

Before the Board of Appeals of the City of Fargo
\$150 filing fee must accompany this form

Appeals of (Owner/Interested Parties): Bright Futures Learning Center at Rocking Horse Farm
Owner - Chelsey Steinlicht

Property Address: 6244 51st Ave S. Fargo, ND 58104

What specific violations are you appealing and what material facts do you have to support your objection?
(Attach additional pages as necessary)

We are appealing the city's decision that a showering area needs to be placed in our building which will be used primarily for daytime child care services.


What relief do you seek, and why do you feel that the finding should be reversed, modified, or otherwise set aside? (Attach additional pages as necessary)

Please see attached documentation.

This appeal must be filed with the Fargo Inspections Department within 20 days of the date on your notification of the violations. The Inspector who performed the original inspection will present this appeal at the next meeting of the Board of Appeals, not less than 10 and not more than 60 days from the date below. You will be notified by mail in advance of the date, time, and place of the meeting. Any orders to correct violations that are appealed on this form will be stayed until the Board of Appeals has made its ruling.

We require that the signatures of all interested parties, along with their respective mailing addresses, be affixed to this appeal. Please attach an additional page as necessary to include all those participating in the appeal.

Name: Chelsey Steinlicht - Bright Futures Address: 7920 Sagittarius Circle S Fargo, ND

Signature: 

Interest: Director of Bright Futures Learning, LLC.

In addition, it is necessary that there be a verification of the truth of the matters stated above by at least one of these parties. Please be advised that such a signature will be considered a declaration under penalty of perjury.

Name: Chelsey Steinlicht Date: 6/27/2016

Signature: 

Interest: Director of Bright Futures Learning, LLC.

These requirements are made in accordance with Chapter 1 of the International Property Maintenance Code, as adopted in Article 31 of the Fargo Municipal Code.

To Whom It May Concern:

6/28/16

Bright Futures Learning, LLC is asking for an appeal on the City of Fargo's decision to implement the IBC 2012 code (see attached document) to exclude the use of a tub/shower in our new facility at 6244 51st Ave S. in Fargo, North Dakota. In the nature of our business we find that the ruling for the necessity of a bathing/showing area should not be implemented for the nature of our business as it is a major safety and hygienic liability for our community's children.

- The use of the shower is unclear and has not been required for any other child care centers in our community to the knowledge of our child care licensors and Child Care Aware. The city has decided to recently implement the addition to this code over the last month.
 - Fargo Cass Public Health does not require a shower in child care facility for health codes or requirements. Director of Environmental Health, Grant Larson, states "There have not been showers that have needed to be installed in child care centers currently or in the past and these centers have met all the health department's compliances. We do not require the use of showers in a child care facility."
 - Child Care Aware, the agency that advises, teaches, and advocates for parents and teachers of children in child care has included a letter which documents their safety concern for requiring this change in code to include a shower in a child care facility. (Please see attached letter)
- We are an educational facility which does not cater to 24 hour care. Our hours of operation are 7am to 6pm Monday through Friday. Bathing infants and children is the responsibility of the parent or guardian and is an incredible liability to our business and the children we care for.
 - Our building is categorized as an I-4 building which does (according to the plumbing codes now being implemented) require a tub/shower. We attempted to re-categorize our new center as an "E" building – similar to an elementary school or preschool setting to avoid the use of the shower/tub. However, it was determined by Mr. Taralson that since we cater to infants (anyone under the age of 2.5 years) it needs to be kept as an I-4 building, thus requiring the shower/tub. (Please see attached document)
- Bathing children after they have soiled clothing articles is a health concern – the feces and microbes, although not visible can spread many illnesses to other children using the same bathroom facility and be tracked through our building on children's shoes and feet, thus spreading to other classrooms.
- Supervision – The teacher to child ratios are implemented and governed by the licensing department through Cass County. It is mandatory that we are able to have the correct ratios to be in alignment with our licensing regulations at all time. If a child is using the shower, it would require a teacher to be in the visual line of a child during the showering of the child, thus removing the supervision from the other children in the classroom. This puts our center at risk for a licensing violation and safety concern with the lack of supervision in the actual classroom.
 - There is a safety concern with holding an infant in bathtub or showering area. Their skin is slippery and this could easily create an accidental injury. Holding a naked infant in a showering area is extremely dangerous.
- Molestation – As our business is required to have background checks for all employees, we reduce our business liability by NOT showering/bathing children and making sure there are multiple teachers in each classroom for supervision and liability purposes. Installing and use of a public shower in our facility

would require a staff member to leave the room with a naked child. This is opening the door to situations for all child care centers in our community that occur with bathing a children.

- As a business owner, I feel it is most inappropriate for my support staff and teachers to be required and asked to wash children as part of their daily duties. As we already have a difficult time obtaining adequate teachers and employees to work in our industry, this is a deterrent to all centers. If there is a fecal incident with a child in our care, we have a set protocol involving the disposal and bagging of all clothing items. This is done on a changing station for younger children and privacy is given to older children as it can be embarrassing and very demeaning to make a mockery of the child needing to be bathed. Wipes are used and then immediately disposed. When the city inspector, Bruce Taralson, was contacted to discuss the point of molestation, he stated that child care was a business that molestation typically happens in and that it was more important that the code was followed – wouldn't it be in our best interest as a community to eliminate an opportunity for molestation to occur?
- As a parent of four small children – I feel it is completely inappropriate for a teacher to shower or bathe any of my children in a one on one setting. If there is a fecal incident, I am aware that the center's teachers should not be washing out the fecal matter, as it will contaminate other sinks in the center and it is my responsibility to dispose or wash out the clothing at my home. I am aware that the center uses disposable wipes to reduce the spread of the fecal matter and I provide these wipes as needed by the center. It also poses the question of how many other parents would allow their children to be bathed or showered in a child care setting. This could cause concern for parents enrolling their children in a child care center that allows the use of bathing/showering.

Please reconsider the requirement for the installation of a shower for all child care centers in our community. We greatly appreciate your time and consideration.

Chelsey Steinlicht
Director
Bright Futures Learning Center
Cell: 701-866-6744



June 28, 2016

To Whom It May Concern:

I am the child care health consultant for Child Care Aware. In my role, I assist child care programs with health and safety issues. I have been in this position for almost 15 years. Prior to my current position, I was a pediatric office nurse for seven years.

I was contacted by Chelsey Steinlicht, the director of Bright Futures Learning Center, regarding the requirement by the city building inspector to install a shower in their new facility.

Here are my concerns:

- While the rationale may be to prevent stool contamination due to stool not contained in the diaper, this would most likely affect infants. A shower is not an age appropriate setting for infants to be bathed. A shower presents more safety hazards than benefits. Holding a naked infant over a wet and tiled/hard surface area while trying to clean all of the areas on the infant's small body is creating a potential for a serious injury to occur.
- My other issue is the reduction in supervision. Due to the location of the shower, a staff member would need to leave the classroom to bring the infant to the shower. This leaves the classroom out of ratio while the staff member is cleaning the infant. The process of giving a shower would most likely take a staff member 10 minutes or more in order to complete.
- My other issue is the potential to spread germs. Moving a child from one room to another or one surface to another is providing an opportunity for more contamination to occur. Keeping the child in one area to clean up will be more successful in containing the fecal material.
- My other issue is the possibility of inappropriate contact to occur when a staff member is cleaning a child in the shower. While staff members are screened before they are hired, this situation leaves a staff member and a child unsupervised for a long period of time.

If the concern for the shower is to prevent stool contamination, I believe having two sinks in the classroom is more beneficial. One sink is used for handwashing after diapering and the other sink is used for handwashing before bottle and food preparation. For classrooms with older children, it is recommended to have a sink in the classroom and one in the bathroom. Children are taught to wash their hands in the classroom sink before they eat and reserve the sinks in the bathroom to use only after toileting to prevent cross contamination.

Child care programs are also given instructions on how to properly change a diaper. If the stool is not contained in the diaper, the changing table provides a more secure surface/setting for the infant to be cleaned compared to a shower. Child care programs are also instructed on how to handle soiled clothing, disinfect the changing pad and disinfect the classroom if the stool is not contained in the diaper. Handwashing procedures for the staff and children are also required.

Please reconsider the requirement for child care programs to install a shower. I believe the safety concerns greatly outweigh the benefits. Feel free to contact me if you have any questions.

Thank you for your consideration,
Sarah Myers, RN, CCHC
Child Care Aware of North Dakota
701-476-6854
sarahm@ndchildcare.org

CHAPTER 29

PLUMBING SYSTEMS

SECTION 2901 GENERAL

[P] 2901.1 Scope. The provisions of this chapter and the *International Plumbing Code* shall govern the erection, installation, alteration, repairs, relocation, replacement, addition to, use or maintenance of plumbing equipment and systems. Toilet and bathing rooms shall be constructed in accordance with Section 1210. Plumbing systems and equipment shall be constructed, installed and maintained in accordance with the *International Plumbing Code*. Private sewage disposal systems shall conform to the *International Private Sewage Disposal Code*.

SECTION 2902 MINIMUM PLUMBING FACILITIES

[P] 2902.1 Minimum number of fixtures. Plumbing fixtures shall be provided for the type of occupancy and in the minimum number shown in Table 2902.1. Types of occupancies not shown in Table 2902.1 shall be considered individually by the *building official*. The number of occupants shall be determined by this code. Occupancy classification shall be determined in accordance with Chapter 3.

[P] 2902.1.1 Fixture calculations. To determine the *occupant load* of each sex, the total *occupant load* shall be divided in half. To determine the required number of fixtures, the fixture ratio or ratios for each fixture type shall be applied to the *occupant load* of each sex in accordance with Table 2902.1. Fractional numbers resulting from applying the fixture ratios of Table 2902.1 shall be rounded up to the next whole number. For calculations involving multiple occupancies, such fractional numbers for each occupancy shall first be summed and then rounded up to the next whole number.

Exception: The total *occupant load* shall not be required to be divided in half where *approved* statistical data indicate a distribution of the sexes of other than 50 percent of each sex.

[P] 2902.1.2 Family or assisted-use toilet and bath fixtures. Fixtures located within family or assisted-use toilet and bathing rooms required by Section 1109.2.1 are permitted to be included in the number of required fixtures for either the male or female occupants in assembly and mercantile occupancies.

[P] TABLE 2902.1
MINIMUM NUMBER OF REQUIRED PLUMBING FIXTURES^a
(See Sections 2902.1.1 and 2902.2)

see 1109.5

No.	CLASSIFICATION	OCCUPANCY	DESCRIPTION	WATER CLOSETS (URINALS SEE SECTION 419.2 OF THE INTERNATIONAL PLUMBING CODE)		LAVATORIES		BATHTUBS/ SHOWERS	DRINKING FOUNTAINS ^a (SEE SECTION 410.1 OF THE INTERNATIONAL PLUMBING CODE)	OTHER
				MALE	FEMALE	MALE	FEMALE			
1	Assembly (continued)	A-1 ^d	Theaters and other buildings for the performing arts and motion pictures	1 per 125	1 per 65	1 per 200		—	1 per 500	1 service sink
		A-2 ^d	Nightclubs, bars, taverns, dance halls and buildings for similar purposes	1 per 40	1 per 40	1 per 75		—	1 per 500	1 service sink
			Restaurants, banquet halls and food courts	1 per 75	1 per 75	1 per 200		—	1 per 500	1 service sink
		A-3 ^d	Auditoriums without permanent seating, art galleries, exhibition halls, museums, lecture halls, libraries, arcades and gymnasiums	1 per 125	1 per 65	1 per 200		—	1 per 500	1 service sink
			Passenger terminals and transportation facilities	1 per 500	1 per 500	1 per 750		—	1 per 1,000	1 service sink
			Places of worship and other religious services	1 per 150	1 per 75	1 per 200		—	1 per 1,000	1 service sink

(continued)

CHAPTER 29

[P] TABLE 2902.1—(continued)
 MINIMUM NUMBER OF REQUIRED PLUMBING FIXTURES^a
 (See Sections 2902.2 and 2902.3)

see 1109.5

No.	CLASSIFICATION	OCCUPANCY	DESCRIPTION	WATER CLOSETS (URINALS SEE SECTION 419.2 OF THE INTERNATIONAL PLUMBING CODE)		LAVATORIES		BATHTUBS/ SHOWERS	DRINKING FOUNTAINS ^a (SEE SECTION 410.1 OF THE INTERNATIONAL PLUMBING CODE)	OTHER
				MALE	FEMALE	MALE	FEMALE			
1	Assembly	A-4	Coliseums, arenas, skating rinks, pools and tennis courts for indoor sporting events and activities	1 per 75 for the first 1,500 and 1 per 120 for the remainder exceeding 1,500	1 per 40 for the first 1,520 and 1 per 60 for the remainder exceeding 1,520	1 per 200	1 per 150	—	1 per 1,000	1 service sink
		A-5	Stadiums, amusement parks, bleachers and grandstands for outdoor sporting events and activities	1 per 75 for the first 1,500 and 1 per 120 for the remainder exceeding 1,500	1 per 40 for the first 1,520 and 1 per 60 for the remainder exceeding 1,520	1 per 200	1 per 150	—	1 per 1,000	1 service sink
2	Business	B	Buildings for the transaction of business, professional services, other services involving merchandise, office buildings, banks, light industrial and similar uses	1 per 25 for the first 50 and 1 per 50 for the remainder exceeding 50		1 per 40 for the first 80 and 1 per 80 for the remainder exceeding 80		—	1 per 100	1 service sink ^e
3	Educational	E	Educational facilities	1 per 50		1 per 50		—	1 per 100	1 service sink
4	Factory and industrial	F-1 and F-2	Structures in which occupants are engaged in work fabricating, assembly or processing of products or materials	1 per 100		1 per 100		See Section 411 of the International Plumbing Code	1 per 400	1 service sink
5	Institutional	I-1	Residential care	1 per 10		1 per 10		1 per 8	1 per 100	1 service sink
		I-2	Hospitals, ambulatory nursing home care recipient ^b	1 per per room ^c		1 per per room ^c		1 per 15	1 per 100	1 service sink
			Employees, other than residential care ^b	1 per 25		1 per 35		—	1 per 100	—
			Visitors, other than residential care	1 per 75		1 per 100		—	1 per 500	—
		I-3	Prisons ^b	1 per cell		1 per cell		1 per 15	1 per 100	1 service sink
		I-3	Reformatories, detention centers and correctional centers ^b	1 per 15		1 per 15		1 per 15	1 per 100	1 service sink
			Employees ^b	1 per 25		1 per 35		—	1 per 100	—
	I-4	Adult day care and child day care	1 per 15		1 per 15		1	1 per 100	1 service sink	

(continued)

[P] TABLE 2902.1—continued
 MINIMUM NUMBER OF REQUIRED PLUMBING FIXTURES^a
 (See Sections 2902.2 and 2902.3)

see 1109.5

No.	CLASSIFICATION	OCCUPANCY	DESCRIPTION	WATER CLOSETS (URINALS SEE SECTION 419.2 OF THE INTERNATIONAL PLUMBING CODE)		LAVATORIES		BATHTUBS OR SHOWERS	DRINKING FOUNTAINS ¹ (SEE SECTION 410.1 OF THE INTERNATIONAL PLUMBING CODE)	OTHER
				MALE	FEMALE	MALE	FEMALE			
6	Mercantile	M	Retail stores, service stations, shops, salesrooms, markets and shopping centers	1 per 500		1 per 750		—	1 per 1,000	1 service sink ^g
7	Residential	R-1	Hotels, motels, boarding houses (transient)	1 per sleeping unit		1 per sleeping unit		1 per sleeping unit	—	1 service sink
		R-2	Dormitories, fraternities, sororities and boarding houses (not transient)	1 per 10		1 per 10		1 per 8	1 per 100	1 service sink
		R-2	Apartment house	1 per dwelling unit		1 per dwelling unit		1 per dwelling unit	—	1 kitchen sink per dwelling unit; 1 automatic clothes washer connection per 20 dwelling units
		R-3	One- and two-family dwellings	1 per dwelling unit		1 per dwelling unit		1 per dwelling unit	—	1 kitchen sink per dwelling unit; 1 automatic clothes washer connection per dwelling unit
		R-3	Congregate living facilities with 16 or fewer persons	1 per 10		1 per 10		1 per 8	1 per 100	1 service sink
		R-4	Congregate living facilities with 16 or fewer persons	1 per 10		1 per 10		1 per 8	1 per 100	1 service sink
8	Storage	S-1 S-2	Structures for the storage of goods, warehouses, storehouses and freight depots, low and moderate hazard	1 per 100		1 per 100		See Section 411 of the International Plumbing Code	1 per 1,000	1 service sink

- a. The fixtures shown are based on one fixture being the minimum required for the number of persons indicated or any fraction of the number of persons indicated. The number of occupants shall be determined by this code.
- b. Toilet facilities for employees shall be separate from facilities for inmates or care recipients.
- c. A single-occupant toilet room with one water closet and one lavatory serving not more than two adjacent patient sleeping units shall be permitted where such room is provided with direct access from each patient sleeping unit and with provisions for privacy.
- d. The occupant load for seasonal outdoor seating and entertainment areas shall be included when determining the minimum number of facilities required.
- e. The minimum number of required drinking fountains shall comply with Table 2902.1 and Chapter 11.
- f. Drinking fountains are not required for an occupant load of 15 or fewer.
- g. For business and mercantile occupancies with an occupant load of 15 or fewer, service sinks shall not be required.

[P] 2902.2 **Separate facilities.** Where plumbing fixtures are required, separate facilities shall be provided for each sex.

Exceptions:

1. Separate facilities shall not be required for *dwelling units* and *sleeping units*.
2. Separate facilities shall not be required in structures or tenant spaces with a total *occupant load*, including both employees and customers, of 15 or less.
3. Separate facilities shall not be required in mercantile occupancies in which the maximum occupant load is 100 or less.

[P] 2902.2.1 **Family or assisted-use toilet facilities serving as separate facilities.** Where a building or tenant space requires a separate toilet facility for each sex and each toilet facility is required to have only one water closet, two family/assisted-use toilet facilities shall be permitted to serve as the required separate facilities. Family or assisted-use toilet facilities shall not be required to be identified for exclusive use by either sex as required by Section 2902.4.

[P] 2902.3 **Employee and public toilet facilities.** Customers, patrons and visitors shall be provided with public toilet facilities in structures and tenant spaces intended for public utilization. The number of plumbing fixtures located within the required toilet facilities shall be provided in accordance with Section 2902.1 for all users. Employees shall be provided with toilet facilities in all occupancies. Employee toilet facilities shall either be separate or combined employee and public toilet facilities.

Exception: Public toilet facilities shall not be required in open or enclosed parking garages. Toilet facilities shall not be required in parking garages where there are no parking attendants.

[P] 2902.3.1 **Access.** The route to the public toilet facilities required by Section 2902.3 shall not pass through kitchens, storage rooms or closets. Access to the required facilities shall be from within the building or from the exterior of the building. All routes shall comply with the accessibility requirements of this code. The public shall have access to the required toilet facilities at all times that the building is occupied.

[P] 2902.3.2 **Location of toilet facilities in occupancies other than malls.** In occupancies other than covered and open mall buildings, the required *public* and employee toilet facilities shall be located not more than one story above or below the space required to be provided with toilet facilities, and the path of travel to such facilities shall not exceed a distance of 500 feet (152 m).

Exception: The location and maximum travel distances to required employee facilities in factory and industrial occupancies are permitted to exceed that required by this section, provided that the location and maximum travel distance are *approved*.

[P] 2902.3.3 **Location of toilet facilities in malls.** In covered and open mall buildings, the required *public* and employee toilet facilities shall be located not more than

one story above or below the space required to be provided with toilet facilities, and the path of travel to such facilities shall not exceed a distance of 300 feet (91 440 mm). In mall buildings, the required facilities shall be based on total square footage (m^2) within a covered mall building or within the perimeter line of an open mall building, and facilities shall be installed in each individual store or in a central toilet area located in accordance with this section. The maximum travel distance to central toilet facilities in mall buildings shall be measured from the main entrance of any store or tenant space. In mall buildings, where employees' toilet facilities are not provided in the individual store, the maximum travel distance shall be measured from the employees' work area of the store or tenant space.

[P] 2902.3.4 **Pay facilities.** Where pay facilities are installed, such facilities shall be in excess of the required minimum facilities. Required facilities shall be free of charge.

[P] 2902.3.5 **Door locking.** Where a toilet room is provided for the use of multiple occupants, the egress door for the room shall not be lockable from the inside of the room. This section does not apply to family or assisted-use toilet rooms.

[P] 2902.4 **Signage.** Required public facilities shall be designated by a legible sign for each sex. Signs shall be readily visible and located near the entrance to each toilet facility. Signs for accessible toilet facilities shall comply with Section 1110.

[P] 2902.4.1 **Directional signage.** Directional signage indicating the route to the public facilities shall be posted in accordance with Section 3107. Such signage shall be located in a *corridor* or aisle, at the entrance to the facilities for customers and visitors.

[P] 2902.5 **Drinking fountain location.** Drinking fountains shall not be required to be located in individual tenant spaces provided that public drinking fountains are located within a travel distance of 500 feet of the most remote location in the tenant space and not more than one story above or below the tenant space. Where the tenant space is in a covered or open mall, such distance shall not exceed 300 feet. Drinking fountains shall be located on an accessible route.

Derek Diers

From: Bruce Taralson <BTaralson@cityoffargo.com>
Sent: Friday, June 10, 2016 7:52 AM
To: Derek Diers; Christine Rose
Cc: Terry Stroh
Subject: RE: Bright Futures

Hi Derek. You know that codes change, so we cannot look to past projects to determine code compliance. We would never know what we were doing if we did that. The plumbing code use to be the chart that we used for projects, and it did not have the tub/shower required. That was changed previously and now we use the IBC. We also allow a time period of transition to new codes so we cannot look at any previous projects and know what was determined.

The IBC wants a shower or tub in a day care. We can all understand why one is required. The IBC chapter 3 does not always align with IBC chapter 29. What we do is give you every benefit we can for the discrepancies between the two. But a school is a school and a day care is a day care. Your design allowance to use E for your occupancy is only used in chapter 3. Is your project a day care? If it is a day care, then provide the fixture. If it is a school, then you do not need to. If there are infants, then you have a day care. Let us know how you will proceed.

Bruce Taralson . CBO . Deputy Administrator . City of Fargo- Inspections
P: 701/476-4147 . f: P: 701/476-6779 . e: bwtaralson@cityoffargo.com

From: Derek Diers [mailto:DerekD@tlstroh.com]
Sent: Thursday, June 09, 2016 9:38 AM
To: Christine Rose <CRose@cityoffargo.com>; Bruce Taralson <BTaralson@cityoffargo.com>
Cc: Terry Stroh <terryst@tlstroh.com>
Subject: RE: Bright Futures

Chris/Bruce,

During the design phase of this project it was determined that this Daycare facility was a Group "E" Occupancy. The client wanted to have at least two water closets in each of the classrooms, except in the Infant Rm. (children would still be in diapers), so we designed to meet their request. With their required amount and having an employee/public use restrooms we have a total of 13 water closets and 12 lavatories. When looking at the Table in Section 2902.1, for an "E" Occupancy, this building has more than enough water closets/lavatories and doesn't require a shower. This building even has enough water closets/lavatories for an "I-4" Occupancy, but we didn't design for the "I-4" because this building is classified as an "E". So now having to find a location for a shower is proving to be difficult.

I have visited with another daycare provider having three facilities in Fargo, that are "E" and "I" Occupancies, (one that has been constructed within the last two years). None of their facilities were required to have a shower/tub? I am asking for your consideration to allow us not to be required to have a shower or tub.

Thank you for your time,

Derek D. Diers



Social Services

Chip Ammerman
Executive Director

Adult Services
701-241-5747

Fax 701-239-6821

Family & Children Services
701-241-5765

Fax 701-241-5775

P.O. Box 3106
Fargo, ND 58108

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Administration
701-241-5761

Economic Assistance
701-241-5761

Fax 701-239-6820

P.O. Box 2986
Fargo, ND 58108

TDD 701-239-6784

Cass County Government Annex
1010 - 2nd Avenue South
Fargo, North Dakota 58103

RE: Requiring a shower in a Child Care Center

To whom it may concern,

The North Dakota Child Care Center Early Childhood Services Chapter 75-03-10 does not require a Child Care Center to have a shower installed in the facility. Licensing regulations required one sink and one flush toilet per 15 children enrolled, excluding those children that are not toilet trained.

It would not be appropriate for a staff member to give a child a bath or a shower while they are in a child care setting. Any aquatic activity poses a greater risk of harm to the children served. If you are required to install a shower in your facility it is recommended that you never use it.

Please let me know if you have any further questions.

Thank you,

Coreen Ruona
Child Care Licensing Specialist
701-239-6704