [G]	
Mining	mining or extraction of mineral or aggregate resources from the ground for off-site use		C	-	-	-	-	-	-	-	-	-	-	-	-	-	-	C	P	-	
Telecom-munications Facilities	devices and supporting elements necessary to produce non-ionizing electromagnetic radiation...operating...to produce a signal...	125 feet in height or less	C [N]	C [N]	C [N]	C [N]	C [N]	C [N]	C [N]	C [N]	C [N]	C [N]	C [N]	C [N]	C [N]	C [N]	P/C [N]	P/C [N]	P/C [N]	C [N]	
		Greater than 125 feet in height	-	-	-	-	-	-	-	-	-	-	-	-	-	-	C [N]	C [N]	C [N]	-	
		Up to building height limit of applicable zoning district	P/C [N]	P/C [N]	P/C [N]	P/C [N]	P/C [N]	P/C [N]	P/C [N]	P/C [N]	P/C [N]	P/C [N]	P/C [N]	P/C [N]	P/C [N]	C [N]	P/C [N]	P/C [N]	P/C [N]	C [N]	
		TSSs supported by Guy wires	C [N]	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
		Attached Telecom-munications facilities	C [N]	C [N]	C [N]	C [N]	C [N]	C [N]	C [N]	C [N]	C [N]	C [N]	C [N]	C [N]	C [N]	C [N]	C [N]	C [N]	C [N]	C [N]	

[1] In SR-0 districts, animal confinements are either permitted or a conditional use, subject to procedures of Sec. 20-0909, as described in Sec. 20-1203.C.2.b.

□ = Use Permitted By-Right ■ P/C = Use Permitted By-Right But Subject to Use-Specific Standards of Sec. 20-0402

◻ = Conditional Use, Subject to Procedures of Sec. 20-0909 ■ Some uses also Subject to **Site Plan Review** (See Sec. 20-0910) or to a Traffic Impact Study as required by Sec. 20-0701L.



DO I NEED A LICENSE TO BUY AND SELL FIREARMS?

Guidance to help you understand when a Federal Firearms License is required under federal law.



The guidance set forth herein has no regulatory effect and is not intended to create or confer any rights, privileges, or benefits in any matter, case, or proceeding, see *United States v. Caceres*, 440 U.S. 741 (1979).

Table of Contents

Introduction..... ii

Key Points 1

Legal Framework 2

Gun Shows, Flea Markets, and Internet Sales 3

Guidance 4

Examples..... 7

**Questions & Answers on Getting
a Federal Firearms License 9**

Introduction

The federal Gun Control Act (GCA) requires that persons who are engaged in the business of dealing in firearms be licensed by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). Federal firearms licensees (FFL) are critical partners in promoting public safety because—among other things—they help keep firearms out of the hands of prohibited persons by running background checks on potential firearms purchasers, ensure that crime guns can be traced back to their first retail purchaser by keeping records of transactions, and facilitate safe storage of firearms by providing child safety locks with every transferred handgun and having secure gun storage or safety locks available any place where they sell firearms. A person who willfully engages in the business of dealing in firearms without the required license is subject to criminal prosecution, and can be sentenced to up to five years in prison, fined up to \$250,000, or both.

Determining whether your firearm-related activities require a license is a fact-specific inquiry that involves application of factors set by federal statute. This guidance is intended to help you determine whether you need to be licensed under federal law.

Note that some states have more stringent laws with respect to when a state-issued license is required for selling a firearm. Please consult the laws of the state to ensure compliance.

In addition, this guidance focuses on the question whether your firearm-related activities require you to obtain a license. There are other laws and regulations that govern the transfer of firearms—both between unlicensed individuals and from licensed dealers (e.g., unlicensed sellers may only lawfully sell to persons within their own state, and it is unlawful for either licensed or unlicensed sellers to sell firearms to persons they know or have reasonable cause to believe cannot lawfully possess them). **All persons who transfer firearms, regardless of whether they are engaged in the business of dealing in firearms, must ensure that any transfers are in compliance with federal, state and local laws.**

Key Points

- Federal law requires that persons who are engaged in the business of dealing in firearms be licensed by ATF. The penalty for dealing in firearms without a license is up to five years in prison, a fine up to \$250,000, or both.
- A person can be engaged in the business of dealing in firearms regardless of the location in which firearm transactions are conducted. For example, a person can be engaged in the business of dealing in firearms even if the person only conducts firearm transactions at gun shows or through the internet.
- Determining whether you are “engaged in the business” of dealing in firearms requires looking at the specific facts and circumstances of your activities.
- As a general rule, you will need a license if you repetitively buy and sell firearms with the principal motive of making a profit. In contrast, if you only make occasional sales of firearms from your personal collection, you do not need to be licensed.
- Courts have identified several factors relevant to determining on which side of that line your activities may fall, including: whether you represent yourself as a dealer in firearms; whether you are repetitively buying and selling firearms; the circumstances under which you are selling firearms; and whether you are looking to make a profit. Note that while quantity and frequency of sales are relevant indicators, courts have upheld convictions for dealing without a license when as few as two firearms were sold, or when only one or two transactions took place, when other factors were also present.

If you have any questions about whether you need a license under federal law, we recommend that you contact your local ATF office (<https://www.atf.gov/contact/atf-field-divisions>) to evaluate the facts and circumstances of your particular case.

Legal Framework

Q

Who needs a Federal license to deal in firearms?

A

Under federal law, any person who engages in the business of dealing in firearms must be licensed.

Q

What does it mean to be “engaged in the business of dealing in firearms”?

A

Under federal law, a person engaged in the business of dealing in firearms is a person who “devotes time, attention and labor to dealing in firearms as a regular course of trade or business with the principal objective of livelihood and profit through the repetitive purchase and resale of firearms.”

Under federal law, conducting business “with the principal objective of livelihood and profit” means that “the intent underlying the sale or disposition of firearms is predominantly one of obtaining livelihood and pecuniary gain, as opposed to other intents, such as improving or liquidating a personal firearms collection.”

Consistent with this approach, federal law explicitly exempts persons “who make occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby, or who sells all or part of his personal collection of firearms.”

Q

Has ATF defined what it means to be “engaged in the business” of dealing in firearms?

A

ATF has published regulatory definitions for the terms “engaged in the business” and “principal objective of livelihood and profit.” ATF’s regulation defining when a person is “engaged in the business” of dealing in firearms is identical to the language of the statute, though in the definition of “dealer,” ATF clarified that the term includes “any person who engages in such business or occupation on a part-time basis.”

Gun Shows, Flea Markets, and Internet Sales



What if I only sell firearms at flea markets, gun shows or over the internet?



A person can be engaged in the business of dealing in firearms regardless of the location in which firearm transactions are conducted. A person can be engaged in the business of dealing in firearms even if the person only conducts firearm transactions from a location other than a traditional brick and mortar store. Many licensed gun dealers conduct business at temporary locations such as qualified gun shows or events, and utilize the internet to facilitate firearm transactions. The question under federal law is not where firearm transactions are conducted, but rather is whether—under a totality of the circumstances—the person conducting those transactions is engaged in the business of dealing in firearms. The factors listed below apply to that determination regardless of where the firearm transactions occur.

The growth of new communications technologies and e-commerce allows sellers of firearms to advertise to an expansive market at minimal cost, and complete sales with minimal effort. While a collector or hobbyist may use the internet and other communication technology to sell a firearm without a license (provided that they comply with all other federal and state laws and regulations), those engaged in the business of dealing in firearms who utilize the internet or other technologies must obtain a license, just as a traditional dealer whose business is run out of a traditional brick and mortar store.

Guidance

A. Overview

What activities require a dealer's license?

Federal law does not establish a “bright-line” rule for when a federal firearms license is required. As a result, there is no specific threshold number or frequency of sales, quantity of firearms, or amount of profit or time invested that triggers the licensure requirement. Instead, **determining whether you are “engaged in the business” of dealing in firearms requires looking at the specific facts and circumstances of your activities.**

As a general rule, you will need a license if you repetitively buy and sell firearms with the principal motive of making a profit. In contrast, if you only make occasional sales of firearms from your personal collection, you do not need to be licensed. In either case, all of your firearms transactions are relevant, regardless of their location; it does not matter if sales are conducted out of your home, at gun shows, flea markets, through the internet, or by other means.

As a general rule, you will need a license if you repetitively buy and sell firearms with the principal motive of making a profit. In contrast, if you only make occasional sales of firearms from your personal collection, you do not need to be licensed.

B. Factors Identified by Federal Courts

Federal courts have identified several factors that can help you determine on what side of that line your activities fall. They include: whether you represent yourself as a dealer in firearms; whether you are repetitively buying and selling firearms; the circumstances under which you are selling firearms; and whether you are looking to make a profit. It is important to note that no single factor is determinative, and that the relative importance of any of the factors will vary depending on the facts and circumstances applicable to the individual seller.

Relevant factors: whether you represent yourself as a dealer in firearms; whether you are repetitively buying and selling firearms; the circumstances under which you are selling firearms; and whether you are looking to make a profit.

- **Are you representing yourself as a dealer in firearms?**

Perhaps the clearest indication of whether a person is “engaged in the business” of dealing in firearms can be found in what he or she represents to others. Some factors that may demonstrate that you intend to engage in the business of dealing in firearms include: representing yourself as a source of firearms for customers, taking orders, and offering to buy firearms to immediately resell. Your intent to engage in the business of

Guidance (*continued*)

dealing in firearms can also be reflected by undertaking activities that are typically associated only with businesses—for example, creating a business entity or trade name for your firearms business, securing State and local business licenses to sell items that may include firearms, purchasing a business insurance policy or rider to cover a firearms inventory, commercial advertising, printing business cards, and accepting credit card payments.

- *Are you repetitively buying and selling firearms?*

As noted above, there is no specific threshold number of firearms purchased or sold that triggers the licensure requirement. Similarly, there is no “magic number” related to the frequency of transactions that indicates whether a person is “engaged in the business” of dealing in firearms. It is important to note, however, that even a few firearms transactions, when combined with other evidence, can be sufficient to establish that a person is “engaged in the business” of dealing in firearms. For example, courts have upheld convictions for dealing without a license when as few as two firearms were sold, or when only one or two transactions took place.

That said, courts have looked at both the quantity of firearms sold, as well as the frequency of sales, as relevant indicators. When combined with other factors, selling large numbers of firearms or engaging in frequent transactions may be highly indicative of business activity.

- *What are the circumstances under which you are selling firearms? Are you selling shortly after acquiring them? Repeatedly selling the same type of firearm? Or repetitively selling new firearms?*

In addition to the volume and frequency of firearms transactions, the timing and circumstances surrounding firearm transactions are also significant indicators of whether a person is engaged in the business. Repetitively selling or offering to sell firearms shortly after they are acquired; “restocking” inventory; repetitively acquiring the same type of firearm or a large quantity of the same type of firearm, and then reselling or offering to sell those firearms; and/or repetitively acquiring and reselling or offering to sell firearms in unopened or original packaging (or in new condition), are all factors which individually or combined may indicate a person is engaged in the business.

- *Are you looking to make a profit?*

As noted above, if you are repetitively buying and selling firearms “with the principal objective of livelihood and profit,” you must be licensed. Because the key is *intent* or *objective*, the courts have made clear that a person can be “engaged in the business” of dealing in firearms without actually making a profit. In determining that intent or objective, courts have looked to prices that an unlicensed seller charges for firearms to determine if the principal objective of the seller is livelihood and profit. In some cases, prices reflect appreciation in actual market value resulting from having held a

Guidance *(continued)*

firearm as part of a collection, or reflect a profit intended to be used to acquire another firearm as part of a collection. As a result, the fact that a transaction results in a profit for the seller is not always determinative.

Finally, it is important to note that courts have found that you can buy and sell firearms “with the principal objective of livelihood and profit” even if your firearm-related activities are not your primary business. In other words, you can still be “engaged in the business of dealing in firearms with the principal objective of livelihood and profit” if you have a full time job, and are buying and selling firearms to supplement your income. ATF regulations specifically note that the term “dealer” includes a person who engages in such a business or occupation on a part-time basis.

Does a Curio and Relics Collector’s license (C&R license) allow me to be engaged in the business of dealing in firearms?

The C&R license does not allow for the licensee to repetitively buy and sell firearms with the principal motive of making a profit. It does not matter if the firearms being bought and sold are curios or relics, or newer firearms. If a C&R licensee wishes to engage in the business of dealing in firearms, he or she must apply for a different type of license that allows this activity.

Do I need a license if I’m an auctioneer and simply auction guns for my customers?

If you repeatedly conduct auctions for firearms that are first consigned to you for sale, and you intend to make money from those sales, you need a license. If, however, you simply offer auctioneer services without having the firearms transferred to you (for example, you are hired by the representative of an estate to travel to the location of the estate, assist the estate in conducting an auction, and the firearms remain the property of the estate until transfer to the buyer), you need not be licensed.

Examples

While the determination of whether a person requires a federal firearms license is highly fact-specific, the following examples are provided to show how the factors identified by federal courts apply to common fact patterns. **Of course, the existence or absence of other facts not included in the examples may change the conclusion as to whether a person is engaged in the business and therefore must be licensed; hence, these examples are provided solely as general guidance.** For the purposes of these examples, assume that the sellers comply with all other relevant federal and state laws and regulations (for example, any unlicensed person makes only lawful sales to persons who reside in the same state).



Bob inherits a collection of firearms from his grandfather. He would rather have cash than the firearms, so he posts them all online for sale. He makes no purchases, but over the course of the next year he sells all of the firearms he inherited in a series of different transactions. Bob does not need a license because he is liquidating a personal collection.



Joe recently lost his job, and to finance his living expenses he has been buying firearms from friends and reselling them through an internet site. He has successfully sold a few firearms this way, and has several more listed for sale at any one time. Joe must be licensed because he is repetitively buying and selling firearms with the primary objective of profit.



Sharon travels to flea markets the first Saturday of every month, buying undervalued goods, including firearms. The last Saturday of every month Sharon rents a booth at the flea market and sells her items at market value for a profit. She hopes to make enough money from these sales to finance a trip to Italy next year. Sharon must get a license because she is repetitively buying and selling firearms with the primary objective of profit.



David enjoys hunting and has a large variety of hunting rifles. He likes to have the newest models with the most current features. To pay for his new rifles, a few times a year David sells his older weapons to fellow hunters for a profit. David does not need to be licensed because he is engaging in occasional sales for enhancement of his personal collection.



Lynn regularly travels to gun shows around her state, rents space, and sells firearms under a banner stating "liquidating personal collection." Most of the firearms Lynn offers for sale she purchased from a licensed dealer in the prior weeks. Lynn is retired and hopes to supplement her income with the money she makes on the sales, although she has yet to turn a profit. Lynn must get a license because she is repetitively buying and selling firearms with a primary objective of profit.

Examples (*continued*)



Scott has been collecting high-end firearms for years. In the six months before his son is about to enter college, Scott sells most of his collection in a series of transactions at gun shows, on the Internet, and to family and friends to provide funds to pay his son's college expenses. Scott does not have to be licensed, because he is liquidating part of a personal collection.



Debby has three handguns at home, and decides that she no longer wants two of them. She posts an advertisement in the local newspaper and sells the two handguns to a local collector. Debby does not need a license because she is not engaging in the repetitive purchase and resale of firearms as a regular course of trade or business.



Jessica enjoys shooting sports and frequently goes to shooting ranges and hunting clubs. To make some extra money, she buys firearms from a dealer who is willing to give her a discount, and resells them for a profit to acquaintances from the shooting ranges and hunting clubs. She has done this a few times a month for the last several months, and has been spreading the word that she has a source for other firearms. She passes out business cards with her name, phone number and email. Jessica must get a license because she is repetitively buying and selling of firearms with the primary objective of profit.



Doug regularly attends gun shows and rents a table to display firearms for sale. He gets firearms from a variety of sources, carefully logs each purchase into a book, and uses the purchase price to set a sales price that will realize him a net profit. Doug accepts credit card payments and typically sells multiple firearms at each of the gun shows he attends each year. He makes a substantial amount of money annually, and uses this money to live on. Doug must be licensed because he is repetitively buying and selling firearms with the primary objective of profit.

Questions & Answers On Getting A Federal Firearms License

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How do I become licensed?

The license application (called the ATF Form 7) is straightforward and can be found here: <https://www.atf.gov/firearms/apply-license>. In addition to the application itself, an applicant for a federal firearms license must also provide to ATF a photograph, fingerprints, and the license application fee, currently set at \$200 for the initial three-year period, and \$90 for each three-year renewal.

What standards does ATF use to determine whether to give me a license?

ATF will approve an application for a federal firearms license if the applicant:

- Is 21 years of age or older;
- Is not prohibited from shipping, transporting, receiving or possessing firearms or ammunition;
- Has not willfully violated the GCA or its regulations;
- Has not willfully failed to disclose material information or willfully made false statements concerning material facts in connection with his application;
- Has a premises for conducting business; and
- The applicant certifies that:
 - the business to be conducted under the license is not prohibited by State or local law in the place where the licensed premises is located;
 - within 30 days after the application is approved the business will comply with the requirements of State and local law applicable to the conduct of the business;
 - the business will not be conducted under the license until the requirements of State and local law applicable to the business have been met;
 - the applicant has sent or delivered a form to the chief law enforcement officer where the premises is located notifying the officer that the applicant intends to apply for a license; and
 - secure gun storage or safety devices will be available at any place in which firearms are sold under the license to persons who are not licensees.

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What obligations will I have once I become licensed?

Licensed firearms dealers are subject to certain requirements under federal law, including running background checks on any non-licensed person prior to transferring a firearm (subject to narrow exceptions), keeping firearms transaction records so that crime guns can be traced to their first retail purchaser, and ensuring safety locks are provided with every handgun, and available in any location where firearms are sold.

Questions & Answers On Getting A Federal Firearms License *(continued)*

Licensees are also prohibited by law from knowingly transferring handguns to persons who do not reside in the State where the licensee's premises are located, and from knowingly transferring any firearm to underage persons and certain categories of "prohibited persons," including felons, persons who were involuntarily committed to mental institutions, and illegal aliens. Under federal law, licensees are subject to inspection and are also required to respond to requests for firearms tracing information within 24 hours.

This list is not all inclusive; more information about the requirements of having a federal firearms license can be found at www.ATF.gov and by contacting your local ATF Office. A list of local offices can be found at <https://www.atf.gov/contact/atf-field-divisions>.

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What if I don't need to be licensed, but I want to make sure a background check is run on a potential purchaser of my gun?

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Private, unlicensed sellers can help ensure that potential purchasers are not prohibited from possessing firearms by using a licensed dealer to facilitate the sale and transfer of a firearm. For a small fee, many licensed dealers will facilitate a sale of a firearm between two unlicensed individuals. This service provides both customers and the community assurance that individuals who want to purchase firearms undergo a comprehensive background check which helps to ensure the buyer is not prohibited from possessing a firearm, and can improve the ability of law enforcement to trace firearms if they are later recovered in a connection with a crime. In 2013, ATF published an open letter (<https://www.atf.gov/file/56331/download>) to licensed dealers educating them on how to facilitate private sales, and published ATF Procedure 2013-1 (<https://www.atf.gov/file/88181/download>), which provides further guidance. The decision to facilitate private sales is wholly voluntary on the part of the licensed dealer.

Additional information can be found at www.atf.gov.

U.S. Department of Justice

Bureau of Alcohol, Tobacco, Firearms and Explosives

99 New York Avenue, NE

Washington, DC 20226





TO: Erik Johnson
Fargo City Attorney

FROM: John Baker
Kate Swenson

DATE: June 8, 2020

RE: *City of Fargo – Sale of Firearms as a Home Occupation*
Our File No: 3070.0003

Executive summary

You asked us to advise whether the Fargo Land Development Code's prohibition of firearm and ammunition sales as home occupations¹ complies with the Second Amendment and with N.D. Cent. Code § 62.1-01-03, as well as whether the prohibition could be eliminated. You also raised the possibility of modifying the prohibition by continuing to prohibit the home-based sale of ammunition, gunpowder, or other explosive materials, but allowing the sale of firearms.

Our opinion is threefold. First, the prohibition likely does not violate either the Second Amendment or the Century Code. Second, the current prohibition could be repealed, which would allow the sale of firearms and ammunition as a home occupation. Third, a modified prohibition (allowing the home-based sale of firearms but continuing to prohibit the sale of ammunition, gunpowder, and the like) also would not violate these laws.

Our legal analysis is summarized below. Because no legal authority indicates that the City could not repeal the current prohibition in its entirety, we focus on whether it is legal to maintain the prohibition in its current form (or in a hypothetical modified form that would allow the sale of firearms but continue to prohibit the sale of ammunition).

I. The current prohibition on home-based sales likely does not violate the Second Amendment.

Fargo prohibited home-based sales of firearms and ammunition approximately twenty years ago. See Fargo Ordinance No. 4164. Since then, the United States Supreme Court has issued two significant opinions with regard to the Second Amendment to the United States

¹ "The sale of firearms and/or ammunition, and the production of ammunition for sale or resale are prohibited as home occupations." Fargo Municipal Code § 20-0403(C)(5)(e).

Constitution. In *Heller*, the Supreme Court struck down a complete ban on handgun possession in the home, holding that the Second Amendment includes an individualized right for law-abiding citizens to keep and bear arms for lawful purposes (namely, self-defense). *District of Columbia v. Heller*, 554 U.S. 570 (2008). And in *McDonald v. City of Chicago*, the Supreme Court held that the Second Amendment applies to the states. 561 U.S. 742 (2010).

The *Heller* and *McDonald* decisions did not define the limits of the individualized Second Amendment right, and did not set forth a legal standard for reviewing Second Amendment challenges. But post-*Heller* cases decided by other courts provide guidance as to the constitutionality of Fargo's ban on home-based sales of firearms.

A. Fargo's prohibition on home-based sales likely does not implicate the Second Amendment.

The first step in the analysis is whether Fargo's prohibition of home-based firearm sales affects conduct that is covered by the Second Amendment. In *Heller*, the Supreme Court declined to provide "exhaustive" guidance on the "full scope of the Second Amendment," but did indicate that the Second Amendment does not prohibit certain "longstanding prohibitions"—including "laws imposing conditions and qualifications on the commercial sale of arms." *Heller*, 554 U.S. at 626–27. The Supreme Court referred to its list of longstanding prohibitions as "presumptively lawful regulatory measures." *Id.* at 627 n.26.

The Eighth Circuit has held that if a law is one of the "longstanding prohibitions" mentioned in *Heller*, the analysis proceeds no further because the law does not infringe on the Second Amendment right. *See, e.g., United States v. Bena*, 664 F.3d 1180, 1183 (8th Cir. 2011) (concluding that it was "most likely" that the "presumptively lawful" regulatory measures listed in *Heller* "do not infringe on the Second Amendment right"); *United States v. Seay*, 620 F.3d 919, 925 (8th Cir. 2020) (rejecting facial challenge to a law falling within *Heller's* "presumptively lawful" list); *United States v. Fincher*, 538 F.3d 868, 873–74 (8th Cir. 2008) (holding that the defendant's possession of machine guns was not protected by the Second Amendment, and citing *Heller's* recognition of "the historical tradition of prohibiting the carrying of 'dangerous and unusual weapons'").

Because Fargo's prohibition on home-based sales is a "condition or qualification on the commercial sale of firearms" as mentioned in *Heller*, under current Eighth Circuit law it likely does not implicate the protections of the Second Amendment.

B. Even if Fargo's prohibition did implicate the Second Amendment, it would likely survive a constitutional challenge

The second step in the analysis would be determining the appropriate level of scrutiny to be applied to the ordinance. Although courts within the Eighth Circuit would likely terminate the analysis after the first step (as described above), Fargo's prohibition is likely sound even if a court were to reach the second step.

The Ninth Circuit's decision in *Teixeira v. County of Alameda*, 873 F.3d 670 (9th Cir. 2017), is a good illustration of how a restriction on the commercial sale of firearms is evaluated after the Supreme Court's *Heller* decision. There, a gun-store owner challenged a zoning ordinance that prevented him from operating his business within 500 feet of a residential district. The Ninth Circuit held that there is no "freestanding right of commercial proprietors **to sell** firearms." *Id.* at 673 (emphasis added).

The court acknowledged that the zoning ordinance could (in theory) infringe on the rights of potential customers **to buy or acquire** firearms—for example, if the ordinance completely banned the purchase of firearms in the jurisdiction. *Id.* at 678–80, 690; *see also Illinois Ass'n of Firearms Retailers v. City of Chicago*, 961 F. Supp. 2d 928 (N.D. Ill. 2014) (striking down complete ban on commercial sale of firearms). Ultimately, the Ninth Circuit held that the gun-store owner's challenge failed because the rights of potential customers to purchase firearms were "not meaningfully constrained" by the ordinance.² *Teixeira*, 873 F.3d at 679–80. That is, the county's residents were able to purchase guns elsewhere in the county. *Id.* The court concluded that the residents did not have a right to have a firearms store in a particular location within the jurisdiction. *Id.* at 680; *see also Illinois Ass'n of Firearms Retailers v. City of Chicago*, 961 F. Supp. 2d 928, 930 (N.D. Ill. 2014).³

Similarly, the Fargo prohibition does not ban all firearm sales in the City of Fargo. It merely prevents commercial gun sales from taking place in residences. It is our understanding that non-home-based businesses that sell firearms can and do operate lawfully elsewhere in Fargo.

² If a law substantially burdens conduct that is at the heart of the Second Amendment—for example, the right to self-defense in the home that was at issue in *Heller*—courts apply strict scrutiny. In other situations, courts apply intermediate scrutiny—that is, courts analyze whether a law is substantially related to an important governmental interest. *See* Congressional Research Service, *Post-Heller Second Amendment Jurisprudence (Summary)* (Mar. 25, 2019), <https://fas.org/sgp/crs/misc/R44618.pdf>.

Courts have acknowledged that there is a legitimate interest in restricting the commercial sale of firearms to particular locations via zoning. *See, e.g., Suter v. City of Lafayette*, 57 Cal. App. 4th 1109, 1131–32 (1st Dist. 1997) (explaining that operation of firearm dealerships can rationally be confined to commercially zoned areas and that "because dealerships can be the targets of persons who are or should be excluded from possessing weapons, it is reasonable to insist that dealerships be located away from residential areas, schools, liquor stores and bars").

³ Chicago is one of many jurisdictions in the country that bans home-based sales of firearms. *See* Municipal Code of Chicago § 4-6-270(e)(18) (prohibiting the licensure of "the sale of firearms, antique firearms . . . , or ammunition" as home occupations). Such prohibitions are usually enacted at the local level, but there is at least one statewide ban on home-based sales. *See* Mass. Gen. Laws ch. 140, § 123.

II. The current prohibition of home-based sales likely does not violate North Dakota's statutory limitation on a city's authority regarding firearms.

It is unlikely that the current prohibition of home-based sales violates Section 62.1-01-03 of the North Dakota Century Code. That section limits the authority of a political subdivision regarding firearms as follows:

A political subdivision, including home rule cities or counties, may not enact any ordinance relating to the purchase, sale, ownership, possession, transfer of ownership, registration, or licensure of firearms and ammunition which is more restrictive than state law. All such existing ordinances are void.

N.D. Cent. Code § 62.1-01-03. We found no North Dakota statutory provision addressing locations for the sale of firearms. In addition to the preemption section quoted above, state law provides that municipalities are allowed to enact zoning ordinances for the purpose of promoting health, safety, morals, or the general welfare of the community. *See* N.D. Cent. Code § 40-47-01; *see also* N.D. Cent. Code § 40-05.1-06(11). And municipalities may regulate and restrict the location and use of building, structures, and land for trade, industry, residence, or other purposes. N.D. Cent. Code § 40-47-01.

The question is whether a **zoning** regulation that restricts the commercial sale of firearms to certain areas is preempted by Section 62.1-01-03. Because North Dakota's preemption statute does not mention zoning, it is likely that the statute does not prohibit local zoning regulations that affect the locations where firearms may be sold. Courts in several other states with preemption statutes similar to North Dakota's (i.e., that do not mention zoning⁴) have concluded that local governments are allowed to exercise their right to regulate land use through zoning controls, including zoning laws that regulate where the commercial sale of firearms can take place:

- **Kentucky's** preemption statute does not mention whether zoning laws are preempted. *See* Ky. Rev. Stat. § 65.870(1) ("No existing or future city . . . may occupy any part of the field of regulation of the manufacture, sale, purchase, taxation, transfer, ownership, possession, carrying, storage, or transportation of firearms, ammunition, components of firearms, components of ammunition, firearms accessories, or combination thereof."). The Court of Appeals of Kentucky has held that the preemption statute did not prohibit zoning ordinances that restrict locations where gun shops can operate because zoning ordinances

⁴ By contrast, some states' preemption statutes explicitly **include** zoning regulations. *See Georgiacarry.org v. Coweta Cty.*, 655 S.E.2d 346, 347 (Ga. Ct. App. 2007). And other states' preemption statutes explicitly **exclude** zoning regulations. *Compare* Minn. § 471.633 (preempting city authority to regulate firearms), *with* Minn. Stat. § 471.635 (notwithstanding preemption, city may regulate location where firearms are sold).

regulate land use, not firearms. *Peter Garrett Gunsmith, Inc. v. City of Dayton*, 98 S.W.3d 517 (Ky. Ct. App. 2002), *review denied* (Ky. Mar. 12, 2003).

- **Michigan's** preemption statute does not mention whether zoning laws are preempted. See Mich. Comp. Laws § 123.1102 ("A local unit of government shall not impose special taxation on, enact or enforce any ordinance or regulation pertaining to, or regulate in any other manner the ownership, registration, purchase, sale, transfer, transportation, or possession of pistols or other firearms, ammunition for pistols or other firearms, or components of pistols or other firearms, except as otherwise provided by federal law or a law of this state."). A Michigan federal court has held that this statute did not preempt a township ordinance that prohibited the operations of firearms businesses on land zoned as residential. *Morgan v. U.S. Dep't of Justice*, 473 F. Supp. 2d 756 (E.D. Mich. 2007). The court explained that the township ordinance "says nothing at all about firearm possession, ownership, purchase, sale, or any other form of firearms regulation, but merely has, at most, an indirect effect upon firearms transactions by limiting firearms businesses (and all other comparable businesses that do not constitute 'home occupations') to certain portions of the Township and excluding them from others. . . . [S]uch an ordinance does not impermissibly 'enter into' the field of firearms regulation that the Michigan Legislature completely occupied through its enactment of § 123.1102." *Id.*
- **Pennsylvania's** statute also does not mention zoning. See 18 P.a.C.S. § 6120(a) ("No county, municipality or township may in any manner regulate the lawful ownership, possession, transfer or transportation of firearms, ammunition or ammunition components when carried or transported for purposes not prohibited by the laws of this Commonwealth."). A Pennsylvania appellate court—after *Heller*—has held that the statute did not preempt a zoning ordinance that regulated the location of gun shops because it did not "restrict how the business is conducted or whether it may be conducted within the City limits." *Gun Range, LLC v. City of Philadelphia*, No. 1529 C.D. 2016, 2018 WL 2090303, at *6 (Pa. Cmwlth. May 7, 2018). That is, the zoning ordinance was not a ban on the sale of firearms in the jurisdiction. In addition, the court noted that "Pennsylvania courts have held that such preemption of a local regulation does not result in the preemption of local zoning regulations unless specifically provided for in the statute." *Id.* at *5 (citing *Good v. Zoning Hearing Board of Heidelberg Twp.*, 967 A.2d 421, 428–29 (Pa. Cmwlth.), *appeal denied*, 973 A.2d 1008 (Pa. 2009)).

III. A modified ordinance (prohibiting the sale of ammunition but allowing the sale of firearms) will likely be treated the same as a restriction on the sale of firearms.

Our analysis is the same whether the City prohibits the home-based sale of firearms, ammunition, or both. As stated previously, Eighth Circuit precedent supports an argument that

laws regulating the commercial sale of firearms are constitutional. But even if that did not end the analysis, courts have concluded that if the Second Amendment includes a right to acquire or possess ammunition, that right is not absolute. After *Heller*, courts have applied intermediate scrutiny to laws regulating ammunition. For example, in *Jackson v. City & County of San Francisco*, 746 F.3d 953, 968–70 (9th Cir. 2014), the Ninth Circuit upheld a ban on the sale of hollow-point ammunition in a particular jurisdiction. The court concluded that the law did regulate conduct within the scope of the Second Amendment (a result unlikely to be reached by the Eighth Circuit), but burdened that right only indirectly because ammunition could be obtained in other jurisdictions and there was no ban on possessing it within the jurisdiction in question. For another example, the Third Circuit has upheld a state law that banned the possession of large-capacity magazines, explaining that a large amount of ammunition was not necessary to act in self-defense. *Ass'n of N.J. Rifle & Pistol Clubs, Inc. v. Attorney General N.J.*, 910 F.3d 106, 119–24 (3d Cir. 2018).

Land Development Code Text Amendment
Relating to firearm and ammunition sales as a non-farm commercial use or home occupation

FAQs

Q. I heard the City will be allowing residents to sell firearms and ammunition out of their homes. Why is the City allowing this?

A. Several City Commissioners have received calls from citizens concerned that Fargo's prohibition on the sale of firearms & ammunition as a home occupation is in violation of North Dakota state law. On January 27, 2020, the City Commission directed staff to review the origins of the current zoning ordinance which prohibits such uses and to initiate an amendment to remove such prohibition.

Q. What is the purpose of this text amendment?

A. The purpose of this text amendment is to remove the current zoning prohibition of firearm & ammunition production & sales as a home occupation. This would allow FFL (Federal Firearm License) holders to participate in firearm and ammunition sales from their residence.

Q. Aren't there already people who sell firearms from their homes? Why does the City need to change this ordinance?

A. Yes, according to the ATF (Bureau of Alcohol, Tabaco, Firearms, & Explosives) there are currently FFL dealers located within residences in Fargo. These individuals are licensed by the ATF, not by the City of Fargo. It is staff's understanding that the ATF has not always had a practice of confirming zoning compliance with local zoning authorities prior to issuing FFLs. Additionally, there is no federal or state prohibition on firearm sales from residences. Likewise, many cities do not prohibit such activities either.

Q. Can I start selling firearms and ammunition out of my house if this ordinance change is approved?

A. Only individuals who have a valid FFL from the ATF are legally allowed to take part in the sales of firearms and ammunition.

Q. What is the process for someone to become licensed to sell guns from their home?

A. The process for acquiring an FFL is regulated by the Federal government and administered by the ATF. The process typically involves submittal of an application, finger prints, photos; a background check through the FBI's criminal database; demonstration of knowledge of federal firearm regulations; and an interview and on-site inspection of the sales premises by the ATF.

Land Development Code Text Amendment
Relating to firearm and ammunition sales as a non-farm commercial use or home occupation

FAQs

- Q. I don't want my neighborhood to turn into a commercial district. Will this be just like a non-stop garage sale? What about all of the traffic and parking that this will generate?**
- A. FFL dealers who conduct business from their home would still be required to meet all applicable zoning regulations relating to home occupations. Such regulations are specifically designed and intended to protect the residential character of the area and mitigate potential impacts to adjacent property. To this end, the home occupation regulations limit the number of customers coming to the home, restrict all business activity to inside the home, regulate the outside appearance of the home, and prohibit the use of any hazardous substances, among other things. Unless a Conditional Use Permit is granted by the Fargo Planning Commission, no more than 4 customers are allowed per day and no more than 12 customers are allowed per week.
- Q. Is there a limit to how many firearms or how much ammunition someone can have in his or her home?**
- A. The Land Development Code does not place limitations on these things. Home occupations are limited to no more than 25% of the floor area of a home. Additionally, the Fire Code does regulate and limit things such as the storage of ammunition.
- Q. I see the proposed text amendment would remove the prohibition on the manufacturing of ammunition. Does this mean that, if approved, the manufacturing of ammunition and the storage of gunpowder would be allowed?**
- A. No. As currently written, the Land Development Code prohibits hazardous substances from being used or stored in conjunction with a home occupation. Accordingly, hazardous substances such as gunpowder or other explosive substances would not be permitted to be used for a home occupation. Without gunpowder or similar explosive propellant, manufacturing of ammunition cannot take place and is therefore essentially prohibited.

Aaron Nelson

Subject: RE: contact information - comments

From: Debra Pullen [REDACTED]
Sent: Tuesday, May 5, 2020 3:49 PM
To: Maegin Elshaug <MElshaug@FargoND.gov>
Subject: Re: contact information - comments

CAUTION: This email originated from an outside source. Do not click links or open attachments unless you know they are safe.

Hi Maegin, Here are my comments/concerns:

First, I don't want to take anybody's guns away and I am not anti-hunting. I just don't think we need to make it more convenient for someone to buy weapons. There are enough options already, obviously, given the number of gun-related deaths (including suicide) in our country. Also, I am concerned that having a weapons stockpile in a home in a neighborhood could be a "green light" for burglary or accidents. I feel there is no need to change this ordinance but there could be very negative outcomes if this is allowed.

My questions are:

Who would be regulating these sales? Would this be allowed in any home, apartment, or other dwelling? Any neighborhood? Next to a school? How many weapons would they be able to have - is there a limit? Would this include assault weapons? Who would be regulating this and monitoring compliance? Who is going to buy these weapons and how will they know if the person is legitimate?

So I would like to encourage the Commission to keep the regulation as is.

Thank you for this opportunity to express my concerns on this very important matter.

Debra Pullen

3200 11th St. S. Fargo

PROPOSED CHANGE IN HOME OCCUPATION RULES RELATING TO THE PROHIBITION OF FIREARM AND AMMUNITION SALES

Fargo Neighborhood Coalition/DNA Position Statement

The Fargo Neighborhood Coalition (FNC) is a non-profit that exists to enhance and protect the livability and the quality of our neighborhoods in Fargo. We strongly support the City of Fargo efforts to uphold their great responsibility for the livability and the sustainable quality of neighborhoods in Fargo.

The FNC's is taking a position on changing the Home Accessory Occupation language in Fargo's new Land Development Code in response to the consideration by the Fargo City Commission to allow home-based firearm sales as an accessory occupation within a home.

The FNC is not opposed to firearms and ammunition sold legally by an Alcohol, Tobacco, and Firearms (ATF) licensed dealer in commercially zoned areas of Fargo, as is the current situation. We believe this policy is fully adequate for an individual to be a licensed dealer or to purchase firearms if they wish to do so.

The FNC is opposed to changing Fargo's current wording in the Land Development Code that would allow the Federal Firearm Licensed (FFL) sale of firearms and ammunition as an "accessory occupation within a home" (home-based business). This change would open up the ability for the sales of firearms and ammunition by licensed dealers from within their homes, whether it is in a multi-use dwelling, a multi-family dwelling such as apartments, any home with "shared walls", or a single-family residences.

Why Not A Change: A change to allow firearm and ammunition sales as an accessory occupation in a home, per the expressed request of exploration by the Fargo City Commission, and as "not recommended" by the Planning Commission on a vote of 5 to 3, is of great concern and presents numerous challenges. Those challenges include:

- **Federal:**

- o Federal on-site inspections are rare and irregular. As of 2018, the ATF inspected only 12.9% of all licensed, firearm business dealers and only 7.7% of all licenses. Applicants do receive an inspection prior to approval. However, as stated there is little ability by the ATF for regular follow up. (<https://www.atf.gov/firearms/docs/report/2019-firearms-commerce-report/download>, pp 21.)

- **North Dakota Laws and Safety:**

- o Although the licensed firearms dealers go through background checks by the ATF, in North Dakota an owner of a handgun, shotgun or rifle need not be registered, permitted, or licensed. This offers little protection to a neighbor or neighborhood regarding a purchaser from a home-based dealer.
- o Being a dealer increase the odds of many ammunitions being present. Ammunitions are considered a fire/explosive hazard and were pointed out by the Fargo Fire Department as a challenge. There are no clear long-term requirements regarding the safe storage of firearms, ammunition, or gunpowder for a home since the Fargo Fire Department does not inspect home-based businesses. The ATF does require secure gun storage or safe devices, which may include trigger locks or gun safes. Without inspections, it is impossible to have oversight compliance.
 - Regardless on the constraint on number of customers allowed in Fargo for an accessory occupation in the home, there is no regulation in ND on the number of firearms and ammunitions stored in a home. As well, In ND there is no law regulating ammunitions by type, large capacity magazines or assault weapons. (<https://www.nrila.org/gun-laws/state-gun-laws/north-dakota/>).

- **Fargo:**

- o The highly intense stances on firearms and ammunitions within the Fargo neighborhood communities.
- o Notice of the license application by the ATF is provided to the "chief law enforcement officer of Fargo" for their background check; however, there is no city-wide process beyond that to deal with a home-based firearms and ammunition dealer. (<https://www.atf.gov/file/61506/download>)

- Inspection are not required in Fargo for accessory occupations in the home, and thus the Fargo Fire Department would not inspect an FFL-accessory occupation residence, but it does inspect commercial retail. It also appears that it would not be legal to place added burdens on an FFL as a home-based seller. Thus It leaves no heightened protection for the neighborhood when a firearms and ammunition dealer is present.
- Fargo does not require notice to neighbors of the existence of an accessory occupation in the home and if enacted, there is no legal path for neighbors to complain if they believe their safety or well-being is jeopardized by a firearms or ammunition dealer.
- The Federal Firearms License (FFL) has multiple types and complexities with the three types of dealers: 01 Other Weapons; 02 Pawn Brokers; and 09 Destructive Devices such as grenades and poisonous gas. The city has not considered the implications of 02 Pawn Broker licenses or the 09 Destructive Devices licenses should they be awarded by the ATF.
- Safety concerns for customers leaving the premise with firearms and ammunition; and in case of a pawn broker license or for any license, for customers coming into the neighborhood since they do not require back ground checks, licensing, permitting or registration unless it is for hand guns, rifles and shotguns.
- Genuine concerns about property values when/if it becomes known that firearms and/or ammunition is sold from a home in the neighborhood.
- Difficulty in obtaining a needed inspection since an individual's home has more protection and required legal support to qualify for an inspection by the City (inspections, fire, or police).
- **The Federal Firearm Licenses and Counts in ND** (<https://www.atf.gov/firearms/docs/report/2019-firearms-commerce-report/download>)
 - Although "09" Destructive devices "and the sale of short barreled rifles and shotguns require extra oversight under the National Firearms Act, the counts of those weapons in ND as provided by the ATF, suggest that more investigation is needed prior to any consideration for a firearms and ammunitions dealer set up as accessory occupation in a home. (<https://www.atf.gov/firearms/docs/report/2019-firearms-commerce-report/download> and image in attachment).
- **Trends:** Nationally an increase in the theft of firearms from FFL holders was a 200% increase since 2013. The reported lost or theft of guns to the ATF/FBI are relatively small yet, but the trend is concerning. (<https://www.atf.gov/firearms/federal-firearms-licensee-ffl-burglary-and-robbery-statistics-calendar-years-2013-2017>)
 - In North Dakota the AFT reported firearm losses were: 2017 - 81; 2018 - one; and 2019 - 35. (<https://www.atf.gov/file/142186/download>)
 - Nationally between 2008-2018 there was a 400% increase in the number of application forms by the ATF for dealer licenses. This trend is added concern for an increase in those seeking in home accessory occupation status. (<https://www.atf.gov/firearms/docs/report/2019-firearms-commerce-report/download>)
 - Per a national cite that assists individuals in obtaining a RRL, and that is approved by the NRA and the Better Business Bureau regarding in-home licensing, " This allows individuals to have firearms shipped directly to their home and gives you the opportunity to purchase weapons from manufacturers and supplies and wholesale prices. This can result in savings of 30% or greater, which for an avid weapons collector can be thousands of dollars within a few years." "Many are drawn to an FFL as a way to circumnavigate some of the restrictions surrounding the purchase of a personal firearm." <https://www.ffa123.com/obtaining-home-based-ffa/>

Because of the long list of facts and concerns, the FNC urges the Fargo City Commission to deny a request for a change that allows firearms and ammunition dealers to operate as an accessory occupation from their homes. The FNC requests you retain the current prohibition.

The FNC supports Fargo's current commercial zoning of firearms and ammunition sales.

References

ND Firearm Laws: <https://www.nraila.org/gun-laws/state-gun-laws/north-dakota/>

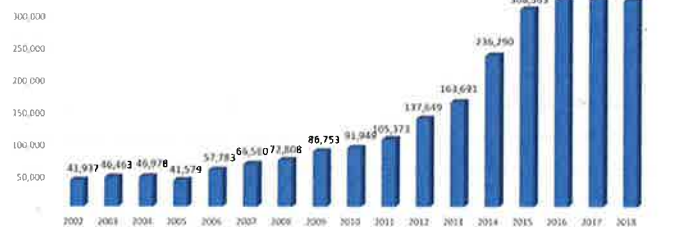
The Alcohol, Tobacco and Firearms (ATF): A law enforcement agency in the United States' Department of Justice that protects our communities from violent criminals, criminal organizations, the illegal use and trafficking of firearms, the illegal use and storage of explosives, acts of arson and bombings, acts of terrorism, and the illegal diversion of alcohol and tobacco products. We partner with communities, industries, law enforcement, and public safety agencies to safeguard the public we serve through information sharing, training, research, and use of technology. (www.atf.gov)

Application form for an FFL License: <https://www.atf.gov/file/61506/download>

Number of Forms ATF for Firearms

Between 2008 and 2018, the number of NFA Forms processed increased over 400%.

**Exhibit 7b. National Firearms Act Forms Processed by Fiscal Year
(2002 - 2018)**



ATF RRL Categories:

<https://www.atf.gov/resource-center/types-federal-firearms-licenses-ffls>

Dealers:

- 01 – Dealer in firearms other than destructive devices.
- 02 – Pawnbroker in firearms other than destructive devices.
- 09 – Dealer in destructive devices.

Manufacturers:

- 06 – Manufacturer of Ammunition for Firearms Other Than Ammunition for Destructive Devices or Armor Piercing Ammunition.
- 07 – Manufacturer of firearms other than destructive devices.
- 10 – Manufacturer of destructive devices, ammunition for destructive devices or armor piercing ammunition.

Importer:

- 08 – Importer of firearms or ammunition for firearms other than destructive devices or ammunition other than armor piercing ammunition.
- 11 – Importer of destructive devices, ammunition for destructive devices or armor piercing ammunition

Other: 03 – Collector of curios and relics.

North Dakota Licenses and Reported Firearm License Counts by Types, April 2020

<https://www.atf.gov/firearms/docs/undefined/ffltypebystate04-10-2020pdf/download>

<https://www.atf.gov/firearms/docs/report/2019-firearms-commerce-report/download> page 15.

ND Categories	Pending Apps	01 "Other"	02 Pawn Brokers	03 Collector of Curios and Relics	06 Manufacture of Ammunitions	07 Manufacturing of "Other Non Destructive Arms"	08 Importer Firearms/Ammunition	09 (Destructive Devices)	010 Manufacturer of Destructive Devices	011 Importer of Destructive Devices or Amour Piercing	TOTAL
Counts	7	465	23	162	8	33	5	0	0	0	696
% of Total	1.0%	66.8%	3.3%	23.3%	1.1%	4.7%	0.7%	0.0%	0.0%	0.0%	100.0%

Exhibit 8 National Firearms Act, Registration by State

North Dakota	Other Weapon	Destructive Devices	Machineguns	Silencer	Long Barreled Rifle	Short Barreled Guns	Total
Counts Registered	202	3,404	1,630	12,712	1,473	299	19,720
% of Total	1%	17%	8%	64%	7%	2%	100%

(<https://www.atf.gov/firearms/docs/report/2019-firearms-commerce-report/download> page 15)

Obtaining a Home-Based FFL: <https://www.ffa123.com/obtaining-home-based-ffa/>

Definitions of RRL Weapon Categories: <https://www.atf.gov/firearms/docs/report/2019-firearms-commerce-report/download>

1 The term "any other weapon" means any weapon or device capable of being concealed on the person from which a shot can be discharged through the energy of an explosive, a pistol or revolver having a barrel with a smooth bore designed or redesigned to fire a fixed shotgun shell, weapons with combination shotgun and rifle barrels 12 inches or more, less than 18 inches in length, from which only a single discharge can be made from either barrel without manual reloading, and shall include any such weapon which may be readily restored to fire. Such term shall not include a pistol or a revolver having a rifled bore, or rifled bores, or weapons designed, made, or intended to be fired from the shoulder and not capable of firing fixed ammunition.

2 Destructive device generally is defined as (a) Any explosive, incendiary, or poison gas (1) bomb, (2) grenade, (3) rocket having a propellant charge of more than 4 ounces, (4) missile having an explosive or incendiary charge of more than one-quarter ounce, (5) mine, or (6) device similar to any of the devices described in the preceding paragraphs of this definition; (b) any type of weapon (other than a shotgun or a shotgun shell which the Director finds is generally recognized as particularly suitable for sporting purposes) by whatever name known which will, or which may be readily converted to, expel a projectile by the action of an explosive or other propellant, and which has any barrel with a bore of more than one-half inch in diameter; and (c) any combination of parts either designed or intended for use in converting any device into any destructive device described in paragraph (a) or (b) of this section and from which a destructive device may be readily assembled. The term shall not include any device which is neither designed nor redesigned for use as a weapon; any device, although originally designed for use as a weapon, which is redesigned for use as a signaling, pyrotechnic, line throwing, safety, or similar device; surplus ordnance sold, loaned, or given by the Secretary of the Army pursuant to the provisions of section 4684(2), 4685, or 4686 of title 10, United States Code; or any other device which the Director finds is not likely to be used as a weapon, is an antique, or is a rifle which the owner intends to use solely for sporting, recreational, or cultural purposes.

3 Machinegun is defined as any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger. The term shall also include the frame or receiver of any such weapon, any part designed and intended solely and exclusively, or combination of parts designed and intended, for use in converting a weapon into a machinegun, and any combination of parts from which a machinegun can be assembled if such parts are in the possession or under the control of a person.

4 Silencer is defined as any device for silencing, muffling, or diminishing the report of a portable firearm, including any combination of parts, designed or redesigned, and intended for the use in assembling or fabricating a firearm silencer or firearm muffler, and any part intended only for use in such assembly or fabrication.

5 Short-barreled rifle is defined as a rifle having one or more barrels less than 16 inches in length, and any weapon made from a rifle, whether by alteration, modification, or otherwise, if such weapon, as modified, has an overall length of less than 26 inches. 6 Short-barreled shotgun is defined as a shotgun having one or more barrels less than 18 inches in length, and any weapon made from a shotgun, whether by alteration, modification, or otherwise, if such weapon as modified has an overall length of less than 26 inches. 1 The term "any other weapon" means any weapon or device capable of being concealed on the person from which a shot can be discharged through the energy of an explosive, a pistol or revolver having a barrel with a smooth bore designed or redesigned to fire a fixed shotgun shell, weapons with combination shotgun and rifle barrels 12 inches or more, less than 18 inches in length, from which only a single discharge can be made from either barrel without manual reloading, and shall include any such weapon which may be readily restored to fire. Such term shall not include a pistol or a revolver having a rifled bore, or rifled bores, or weapons designed, made, or intended to be fired from the shoulder and not capable of firing fixed ammunition. 2 Destructive device generally is defined as (a) Any explosive, incendiary, or poison gas (1) bomb, (2) grenade, (3) rocket having a propellant charge of more than 4 ounces, (4) missile having an explosive or incendiary charge of more than one-quarter ounce, (5) mine, or (

6) device similar to any of the devices described in the preceding paragraphs of this definition; (b) any type of weapon (other than a shotgun or a shotgun shell which the Director finds is generally recognized as particularly suitable for sporting purposes) by whatever name known which will, or which may be readily converted to, expel a projectile by the action of an explosive or other propellant, and which has any barrel with a bore of more than one-half inch in diameter; and (c) any combination of parts either designed or intended for use in converting any device into any destructive device described in paragraph (a) or (b) of this section and from which a destructive device may be readily assembled. The term shall not include any device which is neither designed nor redesigned for use as a weapon; any device, although originally designed for use as a weapon, which is redesigned for use as a signaling, pyrotechnic, line throwing, safety, or similar device; surplus ordnance sold, loaned, or given by the Secretary of the Army pursuant to the provisions of section 4684(2), 4685, or 4686 of title 10, United States Code; or any other device which the Director finds is not likely to be used as a weapon, is an antique, or is a rifle which the owner intends to use solely for sporting, recreational, or cultural purposes. 3 Machinegun is defined as any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger. The term shall also include the frame or receiver of any such weapon, any part designed and intended solely and exclusively, or combination of parts designed and intended, for use in converting a weapon into a machinegun, and any combination of parts from which a machinegun can be assembled if such parts are in the possession or under the control of a person. 4 Silencer is defined as any device for silencing, muffling, or diminishing the report of a portable firearm, including any combination of parts, designed or redesigned, and intended for the use in assembling or fabricating a firearm silencer or firearm muffler, and any part intended only for use in such assembly or fabrication. 5 Short-barreled rifle is defined as a rifle having one or more barrels less than 16 inches in length, and any weapon made from a rifle, whether by alteration, modification, or otherwise, if such weapon, as modified, has an overall length of less than 26 inches. 6 Short-barreled shotgun is defined as a shotgun having one or more barrels less than 18 inches in length, and any weapon made from a shotgun, whether by alteration, modification, or otherwise, if such weapon as modified has an overall length of less than 26 inches.

37c

MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

FROM: TIA BRASETH, COMMUNITY DEVELOPMENT PLANNING COORDINATOR TB
NICOLE CRUTCHFIELD, PLANNING DIRECTOR

DATE: JUNE 11, 2020

RE: PUBLIC HEARING & APPROVAL OF PROPOSED AMENDMENTS TO 2019 ANNUAL ACTION PLAN

The Department of Planning & Development Staff requests the approval of the following HOME actions:

- Cancellation of an activity under the previously approved 2019 Action Plan, HOME Affordable Senior Housing Development project.
- Identified scope, location, and budget for an activity under the previously approved 2019 Action Plan, HOME Affordable Senior Housing Development project.
- Revision of Contingency Language

The proposed amendments are in compliance with federal regulations for the Department of Housing and Urban Development (HUD) HOME programs. The following actions were completed as required by the City of Fargo's Citizen Participation Plan:

Public Advertisement Published	June 9, 2020
Provided Information to the Community Development Committee	June 9, 2020
5-Day Public Comment Period Begins	June 10, 2020
5-Day Public Comment Period Ends	June 15, 2020
Public Hearing and Final Consideration at City Commission Meeting	June 15, 2020

If any public comments are received, they will be presented to the City Commission on June 15, 2020. Each proposed amendment is detailed in the attached public notice.

Recommended Motion: Approve proposed amendments to 2019 Annual Action Plan.



Notice of Public Hearing & Public Comment Period

Amendments to 2019 Action Plan HOME Investment Partnerships Program

The City of Fargo is proposing various actions related to its HOME Investment Partnerships program, which is a grant awarded to the City by the U.S. Department of Housing and Urban Development (HUD). Following a public comment period and subsequent City Commission action on June 15, 2020, a recommendation regarding these actions will be forwarded to HUD for their consideration and approval. All citizens are welcome to submit comments at any time during the public comment period or at the public hearing.

Public Comment Period: June 10 through June 15, 2020

Send written comments or phone: City of Fargo
Planning and Development Department
Attn: Community Development Planning Coordinator
225 4th Street North, Fargo ND 58102
701.476.4144

Electronic Comments: Planning@FargoND.gov

Public Hearing: Monday, June 15, 2020 - 5:15 p.m.
City Commission Chambers
225 4th Street North, Fargo ND 58102

Final City Commission Consideration: Monday, June 15, 2020

Summary of Proposed Amendments

1. Amendments to 2019 Action Plan – HOME Affordable Senior Housing Development Project

- **Canceled Activity – 3129 7 Avenue North – “Golden/Prairie Ridge” – Craig Properties, LLC**
As per notification from the developer, this activity’s timeline has been delayed and withdrawn from 2019 award funds. It may be considered for a future HUD HOME activity. The \$350,000 in HOME funds for this activity will be reallocated, see amendment #1(b).
- **Project site/activities/budget identified – 4462 30 Avenue South – “Elliott Place” – Fargo Housing & Redevelopment Authority**
Activities include construction of a multifamily senior rental housing complex consisting of two buildings in partnership with Fargo Housing and Redevelopment Authority. The proposed HOME allocation for this activity is \$350,000 in reallocated 2019 HOME funds, see amendment #1(a).
- **Revision of Contingency Language**
A 2019 Action Plan amendment approved at the October 7, 2019 Fargo City Commission meeting stated if any other HOME Affordable Senior Housing Development activity were to be canceled, HomeField 3 would be funded up to the full request of \$515,000. In place of this, this amendment proposes reallocating HOME funds to Elliott Place as indicated above, rather than HomeField 3.

Comments & Suggestions

Comments and suggestions from the public are encouraged through a public comment period and/or at the public hearing. The existing plans are available online at www.fargond.gov/planninganddevelopment/plansandstudies or by request through the Planning and Development Department. See contact information below.

The City of Fargo, in an effort to exercise the Centers for Disease Control and Prevention guidelines pertaining to social distancing and gatherings, is encouraging all stakeholders in the Community Development Block Grant and



HOME Programs to participate in the public comment period remotely. Comments submitted by email or telephone are preferred. Email: Planning@FargoND.gov, Telephone: 701-476-4144.

The facility is serviced by public transit, accessible and can accommodate persons with disabilities. Alternative formats of this information or reasonable accommodations for persons with hearing loss, vision loss, disabilities or limited English proficiency, including the availability of interpretation and translation services, will be made upon request (48 hours of notice is required). Anyone who requires these services or an auxiliary aid to fully participate in the hearing should contact the Planning and Development Department at 701.241.1474/Planning@FargoND.gov, or the City of Fargo's Section 504/ADA Coordinator Brock Morrison at 701.298.6966 to arrange for services. To access TTY/ND Relay service dial 800.366.6888 or 711. In accordance with Federal regulations and City of Fargo policies, services are provided without regard to race, color, religion, sex, disability, familial status, national origin, age, marital status, veteran status, sexual orientation, gender identity, public assistance, domestic violence, lawful activity, or condition protected by applicable federal and state laws. The City is an equal employment/equal housing opportunity agency.



**RESOLUTION APPROVING
AMENDMENTS TO THE 2019 ANNUAL ACTION PLAN**

BE IT RESOLVED BY THE BOARD OF CITY COMMISSIONERS OF THE CITY OF FARGO:

WHEREAS, the City of Fargo receives HOME funds from United States Department of Housing and Urban Development (HUD); and

WHEREAS, in compliance with federal regulations, the City of Fargo has amended its 2019 Annual Action Plan to make available housing and community development resources that primarily address the needs of low to moderate income persons in Fargo; and

WHEREAS, in compliance with federal regulations, the City of Fargo has amended certain activities to its 2019 Annual Action Plan; and

WHEREAS, the City of Fargo has conducted a required citizen participation process including a draft publication of the amendments, a public hearing, and a 5-day public comment period as temporarily allowed through HUD waivers related to COVID-19.

NOW, THEREFORE, BE IT RESOLVED by the City Commission of the City of Fargo, North Dakota that the Mayor is herein authorized and directed to submit the amended plan to HUD and enter into, execute, and amend contracts and other documents as necessary to effectuate activities identified in the revised plan.

CERTIFICATE

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF CASS)

I, Timothy J. Mahoney, the duly elected, qualified and acting Mayor of the City of Fargo, North Dakota; and

I, Steven Sprague, the duly appointed, qualified and acting City Auditor of the City of Fargo, North Dakota,

DO HEREBY CERTIFY:

That the foregoing is a full, true and correct copy of the original Resolution, and the whole thereof approving the amendments to the City of Fargo's 2019 Annual Action Plan for the Community Development Block Grant (CDBG) & HOME programs as described in the foregoing Resolution; which Resolution was duly adopted by the Board of City Commissioners of the City of Fargo, North Dakota, at the meeting of the Board held June 15, 2020 at which Regular Meeting all members present voted in favor of the adoption of the Resolution; and

That such Resolution is now a part of the permanent records of the City of Fargo, as such records are now filed in the office of the City Auditor.

(SEAL)

Timothy J. Mahoney,
Mayor of the City of Fargo, North Dakota

ATTEST:

Steven Sprague, City Auditor

On this ____ day of _____, 2020, before me, _____, a Notary Public in and for Cass County, in the State of North Dakota, personally appeared Timothy J. Mahoney, known to me to be the Mayor of the City of Fargo, North Dakota, and Steven Sprague, City Auditor of the City of Fargo, a municipal corporation under the laws of the State of North Dakota, and they acknowledged to me that they executed the foregoing instrument.

Notary Public, Cass County, North Dakota

37d

M E M O R A N D U M

TO: BOARD OF CITY COMMISSIONERS

FROM: TIA BRASETH, COMMUNITY DEVELOPMENT PLANNING COORDINATOR JB
NICOLE CRUTCHFIELD, PLANNING DIRECTOR

DATE: JUNE 10, 2020

**RE: PUBLIC HEARING FOR ACTION RELATED TO COMMUNITY DEVELOPMENT
BLOCK GRANT (CDBG)**

An amendment is being proposed related to the City of Fargo's Community Development Block Grant (CDBG) program. The proposed amendment is:

- Revised project budget for activity under the previously approved 2018 Action Plan, CDBG Gladys Ray Emergency Homeless Shelter Facility Improvements or Relocation Project. Budget increased from \$150,000 to \$250,000 (addition of \$100,000) to match contractor quotes received for facility improvements. \$50,000 reallocated from 2018 Action Plan Slum & Blight Abatement/Hazardous Property Clearance project; \$50,000 reallocated from 2019 Action Plan Affordable Housing Development project.

The proposed amendment is detailed in the attached public notice, which was published in the June 2, 2020 Forum newspaper. The timeline for this amendment, including the 30-day public comment period, is outlined in the attached public notice. Once approved by citizens and the City, the amendment will be submitted to HUD for approval.

It is part of the City's adopted Citizen Participation Plan to take all substantial amendments to the City Commission as part of the review and approval process.

Recommended Motion: This meeting is for a public hearing only; no action is required at this time. Final consideration of the amendments is currently scheduled for July 13, 2020.

**Notice of Public Hearing & Public Comment Period
Amendment to 2018 Action Plan
Community Development Block Grant (CDBG)**

The City of Fargo is proposing amendments related to its Community Development Block Grant (CDBG) program, which is a grant awarded to the City by the U.S. Department of Housing and Urban Development (HUD). Following a public comment period and subsequent City Commission action on July 13, 2020, a recommendation regarding these actions will be forwarded to HUD for their consideration and approval. All citizens are welcome to submit comments at any time during the public comment period or at the public hearing.

Public Comment Period: June 3 through July 2, 2020

Send written comments or phone: City of Fargo
Planning and Development Department
Attn: Community Development Planning Coordinator
225 4th Street North, Fargo ND 58102
701.476.4144

Electronic Comments: planning@FargoND.gov

Public Hearing: Monday, June 15, 2020 - 5:15 p.m.
City Commission Chambers
225 4th Street North, Fargo ND 58102

Final City Commission Consideration: Monday, July 13, 2020

Summary of Proposed Amendment

Amendment to 2018 Action Plan - CDBG Gladys Ray Emergency Homeless Shelter Facility Improvements or Relocation Project

Revise project budget – Increase from \$150,000 to \$250,000 (addition of \$100,000)

Budget increased to match contractor quotes received for facility improvements. \$50,000 reallocated from 2018 Action Plan Slum & Blight Abatement/Hazardous Property Clearance project; \$50,000 reallocated from 2019 Action Plan Affordable Housing Development project. *National Objective: Low to Moderate Clientele [570.208(a)(2)]. CDBG Matrix Code: 03C – Homeless Facilities (non-operating costs). Eligibility [570.201(c)].*

Comments and suggestions from the public are encouraged through a public comment period and/or at the public hearing. The existing plans are available online at www.fargond.gov/planninganddevelopment/plansandstudies or by request through the Planning and Development Department. See contact information below.

The City of Fargo, in an effort to exercise the Centers for Disease Control and Prevention guidelines pertaining to social distancing and gatherings, is encouraging all stakeholders in the Community Development Block Grant and HOME Programs to participate in the public comment period remotely. Comments submitted by email or telephone are preferred. Email: Planning@FargoND.gov, Telephone: 701.476.4144.

The facility is serviced by public transit, accessible and can accommodate persons with disabilities. Alternative formats of this information or reasonable accommodations for persons with hearing loss, vision loss, disabilities or limited English proficiency, including the availability of interpretation and translation services, will be made upon request (48 hours of notice is required). Anyone who requires these services or an auxiliary aid to fully participate in the hearing should contact the Planning and Development Department at 701.241.1474/Planning@FargoND.gov, or the City of Fargo's Section 504/ADA Coordinator Brock Morrison at 701.298.6966 to arrange for services. To access TTY/ND Relay service dial 800.366.6888 or 711. In accordance with Federal regulations and City of Fargo policies, services are provided without regard to race, color, religion, sex, disability, familial status, national origin, age, marital status, veteran status, sexual orientation, gender identity, public assistance, domestic violence, lawful activity, or condition protected by applicable federal and state laws. The City is an equal employment/equal housing opportunity agency.



374

June 10, 2020

Board of City Commissioners
City Hall
Fargo, ND 58102

Dear Commissioners:

Attached is a copy of an application made by Great Plains Kesler South Holdings, LLC for a transfer of a payment in lieu of tax (PILOT) according to N.D.C.C. Chapter 40-57.1. The PILOT transfer requested is for the south portion of a mixed use development containing retail, market rate apartments, and underground parking at 617-621 1 Ave. N. The PILOT was originally granted to DFI BJ, LLC.

N.D.C.C. 40-57.1-06 requires a new application to be made for the remainder of a PILOT agreement term if a new project operator takes possession of the property.

Notices to competitors have been published and the Tax Exempt Review Committee has met to consider this application. The applicant is requesting to fulfill the same terms and payment schedule as originally granted by the City Commission on 8/26/2019.

The committee recommends approval of the transfer of the PILOT agreement.

SUGGESTED MOTION:

Approval of transfer of the 10 year payment in lieu of tax agreement on 617-621 1 Ave. N. from DFI BJ, LLC to Great Plains Kesler South Holdings, LLC according to the same terms and attached payment schedule for the improvements as originally granted.

Sincerely,

Ben Hushka

Tax Exempt Review Committee

Payment In Lieu of Property Tax
Payment Schedule

Pursuant to N.D.C.C. Chapter 40-57.1

PROJECT OPERATOR: Great Plains Kesler South Holdings, LLC

ASSUMPTIONS: **\$7,975,350 Improvement Value**

To begin after 5 year Renaissance Zone exemption

PILOT Years 1-10 = 100%*

*Existing tax on improvements (paving) will be included

PAYMENT SCHEDULE:

<u>YEAR</u>	<u>IN LIEU PAYMENT</u>
1	\$ 404
2	\$ 404
3	\$ 404
4	\$ 404
5	\$ 404
6	\$ 404
7	\$ 404
8	\$ 404
9	\$ 404
10	\$ 404

****Note** - The applicant will pay property tax on the land in addition to these in lieu payments.

Application For Property Tax Incentives For New or Expanding Businesses

N.D.C.C. Chapter 40-57.1

Project Operator's Application To Fargo

City or County

RECEIVED

MAY 7 2020

FARGO ASSESSOR

File with the City Auditor for a project located within a city; County Auditor for locations outside of city limits.

A representative of each affected school district and township is included as a non-voting member in the negotiations and deliberation of this application.

This application is a public record

Identification Of Project Operator

1. Name of project operator of new or expanding business Great Plains Kesler South Holdings, LLC
2. Address of project 621 1 AVE N - 617 1 AVE N
City Fargo County Cass
3. Mailing address of project operator 210 Broadway Suite 300
City Fargo State ND Zip 58102
4. Type of ownership of project
☐ Partnership ☐ Subchapter S corporation ☐ Individual proprietorship
☐ Corporation ☐ Cooperative ☒ Limited liability company
5. Federal Identification No. or Social Security No. XXXXXXXXXXXXXXXXXX
6. North Dakota Sales and Use Tax Permit No. _____
7. If a corporation, specify the state and date of incorporation North Dakota XXXXXXXXXXXX
8. Name and title of individual to contact Mike Allmendinger
 Mailing address 210 Broadway Suite 300
 City, State, Zip Fargo, ND 58102 Phone No. 701.237.2279

Project Operator's Application For Tax Incentives

9. Indicate the tax incentives applied for and terms. Be specific.

<input type="checkbox"/> Property Tax Exemption _____ Number of years _____ Percent of exemption	<input checked="" type="checkbox"/> Payments In Lieu of Taxes 2022 Beginning year 2037 Ending year X Amount of annual payments (attach schedule if payments will vary)
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10. Which of the following would better describe the project for which this application is being made:
☒ New business project ☐ Expansion of a existing business project

Description of Project Property

11. Legal description of project real property

see attached

12. Will the project property be owned or leased by the project operator? ☒ Owned ☐ Leased

If the answer to 12 is leased, will the benefit of any incentive granted accrue to the project operator?

☐ Yes ☐ No

If the property will be leased, attach a copy of the lease or other agreement establishing the project operator's benefits.

13. Will the project be located in a new structure or an existing facility? ☒ New construction ☐ Existing facility

If existing facility, when was it constructed? _____

If new construction, complete the following:

a. Estimated date of commencement of construction of the project covered by this application 10/1/2019

b. Description of project to be constructed including size, type and quality of construction

A six-story mixed-use project with ground floor retail five floors of market-rate apartments and underground parking. This project will be built on three different parking lots, (617/621 1st Ave N & 624 2nd Ave N).

PILOT application would only apply to the 617/621 1st Ave N parcels.

c. Projected number of construction employees during the project construction 20

14. Approximate date of commencement of this project's operations April 2021

15. Estimated market value of the property used for this project:

a. Land..... \$ 176,000

b. Existing buildings and structures for which an exemption is claimed..... \$ 0

c. Newly constructed buildings and structures when completed \$ 7,975,350

d. Total..... \$ 8,151,350

e. Machinery and equipment..... \$ 0

16. Estimate taxable valuation of the property eligible for exemption by multiplying the market values by 5 percent:

a. Land (not eligible)

b. Eligible existing buildings and structures..... \$ 0

c. Newly constructed buildings and structures when completed..... \$ 7,975,350

d. Total taxable valuation of property eligible for exemption (Add lines b and c)..... \$ 7,975,350

e. Enter the consolidated mill rate for the appropriate taxing district 288.60

f. Annual amount of the tax exemption (Line d multiplied by line e)..... \$ 117,623.00

Page 84 Description of Project Business

Note: "project" means a newly established business or the expansion portion of an existing business. Do not include any established part of an existing business.

17. Type of business to be engaged in: ☐ Ag processing ☐ Manufacturing ☐ Retailing
☐ Wholesaling ☐ Warehousing ☐ Services

18. Describe in detail the activities to be engaged in by the project operator, including a description of any products to be manufactured, produced, assembled or stored (attach additional sheets if necessary).

Leasing of residential apartments and commercial space

19. Indicate the type of machinery and equipment that will be installed

n/a

20. For the project only, indicate the projected annual revenue, expense, and net income (before tax) from either the new business or the expansion itself for each year of the requested exemption.

Year (12 mo. periods)	New/Expansion Project only <u>Year 1</u>	New/Expansion Project only <u>Year 2</u>	New/Expansion Project only <u>Year 3</u>	New/Expansion Project only <u>Year 4</u>	New/Expansion Project only <u>Year 5</u>
Annual revenue	<u>1,398,100</u>	<u>1,991,300</u>	<u>2,031,100</u>	<u>2,071,700</u>	<u>2,113,114</u>
Annual expense	<u>471,600</u>	<u>481,000</u>	<u>490,600</u>	<u>500,400</u>	<u>510,408</u>
Net income	<u>926,500</u>	<u>1,510,300</u>	<u>1,540,500</u>	<u>1,571,300</u>	<u>1,602,706</u>

21. Projected number and salary of persons to be employed by the project for the first five years:

Current positions & positions added the initial year of project

# Current Positions	New Positions Under \$13.00	New Positions \$13.01-\$15.00	New Positions \$15.01-\$20.00	New Positions \$20.01-\$28.00	New Positions \$28.01-\$35.00	New Positions Over \$35.00

Year	(Before project)	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4</u>	<u>Year 5</u>
No. of Employees	(1) <u>n/a</u>					
	(2) _____					
Estimated payroll	(1) <u>n/a</u>					
	(2) _____					

(1) - full time
(2) - part time

22. Is the project operator succeeding someone else in this or a similar business? ☐ Yes ☒ No
23. Has the project operator conducted this business at this or any other location either in or outside of the state?
☐ Yes ☒ No
24. Has the project operator or any officers of the project received any prior property tax incentives? ☒ Yes ☐ No
If the answer to 22, 23, or 24 is yes, give details including locations, dates, and name of former business (attach additional sheets if necessary).
RZ: DFI Loudon 2015; DFI St Marks 2015; DFI 1213 2016; DFI BE (123 Broadway) 2016; DFI Roberts 2017; ; DFI BA (113 BW) 2020; DFI BC (119 BW) 2020
DFI RZ/PILOT: DFI Woodrow 2016; DFI Black 2020; Block 9 Partners 2021

Business Competition

25. Is any similar business being conducted by other operators in the municipality? ☒ Yes ☐ No
If YES, give name and location of competing business or businesses
~~Other mixed use projects located in Fargo~~
Percentage of Gross Revenue Received Where Underlying Business Has ANY Local Competition 100%

Property Tax Liability Disclosure Statement

26. Does the project operator own real property in North Dakota which has delinquent property tax levied against it? ☐ Yes ☒ No
27. Does the project operator own a greater than 50% interest in a business that has delinquent property tax levied against any of its North Dakota real property? ☐ Yes ☒ No
If the answer to 26 or 27 is Yes, list and explain

Use Only When Reapplying

28. The project operator is reapplying for property tax incentives for the following reason(s):
☐ To present additional facts or circumstances which were not presented at the time of the original application
☐ To request continuation of the present property tax incentives because the project has:
☐ moved to a new location
☐ had a change in project operation or additional capital investment of more than twenty percent
☐ had a change in project operators
☐ To request an additional annual exemption for the year of _____ on structures owned by a governmental entity and leased to the project operator. (See N.D.C.C. § 40-57.1-04.1)

Notice to Competitors of Hearing

Prior to the hearing, the applicant must present to the governing body of the county or city a copy of the affidavit of publication giving notice to competitors unless the municipality has otherwise determined there are no competitors.

I, Michael Allmendinger, do hereby certify that the answers to the above questions and all of the information contained in this application, including attachments hereto, are true and correct to the best of my knowledge and belief and that no relevant fact pertaining to the ownership or operation of the project has been omitted.

Digitally signed by
Michael Allmendinger

Signature

President

Title


5/6/2020

Date

KESLER PROJECT - SOUTH PARCEL (RZ AND PILOT)				
Project	Great Plains Kesler South Holdings, LLC		Units	Parking
Project Value	\$7,975,350		41	30
Land Value	\$176,000		Commercial	
Mills	0.2886		5,620	
	Land Taxes	New Taxes	Incentive	Proposed Schedule
Year 1	\$2,414	\$0	RZ	\$2,414
Year 2	\$2,414	\$0	RZ	\$2,414
Year 3	\$2,414	\$0	RZ	\$2,414
Year 4	\$2,414	\$0	RZ	\$2,414
Year 5	\$2,414	\$0	RZ	\$2,414
Year 6	\$2,414	\$0	PILOT	\$2,414
Year 7	\$2,414	\$0	PILOT	\$2,414
Year 8	\$2,414	\$0	PILOT	\$2,414
Year 9	\$2,414	\$0	PILOT	\$2,414
Year 10	\$2,414	\$0	PILOT	\$2,414
Year 11	\$2,414	\$0	PILOT	\$2,414
Year 12	\$2,414	\$0	PILOT	\$2,414
Year 13	\$2,414	\$0	PILOT	\$2,414
Year 14	\$2,414	\$0	PILOT	\$2,414
Year 15	\$2,414	\$0	PILOT	\$2,414

(38)

TO: BOARD OF CITY COMMISSIONERS

FROM: MAYOR TIMOTHY J. MAHONEY 

DATE: JUNE 15, 2020

SUBJECT: POLICE CHIEF SELECTION PROCESS

The Fargo Police Chief position was posted on May 19, 2020 following Police Chief David Todd's notice of retirement. The City of Fargo received applications for the position through June 12, 2020.

Traditionally, I have recommended members of the Fargo Police Chief Selection Committee to the City Commission for approval. The Police Chief Selection Committee typically includes members of City Administration, the Police Department, and Civil Service Commission as well as community members to ensure candidates are assessed from a variety of different perspectives. The role of the Selection Committee is to interview the candidates and make a recommendation to the City Commission for appointment.

The City Commission recognizes the importance of having an inclusive Selection Committee for this important decision. I would like to present the Commission with the following proposal for forming the Selection Committee. I welcome your ideas and input on the formation of the Committee.

Selection Committee Members

Following our traditional process, I, as the Commission Liaison to the Police Department, recommend Selection Committee members. If this method is acceptable, my recommendations are as follows:

- Mayor Mahoney
- Deputy Mayor Piepkorn
- Bruce Grubb, City Administrator
- Michael Redlinger, Assistant City Administrator
- Jane Pettinger, Civil Service Chair
- Dr. Rupak Gandhi, Superintendent of Fargo Public Schools
- Dave Leker, Executive Director of Fargo Park District
- Two sworn members of the Fargo Police Department
- One member of the Human Relations Commission
- One member of the Native American Commission
- Four additional community members (citizens of Fargo)

Community Member Application Process

The City of Fargo will solicit "Statements of Interest" from community members who desire to serve on the Police Chief Selection Committee as one of the four community members. Statements of Interest will be accepted electronically, via the City of Fargo website, from June 16 through June 21, 2020. Written Statements of Interest will also be accepted in the City Commission Office, Fargo City Hall, 225 4th St. N. Fargo, ND 58102 until June 21, 2020.

Statement of Interest Requirements:

Interested community members will be screened to serve on the Selection Committee. Individuals will provide written responses to the following questions:

1. *Why are you interested in serving on the Fargo Police Chief Selection Committee?*
2. *How would your service on the Fargo Police Chief Selection Committee contribute to the successful screening and placement of the new Fargo Police Chief?*
3. *Please describe any experience, professional or volunteer, that you have related to the responsibilities of this Committee?*

Attached, you will find a draft tentative timeline for the search process. The timeline is subject to change based on the availability of Selection Committee members and the Police Chief candidates.

Your input on the formation of the Selection Committee, tasked with the important job of selecting our next Fargo Police Chief, is greatly appreciated.

RECOMMENDED MOTION: To approve the process for selection of the Fargo Police Chief as outlined in the June 15, 2020 Police Chief Selection Process memorandum.

Police Chief Selection Schedule

Timeline A	Timeline B	
June 12		Application closing date
June 15		City Commission – selection committee discussion
June 16 – June 21		Community members - submission of statements of interest to serve on the selection committee
June 22 – June 25	June 22 – July 9	City Commission Liaison/Administration/HR review of selection committee statements of interest (Timeline B utilized if we receive a large number of citizens interested in serving on selection committee)
June 29	July 13	City Commission – approval of selection committee
June 30 – July 10	July 14 – July 24	Selection Committee - individual review of police chief applicants
July 14	July 28	City Commission Liaison/Administration/HR review of selection committee individual scoring & selection of candidates to be invited to virtual interview HR to schedule interviews
July 22	August 4	Selection Committee – virtual interview with top eight (approximate) candidates
July 23 – July 27	August 5 - 10	Candidate invitations and travel arrangements made by HR
August 3	August 17	Fargo Police Department - reception for candidates
August 4	August 18	Assessment Day & Selection
August 4 - 5	August 18 – 19	Internal Candidate – Full Offer or
August 4 - 28	August 18 – September 11	External Candidate – Conditional Offer <ul style="list-style-type: none"> • PT Test (physical agility) • Medical Exam • Psychological Exam • Polygraph • Drug Screen • Fargo PD Background Investigation • Full Offer following successful completion of conditional phase

August 10	August 24	City Commission Appointment – internal candidate
September 8 – October 19	September 21 – October 19	or City Commission Appointment – external candidate – date dependent upon notice period with current employer (date range presumes at least 30 day notice)

June 2020	July 2020	August 2020	September 2020
SU MO TU WE TH FR SA	SU MO TU WE TH FR SA	SU MO TU WE TH FR SA	SU MO TU WE TH FR SA
31 1 2 3 4 5 6	1 2 3 4	1	1 2 3 4 5
7 8 9 10 11 12 13	5 6 7 8 9 10 11	2 3 4 5 6 7 8	6 7 8 9 10 11 12
14 15 16 17 18 19 20	12 13 14 15 16 17 18	9 10 11 12 13 14 15	13 14 15 16 17 18 19
21 22 23 24 25 26 27	19 20 21 22 23 24 25	16 17 18 19 20 21 22	20 21 22 23 24 25 26
28 29 30	26 27 28 29 30 31	23 24 25 26 27 28 29	27 28 29 30 1 2 3
	30 31 1 2 3 4 5		