

FARGO CITY COMMISSION AGENDA
Monday, December 12, 2022 - 5:00 p.m.

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, November 28, 2022).

CONSENT AGENDA – APPROVE THE FOLLOWING:

- 1. Agreement with Walker Consultants to provide parking consulting services for the NP Avenue Parking Facility.
- 2. Denial of the Application for Abatement or Refund of Taxes #4536 for 51 Broadway North requesting a reduction in value for 2022 from \$14,665,100.00 down to \$7,332,550.00.
- 3. Denial of the Application for Abatement or Refund of Taxes #4537 for 42 5th Street North requesting a reduction in value for 2022 from \$217,000.00 down to \$108,000.00.
- 4. Denial of the Application for Abatement or Refund of Taxes #4538 for 300 Northern Pacific Avenue North, Unit C1 requesting a reduction in value for 2022 from \$4,125,700.00 down to \$2,062,850.00.
- 5. Waive requirement to receive and file an Ordinance one week prior to 1st reading and 1st reading of an Ordinance Relating to Definitions, License-Qualifications, Licensed Premises-Requirements For and Licenses-Termination, Suspension, Revocation and Sanctions.
- 6. Applications for Games of Chance:
 - a. Knights of Columbus #11930 for a calendar raffle on 5/20/23.
 - b. Outdoor Adventure Foundation for a raffle and raffle board on 3/18/23.
 - c. North Central Bean Dealers Association for a raffle on 1/20/23.
- 7. Receive and file General Fund – Budget to Actual through November 2022 (unaudited).
- 8. Encroachment Agreement with Marcella M. Stack, Life Estate and Mark Stack for property located at 101 23rd Street South.
- 9. Negative Final Balancing Change Order No. 13 in the amount of -\$217,824.30 for Project No. FM-16-A1.
- 10. Negative Final Balancing Change Order No. 7 in the amount of -\$60,588.45 for Project No. FM-19-A3.

- Page 2.
1. Change Order No. 3 in the amount of \$4,787.01 for Project No. FM-19-C1.
 12. Final Balancing Change Order No. 5 in the amount of \$159,363.33 for Project No. FM-19-F1.
 13. Negative Final Balancing Change Order No. 2 in the amount of -\$10,378.00 for Project No. HD-22-A1.
 14. Negative Final Balancing Change Order No. 2 in the amount of -\$227.20 for Project No. SL-21-C1.
 15. Final Balancing Change Order No. 2 in the amount of \$23,622.00 for Project No. SR-22-A1.
 16. Negative Final Balancing Change Order No. 3 in the amount of -\$68,076.25 for Project No. SR-22-B1.
 17. Final Balancing Change Order No. 3 in the amount of \$30,783.00 for Project No. TM-22-A1.
 18. Change Order No. 3 in the amount of \$28,681.00 for Project No. TN-22-B1.
 19. Notice of Grant Award from the ND Department of Health and Human Services for PHEP –EPR Statewide Response Team (CFDA #93.069).
 20. Notice of Grant Award from the ND Department of Health and Human Services for PHEP – EPR All Hazards Allocation (CFDA #93.069).
 21. Notice of Grant Award from the ND Department of Health and Human Services for PHEP – City Readiness Initiative (CFDA #93.069).
 22. One-year contract extension with Vector Solutions (SSP17412).
 23. Bid award for the demolition of 714 12th Street North (RFP22111).
 24. Direct the City Attorney to amend the Findings of Fact, Conclusions and Order for property located at 509 21st Street North.
 25. Acceptance of a grant from the Awesome Foundation.
 26. Development Agreement with Beyond Shelter, Inc.
 27. 2023 parking rate increases, as proposed by Interstate Parking.
 28. Grant Award and Acceptance from the Office of Attorney General for the Project Safe Neighborhoods Grant Program (CFDA #16.609).
 29. Application for Appropriation from Civil Asset Forfeiture Funds in the amount of \$137,695.00 to purchase the Doron Precision System, 550LEplus driving simulation system.
 30. Bid award for articulated wheel loader (RFP23016).
 31. Bid award for the purchase of one crawler dozer (RFP23018).
 32. Bid award for the purchase of one crawler dozer (RFP23019).

Page 33. Piggyback Contract with Sourcewell for the purchase of one 2023 fire pump truck (PBC022818 (23)).

34. Sole Source Procurement for vendor specific parts and service with the following:
 - a. New Flyer in the amount of \$230,000.00 (SSP23021).
 - b. Cummins NP in the amount of \$175,000.00 (SSP23022).
 - c. Nardini Fire Protection in the amount of \$50,000.00 (SSP23023).
35. Proposed route changes for the Transit Department effective 1/9/23.
36. Resolutions prescribing rates and charges for Water, Water Reclamation and Solid Waste Utility services for the 2023 calendar year.
37. Contract and bond for Project Nos. FM-21-A2 and WA2152.
38. Bills.
39. Change Order No. 7 in the amount of \$55,280.00 for Improvement District No. BN-21-H1.
40. Change Order No. 3 in the amount of \$8,746.45 for Improvement District No. BN-21-L1.
41. Change Order No. 4 in the amount of \$31,694.20 for Improvement District No. BN-22-A1.
42. Final Balancing Change Order No. 2 in the amount of \$23,378.52 for Improvement District No. BN-22-B1.
43. Final Balancing Change Order No. 1 in the amount of \$16,385.55 for Improvement District No. BN-22-J1.
44. Negative Final Balancing Change Order No. 4 in the amount of -\$10,652.76 for Improvement District No. BN-22-K1.
45. Change Order No. 1 for a time extension to the substantial completion date of 36 days from the start date, but no later than 6/30/23 and final completion date of 30 days after the substantial completion date for Improvement District No. BN-22-L1.
46. Change Order No. 5 in the amount of \$5,627.60 and time extension to the substantial and final completion dates to 10/23/22 and 11/22/22 for Improvement District No. BR-21-C1.
47. Negative Final Balancing Change Order No. 3 in the amount of -\$11,049.11 for Improvement District No. BR-22-F1.
48. Negative Final Balancing Change Order No. 4 in the amount of -\$30,537.34 for Improvement District No. FP-19-A2.
49. Final Balancing Change Order No. 3 in the amount of \$0.00 for Improvement District No. FP-19-A3.
50. Negative Final Balancing Change Order No. 2 in the amount of -\$626,665.03 for Improvement District No. PR-22-C1.
51. Negative Final Balancing Change Order No. 3 in the amount of -\$5,883.40 for Improvement District No. PR-22-G1.

- Page 52. Negative Final Balancing Change Order No. 2 in the amount of -\$16,260.98 for Improvement District No. UN-22-M1.
53. Memorandum of Offer to Landowner for an Easement (Temporary Construction Easement) and Permanent Easement (Street and Utility) with 502 7th Street North, LLC in association with Improvement District No. BR-23-C1.
 54. Temporary Access Easement with Heritage Condominium, Inc. in association with Improvement District No. BR-23-C1.
 55. Create Improvement District No. BR-23-E.
 56. Bid awards for the following Improvement Districts:
 - a. No. BN-23-A1.
 - b. No. BR-23-C1.

REGULAR AGENDA:

57. **RESIDENT COMMENTS (Fargo residents will be offered 2.5 minutes for comment with a maximum of 30 minutes total for all resident comments. Residents who would like to address the Commission, whether virtually or in person, must sign-up at FargoND.gov/VirtualCommission).**
58. ***Public Input Opportunity* - PUBLIC HEARINGS - 5:15 pm:**
 - a. Text Amendment to amend Sections 20-0401, 20-0402, 20-0403 and 20-1202 of the Fargo Municipal Code (Land Development Code) relating to definitions, regulations, use standards, nonconformities and references regarding adult entertainment centers and adult establishments.
 1. 1st reading of an Ordinance Relating to Adult Entertainment Centers and Adult Establishments.
59. Proclamation in Remembrance of the Ukrainian Famine-Genocide.
 - a. Anastassiya Andrianova would like to recognize the Remembrance of the Ukrainian Famine-Genocide.
60. Presentation on the 2023 Legislative Priorities.
61. Recommendation to approve the 2023 Capital Improvement Plan, the 2024 Street/Utility Replacements Projects and the updated Infrastructure Funding Policy.
62. Recommendation to Adopt the Resolution Authorizing the Issuance of \$57.06 million of Refunding Improvement Bonds, Series 2023A.
63. Recommendation from the Human Rights Commission to remove the word "intent" from Ordinance No. 10-0322 – Harassment.
64. Liaison Commissioner Assignment Updates.

People with disabilities who plan to attend the meeting and need special accommodations should contact the Commission Office at 701.241.1310 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.

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City of Fargo Staff Report			
Title:	Text Amendment	Date: Update:	11/30/2022 12/08/2022
Location:	Citywide and extra-territorial jurisdiction	Staff Contact:	Mark Williams
Owner(s)/Applicant:	City of Fargo/Zoning Administrator	Engineer:	N/A
Entitlements Requested:	Sections 20-0401, 20-0402, 20-0403, and 20-1202 of the Fargo Municipal Code (Land Development Code) relating to definitions, regulations, use standards, and references regarding adult entertainment centers and adult establishments.		
Status:	City Commission Public Hearing: December 12th, 2022		

Proposed Text Amendment

The proposed text amendment would amend Sections 20-0401, 20-0402, 20-0403, and 20-1202 of the Fargo Municipal Code (Land Development Code) relating to definitions, regulations, use standards, and references regarding adult entertainment centers and adult establishments. Specifically, the edits listed are proposed, using the strike-through/underline format. Existing wording that is being eliminated is shown by ~~strike-through~~; new wording being added is shown by underline.

Section 20-0401 (Use Table) of Chapter 20 (Land Development Code) is hereby amended to read as follows:

Use Category	Definition (Excerpt; See Sec. 20-1203)	Specific Use Type	Zoning Districts																				
			A G	S R	S R	S R	S R	SS RR	M R	M R	M R	U M	U M	N H	N O	N C	G O	L C	D M	G C	L I	G I	P I
Commercial																							
Adult Entertainment Center Establishment	an adult arcade, adult bookstore, adult cinema, or adult entertainment facility, or sexual device shop		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	P/C [A]	P/C [A]	P/C [A]	-

Section 20-0402(A) of Chapter 20 (Land Development Code) is hereby amended to read as follows:

- A. Adult Entertainment Center Establishment**
- Adult ~~Entertainment Centers~~ establishments are regulated based upon the documents, rationale, and findings set forth in the ordinance adopting this section. The city hereby adopts and incorporates herein its stated findings and legislative record related to the adverse secondary effects of adult establishments, including the judicial opinions and reports related to such secondary effects. Adult establishments shall be subject to all of the following standards:
1. An adult ~~entertainment center~~ establishment shall not be located within 1,250 feet of any religious institution, school, park or recreation facility (bike paths excluded), SR zoning district, MR zoning district or residential planned unit development.
 2. An adult ~~entertainment center~~ establishment shall not be located within 1,250 feet of any establishment that dispenses alcohol on-premises and is licensed in accordance with Chapter 25 of the Fargo Municipal Code.
 3. An adult ~~entertainment center~~ establishment shall not be located within ~~1,250~~ 750 feet of any other adult ~~entertainment center~~ establishment.
 4. For the purpose of subsections (1), (2), and (3), distance shall be measured from the closest part of any structure, including signs and roof overhangs, used in conjunction with the adult establishment to the closest point on a property boundary of the land use(s) identified in those subsections. Where a use identified in those subsections is located in a multi-tenant development, the distance shall be measured to the closest part of the tenant space occupied by that use rather than the property line of the entire

development. The zoning and/or use of land in adjacent jurisdictions shall not disqualify any location within the City of Fargo from being available to an adult establishment.

- 5. Notwithstanding any provision in the Fargo Municipal Code to the contrary, an adult establishment in a location that satisfies the location standards in the Land Development Code shall not be deemed noncompliant by virtue of the subsequent establishment or expansion of another land use or zoning district identified in subsections (1), (2), or (3).
- ~~46. An adult entertainment center establishment must prohibit entrance by persons less than 18 years of age.~~
- ~~5. An adult entertainment center may not display any signs visible from the exterior of the adult entertainment center, except for signs identifying it as an adult entertainment center, adult bookstore, adult entertainment facility, adult cinema or combination thereof.~~
- ~~6. No materials depicting specified sexual activities or specified anatomical areas shall be visible from the exterior of an adult entertainment center.~~
- 7. The business premises of an adult entertainment center establishment that are generally open to its patrons are open equally at the same time to members of any law enforcement agency who may wish to enter thereon provided the entry is in the course of the discharge of the law enforcement officer's duties.

Section 20-0402(T)(3) of Chapter 20 (Land Development Code) is hereby amended to read as follows:

T. Non-farm Commercial Uses

...

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

Section 20-0403(C)(5)(f) of Chapter 20 (Land Development Code) is hereby amended to read as follows:

C. Home Occupations

...

- 5. **Prohibited Uses.**

f. ~~Adult Entertainment Center Uses~~ Establishments

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

Section 20-1202 of Chapter 20 (Land Development Code) is hereby amended to read as follows:

§20-1202 – Words Defined

(NOTE: In the interest of brevity, only those terms related to adult uses are listed below, rather than the entire list of definitions. Additions to the list of definitions have resulted in renumbering as noted)

The following terms shall have the meanings ascribed to them:

- 2. **Adult Arcade:** A commercial establishment to which the public is permitted or invited that maintains booths or rooms smaller than 100 square feet, wherein image-producing devices are regularly maintained to show images characterized by their emphasis upon matter exhibiting "specified sexual activities" or "specified anatomical areas."
- 23. **Adult Bookstore:** An enclosed building having as a substantial or significant portion of its stock in trade, books, magazines, or other periodicals that are distinguished or characterized by their emphasis on matter depicting or describing specified sexual activities or specified anatomical areas. A commercial establishment which, as one of its principal business activities, offers for sale or rental for any form of consideration any one or more of the following: books, magazines, periodicals or other printed matter, or

photographs, films, motion pictures, video cassettes, compact discs, digital video discs, slides, or other visual representations which are characterized by their emphasis upon the display of "specified sexual activities" or "specified anatomical areas." A "principal business activity" exists where the commercial establishment meets any one or more of the following criteria:

- a. At least 30% of the establishment's displayed merchandise consists of said items, or
- b. At least 30% of the establishment's revenues derive from the sale or rental, for any form of consideration, of said items, or
- c. The establishment maintains at least 30% of its floor space for the display, sale, and/or rental of said items (aisles and walkways used to access said items, as well as cashier stations where said items are rented or sold, shall be included in "floor space" maintained for the display, sale, or rental of said items); or
- d. The establishment maintains at least five hundred square feet (500 sq. ft.) of its floor space for the display, sale, and/or rental of said items (aisles and walkways used to access said items, as well as cashier stations where said items are rented or sold, shall be included in "floor space" maintained for the display, sale, or rental of said items); or
- e. The establishment regularly offers for sale or rental at least five hundred (500) of said items; or
- f. The establishment regularly makes said items available for sale or rental and holds itself out, in any medium, as an establishment that caters to adult sexual interests.

In this definition, "floor space" means the floor area inside an establishment that is visible or accessible to patrons for any reason, excluding restrooms.

34. **Adult Cinema:** An enclosed building used on a regular basis for presenting pictorial materials or other visual images by way of direct or indirect projection, which materials are distinguished or characterized by an emphasis on the depiction of specified sexual activities or specified anatomical areas, for observation by patrons therein in return for the payment of a consideration, irrespective of the number of patrons who may be able to view the presentation at one time. A commercial establishment to which the public is permitted or invited that maintains viewing rooms that are 100 square feet or larger wherein films or videos characterized by their emphasis upon "specified sexual activities" or "specified anatomical areas" are regularly shown.
45. **Adult Entertainment Facility:** An enclosed building wherein an admission is charged for entrance, or food or nonalcoholic beverages are sold or intended for consumption, and wherein may be observed live presentation of entertainment distinguished or characterized by an emphasis on matters depicting, describing or relating to specified sexual activities or specified anatomical areas. A nightclub, juice bar, restaurant, or similar commercial establishment that regularly offers live semi-nude conduct. No establishment shall avoid classification as an adult entertainment facility by offering nude conduct.
56. **Adult Entertainment Center Establishment:** An Adult Arcade, Adult Bookstore, Adult Cinema, Adult Entertainment Facility, or a Sexual Device Shop, or any combination thereof.
17. **Characterized by:** Describing the essential character or quality of an item. As applied in this chapter, no business shall be classified as an adult establishment by virtue of showing, selling, or renting materials rated NC-17 or R by the Motion Picture Association of America.
44. **Nudity or Nude Conduct:** The showing of the human male or female genitals, pubic area, vulva, or anus with less than a fully opaque covering, or the showing of the female breast with less than a fully opaque covering of any part of the nipple and areola. For purposes of this chapter, a "fully opaque covering" must not consist of any substance that can be washed or peeled off the skin (such as paint, make-up, or latex).
55. **Regional Shopping Mall (Enclosed):** A group of retail and other commercial establishments that is planned, developed, and managed as a single property, with on-site parking provided around the perimeter of the shopping center, and that is generally at least forty acres in size and flanked by two or more large "anchor" stores, such as department stores. The common walkway or "mall" is enclosed, climate-controlled and lighted, usually with an inward orientation of the stores facing the walkway.
58. **Regularly:** The consistent and repeated doing of an act on an ongoing basis.

62. Semi-Nude or Semi-Nudity: The showing of the female breast below a horizontal line across the top of the areola and extending across the width of the breast at that point, or the showing of the male or female buttocks, with less than a fully opaque covering. This definition shall include the lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breasts exhibited by a bikini, dress, blouse, shirt, leotard, or similar wearing apparel provided the areola is not exposed in whole or in part. For purposes of this chapter, a "fully opaque covering" must not consist of any substance that can be washed or peeled off the skin (such as paint, make-up, or latex).

64. Sexual Device: Any three (3) dimensional object designed for stimulation of the male or female human genitals, anus, buttocks, nipple, or for sadomasochistic use or abuse of oneself or others and shall include devices commonly known as dildos, vibrators, penis pumps, cock rings, anal beads, butt plugs, nipple clamps, and physical representations of the human genital organs. Nothing in this definition shall be construed to include devices primarily designed for protection against sexually transmitted diseases or for preventing pregnancy.

65. Sexual Device Shop: A commercial establishment:

- a. where more than 100 sexual devices are regularly made available for sale or rental; or
- b. where sexual devices are regularly made available for sale or rental and the establishment regularly gives special prominence to sexual devices (e.g., by using lighted display cases for sexual devices, having a large variety of sexual devices, having a room or discrete area of the establishment significantly devoted to sexual devices, or positioning sexual devices near cash registers or similar points of sale).

This definition shall not be construed to include an establishment located within an enclosed regional shopping mall, an establishment containing a pharmacy that employs a licensed pharmacist to fill prescriptions on the premises, or an establishment that is enrolled in Medicare as a durable medical equipment, prosthetics, and supplies (DMEPOS) supplier.

78. Viewing Room: The room or booth where a patron of an adult establishment would ordinarily be positioned while watching a film, videocassette, digital video disc, or other video on an image-producing device.

Background and Existing Ordinances.

The Land Development Code's (LDC) regulations regarding adult uses have recently come to staff's attention. It appears there has been no update, revision, or amendment to the sections of the LDC that relate to the adult uses since the LDC's adoption in 1998. Further, the LDC's adult use regulations are almost verbatim the adult use regulations adopted in 1996 (Ordinance No. 2807). Review by staff and outside consultants specializing in adult use regulation has indicated that the area of adult use regulation has evolved considerably since the late 1990's, and an update to the LDC's adult use regulations is timely and appropriate. Thus, staff brings forward these proposed amendments.

Purpose

It is the purpose of this ordinance to regulate adult establishments in order to promote the health, safety, and general welfare of the citizens of the city, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of adult establishments within the city. The text amendments update adult use definitions and set forth the City's reliance on secondary effects as the rationale for regulating such establishments, which aligns with governing law.

A list of legislative secondary effects documentation, provided by the City's consulting attorney for this text amendment, is attached. The Planning Department file for this text amendment includes a document providing a more detailed summary of these legislative effects documents, as well as an electronic version of the full text of the court cases cited in this staff report and in the City Commission presentation.

(continued on next page)

<p>Staff Analysis:</p> <p>Approval Criteria</p> <p>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.</p> <ol style="list-style-type: none"> <p>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 adult establishments, as a category of commercial uses, are associated with a wide variety of adverse secondary effects including, but not limited to, personal and property crimes, human trafficking, prostitution, potential spread of disease, lewdness, public indecency, obscenity, illicit drug use and drug trafficking, negative impacts on surrounding properties, urban blight, litter, and sexual assault and exploitation. Regulating adult establishments to reduce and abate secondary effects served to protect public health, safety, and welfare. (Criteria Satisfied)</p> <p>2. The amendment must not adversely affect the public health, safety, or general welfare; Staff finds that the amendment does not adversely affect, but rather promotes, the public health, safety, or general welfare. (Criteria Satisfied)</p> <p>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, as noted above, the area of adult use regulation has evolved considerably since the LDC’s regulations regarding adult uses were adopted in 1998. The amendments are proposed to bring the LDC’s regulation of adult uses into line with modern planning and regulatory practices and intervening case law that has developed over time. (Criteria Satisfied)</p>
<p>Staff Recommendation:</p> <p>Suggested Motion “To accept the findings and recommendations of the Planning Commission and staff and hereby waive the requirement to receive the text amendment Ordinance one week prior to the first reading and place the text amendment Ordinance on for first reading, and move to approve the proposed text amendment to Sections 20-0401, 20-0402, 20-0403, and 20-1202 of the Fargo Municipal Code (Land Development Code) relating to definitions, regulations, use standards, nonconformities, and references regarding adult entertainment centers and adult establishments.”</p>
<p>Planning Commission Recommendation: December 6th, 2022</p> <p>At that December 6th, 2022 Planning Commission, that Commission, by a vote of 5-2 with two Commissioners absent and two Commission seats vacant, moved to accept the findings and recommendations of staff and recommended approval to the City Commission of the proposed text amendment to Sections 20-0401, 20-0402, 20-0403, and 20-1202 of the Fargo Municipal Code (Land Development Code) relating to definitions, regulations, use standards, nonconformities, and references regarding adult entertainment centers and adult establishments.</p>
<p>Attachments:</p> <ol style="list-style-type: none"> 1. Powerpoint slides (these slides will also appear in the City Commission presentation) 2. List of legislative secondary effects documentation

**Legal Presentation on Regulating
Negative Secondary Effects of
Adult Establishments**

Fargo Planning Commission

December 6, 2022

1

***Renton v. Playtime Theatres,
Inc., 475 U.S. 41, 51-52 (1986)***

“Renton was entitled to rely on the experiences of Seattle and other cities, and in particular on the ‘detailed findings’ summarized in [prior case].

The First Amendment does not require a city, before enacting such an ordinance, to conduct new studies or produce evidence independent of that already generated by other cities, so long as whatever evidence the city relies upon is reasonably believed to be relevant to the problem that the city addresses.”

2

Courts Have Recognized Many Types of Secondary Effects

- 1. Negative impacts on surrounding properties**
- 2. Personal and property crimes, public safety risks, confrontations**
- 3. Lewdness, public indecency, illicit sexual activity and potential spread of disease**
- 4. Illicit drug use and trafficking**
- 5. Litter, aesthetic impacts, traffic, noise, blight**

3

Courts Have Recognized a Wide Variety of Sources of Secondary Effects Evidence

- 1. Land Use Reports**
- 2. Crime Impact Reports**
- 3. Judicial Opinions**
- 4. Expert Reports**
- 5. Anecdotal Data**

4

Negative Secondary Effects Justify Location Regulations

- 1. *Stardust, 3007 LLC v. City of Brookhaven*, 899 F.3d 1164 (11th Cir. 2018) (upholding sexual device shop regulation; holding city's secondary effects evidence sufficient)**
- 2. *Independence News, Inc. v. City of Charlotte*, 568 F.3d 148 (4th Cir. 2009) (“[C]ities...need not show that each individual adult establishment actually generates the undesired secondary effects.”)**
- 3. *Taylor v. State*, 2002 WL 1722154 (Tex. Ct. App. 2002) (noting manipulation of inventory to avoid classification as adult store)**

5

Supporting Cases (cont'd)

- 4. *World Wide Video of Washington, Inc. v. City of Spokane*, 368 F.3d 1186 (9th Cir. 2004) (upholding regulation of retail-only adult stores)**
- 5. *ILQ Investments, Inc. City of Rochester*, 25 F.3d 1413 (8th Cir. 1994) (upholding regulation of adult retail stores)**
- 6. *H-H Indianapolis, LLC v. Indianapolis-Marion County*, 889 F.3d 432 (7th Cir. 2018) (upholding city decision that store would be “adult” despite its contrary claim to limit inventory)**

6

Sexual Devices Not Protected by First Amendment

- 1. *Sewell v. Georgia*, 435 U.S. 982 (1978); *id.* at 985 (Brennan, J., dissenting from certiorari denial) (noting that First Amendment does not protect sexual devices)**
- 2. *Adam and Eve Jonesboro, LLC v. Perrin*, 933 F.3d 951 (8th Cir. 2019) (selling sexually-oriented devices is not speech)**
- 3. *Heideman v. South Salt Lake City*, 348 F.3d 1182, 1195 (10th Cir. 2003) (upholding regulation of “adult novelty stores,” which are not engaged in expressive activity.)**

7

Some Court-Approved Secondary Effects Evidence

- 1. Garden Grove, California (ambient crime risk)**
- 2. McCleary Expert Report (2008 Jackson County, MO report) (explaining secondary effects are associated with all adult uses, including retail stores)**
- 3. Oklahoma City, Oklahoma (adverse impacts on surrounding properties)**
- 4. Criminal Justice Policy Review Article re: Secondary Effects of Retail Adult Stores**
- 5. Excerpts from Sex Store Statistics and Articles (retail sex shops as hot-spots for crime)**

8

Court-Approved Expert Findings

- 1. Finding of secondary effects from sexually oriented businesses is confirmed in wide variety of sources.**
- 2. Reliance on police calls-for-service (CFS) is flawed because most vice crimes never result in a CFS. See *Daytona Grand*, 490 F.3d 860, 881-883 (11th Cir. 2007).**
- 3. All subclasses of sexually oriented businesses, including retail-only stores, have secondary effects. *H&A Land Corp. v. City of Kennedale*, 480 F.3d 336 (5th Cir. 2007).**

9

Land Development Code Text Amendments

Adult use provisions were adopted in 1998

Amendments are warranted to address various legal and industry developments and to modernize the definitions and regulations

- 1. Maintain GC, LI, and GI zoning for adult uses with 1,250 ft. buffer from sensitive uses**
- 2. Specify measurement method**
- 3. Update terminology to “adult establishment”**

10

LDC Text Amendments, continued

- 4. Update “adult bookstore” “adult cinema” and “adult entertainment facility” definitions**
- 5. Add “adult arcade” and “sexual device shop”**
- 6. Add supporting definitions**
- 7. Specify secondary effects rationale and findings for adult use zoning regulations**

11

The Voluminous Secondary Effects Materials are Made A Part of the Official Record and/or Minutes for this Public Meeting.

12

**FARGO, NORTH DAKOTA
ADULT ESTABLISHMENT REGULATIONS
INDEX TO LEGISLATIVE SECONDARY EFFECTS DOCUMENTATION**

1. Legal Presentation on Regulating Negative Secondary Effects of Sexually Oriented Businesses (PowerPoint Slides)
2. Summaries of Key Reports Concerning the Negative Secondary Effects of Sexually Oriented Businesses
3. *Correlates of Current Transactional Sex among a Sample of Female Exotic Dancers in Baltimore, MD*. Journal of Urban Health: Bulletin of the New York Academy of Medicine (15 February 2011)
4. *Does the Presence of Sexually Oriented Businesses Relate to Increased Levels of Crime? An Examination Using Spatial Analyses*, Crime & Delinquency (29 November 2012) (Louisville, KY)
5. Metropolis, Illinois, Investigator Affidavits Documenting Paid Sexual Conduct in Adult Entertainment Club, 2011-2012
6. Manatee County, Florida Investigator Affidavits and News Articles re: Secondary Effects of Sexually Oriented Businesses, 2007
7. Hillsborough County, Florida Investigator Affidavits re: Secondary Effects of Sexually Oriented Businesses, 2006
8. Clarksville, Indiana, Police Reports, Testimony, and Investigator Report re: Live Sexual Conduct in Adult Establishment Theater & Booth Areas, 2009, 2013-2019
9. El Paso, Texas, Affidavits re: Illicit Sex Acts and Unsanitary Conditions in Adult Cabarets and Adult Bookstores, 2008
10. Memphis Articles re: Crime at Strip Clubs and Strip Club Owner Guilty Plea, 2006
11. New Albany, Indiana, Investigator Report re: Illicit Sexual Conduct at Gentlemen's Club, 2009
12. Louisville, Kentucky Police Reports, Investigator Affidavits, and Citizen Affidavits re: Secondary Effects of Sexually Oriented Businesses, 2004
13. Report on Fulton County Adult Entertainment Businesses, July 2001, and minutes of public hearing
14. Chattanooga Police Records re: Public Masturbation and Public Nuisance Activities at Cinema One Theatre, 1999-2003

15. Crime-Related Secondary Effects of Sexually-Oriented Businesses: Report to the Jackson County Legislature, May 9, 2008
16. Survey of Appraisers, Fort Worth & Dallas, Effects of Land Uses on Surrounding Property Values, September 2004
17. Report to the City Attorney on Crime-Related Secondary Effects, Kennedale, Texas, 2005
18. A Methodological Critique of the Linz-Yao Report: Report to the Greensboro City Attorney, December 15, 2003
19. An Analysis of the Effects of SOBs on the Surrounding Neighborhoods in Dallas, Texas, April 1997
20. Sexually Oriented Business Ordinance Revision Committee Legislative Report, Houston City Council, January 7, 1997
21. Legislative Report on an Ordinance Amending Section 28-73 of the Code of Ordinances of the City of Houston, Texas, November 1983
22. Adult Cabarets, Factual Record, Phoenix, Arizona, 1995-1998
Incall Escort Bureaus/Nude Modeling Studios (Private Room Nude Dancing) Factual Record, Phoenix, Arizona, 1995-1998
Sex Clubs Factual Record, Phoenix, Arizona, 1997-1998
23. Adult Business Study, Planning Department, City of Phoenix, May 25, 1979
24. Tucson, Arizona Police Memorandum dated May 1, 1990
25. Declaration in Support of City of Spokane's Motion for Summary Judgment re: Secondary Effects Evidence Concerning Retail Adult Bookstores, July 24, 2002; and other Spokane, Washington documents
26. Summary of Review and Conclusions Regarding the City of St. Cloud's Regulation of Adult Use Businesses, December, 1994
27. Report on Adult Oriented Businesses in Austin, prepared by Office of Land Development Services, Austin, Texas, May 19, 1986
28. Adult Entertainment Businesses in Indianapolis, An Analysis, Department of Metropolitan Development, Division of Planning, February 1984
29. The Relationship Between Crime and Adult Business Operations on Garden Grove Boulevard, October 23, 1991

30. Study of the Effects of the Concentration of Adult Entertainment Establishments in the City of Los Angeles, Department of City Planning, City of Los Angeles, June 1977
31. Staff Report, Amendment to Zoning Regulations, Adult Businesses in C-2 Zone with Conditional Use Permit, City of Whittier, California, January 9, 1978
32. Adult Entertainment Businesses in Oklahoma City: A Survey of Real Estate Appraisers, March 3, 1986
33. Report on Secondary Effects of the Concentration of Adult Use Establishments in the Times Square Area, April 1994
34. Report of the Attorney General's Working Group on the Regulation of Sexually Oriented Businesses, State of Minnesota, June 6, 1989
35. Expert Report in *Illusions-Dallas Private Club, Inc. v. Steen*, N.D. Tex. no. 3:04-CV-201, October 5, 2007
36. *Rural Hotspots: The Case of Adult Businesses*, 19 Criminal Justice Policy Review 153 (2008)
37. Stripclubs According to Strippers: Exposing Workplace Sexual Violence, by Kelly Holsopple, Program Director, Freedom and Justice Center for Prostitution Resources, Minneapolis, Minnesota
38. David Sherman, Sexually Oriented Businesses: An Insider's View, Testimony before Michigan House Committee—Ethics and Constitutional Law, January 12, 2000
39. Sex Store Statistics and Articles
40. Indianapolis / Marion County Board of Zoning Appeals Documents — 2017
41. Law Enforcement and Private Investigator Affidavits (Adult Cabarets in Forest Park, GA and Sandy Springs, GA)
42. DeKalb County Testimony and Reports – 2014
43. Strip Club – Trafficking Documents
44. Cases Discussing the Negative Secondary Effects of Sexually Oriented Businesses and/or the Constitutionality of Regulations Pertaining to Same

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ORDINANCE NO. _____

AN ORDINANCE AMENDING SECTIONS 20-0401, 20-0402,
20-0403, AND 20-1202 OF THE FARGO MUNICIPAL CODE
(LAND DEVELOPMENT CODE) RELATING TO ADULT
ENTERTAINMENT CENTERS AND ADULT
ESTABLISHMENTS

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WHEREAS, the electorate of the City of Fargo has adopted a home rule charter in accordance with Chapter 40-50.1 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 ordinance; 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 purpose; and

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

WHEREAS, adult establishments require special supervision from the public safety agencies of the city in order to protect and preserve the health, safety, and welfare of the patrons of such businesses as well as the citizens of the city; and

WHEREAS, the Board of City Commissioners finds that adult establishments, as a category of establishments, are frequently used for unlawful sexual activities, including prostitution, and sexual liaisons of a casual nature; and

WHEREAS, there is convincing documented evidence that adult establishments, as a category of establishments, have deleterious secondary effects and are often associated with crime and adverse effects on surrounding properties; and

WHEREAS, the board desires to protect the health, safety, and welfare of the citizenry; protect the citizens from crime; preserve the quality of life; preserve the character of surrounding neighborhoods and deter the spread of urban blight; and

WHEREAS, certain sexually oriented products and services offered to the public are recognized as not inherently expressive and not protected by the First Amendment, *see, e.g.*,

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Heideman v. South Salt Lake City, 348 F.3d 1182, 1195 (10th Cir. 2003) (“On its face, the Ordinance applies to all ‘sexually oriented businesses,’ which include establishments such as ‘adult motels’ and ‘adult novelty stores,’ which are not engaged in expressive activity.”); *Sewell v. Georgia*, 233 S.E.2d 187 (Ga. 1977), *dismissed for want of a substantial federal question*, 435 U.S. 982 (1978) (sexual devices); *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 224 (1990) (escort services and sexual encounter services); and

WHEREAS, there is documented evidence of adult establishments, including adult bookstores and adult video stores, manipulating their inventory and/or business practices to avoid regulation while retaining their essentially “adult” nature, *see, e.g., Z.J. Gifts D-4, L.L.C. v. City of Littleton*, Civil Action No. 99-N-1696, Memorandum Decision and Order (D. Colo. March 31, 2001) (finding retail adult store’s “argument that it is not an adult entertainment establishment” to be “frivolous at best”); *People ex rel. Deters v. The Lion’s Den, Inc.*, Case No. 04-CH-26, Modified Permanent Injunction Order (Ill. Fourth Judicial Circuit, Effingham County, July 13, 2005) (noting that “the accuracy and credibility” of the evidence on inventory in adult retail store was suspect, and that testimony was “less than candid” and “suggested an intention to obscure the actual amount of sexually explicit material sold”); *City of New York v. Hommes*, 724 N.E.2d 368 (N.Y. 1999) (documenting manipulation of inventory to avoid adult classification);

Taylor v. State, No. 01-01-00505-CR, 2002 WL 1722154 (Tex. App. July 25, 2002) (noting that “the nonadult video selections appeared old and several of its display cases were covered with cobwebs”); *HH-Indianapolis, LLC v. Consol. City of Indianapolis/Marion County*, 889 F.3d 432 (7th Cir. 2018); *HH-Indianapolis, LLC v. Consol. City of Indianapolis/Marion County*, 265 F. Supp. 3d 873 (S.D. Ind. 2017); and

WHEREAS, the manner in which an establishment holds itself out to the public is a reasonable consideration in determining whether the establishment is an adult establishment, *see, e.g., East Brooks Books, Inc. v. Shelby County*, 588 F.3d 360, 365 (6th Cir. 2009) (“A prominent display advertising an establishment as an ‘adult store,’ moreover, is a more objective indicator that the store is of the kind the Act aims to regulate, than the mere share of its stock or trade comprised of adult materials.”); *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 261 (1991) (Scalia, J., concurring in part and dissenting in part) (“[I]t is most implausible that any enterprise which has as its constant intentional objective the sale of such [sexual] material does not advertise or promote it as such.”); *see also Johnson v. California State Bd. of Accountancy*, 72 F.3d 1427 (9th Cir. 1995) (rejecting First Amendment challenge to statute which used the phrase “holding out” to identify conduct indicative of the practice of public accountancy, but did not ban any speech); *Spencer v. World Vision, Inc.*, 633 F.3d 723 (9th Cir. 2010) (O’Scannlain, J., concurring) (concluding that whether an entity “holds itself out” as religious is a neutral factor and that factor helps to ensure that the entity is a *bona fide* religious entity); and

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1 WHEREAS, the city intends to regulate such businesses as adult establishments through
2 narrowly tailored regulations designed to serve its substantial government interest in protecting
3 the health, safety, and welfare of the community, including by preventing the negative secondary
4 effects of adult establishments; and

5 WHEREAS, the city recognizes its constitutional duty to interpret and construe its laws to
6 comply with constitutional requirements as they are announced; and

7 WHEREAS, the board wishes to update the city's definitions and land use regulations for
8 adult establishments; and

9 WHEREAS, with the passage of any ordinance, the city and the board of city
10 commissioners accept as binding the applicability of general principles of criminal and civil law
11 and procedure and the rights and obligations under the United States and North Dakota
12 Constitutions, the North Dakota Century Code, and the North Dakota Rules of Civil and
13 Criminal Procedure; and

14 WHEREAS, it is not the intent of this ordinance to suppress any speech activities protected by
15 the U.S. Constitution or the North Dakota Constitution, but to enact legislation to further the
16 content-neutral governmental interests of the city, to wit, the controlling of secondary effects of
17 adult establishments.

18 NOW, THEREFORE,

19 Be it Ordained by the Board of City Commissioners of the City of Fargo:

20 Section 1. Amendment.

21 Section 20-0401 of Chapter 20 (Land Development Code) is hereby amended so that the row
22 for "Adult Entertainment Center" in Table 20-0401 is amended to read as shown in Exhibit 1
23 attached hereto.

Section 2. Amendment.

Section 20-0402(A) of Chapter 20 (Land Development Code) is hereby amended to read as follows:

A. Adult Entertainment Center Establishment

Adult Entertainment Centers establishments are regulated based upon the documents, rationale, and findings set forth in the ordinance adopting this section. The city hereby

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adopts and incorporates herein its stated findings and legislative record related to the adverse secondary effects of adult establishments, including the judicial opinions and reports related to such secondary effects. Adult establishments shall be subject to all of the following standards:

1. An adult ~~entertainment center~~ establishment shall not be located within 1,250 feet of any religious institution, school, park or recreation facility (bike paths excluded), SR zoning district, MR zoning district or residential planned unit development.
2. An adult ~~entertainment center~~ establishment shall not be located within 1,250 feet of any establishment that dispenses alcohol on-premises and is licensed in accordance with Chapter 25 of the Fargo Municipal Code.
3. An adult ~~entertainment center~~ establishment shall not be located within ~~1,250~~ 750 feet of any other adult ~~entertainment center~~ establishment.
4. For the purpose of subsections (1), (2), and (3), distance shall be measured from the closest part of any structure, including signs and roof overhangs, used in conjunction with the adult establishment to the closest point on a property boundary of the land use(s) identified in those subsections. Where a use identified in those subsections is located in a multi-tenant development, the distance shall be measured to the closest part of the tenant space occupied by that use rather than the property line of the entire development. The zoning and/or use of land in adjacent jurisdictions shall not disqualify any location within the City of Fargo from being available to an adult establishment.
5. Notwithstanding any provision in the Fargo Municipal Code to the contrary, an adult establishment in a location that satisfies the location standards in the Land Development Code shall not be deemed noncompliant by virtue of the subsequent establishment or expansion of another land use or zoning district identified in subsections (1), (2), or (3).
46. An adult ~~entertainment center~~ establishment must prohibit entrance by persons less than 18 years of age.
5. ~~An adult entertainment center may not display any signs visible from the exterior of the adult entertainment center, except for signs identifying it as an adult entertainment center, adult bookstore, adult entertainment facility, adult cinema or combination thereof.~~
6. ~~No materials depicting specified sexual activities or specified anatomical areas shall be visible from the exterior of an adult entertainment center.~~
7. The business premises of an adult ~~entertainment center~~ establishment that are generally open to its patrons are open equally at the same time to members of any law enforcement agency who may wish to enter thereon provided the entry is in the course of the discharge of the law enforcement officer's duties.

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Section 3. Amendment.

Section 20-0402(T)(3) of Chapter 20 (Land Development Code) is hereby amended to read as follows:

T. Non-farm Commercial Uses

...

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

Section 4. Amendment.

Section 20-0403(C)(5)(f) of Chapter 20 (Land Development Code) is hereby amended to read as follows:

C. Home Occupations

...

5. Prohibited Uses.

...

f. **Adult ~~Entertainment Center Uses~~ Establishments**
~~Entertainment or sale of goods defined as adult bookstore, adult cinema, adult entertainment facility, or adult entertainment center~~ Adult establishments as defined in Sec. 20-1202 are not allowed as a home occupation.

Section 5. Amendment.

Section 20-1202 of Chapter 20 (Land Development Code) is hereby amended to read as follows:

§20-1202 – Words Defined

The following terms shall have the meanings ascribed to them:

1. **Accessory Use:** a use or structure that:
 - a. Is clearly incidental to and customarily found in connection with a principal structure or use;

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- b. Is subordinate in area, extent and purpose to the principal building or use;
- c. Contributes to the comfort, convenience or necessity of occupants of the principal use; and
- d. Is located on the same lot and in the same zoning district as the principal use.

1
2 2. **Adult Arcade:** A commercial establishment to which the public is permitted or invited
3 that maintains booths or rooms smaller than 100 square feet, wherein image-producing
4 devices are regularly maintained to show images characterized by their emphasis upon
5 matter exhibiting "specified sexual activities" or "specified anatomical areas."

6
7 23. **Adult Bookstore:** An enclosed building having as a substantial or significant portion of
8 its stock in trade, books, magazines, or other periodicals that are distinguished or
9 characterized by their emphasis on matter depicting or describing specified sexual
10 activities or specified anatomical areas. A commercial establishment which, as one of
11 its principal business activities, offers for sale or rental for any form of consideration
12 any one or more of the following: books, magazines, periodicals or other printed
13 matter, or photographs, films, motion pictures, video cassettes, compact discs, digital
14 video discs, slides, or other visual representations which are characterized by their
15 emphasis upon the display of "specified sexual activities" or "specified anatomical
16 areas." A "principal business activity" exists where the commercial establishment meets
17 any one or more of the following criteria:

- a. At least 30% of the establishment's displayed merchandise consists of said items,
or
 - b. At least 30% of the establishment's revenues derive from the sale or rental, for any
form of consideration, of said items, or
 - c. The establishment maintains at least 30% of its floor space for the display, sale,
and/or rental of said items (aisles and walkways used to access said items, as well
as cashier stations where said items are rented or sold, shall be included in "floor
space" maintained for the display, sale, or rental of said items); or
 - d. The establishment maintains at least five hundred square feet (500 sq. ft.) of its
floor space for the display, sale, and/or rental of said items (aisles and walkways
used to access said items, as well as cashier stations where said items are rented or
sold, shall be included in "floor space" maintained for the display, sale, or rental of
said items); or
 - e. The establishment regularly offers for sale or rental at least five hundred (500) of
said items; or
 - f. The establishment regularly makes said items available for sale or rental and holds
itself out, in any medium, as an establishment that caters to adult sexual interests.
- In this definition, "floor space" means the floor area inside an establishment that is
visible or accessible to patrons for any reason, excluding restrooms.

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34. **Adult Cinema:** ~~An enclosed building used on a regular basis for presenting pictorial materials or other visual images by way of direct or indirect projection, which materials are distinguished or characterized by an emphasis on the depiction of specified sexual activities or specified anatomical areas, for observation by patrons therein in return for the payment of a consideration, irrespective of the number of patrons who may be able to view the presentation at one time. A commercial establishment to which the public is permitted or invited that maintains viewing rooms that are 100 square feet or larger wherein films or videos characterized by their emphasis upon "specified sexual activities" or "specified anatomical areas" are regularly shown.~~
45. **Adult Entertainment Facility:** ~~An enclosed building wherein an admission is charged for entrance, or food or nonalcoholic beverages are sold or intended for consumption, and wherein may be observed live presentation of entertainment distinguished or characterized by an emphasis on matters depicting, describing or relating to specified sexual activities or specified anatomical areas. A nightclub, juice bar, restaurant, or similar commercial establishment that regularly offers live semi-nude conduct. No establishment shall avoid classification as an adult entertainment facility by offering nude conduct.~~
56. **Adult Entertainment Center Establishment:** ~~An Adult Arcade, Adult Bookstore, Adult Cinema, Adult Entertainment Facility, or a Sexual Device Shop, or any combination thereof.~~
67. **Airport:** Hector International Airport.
78. **Airport Elevation:** The established elevation of the highest point on the usable landing area.
89. **Airport Hazard:** Any structure or tree or use of land which obstructs the airspace required for the flight of aircraft in landing or taking off at the airport or is otherwise hazardous to such landing or taking-off of aircraft.
910. **All Weather Surface:** Any surface that is durable and reasonably free of dust or mud. Such surfaces shall include, but not be limited to concrete, asphalt, paving blocks, brick, and other similar materials intended for outdoor motor vehicle use. They shall not include dirt, grass, or gravel. Crushed concrete, asphalt millings, or approved similar materials are acceptable in LI or GI zoning districts in areas used for rear-yard circulation and/or loading, but not used for required parking.

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1 ~~10~~11. **Animal Confinement:** Any lot or building or combination of lots or buildings
intended for the confined feeding, breeding, raising, or holding of animals and
specifically designed as a confinement area in which manure may accumulate, or where
the concentration of animals is such that vegetative cover cannot be maintained within
the enclosure.

2 ~~11~~12. **Antenna Array:** One or more rods, panels, discs or similar devices used for the
3 transmission or reception of radio frequency signals, which may include omni-
directional antenna (rod), directional antenna (panel) and parabolic antenna (disc). It
4 does not include a “telecommunications support structure.”

5 ~~12~~13. **Block:** An area of land bounded entirely by streets.

6 ~~13~~14. **Boundary Line Adjustment:** An adjustment in the boundary between adjoining
7 lots if the adjustment does not create an additional or substandard lot or necessitate new
roadway construction or right-of-way dedication.

8 ~~14~~15. **Building:** A structure having a roof supported by columns or walls.

9 ~~15~~16. **Building Coverage:** The area of a lot covered by buildings (principal and
10 accessory) or roofed areas, as measured along the outside wall at ground level, and
including all projections, other than open porches, fire escapes, canopies and the first
11 three feet of a roof overhang.

12 17. **Characterized by:** Describing the essential character or quality of an item. As applied in
13 this chapter, no business shall be classified as an adult establishment by virtue of showing,
14 selling, or renting materials rated NC-17 or R by the Motion Picture Association of
America.

15 ~~16~~18. **Decision-Making Body:** A person or group authorized in this Land Development
16 Code to conduct land use reviews and take action on the matter under review.

17 ~~17~~19. **Density:** The number of dwelling units for each acre of land. See also Sec. 20-
18 0504. Density may also be expressed as the amount of land area per dwelling unit.

19 ~~18~~20. **Developer.** The person proposing to develop land, either as an owner of said land
20 or as an agent of the owner.

21 ~~19~~21. **Dwelling Unit:** A building or portion of it designed and used for residential
22 occupancy by a single household and that includes exclusive sleeping, cooking, eating

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and sanitation facilities. Buildings with more than one set of cooking facilities are considered to be multi-dwelling structures unless the additional cooking facilities are clearly accessory, such as an outdoor grill.

1 ~~20~~22. **Essential Services:** The erection, construction, alteration, maintenance by public
2 utilities or by governmental departments or commissions of such underground or
3 overhead gas, electrical, steam, or water transmission or distribution systems,
4 collection, communication, supply or disposal systems, including towers, poles, wires,
5 mains, drains, sewers, pipes, conduits, cables, fire alarm boxes, police call boxes, street
6 lights, traffic signals, hydrants, and other similar equipment, and accessories in
7 connection therewith, but not including buildings, as are reasonably necessary for the
8 furnishing of adequate service by such public utilities or governmental departments or
9 commissions or as are required for protection of the public health, safety, or general
10 welfare.

11 ~~21~~23. **Floor Area (Gross):** The total square footage within a structure calculated by
12 using the measurements from the exterior walls.

13 ~~22~~24. **Garage:** An accessory building or portion of a main building used for the storage
14 of motor vehicles.

15 ~~23~~25. **Height, Building:** The vertical distance between the average finished grade at the
16 base of the building and: 1) the highest point of the coping of a flat roof; 2) the highest
17 point of a mansard roof; or 3) the average height level between the eaves and ridge line
18 of a gable, hip or gambrel roof. For the purpose of the HIA-O, Hector International
19 Airport Overlay district regulations the datum shall be mean sea level elevation unless
20 otherwise specified.

21 ~~24~~26. **Home Occupation:** A business, profession, occupation or trade conducted for
22 gain, conducted within a dwelling unit, including an attached or detached garage
23 accessory to the dwelling unit, for gain or support by a resident of the dwelling unit.

24 ~~25~~27. **Household:** Any one of the following:
25 a. One or more persons related by blood, marriage, adoption, or legal guardianship,
26 including foster children, living together in a dwelling unit; or
27 b. A group of not more than 3 persons not related by blood, marriage, adoption, or
28 legal guardianship living together in a dwelling unit;
29 c. Two unrelated persons and their children living together in a dwelling unit; or
30 d. Any group of people living together that meets the definition of "protected class,"
31 as that term is defined in the North Dakota law.

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2628. **Landing Area:** the area of the airport used for the landing, taking off or taxiing of aircraft.

2729. **Lot:** The entire parcel of land occupied or intended to be occupied by a principal building and its accessory buildings, or by a group such as a dwelling group or automobile court and accessory buildings, including the yards, setbacks and open spaces required by this Land Development Code and other applicable law. When a lot is used together with 1 or more contiguous lots for a single use or unified development, all of the lots so used, including any lots used for off-street parking, shall be considered a single lot.

2830. **Lot, Legal:**

- a. A lot that is shown on a Subdivision plat that has been recorded in the office of the County Register of Deeds; or
- b. A lot created through a Boundary Line Adjustment.

2931. **Lot, Corner:** A lot abutting two or more streets at their intersection.

3032. **Lot, Interior:** A lot other than a corner lot.

3133. **Lot Lines:** The property lines along the edge of a lot or site.

- a. **Front Lot Line:** A lot line that abuts a street. A through lot has 2 front lot lines.
- b. **Side Lot Line:** Any lot line except a front or rear lot line.
- c. **Rear Lot Line:** A lot line that is opposite a front lot line. A triangular lot has two side lot lines but no rear lot line. For other irregularly shaped lots, the rear lot line is all lot lines that are most nearly opposite the front lot line.
- d. **Interior Side Line:** A side lot line that does not abut a street.
- e. **Street Side Lot Line:** A lot line that is both a side lot line and a street lot line.
- f. **Lot Line, Street:** Any lot lines that abut a street. Street lot line does not include lot lines that abut an alley. On a corner lot, there are two (or more) street lot lines. Street lot line can include front lot lines and side lot lines.

3234. **Lot, Reverse Corner:** A corner lot whose front does not face the same street as the adjacent lot.

3335. **Lot, Through:** A lot having its front and rear lines on different streets.

3436. **Lot Width:** The horizontal distance between side lines measured along a line that is parallel to the front lot line and located the minimum exterior setback distance from the front lot line.

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3537. **Mobile Home Space:** That part of a Mobile Home Park that has been reserved for the placement of the mobile home, appurtenant structures, or additions.

3638. **Mobile Home Park:** A parcel of land under single ownership that has been planned and improved for the placement of mobile homes for nontransient use.

3739. **Negative Access Easement:** An easement, usually designated on a plat, which operates to deny direct access to a street or public way from the lot or lots adjacent to such street or way.

3840. **Nonconforming Lot:** Lots that were legally created in accordance with zoning district minimum lot size and dimensional standards in effect at the time of their creation, but which, because of amendments to the zoning regulations, no longer comply with the minimum lot size or other dimensional standards of the zoning district.

3941. **Nonconforming Structure:** Buildings or structures that were established in accordance with all zoning regulations in effect at the time of their establishment, but which, because of amendments to the zoning regulations, no longer comply with the dimensional standards of the underlying zoning district.

4042. **Nonconforming Use:** Uses that were established in accordance with zoning regulations in effect at the time of their establishment, but which, because of amendments to the zoning regulations, no longer comply with the use regulations of the underlying zoning district.

4143. **Nonprecision Instrument Runway:** a runway equipped or to be equipped with an instrument approach procedure utilizing air navigation facilities with only horizontal guidance or area-type navigation equipment.

44. **Nudity or Nude Conduct:** The showing of the human male or female genitals, pubic area, vulva, or anus with less than a fully opaque covering, or the showing of the female breast with less than a fully opaque covering of any part of the nipple and areola. For purposes of this chapter, a "fully opaque covering" must not consist of any substance that can be washed or peeled off the skin (such as paint, make-up, or latex).

4245. **Official Map:** A map established by the Board of City Commissioners showing the streets, highways and drainage systems theretofore laid out, adopted and established by law, including new subdivision plats approved by the Board of City Commissioners and the subsequent filing of such approved subdivision plats.

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4346. **Open Space:** an outdoor, unenclosed area, located on the ground or on a roof, balcony, deck, porch or terrace designed and accessible for outdoor living, recreation, pedestrian access or landscaping, but not including roads, parking areas, driveways, or other areas intended for vehicular travel.

4447. **Open Space, Common:** open space within a development, not in individually owned lots or dedicated for public use, but which is designed and intended for the common use or enjoyment of the residents or occupants of the development. Common Open Space does not include areas used for streets, alleys, driveways, or off-street parking or loading areas. However, the area of recreational activities such as swimming pools, tennis courts, shuffleboard courts, etc., may be counted as common open space.

4548. **Parcel:** A contiguous area of land in the possession of, owned by, or recorded as the property of the same person or persons.

4649. **Perimeter Street:** Any street or road which is on the perimeter of the parcel of land to be subdivided and which abuts said parcel on only one side.

4750. **Precision Instrument Runway:** a runway equipped or to be equipped with an Instrument Landing System (ILS), or a Precision Approach Radar (PAR).

4851. **Principal Building:** A building occupied by the principal use of the lot on which it is situated.

4952. **Property Owner:** The person who is shown by the County Register of Deeds as the record owner of a lot or parcel.

5053. **Public Improvement:** Any improvement for use by the general public and for which a governmental unit may ultimately assume the responsibility for maintenance and operation.

5154. **Public Utility:** Any person, firm, corporation, municipal department, or board duly authorized to furnish, and furnishing, under public regulation, to the public, electricity, gas, heat, power, steam, telephone, telegraph, transportation, or water.

55. **Regional Shopping Mall (Enclosed):** A group of retail and other commercial establishments that is planned, developed, and managed as a single property, with on-site parking provided around the perimeter of the shopping center, and that is generally at least forty acres in size and flanked by two or more large "anchor" stores, such as

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department stores. The common walkway or “mall” is enclosed, climate-controlled and lighted, usually with an inward orientation of the stores facing the walkway.

1 **5256. Registered Engineer:** An individual licensed and registered as a professional
2 engineer under the laws of the state of North Dakota.

3 **5357. Registered Land Surveyor:** An individual licensed and registered as a
4 professional land surveyor under the laws of the state of North Dakota.

5 **58. Regularly:** The consistent and repeated doing of an act on an ongoing basis.

6 **5459. Residential Structure Types:**

- 7 **a. House, Attached:** A dwelling unit that shares one or more common or abutting
8 walls with one or more dwelling units. An attached house does not share common
9 floor/ceilings with other dwelling units. An attached house is also called a
10 townhouse.
- 11 **b. House, Detached:** A dwelling unit located on its own lot that is not attached to
12 any other dwelling unit, including a residential-design manufactured housing unit.
- 13 **c. Duplex:** A single structure that contains 2 primary dwelling units on one lot. The
14 units may share common walls or common floor/ceilings.
- 15 **d. Group Living Structure:** A structure that contains sleeping areas and at least one
16 set of cooking and sanitary facilities that is used as a residence for Group Living
17 uses.
- 18 **e. Manufactured Housing Unit:** A dwelling unit constructed in accordance with
19 Federal Manufactured Housing Construction and Safety Standards (HUD code) in
20 effect after June 15, 1976. For the purpose of this Land Development Code, the
21 term “manufactured housing unit,” when used by itself, shall not include a
22 “residential-design manufactured housing unit” as defined in this section.
- 23 **f. Mobile Home:** A transportable, factory-built structure that was manufactured
prior to enactment of or otherwise does not comply with the federal Manufactured
Housing Construction and Safety Standards Act of 1974 (42 U.S.C. Sec. 5401) and
that is designed to be used as a single dwelling unit.
- g. Multi-Dwelling Structure:** A structure that contains 3 or more dwelling units that
share common walls or floor/ceilings with one or more units. The land underneath
the structure is not divided into separate lots. Multi-dwelling includes structures
commonly called garden apartments, apartments and condominiums.
- h. Residential-Design Manufactured Housing Unit:** A manufactured housing unit
that meets the following criteria:

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- (1) Is constructed on a permanent foundation that complies with the Uniform Building Code and the City's Building Code;
- (2) Has a minimum front width of 24 feet and a minimum depth of 20 feet;
- (3) Has a predominantly double-pitched roof with a minimum vertical rise of 2.2 inches for every 12 inches of horizontal run and a minimum eave projection and roof overhang of 10 inches on at least 2 sides. Gutters shall be counted in calculating roof overhang.
- (4) Uses siding and roofing materials customarily used on site-built homes within the City of Fargo;
- (5) Has a minimum gross floor area of 960 square feet; and
- (6) Has a minimum ceiling height of 7 feet.

5560. **Review Body:** A person or group authorized in this Land Development Code to conduct land use reviews and offer recommendations but not to take final action on the matter under review.

5661. **Runway:** the paved surface of an airport landing strip.

62. **Semi-Nude or Semi-Nudity:** The showing of the female breast below a horizontal line across the top of the areola and extending across the width of the breast at that point, or the showing of the male or female buttocks, with less than a fully opaque covering. This definition shall include the lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breasts exhibited by a bikini, dress, blouse, shirt, leotard, or similar wearing apparel provided the areola is not exposed in whole or in part. For purposes of this chapter, a "fully opaque covering" must not consist of any substance that can be washed or peeled off the skin (such as paint, make-up, or latex).

5763. **Setback:** The distance that is required by this Land Development Code to be maintained in an unobstructed state between a structure and the lot line of the lot on which the structure is located. Note: The term "setback" refers to a required minimum area, while the term "yard" refers to the actual open area.

- a. **Front Setback:** A setback that is to extend across the full width of a lot, the required depth of which is measured as the minimum horizontal distance between the front lot line and a line parallel thereto on the lot.
- b. **Interior Side Setback:** A setback that is to extend from the front lot line to the rear lot line along the side of a lot that is adjacent to another lot, the required depth of which is measured as the minimum horizontal distance between the side lot line and a line parallel thereto on the lot.

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- c. **Rear Setback:** A setback that is to extend across the full width of a lot, the required depth of which is measured as the minimum horizontal distance between the rear lot line and a line parallel thereto on the lot.
- d. **Street Side Setback:** A setback that is to extend from the front lot line to the rear lot line along the street side of a corner lot, the required depth of which is measured as the minimum horizontal distance between the street side lot line and a line parallel thereto on the lot.

64. **Sexual Device:** Any three (3) dimensional object designed for stimulation of the male or female human genitals, anus, buttocks, nipple, or for sadomasochistic use or abuse of oneself or others and shall include devices commonly known as dildos, vibrators, penis pumps, cock rings, anal beads, butt plugs, nipple clamps, and physical representations of the human genital organs. Nothing in this definition shall be construed to include devices primarily designed for protection against sexually transmitted diseases or for preventing pregnancy.

65. **Sexual Device Shop:** A commercial establishment:

- a. where more than 100 sexual devices are regularly made available for sale or rental;
or
- b. where sexual devices are regularly made available for sale or rental and the establishment regularly gives special prominence to sexual devices (e.g., by using lighted display cases for sexual devices, having a large variety of sexual devices, having a room or discrete area of the establishment significantly devoted to sexual devices, or positioning sexual devices near cash registers or similar points of sale).

This definition shall not be construed to include an establishment located within an enclosed regional shopping mall, an establishment containing a pharmacy that employs a licensed pharmacist to fill prescriptions on the premises, or an establishment that is enrolled in Medicare as a durable medical equipment, prosthetics, and supplies (DMEPOS) supplier.

5866. **Solar Energy Collector:** A device or combination of devices, structure, or part of a device or structure that transforms direct solar energy into thermal, chemical or electrical energy and that contributes significantly to a structure's energy supply.

5967. **Specified Anatomical Areas:**

- a. Less than completely and opaquely covered:
 - (1) Human genitals, pubic region;
 - (2) Buttocks;
 - (3) Female breast below a point immediately above the top of the areola; and

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- b. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

1 ~~60~~68. **Specified Sexual Activities:**

- 2 a. Human genitals in a state of sexual stimulations or arousal;
- 3 b. Acts of human masturbation, sexual intercourse, or sodomy; and
- 4 c. Fondling of human genitals, pubic region, buttock or female breast.

5 ~~61~~69. **Street:** A public or private way used or intended to be used for passage or travel by
6 motor vehicles. Streets are further classified according to their design and the function they
7 perform. The hierarchy of streets is as follows:

- 8 a. **Local Street:** A street intended to provide direct access to abutting property and
9 access to higher classification streets.
- 10 b. **Local Collector Street:** A street that connects traffic from local streets and higher
11 classification streets and that may provide direct access to abutting property.
- 12 c. **Collector Street:** A street that connects traffic from lower classification streets and
13 higher classification streets and that does not provide direct access to abutting
14 property.
- 15 d. **Minor Arterial Street:** A street with signals at major intersections and stop signs at
16 side streets and that collects and distributes traffic to and from collector streets.
- 17 e. **Principal Arterial Street:** A street with access control, channelized intersections,
18 restricted parking, and that collects and distributes traffic to and from minor arterial
19 streets.

20 ~~62~~70. **Structural Alteration:** Any change, addition or modification in construction in the
21 supporting members of a building, such as exterior walls, bearing walls, beams, columns,
22 foundations, girders, floor joists, roof joists, rafters or trusses.

23 ~~63~~71. **Structure:** Anything constructed or erected having location on or under the ground
or attached to something having location on or under the ground.

~~64~~72. **Subdivision:** The division of a tract or parcel of land into lots for the purpose of,
whether immediate or future, sale or of development.

~~65~~73. **Subdivision, Major:** Any subdivision that does not meet the definition of a “Minor
Subdivision.”

~~66~~74. **Subdivision, Minor:** A subdivision that meets all of the following criteria:

- a. Does not require the dedication of rights-of-way or construction of new streets;

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- b. Does not create any public improvements other than sidewalks;
- c. Does not land-lock or otherwise impair convenient ingress and egress to or from the rear or side of the subject tract or any adjacent property;
- d. Does not fall within the corridors of any planned or proposed street as shown upon the Official Map or approved Area Plans; and
- e. Does not violate any local, state or federally adopted law, ordinance, regulation, plan or policy.

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6775. **Telecommunication Facility, Attached:** An antenna array that is attached to an existing building or structure, including utility poles, signs, water towers, and similar structures with any associated connection cables, and an equipment facility which may be located either inside or outside of the attachment structure.

6876. **Telecommunications Support Structure:** A structure designed and constructed specifically to support an antenna array, and may include a monopole, self supporting (lattice) tower, guy-wire support tower and other similar structures. Any device used solely to attach an attached telecommunications facility to an existing building or structure shall be excluded from this definition. A monopole, self-supporting (lattice) tower, Guy-wire support tower and other similar structures which are erected or constructed on a building, water tower, or other structure for the purpose of elevating an attached telecommunications facility shall be included in this definition.

6977. **Use:** The purpose for which land or a building or structure thereon is designed, arranged, intended, or maintained or for which it is or may be used or occupied.

78. **Viewing Room:** The room or booth where a patron of an adult establishment would ordinarily be positioned while watching a film, videocassette, digital video disc, or other video on an image-producing device.

7079. **Yard:** The actual unobstructed open space that exists or that is proposed between a structure and the lot lines of the lot on which the structure is located. See "Setback."

7180. **Zoning District:** The separate geographic areas to which a specific zoning district is assigned.

- a. **Base Zoning District:** A zoning district that establishes the primary permitted uses, conditional uses, and dimensional standards.
- b. **Overlay Zoning District:** A zoning district that is applied to a parcel of land to add special or additional development requirements in addition to or in place of the requirements of the Base Zoning District requirements.

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~~7281.~~ **Bed and Breakfast:** A facility of residential character that provides sleeping accommodations and breakfast for hire on a day-to-day basis in which the proprietor resides.

Section 6. Purpose; findings and rationale.

- A. *Purpose.* It is the purpose of this ordinance to regulate adult establishments in order to promote the health, safety, and general welfare of the citizens of the city, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of adult establishments within the city. The provisions of this chapter have neither the purpose nor effect of imposing a limitation or restriction on the content or reasonable access to any communicative materials, including sexually oriented materials. Similarly, it is neither the intent nor effect of this chapter to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this chapter to condone or legitimize the distribution of obscene material.

- B. *Findings and Rationale.* Based on evidence of the adverse secondary effects of adult uses presented in hearings and in reports made available to the Board of City Commissioners, and on findings, interpretations, and narrowing constructions incorporated in the cases of *City of Littleton v. Z.J. Gifts D-4, L.L.C.*, 541 U.S. 774 (2004); *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425 (2002); *City of Erie v. Pap's A.M.*, 529 U.S. 277 (2000); *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986); *Young v. American Mini Theatres*, 427 U.S. 50 (1976); *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991); *California v. LaRue*, 409 U.S. 109 (1972); *N.Y. State Liquor Authority v. Bellanca*, 452 U.S. 714 (1981); *Sewell v. Georgia*, 435 U.S. 982 (1978); *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215 (1990); *City of Dallas v. Stanglin*, 490 U.S. 19 (1989); and *McCrothers Corp. v. City of Mandan*, 728 N.W.2d 124 (N.D. 2007); *Adam and Eve Jonesboro, LLC v. Perrin*, 933 F.3d 951 (8th Cir. 2019); *Farkas v. Miller*, 151 F.3d 900 (8th Cir. 1998); *Jakes, Ltd. v. City of Coates*, 284 F.3d 884 (8th Cir. 2002); *BZAPS, Inc. v. City of Mankato*, 268 F.3d 603 (8th Cir. 2001); *SOB, Inc. v. County of Benton*, 317 F.3d 856 (8th Cir. 2003); *Scope Pictures v. City of Kansas City*, 140 F.3d 1201 (8th Cir. 1998); *Excalibur Group v. City of Minneapolis*, 116 F.3d 1216 (8th Cir. 1997); *ILQ Invs. v. City of Rochester*, 25 F.3d 1413 (8th Cir. 1994); *Ambassador Books & Video v. City of Little Rock*, 20 F.3d 858 (8th Cir. 1994); *Alexander v. Minneapolis*, 928 F.2d 278 (8th Cir. 1991); *John Doe v. Minneapolis*, 898 F.2d 612 (8th Cir. 1990); *Thames Enters. v. St. Louis*, 851 F.2d 199 (8th Cir. 1988); *Xiong v. City of Moorhead*, 2009 WL 322217 (D. Minn. Feb. 2, 2009); *Enlightened Reading, Inc. v. Jackson County*, 2009 WL 792492 (W.D. Mo. March 24, 2009); *Stardust, 3007 LLC v. City of Brookhaven*, 899 F.3d 1164 (11th Cir. 2018); *HH-Indianapolis, LLC v. Consol. City of*

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1 *Indianapolis/Marion County*, 889 F.3d 432 (7th Cir. 2018); *HH-Indianapolis, LLC v. Consol.*
 2 *City of Indianapolis/Marion County*, 265 F. Supp. 3d 873 (S.D. Ind. 2017); *Stardust 3007,*
 3 *LLC v. City of Brookhaven*, 348 Ga. App. 711 (2019); *Daytona Grand, Inc. v. City of Daytona*
 4 *Beach*, 490 F.3d 860 (11th Cir. 2007); *Tokyo Gwinnett, LLC v. Gwinnett County*, No. 1:15-
 5 *cv-2606*, 2022 WL 1027633 (N.D. Ga. April 6, 2022); *Williams v. Morgan*, 478 F.3d 1316
 6 (11th Cir. 2007); *David Vincent, Inc. v. Broward County*, 200 F.3d 1325 (11th Cir. 2000);
 7 *DLS, Inc. v. City of Chattanooga*, 107 F.3d 403 (6th Cir. 1997); *Morrison v. State*, 272 Ga.
 8 129 (2000); *Chamblee Visuals, LLC v. City of Chamblee*, 270 Ga. 33 (1998); *Entm't Prods.,*
 9 *Inc. v. Shelby County*, 721 F.3d 729 (6th Cir. 2013); *Lund v. City of Fall River*, 714 F.3d 65
 10 (1st Cir. 2013); *Imaginary Images, Inc. v. Evans*, 612 F.3d 736 (4th Cir. 2010); *LLEH, Inc. v.*
 11 *Wichita County*, 289 F.3d 358 (5th Cir. 2002); *Ocello v. Koster*, 354 S.W.3d 187 (Mo. 2011);
 12 *84 Video/Newsstand, Inc. v. Sartini*, 2011 WL 3904097 (6th Cir. Sept. 7, 2011); *Plaza Group*
 13 *Properties, LLC v. Spencer County Plan Commission*, 877 N.E.2d 877 (Ind. Ct. App. 2007);
 14 *East Brooks Books, Inc. v. Shelby County*, 588 F.3d 360 (6th Cir. 2009); *Entm't Prods., Inc. v.*
 15 *Shelby County*, 588 F.3d 372 (6th Cir. 2009); *Sensations, Inc. v. City of Grand Rapids*, 526
 16 F.3d 291 (6th Cir. 2008); *World Wide Video of Washington, Inc. v. City of Spokane*, 368 F.3d
 17 1186 (9th Cir. 2004); *Ben's Bar, Inc. v. Village of Somerset*, 316 F.3d 702 (7th Cir. 2003);
 18 *Heideman v. South Salt Lake City*, 348 F.3d 1182 (10th Cir. 2003); *H&A Land Corp. v. City of*
 19 *Kennedale*, 480 F.3d 336 (5th Cir. 2007); *Hang On, Inc. v. City of Arlington*, 65 F.3d 1248
 20 (5th Cir. 1995); *Fantasy Ranch, Inc. v. City of Arlington*, 459 F.3d 546 (5th Cir. 2006); *Illinois*
 21 *One News, Inc. v. City of Marshall*, 477 F.3d 461 (7th Cir. 2007); *G.M. Enterprises, Inc. v.*
 22 *Town of St. Joseph*, 350 F.3d 631 (7th Cir. 2003); *Richland Bookmart, Inc. v. Knox County*,
 23 555 F.3d 512 (6th Cir. 2009); *Bigg Wolf Discount Video Movie Sales, Inc. v. Montgomery*
County, 256 F. Supp. 2d 385 (D. Md. 2003); *Richland Bookmart, Inc. v. Nichols*, 137 F.3d 435
 (6th Cir. 1998); *Spokane Arcade, Inc. v. City of Spokane*, 75 F.3d 663 (9th Cir. 1996); *DCR,*
Inc. v. Pierce County, 964 P.2d 380 (Wash. Ct. App. 1998); *City of New York v. Hommes*, 724
 N.E.2d 368 (N.Y. 1999); *Taylor v. State*, No. 01-01-00505-CR, 2002 WL 1722154 (Tex. App.
 July 25, 2002); *Fantasyland Video, Inc. v. County of San Diego*, 505 F.3d 996 (9th Cir. 2007);
U.S. v. Baston, 818 F.3d 651 (11th Cir. 2016); *Johnson v. California State Bd. of*
Accountancy, 72 F.3d 1427 (9th Cir. 1995); *Spencer v. World Vision, Inc.*, 633 F.3d 723
 (9th Cir. 2010); *Mutschler v. City of Phoenix*, 129 P.3d 71 (Ariz. Ct. App. 2006); *Fleck &*
Assocs. v. City of Phoenix, 356 F. Supp. 2d 1034 (D. Ariz. 2005); and in *Recreational*
Developments of Phoenix, Inc. v. City of Phoenix, 220 F. Supp. 2d 1054 (D. Ariz. 2002);
Gammoh v. City of La Habra, 395 F.3d 1114 (9th Cir. 2005); *Z.J. Gifts D-4, L.L.C. v. City of*
Littleton, Civil Action No. 99-N-1696, Memorandum Decision and Order (D. Colo. March 31,
 2001); *People ex rel. Deters v. The Lion's Den, Inc.*, Case No. 04-CH-26, Modified Permanent
 Injunction Order (Ill. Fourth Judicial Circuit, Effingham County, July 13, 2005); *Reliable*
Consultants, Inc. v. City of Kennedale, No. 4:05-CV-166-A, Findings of Fact and Conclusions
 of Law (N.D. Tex. May 26, 2005);

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1 and based upon reports concerning secondary effects occurring in and around adult
2 establishments, including, but not limited to, “Correlates of Current Transactional Sex among
3 a Sample of Female Exotic Dancers in Baltimore, MD,” Journal of Urban Health (2011);
4 “Does the Presence of Sexually Oriented Businesses Relate to Increased Levels of Crime?”
5 Crime & Delinquency (2012) (Louisville, KY); Metropolis, Illinois – 2011-12; Manatee
6 County, Florida – 2007; Hillsborough County, Florida – 2006; Clarksville, Indiana – 2009,
7 2013-2019; El Paso, Texas – 2008; Memphis, Tennessee – 2006; New Albany, Indiana –
8 2009; Louisville, Kentucky – 2004; Fulton County, GA – 2001; Chattanooga, Tennessee –
9 1999-2003; Jackson County, Missouri – 2008; Ft. Worth, Texas – 2004; Kennedale, Texas –
10 2005; Greensboro, North Carolina – 2003; Dallas, Texas – 1997; Houston, Texas – 1997,
11 1983; Phoenix, Arizona – 1995-98, 1979; Tucson, Arizona – 1990; Spokane, Washington –
12 2001; St. Cloud, Minnesota – 1994; Austin, Texas – 1986; Indianapolis, Indiana – 1984;
13 Garden Grove, California – 1991; Los Angeles, California – 1977; Whittier, California – 1978;
14 Oklahoma City, Oklahoma – 1986; New York, New York Times Square – 1994; the Report of
15 the Attorney General's Working Group On The Regulation Of Sexually Oriented Businesses,
16 (June 6, 1989, State of Minnesota); Dallas, Texas – 2007; “Rural Hotspots: The Case of Adult
17 Businesses,” 19 Criminal Justice Policy Review 153 (2008); “Stripclubs According to
18 Strippers: Exposing Workplace Sexual Violence,” by Kelly Holsopple, Program Director,
19 Freedom and Justice Center for Prostitution Resources, Minneapolis, Minnesota; “Sexually
20 Oriented Businesses: An Insider’s View,” by David Sherman, presented to the Michigan
21 House Committee on Ethics and Constitutional Law, Jan. 12, 2000; Sex Store Statistics and
22 Articles; Indianapolis / Marion County Board of Zoning Appeals Documents; Law
23 Enforcement and Private Investigator Affidavits (Adult Cabarets in Forest Park, GA and
Sandy Springs, GA); DeKalb County Testimony and Reports – 2014; and Strip Club-
Trafficking Documents, the board finds:

1. Adult establishments, as a category of commercial uses, are associated with a wide variety of adverse secondary effects including, but not limited to, personal and property crimes, human trafficking, prostitution, potential spread of disease, lewdness, public indecency, obscenity, illicit drug use and drug trafficking, negative impacts on surrounding properties, urban blight, litter, and sexual assault and exploitation. Alcohol consumption impairs judgment and lowers inhibitions, thereby increasing the risk of adverse secondary effects.
2. Adult establishments should be separated from sensitive land uses to minimize the impact of their secondary effects upon such uses, and should be separated from other adult establishments, to minimize the secondary effects associated with such uses and to prevent an unnecessary concentration of adult establishments in one area.

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- 3. Each of the foregoing negative secondary effects constitutes a harm which the city has a substantial government interest in preventing and/or abating. The city's interest in regulating adult establishments extends to preventing future secondary effects of either current or future adult establishments that may locate in the city. The city finds that the cases and documentation relied on in this ordinance are reasonably believed to be relevant to said secondary effects.

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Section 7. Effective Date.

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

Timothy J. Mahoney, Mayor

(Seal)

Attest:

Steven Sprague, City Auditor

First Reading:
Second Reading:
Final Reading:
Publication:

THE CITY OF FARGO

OFFICE OF THE MAYOR

59

Proclamation

WHEREAS, the Holodomor, or the Ukrainian Famine-Genocide of 1932-1933, was a famine engineered by the Soviet Union that sought to utilize food and starvation as a weapon against Ukrainian resistance by forcibly removing foodstuffs from households and confiscating crops, effectively leading to the starvation, suffering and death of millions; and

WHEREAS, the Holodomor also saw the attempted elimination of Ukrainian culture, and many of Ukraine's intellectuals, artists and religious and political leaders, were targeted, imprisoned and killed for their resistance to the Soviet Union's policies and efforts to establish a monolithic culture; and

WHEREAS, the effects of the Holodomor are still felt by Ukrainians around the world today, with a generation of Ukrainian people, culture and wealth having been lost not only to the atrocities of the Holodomor but to the lack of education and recognition surrounding the famine-genocide in Ukraine and among the broader global community; and

WHEREAS, this year, in remembrance of the Holodomor, the City of Fargo joins the resilient Ukrainian-American community in the Fargo area and throughout the nation in honoring the memory of the millions of victims and recognizing the continued struggles faced by the Ukrainian people in their fight for freedom.

NOW, THEREFORE, BE IT RESOLVED, that I, Dr. Timothy J. Mahoney, Mayor of the City of Fargo, North Dakota, do hereby proclaim December 12, 2022 as

UKRAINIAN FAMINE-GENOCIDE (HOLODOMOR) REMEMBRANCE DAY

in the City of Fargo, North Dakota.



IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of The City of Fargo, North Dakota to be affixed this 12th day of December, 2022.

A handwritten signature in black ink, appearing to read "Timothy J. Mahoney".

Dr. Timothy J. Mahoney
Mayor
Fargo, North Dakota



December 12, 2022

To: Board of City Commissioners
Fr: Michael Redlinger, Assistant City Administrator
Re: City of Fargo 2023 Legislative Priorities Presentation

At the December 12, 2022 City Commission meeting, time will be reserved for a discussion regarding the City of Fargo's proposed 2023 priorities for the upcoming Legislative Session. City staff, along with the Special Assistant City Attorney for government relations, Ms. Terry Effertz, will provide presentations and answer questions of the City Commission. Following the conclusion of the presentations, the City Commission will be asked to approve the City of Fargo's proposed 2023 legislative priorities.

Recommended Action: Receive presentations from City staff and Ms. Terry Effertz regarding the City of Fargo's proposed 2023 legislative priorities and approve for inclusion into the City of Fargo's 2023 legislative program.

(61)

December 7, 2022

Honorable Board of City
Commissioners
City of Fargo
Fargo, North Dakota

Re: 2023 Capital Improvement Plan, 2024 Street/Utility Replacement Projects,
and Updates to the Infrastructure Funding Policy.

Honorable Commissioners:

At our Brown Bag Meeting we updated the Commissioners on our proposed 2023 Capital Improvement Plan (CIP), 2024 Street/Utility Replacement Projects, and recommended updates to the Infrastructure Funding Policy to sustain the CIP. These recommended updates include:

- Remove the Prairie Dog reduction provision
- Minor text cleanup items
- Clearly define that additional streetscaping items included in Downtown projects are special assessed
- Create a tiered system for the special assessment of standalone traffic signal projects.

Recommended Motion:

Approve the 2023 Capital Improvement Plan, the 2024 Street/Utility Replacement Projects, and the Updated Infrastructure Funding Policy as presented.

Respectfully,



Brenda E. Derrig, P.E.
City Engineer

Attachments

C: Tom Knakmuhs, Assistant City Engineer

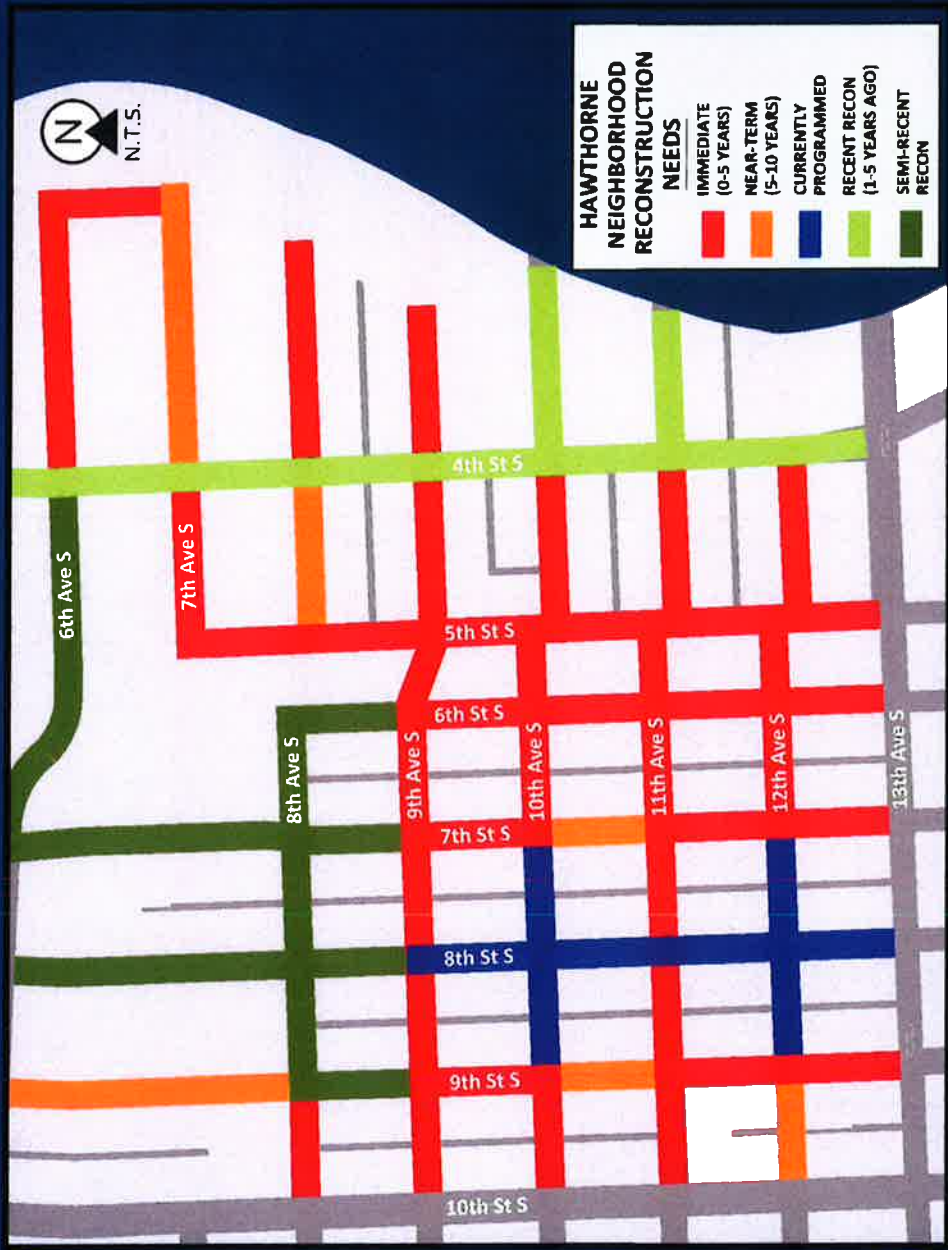
Proposed 2023 Capital Improvement Projects		Construction Costs		Misc Costs		Fees					Total City Cost with Estimated Fees	Outside Funding Sources			Special Assessments	Local Funds								
\$100,113,475.94 Total Program \$35,933,851.94 Total Outside Funding Sources \$40,700,284.99 Total Special Assessed \$43,479,289.70 Other Local Funds (Prairie Dog, Sales Tax, Traffic, Storm, Waste Water, and Water)		Engineer's Estimate	Construction Bid Cost	Land/Easements/ROW	Utility Relocation	Consultant Engineer/HMGP/ NDDOT Fee/ Incentives	Engineering	Admin	Interest	Legal/Misc		Contingency	Federal	DOT/ County/ W/ Mhd/ TIF/ NDSWC/ Cass Rural Water		SE Cass/ NDDDES/ Parks/ Developer	Prairie Dog - Bucket #1 (\$1.5M)	Prairie Dog - Bucket #2 (\$2.5M)	Sales Tax - Infrastructure (1/4 cent) (Fund 420)	Sales Tax - Flood Control (2013) (Fund 460)	Utility Funds - Street Lights (Fund 528)	Utility Funds - Storm Utility (Fund 524)	Utility Funds - Waste Water (Fund 521)	Utility Funds - Water (Fund 501)
Locally Funded and Programmed Projects		\$9,724,460	\$9,702,396	\$20,000	\$0	\$0	\$970,240	\$388,096	\$388,096	\$291,072	\$485,120	\$12,245,019	\$0	\$0	\$0	\$2,749,756	\$0	\$0	\$3,643,905	\$0	\$284,443	\$593,111	\$2,209,683	\$2,764,121
Core Neighborhood Projects - Street Reconstruction and Utility Replacement Projects		\$2,883,000	\$2,641,760	92%	\$0	\$0	\$264,176	\$105,670	\$105,670	\$79,253	\$132,088	\$3,328,617	\$0	\$0	\$0	\$888,193	\$0	\$0	\$629,679	\$0	\$7,520	\$140,987	\$928,800	\$773,438
BR-23-B1	8 St N from 7 Ave N to 10 Ave N; 8 Ave N from 9 St N to 7 St N; 10 Ave N from 9 St N to 7 St N	\$3,273,148	\$3,492,319	107%	\$20,000	\$0	\$349,232	\$139,693	\$139,693	\$104,770	\$174,616	\$4,420,321	\$0	\$0	\$0	\$1,241,495	\$0	\$0	\$1,482,006	\$0	\$46,472	\$203,596	\$602,816	\$843,936
BR-23-C1	6 Ave N from 10 St N to Roberts St N; 8 St N from 6 Ave N to 7 Ave N; 7 St N from BNSF to 7 Ave N	\$3,568,318	\$3,568,318	100%	\$0	\$0	\$356,832	\$142,733	\$142,733	\$107,050	\$178,416	\$4,496,080	\$0	\$0	\$0	\$660,068	\$0	\$0	\$1,532,220	\$0	\$230,451	\$248,527	\$678,067	\$1,146,747
BR-23-E1	8 St S from 9 Ave S to 13 Ave S; 10 Ave S from 9 St S to 7 St S; 12 Ave S from 9 St S to 7 St S	\$7,700,000	\$7,700,000	100%	\$0	\$0	\$770,000	\$308,000	\$308,000	\$231,000	\$385,000	\$9,702,000	\$0	\$0	\$0	\$3,743,672	\$0	\$0	\$5,958,328	\$0	\$0	\$0	\$0	\$0
Pavement Preservation Projects		\$100,000	\$100,000	100%	\$0	\$0	\$100,000	\$4,000	\$4,000	\$3,000	\$5,000	\$126,000	\$0	\$0	\$0	\$0	\$0	\$0	\$126,000	\$0	\$0	\$0	\$0	\$0
PR-23-A1	Asphalt Crack Seal - Various Locations City Wide	\$600,000	\$600,000	100%	\$0	\$0	\$600,000	\$24,000	\$24,000	\$18,000	\$30,000	\$756,000	\$0	\$0	\$0	\$0	\$0	\$0	\$756,000	\$0	\$0	\$0	\$0	\$0
PR-23-B1	Concrete Spot Repairs City Wide	\$1,500,000	\$1,500,000	100%	\$0	\$0	\$1,500,000	\$60,000	\$60,000	\$45,000	\$75,000	\$1,890,000	\$0	\$0	\$0	\$0	\$0	\$0	\$1,890,000	\$0	\$0	\$0	\$0	\$0
PR-23-C1	Seal Coat Projects	\$5,500,000	\$5,500,000	100%	\$0	\$0	\$550,000	\$220,000	\$220,000	\$165,000	\$275,000	\$6,930,000	\$0	\$0	\$0	\$0	\$0	\$0	\$3,465,000	\$0	\$0	\$0	\$0	\$0
PR-23-E1	Mill & Overlay	\$1,675,000	\$1,675,000	100%	\$0	\$0	\$167,500	\$67,000	\$67,000	\$50,250	\$83,750	\$2,110,500	\$0	\$0	\$0	\$0	\$0	\$0	\$756,000	\$0	\$0	\$0	\$1,354,500	\$0
Storm Sewer Utility Projects		\$800,000	\$800,000	100%	\$0	\$0	\$800,000	\$32,000	\$32,000	\$24,000	\$40,000	\$1,008,000	\$0	\$0	\$0	\$0	\$0	\$0	\$1,008,000	\$0	\$0	\$0	\$0	\$0
UR-23-A1	Storm Sewer Repairs - Lining	\$400,000	\$400,000	100%	\$0	\$0	\$400,000	\$16,000	\$16,000	\$12,000	\$20,000	\$504,000	\$0	\$0	\$0	\$0	\$0	\$0	\$504,000	\$0	\$0	\$0	\$0	\$0
UR-23-B1	Storm Sewer Repairs - Spot Repairs	\$75,000	\$75,000	100%	\$0	\$0	\$75,000	\$3,000	\$3,000	\$2,250	\$3,750	\$94,500	\$0	\$0	\$0	\$0	\$0	\$0	\$94,500	\$0	\$0	\$0	\$0	\$0
NR-23-B1	Storm Sewer Lift Station SCADA Upgrades	\$400,000	\$400,000	100%	\$0	\$0	\$400,000	\$16,000	\$16,000	\$12,000	\$20,000	\$504,000	\$0	\$0	\$0	\$0	\$0	\$0	\$504,000	\$0	\$0	\$0	\$0	\$0
NR-23-C1	Storm Sewer Lift Station Repairs	\$593,000	\$593,000	100%	\$0	\$0	\$59,300	\$23,720	\$23,720	\$17,790	\$29,650	\$747,180	\$0	\$0	\$0	\$0	\$0	\$0	\$747,180	\$0	\$0	\$0	\$0	\$0
Traffic and Streetlight Improvements		\$250,000	\$250,000	100%	\$0	\$0	\$250,000	\$10,000	\$10,000	\$7,500	\$12,500	\$315,000	\$0	\$0	\$0	\$0	\$0	\$0	\$315,000	\$0	\$0	\$0	\$0	\$0
TN-23-A1	HAWK Installation	\$343,000	\$343,000	100%	\$0	\$0	\$34,300	\$13,720	\$13,720	\$10,290	\$17,150	\$432,180	\$0	\$0	\$0	\$0	\$0	\$0	\$432,180	\$0	\$0	\$0	\$0	\$0
TR-23-A1	Street Light and Traffic Signal Maintenance	\$1,000,000	\$1,000,000	100%	\$0	\$0	\$100,000	\$40,000	\$40,000	\$30,000	\$50,000	\$1,260,000	\$0	\$0	\$0	\$0	\$0	\$0	\$1,260,000	\$0	\$0	\$0	\$0	\$0
Safety Improvement Projects		\$1,000,000	\$1,000,000	100%	\$0	\$0	\$100,000	\$40,000	\$40,000	\$30,000	\$50,000	\$1,260,000	\$0	\$0	\$0	\$0	\$0	\$0	\$630,000	\$0	\$0	\$0	\$0	\$0
TM-23-A1	Pavement Marking Replacement	\$1,000,000	\$1,000,000	100%	\$0	\$0	\$100,000	\$40,000	\$40,000	\$30,000	\$50,000	\$1,260,000	\$0	\$0	\$0	\$0	\$0	\$0	\$630,000	\$0	\$0	\$0	\$0	\$0
Sidewalk Projects		\$500,000	\$500,000	100%	\$0	\$0	\$50,000	\$20,000	\$20,000	\$15,000	\$25,000	\$630,000	\$0	\$0	\$0	\$0	\$0	\$0	\$315,000	\$0	\$0	\$0	\$0	\$0
SR-23-A1	Sidewalks: New/Rehab Sidewalks (including ADA improvements)	\$500,000	\$500,000	100%	\$0	\$0	\$50,000	\$20,000	\$20,000	\$15,000	\$25,000	\$630,000	\$0	\$0	\$0	\$0	\$0	\$0	\$315,000	\$0	\$0	\$0	\$0	\$0
SR-23-B1	Sidewalks: New/Rehab Sidewalks (including ADA improvements)	\$60,000	\$60,000	100%	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$60,000	\$0	\$0	\$0	\$0	\$0	\$0	\$60,000	\$0	\$0	\$0	\$0	\$0
Miscellaneous Projects		\$60,000	\$60,000	100%	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$60,000	\$0	\$0	\$0	\$0	\$0	\$0	\$60,000	\$0	\$0	\$0	\$0	\$0
MS-23-B0	Public Information Coordinator Services	\$60,000	\$60,000	100%	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$60,000	\$0	\$0	\$0	\$0	\$0	\$0	\$60,000	\$0	\$0	\$0	\$0	\$0
2023 Total for Locally Funded and Programmed Projects		\$21,752,466	\$21,730,396		\$20,000	\$0	\$2,167,040	\$866,616	\$866,616	\$650,112	\$1,083,520	\$27,384,699	\$0	\$0	\$0	\$7,879,427	\$0	\$0	\$11,552,233	\$0	\$1,081,623	\$1,947,611	\$2,209,683	\$2,764,121
Federal Aid Projects		\$16,148,717	\$18,855,179	117%	\$77,785	\$50,000	\$1,762,273	\$0	\$394,207	\$394,207	\$295,655	\$985,518	\$22,814,825	\$9,000,000	\$6,565,832	\$0	\$6,605,054	\$0	\$0	\$643,939	\$0	\$0	\$0	\$0
BN-23-A1	52nd Ave S from 63 St S to Shevonne	\$0	\$0	#DIV/0!	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
QN-23-A1	2nd Street Pedestrian Bridge	\$360,000	\$360,000	100%	\$20,000	\$20,000	\$36,000	\$0	\$14,400	\$14,400	\$10,800	\$72,000	\$547,600	\$288,000	\$0	\$80,000	\$0	\$0	\$80,000	\$0	\$0	\$0	\$0	\$0
SN-23-A1	Bison Village Shared Use Path	\$16,508,737	\$19,215,179		\$97,785	\$70,000	\$1,798,273	\$0	\$408,607	\$408,607	\$306,455	\$1,097,518	\$23,362,425	\$9,288,000	\$6,565,832	\$80,000	\$6,605,054	\$0	\$0	\$823,539	\$0	\$0	\$0	\$0
2023 Total for Federal Aid Projects		\$16,508,737	\$19,215,179		\$97,785	\$70,000	\$1,798,273	\$0	\$408,607	\$408,607	\$306,455	\$1,097,518	\$23,362,425	\$9,288,000	\$6,565,832	\$80,000	\$6,605,054	\$0	\$0	\$823,539	\$0	\$0	\$0	\$0
Prairie Dog Extra Projects		\$4,788,792	\$4,788,792	100%	\$0	\$0	\$478,879	\$191,552	\$191,552	\$143,664	\$718,319	\$6,512,757	\$0	\$0	\$0	\$2,484,009	\$2,500,000	\$1,528,748	\$0	\$0	\$0	\$0	\$0	\$0
BR-23-F1	NP Ave from 10th St N to Broadway; 8th St from Main to NP Ave	\$3,505,806	\$3,505,806	100%	\$0	\$0	\$350,581	\$140,232	\$140,232	\$106,174	\$525,871	\$4,767,896	\$0	\$0	\$0	\$1,617,985	\$0	\$0	\$3,149,911	\$0	\$0	\$0	\$0	\$0
BR-23-J1	Broadway and 1st Ave S - Bell Bank	\$1,350,000	\$1,350,000	100%	\$0	\$0	\$135,000	\$54,000	\$54,000	\$40,500	\$202,500	\$1,836,000	\$0	\$0	\$0	\$885,909	\$0	\$0	\$950,091	\$0	\$0	\$0	\$0	\$0
BR-23-H1	25 St N from Main Ave to 1 Ave N	\$750,000	\$750,000	100%	\$0	\$0	\$75,000	\$30,000	\$30,000	\$22,500	\$112,500	\$1,020,000	\$0	\$0	\$0	\$0	\$0	\$1,020,000	\$0	\$0	\$0	\$0	\$0	\$0
PR-23-F1	Mill & Overlay - 19th Ave N Dakota Dr to 18 St	\$3,000,000	\$3,000,000	100%	\$0	\$0	\$300,000	\$120,000	\$120,000	\$90,000	\$450,000	\$4,080,000	\$0	\$0	\$0	\$816,000	\$0	\$0	\$3,264,000	\$0	\$0	\$0	\$0	\$0
BR-23-K1	Core Neighborhood Project - Street Reconstruction and Utility Replacement	\$13,394,598	\$13,394,598	99%	\$0	\$0	\$1,339,460	\$535,784	\$535,784	\$401,818	\$2,009,190	\$18,716,653	\$0	\$0	\$0	\$5,803,903	\$2,500,000	\$9,912,750	\$0	\$0	\$0	\$0	\$0	\$0
2023 Total for Redevelopment Driven Projects		\$13,394,598	\$13,394,598		\$0	\$0	\$1,339,460	\$535,784	\$535,784	\$401,818	\$2,009,190	\$18,716,653	\$0	\$0	\$0	\$5,803,903	\$2,500,000	\$9,912,750	\$0	\$0	\$0	\$0	\$0	\$0
Flood Control Projects		\$320,000	\$320,000	100%	\$4,000,000	\$0	\$120,000	\$0	\$0	\$0	\$32,000	\$4,472,000	\$0	\$0	\$0	\$0	\$0	\$0	\$4,472,000	\$0	\$0	\$0	\$0	\$0
FM-15-F3	Harwood, Hackberry, River Drives	\$4,890,000	\$4,890,000	100%	\$100,000	\$100,000	\$537,900	\$0	\$0	\$0	\$489,000	\$6,116,900	\$0	\$0	\$0	\$0	\$0	\$0	\$6,116,900	\$0	\$0	\$0	\$0	\$0
NR-23-A1	Storm Lift Station # 47 & #48 (& I-29 Ditch)	\$120,000	\$120,000	100%	\$0	\$0	\$12,000	\$4,800	\$4,800	\$0	\$12,000	\$148,800	\$0	\$0	\$0	\$0	\$0	\$0	\$148,800	\$0	\$0	\$0	\$0	\$0
HD-23-A1	Demolition - Flood Buyouts (2 Homes)	\$5,330,000	\$5,330,000	100%	\$4,100,000	\$100,000	\$657,900	\$12,000	\$4,800	\$0	\$0	\$533,000	\$10,737,700	\$0	\$0	\$0	\$0	\$0	\$10,737,700	\$0	\$0	\$0	\$0	\$0
2023 Total for Flood Control Projects		\$5,330,000	\$5,330,000		\$4,100,000	\$100,000	\$657,900	\$12,000	\$4,800	\$0	\$0	\$533,000	\$10,737,700	\$0	\$0	\$0	\$0	\$0	\$10,737,700	\$0	\$0	\$0	\$0	\$0
New Development/Alley Paving Projects		\$16,000,000	\$16,000,000	100%	\$0	\$0	\$1,600,000	\$640,000	\$640,000	\$480,000	\$800,000	\$20,160,000	\$0	\$0	\$0	\$20,160,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
New Development Projects		\$2,000,000	\$2,000,000	100%	\$0	\$0	\$200,000	\$80,000	\$80,000	\$60,000	\$100,000	\$2,520,000	\$0	\$0	\$0	\$2,520,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
DN-23-A1	New Development Project - SW Metro Pond Drain	\$1,000,000	\$1,000,000	100%	\$0	\$0	\$100,000	\$40,000	\$40,000	\$30,000	\$50,													

Proposed Street Reconstruction and Utility Replacement Project Areas for 2024

Proposed Street Reconstruction and Utility Reconstruction Project Areas:

- Hawthorne Neighborhood (approximately \$3M - \$4M project)
- Longfellow Neighborhood (approximately \$3M - \$4M project)
- Roosevelt Neighborhood (approximately \$3M - \$4M project)

PROPOSED 2024 RECONSTRUCTION PROJECT - HAWTHORNE



PROPOSED 2024 RECONSTRUCTION PROJECT - LONGFELLOW



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PROPOSED 2024 RECONSTRUCTION PROJECT - ROOSEVELT



2023 Fargo Infrastructure Funding Policy

Initial Installation

SANITARY SEWER - 25 YR ASSESSMENT		Special Assessed	Other City Funds
Sewer Mains - Local		100%	None
Sewer Mains - Trunk	Assess equivalent of a local main; oversize assessed to the benefiting area where applicable		Sewer Utility
Lift Stations		100%	None

WATER MAINS - 25 YR ASSESSMENT		Special Assessed	Other City Funds
Local Mains		100%	None
Oversized Mains (mains larger than 12")	Assess equivalent of a 12" main; oversize assessed to the benefiting area where applicable		Water Utility
Trunk Mains (12" on quarter lines; ½ mile spacing)		100%	None
Trunk Mains (16" on section lines; 1 mile spacing)		100%	None
Trunk Mains (larger than 16" on section lines)	Assess equivalent of a 16" main		Balance - Water Utility
Feeder Mains (no local connections)		None	Water Utility
Fire Flow Benefit (no domestic service)		60%	Balance - Water Utility
Mains on Jurisdictional Boundaries		50%	Balance - Water Utility
Water Towers		None	Water Utility

STORM SEWER - 25 YR ASSESSMENT		Special Assessed	Other City Funds
Mains		100%	None
Outfalls		100%	None
Detention/Retension Basins		100%	None
Lift Stations		100%	None

LOMR (Letter of Map Revision)		Special Assessed	Other City Funds
LOMR	LOMR to be completed prior to Improvement Project or as part of Improvement Project. All cost for LOMR shall be paid for by Developer. No LOMR costs will be special assessed.		None

2023 Fargo Infrastructure Funding Policy

Initial Installation

PAVING - 25 YR ASSESSMENT	Special Assessed	Other City Funds
Local	100%	None
Local - Initial Wear Course & Seal Coat	100%	None
Collector	100%	None
Collector - Initial Wear Course & Seal Coat	100%	None
Arterial Direct*		
Single	\$212.24	Balance - Federal or Sales Tax
Multi Family Tier 1 (1 to 3 units)	\$212.24	Balance - Federal or Sales Tax
Multi Family Tier 2 (4 to 12 units)	\$291.83	Balance - Federal or Sales Tax
Multi Family Tier 3 (13 to 36 units)	\$371.42	Balance - Federal or Sales Tax
Multi Family Tier 4 (37 units & above)	\$451.01	Balance - Federal or Sales Tax
Commercial, Industrial, Institutional	\$530.60	Balance - Federal or Sales Tax
Arterial Indirect*		
Single**	\$31.83	Balance - Federal or Sales Tax
Multi Family Tier 1 (1 to 3 units)**	\$31.83	Balance - Federal or Sales Tax
Multi Family Tier 2 (4 to 12 units)**	\$42.45	Balance - Federal or Sales Tax
Multi Family Tier 3 (13 to 36 units)**	\$53.06	Balance - Federal or Sales Tax
Multi Family Tier 4 (37 units & above)**	\$63.67	Balance - Federal or Sales Tax
Commercial, Industrial, Institutional**	\$74.29	Balance - Federal or Sales Tax
Alleys in Greenfield Developments	100%	None
Structures - Interchanges, Bridges, Over/Underpasses		
Single Family	\$0.01592 per Square Foot	Balance - Federal or Sales Tax
Multi Family Tier 1 (1 to 3 units)	\$0.01592 per Square Foot	Balance - Federal or Sales Tax
Multi Family Tier 2 (4 to 12 units)	\$0.02123 per Square Foot	Balance - Federal or Sales Tax
Multi Family Tier 3 (13 to 36 units)	\$0.03183 per Square Foot	Balance - Federal or Sales Tax
Multi Family Tier 4 (37 units & above)	\$0.04245 per Square Foot	Balance - Federal or Sales Tax
Commercial, Industrial, Institutional	\$0.05306 per Square Foot	Balance - Federal or Sales Tax
DMU	\$0.07429 per Square Foot	Balance - Federal or Sales Tax

*Costs include final paving, traffic signals, seal coat, & street lights.

**Square foot computation where applicable.

2023 Fargo Infrastructure Funding Policy

Initial Installation

STREET LIGHTING - 10 YR ASSESSMENT		Special Assessed	Other City Funds
Street Lights		100%	None

SIDEWALKS - 20 YR ASSESSMENT		Special Assessed	Other City Funds
Collector		100%	None
Local Streets - Front Yard		Private or 100% assessed	None
Local Streets - Side/Rear Yard		100%	None
All Others		100%	None

ALTERNATIVE TRANSPORTATION FACILITIES - 15 YR ASSESSMENT		Special Assessed	Other City Funds
Shared Use Path		Direct assess equivalent to sidewalk - balance assessed to the area	None
Special Trails		Up to 100%	Balance - Federal or Sales Tax
On Street Bike Facilities		Up to 100%	Balance - Federal or Sales Tax

TRAFFIC CONTROL DEVICES - 25 YR ASSESSMENT		Special Assessed	Other City Funds
Pedestrian Cross Walk & Other Safety Improvements		Up to 100%	Balance - Federal or Sales Tax
Traffic Calming		100%	None
Traffic Signals - Standalone Project			
Single Family		None	Street Light Utility
Multi Family Tier 1 (1 to 3 units)		None	Street Light Utility
Multi Family Tier 2 (4 to 12 units)		None	Street Light Utility
Multi Family Tier 3 (13 to 36 units)		100% (2x SR)	None
Multi Family Tier 4 (37 units & above)		100% (3x SR)	None
Commercial, Industrial, Institutional		100% (4x SR)	None
DMU		100% (5x SR)	None

2023 Fargo Infrastructure Funding Policy

Initial Installation

TREE PLANTING - 10 YR ASSESSMENT	Special Assessed	Other City Funds
Local Street	Privately installed & financed per ordinance	None
Collector Street	Privately installed & financed per ordinance	None
Arterial Street	None	Sales Tax

STREET AMENITIES***	Special Assessed	Other City Funds
Including: Vegetative and Non Vegetative Landscape Features, Trash Receptacles, Permanent Bike Racks, Material Upgrades, Festoon Circuitry, Stamped and/or Color Concrete, Sidewalks wider than standard width, and other items not included in the paving cap	100%	None

***Paving caps include roadway subgrade, roadway pavement, curb and gutter, grass boulevard, and standard width sidewalk. Any amenities beyond this will be 100 % special assessed.

Note - All caps shall be increased by 2% annually.

Note - When it is necessary to utilize a square foot cost, the square foot cost is based on a typical lot which is 12,000 SF lot with 80' of frontage. Cost per SF = (Cost per FF x 80)/12,000

2023 Fargo Infrastructure Funding Policy

Rehabilitation/Replacement/Misc

SANITARY SEWER - 25 YR ASSESSMENT	Special Assessed	Other City Funds
Sewer Mains - Applies to Local & Trunk Sewers	Capped at \$42.45 (\$63.67 for DMU)	Balance - Waste Water Utility
Lift Stations	None	Waste Water Utility
Lift Stations Expansion	Up to 100%	Balance - Waste Water Utility
Sewer Service - Replacement with Street Recon (to boulevard on the street recon projects)	None	Waste Water Utility
Sewer Service - Wye Connection with Street Recon	None	Waste Water Utility

WATER MAINS - 25 YR ASSESSMENT	Special Assessed	Other City Funds
Local & Trunk Mains	Capped at \$42.45 (\$63.67 for DMU)	Balance - Water Utility
Water Service - Service Replacement - Main to stopbox - in Conjunction with a City Led Main Replacement Project	None	Water Utility
Water System Expansion - Towers, Treatment, Intake Structures	None	Water Utility

STORM SEWER - 25 YR ASSESSMENT	Special Assessed	Other City Funds
Mains, Inlets, Structures	50%	Balance - Sales Tax or Storm Sewer Utility
Outfalls	50%	Balance - Sales Tax or Storm Sewer Utility
Detention/Retention Basins	50%	Balance - Sales Tax or Storm Sewer Utility
Lift Stations	50%	Balance - Sales Tax or Storm Sewer Utility
Floodwall/Levee	50%	Balance - Sales Tax or Storm Sewer Utility
Capacity Expansion - Relief Sewers, Detention/Retention Basins	Capped at \$0.106 per Square Foot	Balance - Sales Tax or Storm Sewer Utility
Capacity Expansion - Enhancements	Up to 100%	Balance - Sales Tax or Storm Sewer Utility
Flood Risk Reduction - Levees/Floodwalls, Etc.	Direct benefit capped at \$0.53 per Square Foot - secondary benefit capped at \$0.106 per Square Foot	Balance - Sales Tax
Flood Risk Reduction - Lift Stations	Capped at \$0.106 per Square Foot	Balance - Sales Tax
Flood Risk Reduction - Comprehensive Flood Risk Reduction Plan	None	Sales Tax & NDSWC

2023 Fargo Infrastructure Funding Policy

Rehabilitation/Replacement/Misc

PAVING - 25 YR ASSESSMENT	Special Assessed	Other City Funds
Local & Collector *		
Single	\$90.20	Balance - Sales Tax
Multi Family Tier 1 (1 to 3 units)	\$90.20	Balance - Sales Tax
Multi Family Tier 2 (4 to 12 units)	\$137.96	Balance - Sales Tax
Multi Family Tier 3 (13 to 36 units)	\$180.41	Balance - Sales Tax
Multi Family Tier 4 (37 units & above)	\$212.24	Balance - Sales Tax
Commercial, Industrial, Institutional	\$244.08	Balance - Sales Tax
DMU	\$371.42	Balance - Sales Tax
Arterial Direct*		
Single	\$106.12	Balance - Federal or Sales Tax
Multi Family Tier 1 (1 to 3 units)	\$106.12	Balance - Federal or Sales Tax
Multi Family Tier 2 (4 to 12 units)	\$159.18	Balance - Federal or Sales Tax
Multi Family Tier 3 (13 to 36 units)	\$206.94	Balance - Federal or Sales Tax
Multi Family Tier 4 (37 units & above)	\$244.08	Balance - Federal or Sales Tax
Commercial, Industrial, Institutional	\$291.83	Balance - Federal or Sales Tax
DMU	\$435.09	Balance - Federal or Sales Tax
Arterial Indirect*		
Single**	\$15.92	Balance - Federal or Sales Tax
Multi Family Tier 1 (1 to 3 units)**	\$15.92	Balance - Federal or Sales Tax
Multi Family Tier 2 (4 to 12 units)**	\$21.23	Balance - Federal or Sales Tax
Multi Family Tier 3 (13 to 36 units)**	\$26.53	Balance - Federal or Sales Tax
Multi Family Tier 4 (37 units & above)**	\$31.83	Balance - Federal or Sales Tax
Commercial, Industrial, Institutional**	\$47.76	Balance - Federal or Sales Tax
DMU**	\$63.67	Balance - Federal or Sales Tax

2023 Fargo Infrastructure Funding Policy		
Rehabilitation/Replacement/Misc		
Alleys - Replace or Initial Install in Established Areas	100%	None
Street Rehab & Spot Repair (15 year Assessment)		
Street Rehab - Mill & Overlay (w/ Curb Ramps)	50%	Balance - Sales Tax
Street Rehab - Seal Coat Only	None	Sales Tax
Concrete Spot Repair	None	Sales Tax
Concrete Spot Repair by Reach	50% of project cost and no more than 25% of the cap	Balance - Sales Tax
Structures - Interchanges, Bridges, Over/Underpasses		
Single Family		
Multi Family Tier 1 (1 to 3 units)	\$0.01592 per Square Foot	Federal or Sales Tax
Multi Family Tier 2 (4 to 12 units)	\$0.01592 per Square Foot	Balance - Federal or Sales Tax
Multi Family Tier 3 (13 to 36 units)	\$0.02123 per Square Foot	Balance - Federal or Sales Tax
Multi Family Tier 4 (37 units & above)	\$0.03183 per Square Foot	Balance - Federal or Sales Tax
Commercial, Industrial, Institutional	\$0.04245 per Square Foot	Balance - Federal or Sales Tax
DMU	\$0.05306 per Square Foot	Balance - Federal or Sales Tax
	\$0.07429 per Square Foot	Balance - Federal or Sales Tax

*Costs include final paving , traffic signals, seal coat, & street lights.

**Square foot computation where applicable.

2023 Fargo Infrastructure Funding Policy

Rehabilitation/Replacement/Misc

STREET LIGHTING - 10 YR ASSESSMENT		Special Assessed	Other City Funds
Street Lights with Street Recon		None	Sales Tax or Street Light Utility
Street Light Replacement Only		Up to 100%	Balance - Street Light Utility

SIDEWALKS - 20 YR ASSESSMENT		Special Assessed	Other City Funds
Single Family - Front Yards		100%	None
Single Family - Rear & Side Yard		None	Sales Tax
All Other Zones - Front, Rear, and Side		100%	None
Curb Ramps at Public Cross Walks		None	Sales Tax

SHARED USE PATHS AND BIKE FACILITIES - 15 YR ASSESSMENT		Special Assessed	Other City Funds
Reconstruction or Rehabilitation		Up to 100%	Balance - Federal or State Tax
Structures, Bridges, Underpass, Etc. - River Crossings and Non-River Crossings		Up to 100%	Balance - Federal or Sales Tax

TRAFFIC CONTROL DEVICES - 25 YR ASSESSMENT		Special Assessed	Other City Funds
Pedestrian Cross Walk & Other Safety Improvements		Up to 100%	Balance - Federal or Sales Tax
Traffic Calming		100%	None
Maintenance/Operational Modifications		None	Sales Tax or Street Light Utility

Traffic Signals - Standalone Project		Special Assessed	Other City Funds
Single Family		None	Street Light Utility
Multi Family Tier 1 (1 to 3 units)		None	Street Light Utility
Multi Family Tier 2 (4 to 12 units)		None	Street Light Utility
Multi Family Tier 3 (13 to 36 units)		100% (2x SR)	None
Multi Family Tier 4 (37 units & above)		100% (3x SR)	None
Commercial, Industrial, Institutional		100% (4x SR)	None
DMU		100% (5x SR)	None

2023 Fargo Infrastructure Funding Policy

Rehabilitation/Replacement/Misc

RAILROAD CROSSING IMPROVEMENTS - 10 YR ASSESSMENT	Special Assessed	Other City Funds
Main Line	None	Sales Tax
Spur Line	100%	None
Quiet Zones		
Single Family	100%	None
Multi Family Tier 1 (1 to 3 units)	100%	None
Multi Family Tier 2 (4 to 12 units)	100%	None
Multi Family Tier 3 (13 to 36 units)	100% (2x SR)	None
Multi Family Tier 4 (37 units & above)	100% (3x SR)	None
Commercial, Industrial, Institutional	100% (4x SR)	None
DMU	100% (5x SR)	None

STREET AMENITIES***	Special Assessed	Other City Funds
Including: Vegetative and Non Vegetative Landscape Features, Trash Receptacles, Permanent Bike Racks, Material Upgrades, Festoon Circuitry, Stamped and/or Color Concrete, Sidewalks wider than standard width, and other items not included in the paving cap	100%	None

***Paving caps include roadway subgrade, roadway pavement, curb and gutter, grass boulevard, and standard width sidewalk. Any amenities beyond this will be 100% special assessed.

Note - All caps shall be increased by 2% annually.

Note - Actual assessment may be based on use, not zoning.

Note - Prairie Dogs funds may be used to supplement funding of all City Funds (with the exception of Fiber Optic) for any category.

Publicly Bid Projects (Initial Installation and Rehab/Reconstruction)					
	Engineering	Administration	Interest	Legal/Misc.	
Design: City Survey and Inspect: City	10%	4%	4%	3%	
Design: City Survey and Inspect: Consultant	City Design 4%, plus Actual Consultant Cost. Total engineering to be special assessed not to exceed 10%	4%	4%	3%	
Design: Consultant Survey and Inspect: City	Actual Consultant Cost, plus 6% City Survey and Inspect. Total engineering to be special assessed not to exceed 10%	4%	4%	3%	
Design: Consultant Survey and Inspect: Consultant	Actual Consultant Cost, plus 4% City oversight. Total engineering to be special assessed not to exceed 10%	4%	4%	3%	

Publicly Bid Projects with Design Paid for by Developer					
	Engineering	Administration	Interest	Legal/Misc.	
Design: Consultant (paid by Developer) Survey and Inspect: City	7%	4%	4%	3%	
Design: Consultant (paid by Developer) Survey and Inspect: Consultant	Actual Consultant Cost or 7%, whichever is greater	4%	4%	3%	

Developer Bid Projects with No Special Assessments (City Oversight Only)					
	Engineering	Administration	Interest	Legal/Misc.	
Design: Consultant (paid by Developer) Survey and Inspect: Consultant (paid by Developer)	4%	0%	0%	0%	



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FINANCE OFFICE
PO Box 2083
225 4th Street North
Fargo, ND 58102
Phone: 701.241.1333 | Fax: 701.476.4188
www.FargoND.gov

TO: BOARD OF COMMISSIONERS

FROM: TERRI GAYHART, DIRECTOR OF FINANCE *TG*

RE: RESOLUTION AUTHORIZING THE ISSUANCE OF \$57.06 MILLION OF REFUNDING IMPROVEMENT BONDS SERIES 2023, PRESCRIBING TERMS AND CONDITIONS THEREOF, AND CREATING A FUND FOR THE PAYMENT METHOD

DATE: DECEMBER 12, 2022

The City of Fargo will be issuing bonds on January 23, 2023 for the repayment of our capital Project fund for various infrastructure projects completed in 2022. These bonds will be repaid with special assessments levied this fall.

Brad Elmer of Baker Tilly will present the bond sale results and will be available for any questions you may have about the bond markets.

The final resolution and bond par amount of bonds issued will be updated on the sale date based upon the final bids received.

Suggested Motion:

Approve a resolution authorizing the issuance of Refunding Improvement Bonds, Series 2023A prescribing terms and conditions thereof, and creating a fund for the payment thereof.

RESOLUTION RELATING TO \$57,060,000 REFUNDING IMPROVEMENT BONDS, SERIES 2023A; CALLING FOR THE SALE THEREOF

BE IT RESOLVED by the City Commission (the “Commission”) of the City of Fargo, North Dakota (the “City”), as follows:

1. Authorization. For the purpose of paying the cost of improvements of special benefit to the following improvement districts in the City:

Project Number	Bond Proceeds
BN-22-B1	\$ 1,375,000
BN-21-H1	2,870,000
BN-21-E1	2,450,000
BN-22-K1	2,550,000
PR-22-E1	275,000
UN-22-M1	1,150,000
BN-22-J1	590,000
PR-22-G1	1,215,000
BR-22-F1	400,000
BN-22-A1	12,000,000
PR-21-F1	575,000
PR-22-F1	1,700,000
PN-22-A1	2,350,000
BN-21-L1	1,400,000
BR-22-C1	1,100,000
PR-22-C1	1,260,000
SR-22-A1	735,000
NR-20-A2	682,000
BN-22-C1	20,500,000
	\$ 55,177,000.00

it is determined to be necessary to issue and sell definitive improvement warrants on the funds of said districts in the approximate aggregate principal amount of \$57,060,000, to be refunded simultaneously by the issuance to the purchaser of refunding improvement bonds of the City in the same aggregate principal amount, to be designated Refunding Improvement Bonds, Series 2023A (the “Bonds”).

Section 2. Sale of Bonds And Publication of Notice of Bond Sale. Baker Tilly Municipal Advisors, LLC, municipal advisor to the City, has presented to this Commission a form of Official Terms of Offering for the Bonds, which shall be placed on file by the City Auditor. Each and all of the provisions of the Official Terms of Offering are hereby adopted as the terms and conditions of the Bonds and of the sale thereof.

Section 3. Sale Meeting. This Commission shall meet at the City Hall on Monday, January 23, 2023, at 5:00 o’clock P.M., for the purpose of considering sealed bids for the

purchase of the Bonds, and of taking such action thereon as may be in the best interests of the City.

Mayor

Attest:

City Auditor

COMMISSIONER _____ introduced the preceding resolution and moved its adoption. The motion for the adoption of the foregoing resolution was duly seconded by COMMISSIONER _____, and upon roll call vote, the following voted in favor thereof:

COMMISSIONERS _____.

The following were absent and not voting: _____, and the following voted against the same: _____, whereupon the resolution was declared duly passed and adopted this 12th day of December, 2022.



City of Fargo, North Dakota Pre-Sale Summary for Issuance of Bonds

\$57,060,000 Refunding Improvement Bonds, Series 2023A (the "Bonds")

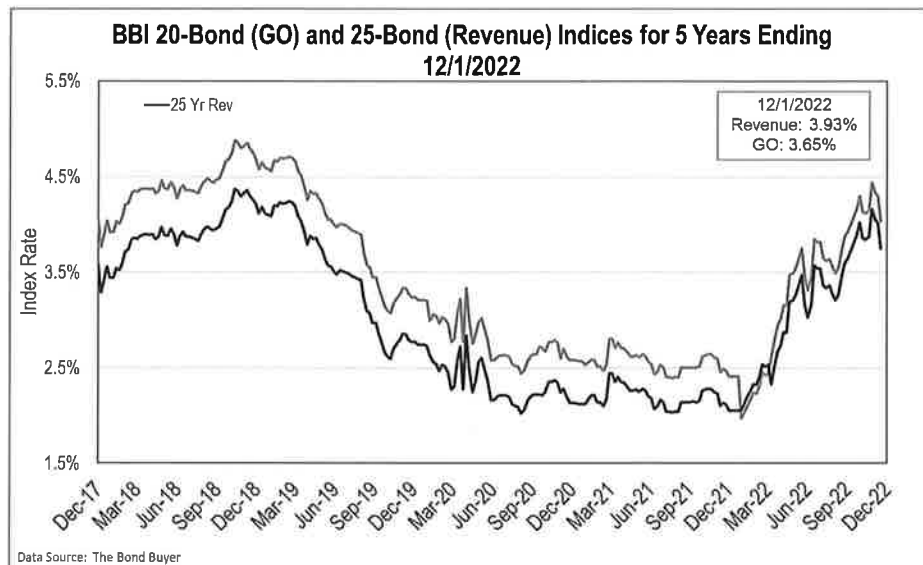
The City Commission of the City of Fargo has under consideration the issuance of bonds for the financing of various improvement projects within the City. This document provides information relative to the proposed issuance.

KEY EVENTS: The following summary schedule includes the timing of key events that will occur relative to the bond issuance:

December 12, 2022	City Commission authorizes sale of the Bonds
Week of January 2nd, 2023	Rating conference is conducted
January 23rd, 2023, 10:00 a.m.	Competitive bids are received
January 23rd, 2023, 5:00 p.m.	City Commission considers award of the Bonds
February 22, 2023	Proceeds are received

RATING: An application will be made to Moody's Investors Service (Moody's) for a rating on the Bonds. The City's general obligation debt is currently rated "Aa2" by Moody's.

THE MARKET: Performance of the tax-exempt market is often measured by the Bond Buyer's Index ("BBI") which measures the yield of high grade municipal bonds in the 20th year for general obligation bonds rated Aa2 by Moody's or AA by S&P (the BBI 20-Bond GO Index) and the 30th year for revenue bonds rated A1 by Moody's or A+ by S&P (the BBI 25-Bond Revenue Index). The following chart illustrates these two indices over the past five years:



PURPOSE: The proceeds of the Bonds will be used to finance various utility, street, alley, and street lighting improvement projects within various improvement districts of the City. A detailed listing of all projects is included below.

AUTHORITY: Statutory Authority: The Bonds are being issued pursuant to the North Dakota Century Code, Chapters 40-22 through 40-27.

SECURITY AND SOURCE OF PAYMENT: The special improvement warrants issued against the funds of such improvement districts and the special assessments levied for the improvements have been appropriated by the City to a special fund for the payment of the Bonds. The City is also required, by law, to levy a tax upon all taxable property within its corporate limits to restore any deficiency in the improvement district funds (assessments) for the payment of all warrants and interest thereon. The City is authorized to levy a tax whenever a deficiency is anticipated to occur within one year. Such tax levies are not subject to any constitutional or statutory limitation as to rate or amount. It is not anticipated that a tax levy will be needed to pay debt service on the Bonds.

Assessments totaling \$55,177,000 are expected to be filed in 2023 for first collection in 2024. Assessments will be collected over terms of 20 and 25 years and repaid in equal annual installments of principal and interest, with interest on the unpaid balance collected at a rate of 0.75% over the true interest rate on the Bonds. For projection purposes, the true interest estimate is 4.50% and so a rate of 5.25% is used for the assessments.

Interest for the November 2023 payment is capitalized in the bond issue. In the remaining years, assessment income received by February 15 is expected to be sufficient to cover each May 1 principal and interest payment. Remaining assessments collected through October 15, and any funds collected but not applied on May 1, will be used to make each November 1 interest payment due in the year of collection.

STRUCTURING SUMMARY: In consultation with City Staff, principal repayment for the Bonds is structured with twenty-five (25) years of amortization, aligning with the projected assessment income so assessment income exceeds debt service each year. The annual surplus averages approximately \$60,269. The principal amount of the Bonds includes financing costs. It is the City's policy not to assess financing costs. Since the assessments will carry a higher rate of interest than the Bonds, it is anticipated that a modest annual surplus will accumulate in the debt service fund.

The Bonds are structured with premium pricing, estimated based on the current market environment and recent comparable issue sales. Premium pricing results when bids are received with coupon rates that exceed market yields, thereby requiring investors pay a reoffering premium (an amount above the face value of each maturity of the issue) to drive their yield back down to market levels and generating additional proceeds. The underwriter will take their compensation from the reoffering premium. It is anticipated any excess proceeds generated as original issue premium and/or unused underwriters discount will be used to reduce the principal amount of the Bonds.

SCHEDULES ATTACHED:

Schedules attached for the Bonds include:

- Summary of Capital Projects Funded by the Bonds (provided by City Staff)
- Sources and Uses
- Pricing Summary
- Semiannual Debt Service and Cash Flow Analysis, estimated given current market conditions
- Projected Aggregate Assessment Income

RISKS/SPECIAL CONSIDERATIONS:

The outcome of this financing will rely on the market conditions at the time of the sale. Any projections included herein are estimates based on current market conditions.

Future assessment collections are expected to cover 100% of the debt service payments on the Bonds. If actual assessment collections are different than projected and assessment collections and/or a positive cumulative surplus in the debt service fund do not materialize, the City will be required to levy taxes or appropriate other available funds to make the debt service payments on the Bonds.

The schedules included for the Bonds estimate a level of premium pricing based on the current interest rate environment. Original issue premium is a combination of coupons and yields, a reoffering premium and probable underwriter's compensation. While the projected pricing is based on comparable bond sales and recent market data, it is just an estimate and actual pricing almost certainly will differ. Any such difference could result in less or more premium than estimated in these schedules resulting in a larger or smaller issue size.

SALE TERMS AND MARKETING:

Variability of Issue Size: A specific provision in the sale terms permits modifications to the issue size and/or maturity structure to customize the issue once the price and interest rates are set on the day of sale.

Prepayment Provisions: The Bonds have been structured with optional call dates as follows:

- Bonds Maturing on May 1, 2029 through May 1, 2031 may be prepaid at a price of par plus accrued interest on May 1, 2028. This early call provision will allow the City to apply potential prepaid assessments to call these maturities.
- Bonds maturing in the years May 1, 2034 through May 1, 2048 may be prepaid at a price of par plus accrued interest on May 1, 2033.

Bank Qualification: The Bonds are expected to be issued as tax-exempt obligations in an amount greater than \$10 million; therefore, the Bonds will not be designated as bank qualified.

Post Issuance Compliance

**POST ISSUANCE
COMPLIANCE:**

The issuance of the Bonds will result in post-issuance compliance responsibilities. The responsibilities are in two primary areas: (i) compliance with federal arbitrage requirements and (ii) compliance with secondary disclosure requirements.

Federal arbitrage requirements include a wide range of implications that have been taken into account as this issue has been structured. Post-issuance compliance responsibilities for this tax-exempt issue include both rebate and yield restriction provisions of the IRS Code. In general terms the arbitrage requirements control the earnings on unexpended bond proceeds, including investment earnings, moneys held for debt service payments (which are considered to be proceeds under the IRS regulations), and/or reserves. Under certain circumstances any "excess earnings" will need to be paid to the IRS to maintain the tax-exempt status of the Bonds. Any interest earnings on gross bond proceeds or debt service funds should not be spent until it has been determined based on actual facts that they are not "excess earnings" as defined by the IRS Code.

The arbitrage rules provide for spend-down exceptions for proceeds that are spent within either a 6-month, 18-month or, for certain construction issues, a 24-month period each in accordance with certain spending criteria. Proceeds that qualify for an exception will be exempt from rebate. These exceptions are based on actual expenditures and not based on reasonable expectations, and expenditures, including any investment proceeds will have to meet the spending criteria to qualify for the exclusion. The City expects to meet the 18-month spending exception.

Regardless of whether the issue qualifies for an exemption from the rebate provisions, yield restriction provisions will apply to Bond proceeds (including interest earnings) unspent after three years and the debt service fund throughout the term of the Bonds. These moneys should be monitored until the Bonds are retired.

Baker Tilly currently provides secondary disclosure services to the City. Baker Tilly will work with City staff to include the Bonds under the existing Agreement for Municipal Advisor Services. We understand that arbitrage rebate responsibilities are being monitored through a third-party contract.

Secondary disclosure requirements result from an SEC requirement that underwriters provide ongoing disclosure information to investors. To meet this requirement, any prospective underwriter will require the City to commit to providing the information needed to comply under a continuing disclosure agreement.

**SUPPLEMENTAL
INFORMATION
AND
BOND RECORD:**

Supplementary information will be available to staff including detailed terms and conditions of sale, comprehensive structuring schedules and information to assist in meeting post-issuance compliance responsibilities.

Upon completion of the financing, a bond record will be provided that contains pertinent documents and final debt service calculations for the transaction.

Baker Tilly Municipal Advisors, LLC is a registered municipal advisor and controlled subsidiary of Baker Tilly US, LLP, an accounting firm. Baker Tilly US, LLP trading as Baker Tilly, is a member of the global network of Baker Tilly International Ltd., the members of which are separate and independent legal entities. © 2022 Baker Tilly Municipal Advisors, LLC.

Summary of Capital Projects Funded by the Bonds (provided by City Staff)

Project Number	Contract Percentage	Contract Amount	Actual PD to date	Estimated Final	Eng & Admin	Misc Other	Interest	Total Est Cost	Less Other	Est Assessed	Bond Proceeds	Term	Term Totals	
													25 Years	20 Years
BN-22-B1	101%	1,349,795.57	1,364,400.58	1,365,000.00	191,100.00	20,000.00	66,070.66	1,642,170.66	269,403.83	1,372,766.83	1,375,000.00	25 years	1,375,000.00	-
BN-21-H1	101%	2,382,944.72	2,921,066.50	2,925,000.00	436,681.00	14,500.50	70,067.36	3,446,248.86	576,243.87	2,870,004.99	2,870,000.00	25 years	2,870,000.00	-
BN-21-E1	100%	2,084,720.64	2,139,438.45	2,140,000.00	299,600.00	17,795.32	28,418.77	2,485,814.09	50,000.00	2,435,814.09	2,450,000.00	25 years	2,450,000.00	-
BN-22-K1	97%	2,182,407.68	2,147,940.51	2,182,500.00	305,550.00	12,747.96	35,343.00	2,536,140.96		2,536,140.96	2,550,000.00	25 years	2,550,000.00	-
PR-22-E1	97%	980,511.28	1,002,768.39	1,030,000.00	144,200.00	4,100.97	5,000.00	1,183,300.97	915,000.00	268,300.97	275,000.00	25 years	275,000.00	-
UN-22-M1	95%	1,304,685.07	1,284,251.45	1,285,000.00	179,900.00	5,096.22	21,965.00	1,491,961.22	345,000.00	1,146,961.22	1,150,000.00	25 years	1,150,000.00	-
BN-22-J1	94%	676,009.60	635,046.00	650,000.00	91,000.00	8,655.26	9,260.00	758,915.26	175,000.00	583,915.26	590,000.00	25 years	590,000.00	-
PR-22-G1	93%	1,254,091.80	1,172,738.30	1,255,000.00	175,700.00	7,396.00	11,100.00	1,448,196.00	235,000.00	1,214,196.00	1,215,000.00	25 years	1,215,000.00	-
BR-22-F1	90%	1,382,810.18	1,310,346.00	1,350,000.00	189,000.00	11,956.24	50,000.00	1,600,956.24	1,342,030.00	258,926.24	400,000.00	25 years	400,000.00	-
BN-22-A1	87%	12,396,178.60	11,395,420.25	12,400,000.00	1,736,000.00	47,472.27	195,000.00	14,378,472.27	2,387,908.00	11,990,564.27	12,000,000.00	25 years	12,000,000.00	-
PR-21-F1	87%	1,789,486.00	1,561,869.64	1,775,000.00	248,500.00	11,777.00	20,000.00	2,055,277.00	1,657,192.00	398,085.00	575,000.00	25 years	575,000.00	-
PR-22-F1	86%	4,189,285.60	3,802,328.66	3,825,000.00	535,500.00	16,919.64	12,000.00	4,389,419.64	2,690,174.00	1,699,245.64	1,700,000.00	25 years	1,700,000.00	-
PN-22-A1	85%	2,465,653.50	2,191,851.00	2,400,000.00	336,000.00	17,136.00	35,000.00	2,788,136.00	471,000.00	2,317,136.00	2,350,000.00	25 years	2,350,000.00	-
BN-21-L1	84%	1,470,135.50	1,418,400.00	1,450,000.00	203,000.00	13,485.00	30,000.00	1,696,485.00	303,210.00	1,393,275.00	1,400,000.00	25 years	1,400,000.00	-
BR-22-C1	78%	1,713,188.00	1,399,385.00	1,700,000.00	238,000.00	11,620.00	9,000.00	1,958,620.00	982,733.00	975,887.00	1,100,000.00	25 years	1,100,000.00	-
PR-22-C1	74%	4,514,105.70	3,340,525.00	4,400,000.00	616,000.00	19,050.00	15,000.00	5,050,050.00	4,424,920.00	625,130.00	1,260,000.00	25 years	1,260,000.00	-
SR-22-A1	68%	914,905.00	938,527.00	940,000.00	131,600.00	700.00	20,000.00	1,092,300.00	358,845.00	733,455.00	735,000.00	20 years	735,000.00	-
NR-20-A2	99%	1,074,034.20	1,176,157.00	1,175,250.00	164,535.00	2,870.00	20,000.00	1,362,655.00	1,266,105.00	681,327.50	682,000.00	25 years	682,000.00	-
BN-22-C1	2%	18,578,544.59	18,600,000.00	18,600,000.00	2,604,000.00	186,000.00	186,000.00	21,576,000.00	1,100,000.00	20,476,000.00	20,500,000.00	25 years	20,500,000.00	-
Total		62,703,493.23	62,847,750.00	62,847,750.00	8,825,866.00	429,278.38	839,224.79	72,942,119.17	19,549,764.70	53,977,131.97	54,442,000.00		54,442,000.00	735,000.00

Sources & Uses

Dated 02/22/2023 | Delivered 02/22/2023

Sources Of Funds

Par Amount of Bonds	\$57,060,000.00
Reoffering Premium	752,167.65

Total Sources **\$57,812,167.65**

Uses Of Funds

Deposit to Project Construction Fund	55,177,000.00
Deposit to Capitalized Interest (CIF) Fund	1,777,203.61
Total Underwriter's Discount (1.200%)	684,720.00
Costs of Issuance	168,941.60
Rounding Amount	4,302.44

Total Uses **\$57,812,167.65**

Pricing Summary

Maturity	Type of Bond	Coupon	Yield	Maturity Value	Price	YTM	Call Date	Call Price	Dollar Price
05/01/2024	Serial Coupon	5.000%	3.020%	1,280,000.00	102.296%	-	-	-	1,309,388.80
05/01/2025	Serial Coupon	5.000%	3.080%	1,345,000.00	104.034%	-	-	-	1,399,257.30
05/01/2026	Serial Coupon	5.000%	3.130%	1,415,000.00	105.633%	-	-	-	1,494,706.95
05/01/2027	Serial Coupon	5.000%	3.170%	1,490,000.00	107.125%	-	-	-	1,596,162.50
05/01/2028	Serial Coupon	5.000%	3.210%	1,565,000.00	108.492%	-	-	-	1,697,899.80
05/01/2029	Serial Coupon	4.000%	3.360%	1,635,000.00	103.021%	c 3.453%	05/01/2028	100.000%	1,684,393.35
05/01/2030	Serial Coupon	4.000%	3.380%	1,705,000.00	102.925%	c 3.535%	05/01/2028	100.000%	1,754,871.25
05/01/2031	Serial Coupon	4.000%	3.400%	1,770,000.00	102.829%	c 3.598%	05/01/2028	100.000%	1,820,073.30
05/01/2032	Serial Coupon	4.000%	3.320%	1,845,000.00	105.344%	-	-	-	1,943,596.80
05/01/2033	Serial Coupon	4.000%	3.380%	1,920,000.00	105.303%	-	-	-	2,021,817.60
05/01/2034	Serial Coupon	3.900%	3.900%	1,995,000.00	100.000%	-	-	-	1,995,000.00
05/01/2035	Serial Coupon	4.040%	4.040%	2,080,000.00	100.000%	-	-	-	2,080,000.00
05/01/2036	Serial Coupon	4.180%	4.180%	2,165,000.00	100.000%	-	-	-	2,165,000.00
05/01/2037	Serial Coupon	4.280%	4.280%	2,260,000.00	100.000%	-	-	-	2,260,000.00
05/01/2038	Serial Coupon	4.370%	4.370%	2,360,000.00	100.000%	-	-	-	2,360,000.00
05/01/2039	Serial Coupon	4.430%	4.430%	2,465,000.00	100.000%	-	-	-	2,465,000.00
05/01/2040	Serial Coupon	4.480%	4.480%	2,575,000.00	100.000%	-	-	-	2,575,000.00
05/01/2041	Serial Coupon	4.560%	4.560%	2,695,000.00	100.000%	-	-	-	2,695,000.00
05/01/2042	Serial Coupon	4.590%	4.590%	2,820,000.00	100.000%	-	-	-	2,820,000.00
05/01/2043	Serial Coupon	4.630%	4.630%	2,955,000.00	100.000%	-	-	-	2,955,000.00
05/01/2044	Serial Coupon	4.670%	4.670%	3,035,000.00	100.000%	-	-	-	3,035,000.00
05/01/2045	Serial Coupon	4.700%	4.700%	3,180,000.00	100.000%	-	-	-	3,180,000.00
05/01/2046	Serial Coupon	4.750%	4.750%	3,335,000.00	100.000%	-	-	-	3,335,000.00
05/01/2047	Serial Coupon	4.780%	4.780%	3,500,000.00	100.000%	-	-	-	3,500,000.00
05/01/2048	Serial Coupon	4.820%	4.820%	3,670,000.00	100.000%	-	-	-	3,670,000.00
Total		-	-	\$57,060,000.00	-	-	-	-	\$57,812,167.65

Bid Information

Par Amount of Bonds	\$57,060,000.00
Reoffering Premium or (Discount)	752,167.65
Gross Production	\$57,812,167.65
Total Underwriter's Discount (1.200%)	\$(684,720.00)
Bid (100.118205%)	57,127,447.65
Total Purchase Price	\$57,127,447.65
Bond Year Dollars	\$877,291.50
Average Life	15.375 Years
Average Coupon	4.5440258%
Net Interest Cost (NIC)	4.5363376%
True Interest Cost (TIC)	4.5094425%

Semi-Annual Debt Service and Cashflow Analysis

Date	Principal	Coupon	Interest	Total P+I	Fiscal Year Debt Service	Capitalized Interest	Projected Assessment Income *	Semiannual Surplus (Deficit)	Fiscal Year Surplus (Deficit)	Cumulative Fiscal Year Balance
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
2/22/2023	-	-	-	-	-	-	-	-	-	-
11/01/2023	-	-	1,777,204	1,777,204	1,777,204	1,777,204	-	-	-	-
5/01/2024	1,280,000	5.00%	1,284,726	2,564,726	-	-	3,489,997	925,271	-	-
11/01/2024	-	-	1,252,726	1,252,726	3,817,451	-	387,777	(864,948)	60,323	60,323
5/01/2025	1,345,000	5.00%	1,252,726	2,597,726	-	-	3,489,997	892,271	-	-
11/01/2025	-	-	1,219,101	1,219,101	3,816,826	-	387,777	(831,323)	60,948	121,272
5/01/2026	1,415,000	5.00%	1,219,101	2,634,101	-	-	3,489,997	855,896	-	-
11/01/2026	-	-	1,183,726	1,183,726	3,817,826	-	387,777	(795,948)	59,948	181,220
5/01/2027	1,490,000	5.00%	1,183,726	2,673,726	-	-	3,489,997	816,271	-	-
11/01/2027	-	-	1,146,476	1,146,476	3,820,201	-	387,777	(758,698)	57,573	238,794
5/01/2028	1,565,000	5.00%	1,146,476	2,711,476	-	-	3,489,997	778,521	-	-
11/01/2028	-	-	1,107,351	1,107,351	3,818,826	-	387,777	(719,573)	58,948	297,742
5/01/2029	1,635,000	4.00%	1,107,351	2,742,351	-	-	3,489,997	747,646	-	-
11/01/2029	-	-	1,074,651	1,074,651	3,817,001	-	387,777	(686,873)	60,773	358,515
5/01/2030	1,705,000	4.00%	1,074,651	2,779,651	-	-	3,489,997	710,346	-	-
11/01/2030	-	-	1,040,551	1,040,551	3,820,201	-	387,777	(652,773)	57,573	416,089
5/01/2031	1,770,000	4.00%	1,040,551	2,810,551	-	-	3,489,997	679,446	-	-
11/01/2031	-	-	1,005,151	1,005,151	3,815,701	-	387,777	(617,373)	62,073	478,162
5/01/2032	1,845,000	4.00%	1,005,151	2,850,151	-	-	3,489,997	639,846	-	-
11/01/2032	-	-	968,251	968,251	3,818,401	-	387,777	(580,473)	59,373	537,536
5/01/2033	1,920,000	4.00%	968,251	2,888,251	-	-	3,489,997	601,746	-	-
11/01/2033	-	-	929,851	929,851	3,818,101	-	387,777	(542,073)	59,673	597,209
5/01/2034	1,995,000	3.90%	929,851	2,924,851	-	-	3,489,997	565,146	-	-
11/01/2034	-	-	890,948	890,948	3,815,799	-	387,777	(503,171)	61,976	659,185
5/01/2035	2,080,000	4.04%	890,948	2,970,948	-	-	3,489,997	519,049	-	-
11/01/2035	-	-	848,932	848,932	3,819,880	-	387,777	(461,155)	57,894	717,079
5/01/2036	2,165,000	4.18%	848,932	3,013,932	-	-	3,489,997	476,065	-	-
11/01/2036	-	-	803,684	803,684	3,817,616	-	387,777	(415,906)	60,159	777,238
5/01/2037	2,260,000	4.28%	803,684	3,063,684	-	-	3,489,997	426,313	-	-
11/01/2037	-	-	755,320	755,320	3,819,003	-	387,777	(367,542)	58,771	836,010
5/01/2038	2,360,000	4.37%	755,320	3,115,320	-	-	3,489,997	374,677	-	-
11/01/2038	-	-	703,754	703,754	3,819,073	-	387,777	(315,976)	58,701	894,711
5/01/2039	2,465,000	4.43%	703,754	3,168,754	-	-	3,489,997	321,243	-	-
11/01/2039	-	-	649,154	649,154	3,817,907	-	387,777	(261,376)	59,867	954,578
5/01/2040	2,575,000	4.48%	649,154	3,224,154	-	-	3,489,997	265,843	-	-
11/01/2040	-	-	591,474	591,474	3,815,628	-	387,777	(203,696)	62,147	1,016,725
5/01/2041	2,695,000	4.56%	591,474	3,286,474	-	-	3,489,997	203,523	-	-
11/01/2041	-	-	530,028	530,028	3,816,502	-	387,777	(142,250)	61,273	1,077,998
5/01/2042	2,820,000	4.59%	530,028	3,350,028	-	-	3,489,997	139,969	-	-
11/01/2042	-	-	465,309	465,309	3,815,337	-	387,777	(77,531)	62,438	1,140,436
5/01/2043	2,955,000	4.63%	465,309	3,420,309	-	-	3,489,997	69,688	-	-
11/01/2043	-	-	396,901	396,901	3,817,209	-	387,777	(9,123)	60,565	1,201,001
5/01/2044	3,035,000	4.67%	396,901	3,431,901	-	-	3,437,708	5,808	-	-
11/01/2044	-	-	326,033	326,033	3,757,934	-	381,968	55,934	61,742	1,262,744
5/01/2045	3,180,000	4.70%	326,033	3,506,033	-	-	3,437,708	(68,325)	-	-
11/01/2045	-	-	251,303	251,303	3,757,337	-	381,968	130,664	62,340	1,325,083
5/01/2046	3,335,000	4.75%	251,303	3,586,303	-	-	3,437,708	(148,595)	-	-
11/01/2046	-	-	172,097	172,097	3,758,400	-	381,968	209,871	61,276	1,386,359
5/01/2047	3,500,000	4.78%	172,097	3,672,097	-	-	3,437,708	(234,389)	-	-
11/01/2047	-	-	88,447	88,447	3,760,544	-	381,968	293,521	59,132	1,445,491
5/01/2048	3,670,000	4.82%	88,447	3,758,447	-	-	3,437,708	(320,739)	-	-
11/01/2048	-	-	-	-	3,758,447	-	381,968	381,968	61,229	1,506,720
Total	57,060,000		39,864,352	96,924,352	96,924,352		96,653,869	1,506,720	1,506,720	

* Projected future assessment income assumes 90% of each year's assessments are collected before the May 1 principal and interest payment date and the remaining 10% of collections, plus surplus first-half collections, will be available to make each November 1 interest payment.

Projected Aggregate Assessment Income

DATE	20 Year Term Assessments	25 Year Term Assessments	TOTAL
2024	58,098.33	3,819,676.09	3,877,774.42
2025	58,098.33	3,819,676.08	3,877,774.41
2026	58,098.33	3,819,676.09	3,877,774.42
2027	58,098.33	3,819,676.09	3,877,774.42
2028	58,098.32	3,819,676.09	3,877,774.41
2029	58,098.32	3,819,676.09	3,877,774.41
2030	58,098.33	3,819,676.08	3,877,774.41
2031	58,098.32	3,819,676.08	3,877,774.40
2032	58,098.33	3,819,676.09	3,877,774.42
2033	58,098.33	3,819,676.09	3,877,774.42
2034	58,098.33	3,819,676.10	3,877,774.43
2035	58,098.34	3,819,676.08	3,877,774.42
2036	58,098.32	3,819,676.09	3,877,774.41
2037	58,098.33	3,819,676.08	3,877,774.41
2038	58,098.34	3,819,676.08	3,877,774.42
2039	58,098.33	3,819,676.08	3,877,774.41
2040	58,098.32	3,819,676.08	3,877,774.40
2041	58,098.32	3,819,676.09	3,877,774.41
2042	58,098.33	3,819,676.09	3,877,774.42
2043	58,098.33	3,819,676.08	3,877,774.41
2044	-	3,819,676.08	3,819,676.08
2045	-	3,819,676.09	3,819,676.09
2046	-	3,819,676.08	3,819,676.08
2047	-	3,819,676.08	3,819,676.08
2048	-	3,819,676.08	3,819,676.08
Total	\$1,161,966.56	\$95,491,902.13	\$96,653,868.69

Principal Amounts Of Assessments

20 Year Term Assessments	735,000.00
25 Year Term Assessments	54,442,000.00
TOTAL	55,177,000.00



December 12, 2022

To: Board of City Commissioners
Fr: Dr. Terry Hogan, Director of Diversity, Equity, & Inclusion & Human Rights Commission Staff
Re: Removing the word "Intent" from City Ordinance 10-0322.1

Background: The Human Rights Commission held its meeting last month on November 17, 2022. Ms. Dotzenrod of the Human Rights Commission suggested removing the word "intent" from City Ordinance 10-0322.1 regarding harassment. Ms. Dotzenrod made a motion to the Human Rights Commission to refer City Ordinance 10-0322.1 to the City Commission to remove the word "Intent" from the existing City Ordinance. The motion was voted and carried unanimously by the Human Rights Commission to remove the word "intent."

Suggested Motion: Upon the unanimous recommendation of the Human Rights Commission, approve the request to remove the word "intent" from City Ordinance 10-0322 and direct the City Attorney to prepare a revised ordinance for City Commission consideration at its December 27, 2022 meeting (First Reading).

Attachment: City Ordinance 10-0322.1

10-0322.1. - Harassment—Hate crime.

- A. A person is guilty of an offense if, with intent to frighten or harass another, he:
 - 1. Makes a telephone call anonymously or in offensively coarse language;
 - 2. Makes repeated telephone calls or other electronic communication, whether or not a conversation ensues, with no purpose of legitimate communication; or
 - 3. Communicates a falsehood in writing or by electronic communication and causes mental anguish.
- B. Any offense defined herein and committed by use of electronic communication may be deemed to have been committed at either the place at which the electronic communication was made, or at the place where the electronic communication was received.
- C. Any offense defined herein is deemed communicated in writing if it is transmitted electronically, by electronic mail, facsimile, or other similar means. Electronic communication means transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photo-electronic, or photo-optical system.
- D. Commits an offense in violation of subdivision A (1), (2), or (3) in whole or in part because of the actual or perceived race, color, religion, gender, disability, sexual orientation, gender identity, national origin, or ancestry of the victim.

**CHAPTER 12.1-31
MISCELLANEOUS OFFENSES**

12.1-31-01. Disorderly conduct.

1. An individual is guilty of a class B misdemeanor if, with intent to harass, annoy, or alarm another person or in reckless disregard of the fact that another person is harassed, annoyed, or alarmed by the individual's behavior, the individual:
 - a. Engages in fighting, or in violent, tumultuous, or threatening behavior;
 - b. Makes unreasonable noise;
 - c. In a public place, uses abusive or obscene language, knowingly exposes that individual's penis, vulva, or anus, or makes an obscene gesture;
 - d. Obstructs vehicular or pedestrian traffic or the use of a public facility;
 - e. Persistently follows a person in or about a public place or places;
 - f. While loitering in a public place for the purpose of soliciting sexual contact, the individual solicits the contact;
 - g. Creates a hazardous, physically offensive, or seriously alarming condition by any act that serves no legitimate purpose;
 - h. Engages in harassing conduct by means of intrusive or unwanted acts, words, or gestures that are intended to adversely affect the safety, security, or privacy of another person; or
 - i. Uses a fixed optical device that enhances or records a visual occurrence to view through any window of another person's property, or uses a surveillance camera to capture an image from the dwelling or accessory structure of another person; however, an individual using a surveillance camera has seven days from notice by a law enforcement officer to direct or shield the camera so as to not capture an image from another person's dwelling or accessory structure before there is an offense.
2. This section does not apply to constitutionally protected activity. If an individual claims to have been engaged in a constitutionally protected activity, the court shall determine the validity of the claim as a matter of law and, if found valid, shall exclude evidence of the activity.

**CHAPTER 12.1-02
LIABILITY AND CULPABILITY****12.1-02-01. Basis of liability for offenses.**

1. A person commits an offense only if the person engages in conduct, including an act, an omission, or possession, in violation of a statute which provides that the conduct is an offense.
2. A person who omits to perform an act does not commit an offense unless the person has a legal duty to perform the act, nor shall such an omission be an offense if the act is performed on the person's behalf by a person legally authorized to perform it.

12.1-02-02. Requirements of culpability.

1. For the purposes of this title, a person engages in conduct:
 - a. "Intentionally" if, when he engages in the conduct, it is his purpose to do so.
 - b. "Knowingly" if, when he engages in the conduct, he knows or has a firm belief, unaccompanied by substantial doubt, that he is doing so, whether or not it is his purpose to do so.
 - c. "Recklessly" if he engages in the conduct in conscious and clearly unjustifiable disregard of a substantial likelihood of the existence of the relevant facts or risks, such disregard involving a gross deviation from acceptable standards of conduct, except that, as provided in section 12.1-04-02, awareness of the risk is not required where its absence is due to self-induced intoxication.
 - d. "Negligently" if he engages in the conduct in unreasonable disregard of a substantial likelihood of the existence of the relevant facts or risks, such disregard involving a gross deviation from acceptable standards of conduct.
 - e. "Willfully" if he engages in the conduct intentionally, knowingly, or recklessly.
2. If a statute or regulation thereunder defining a crime does not specify any culpability and does not provide explicitly that a person may be guilty without culpability, the culpability that is required is willfully.
3.
 - a. Except as otherwise expressly provided, where culpability is required, that kind of culpability is required with respect to every element of the conduct and to those attendant circumstances specified in the definition of the offense, except that where the required culpability is "intentionally", the culpability required as to an attendant circumstance is "knowingly".
 - b. Except as otherwise expressly provided, if conduct is an offense if it causes a particular result, the required degree of culpability is required with respect to the result.
 - c. Except as otherwise expressly provided, culpability is not required with respect to any fact which is solely a basis for grading.
 - d. Except as otherwise expressly provided, culpability is not required with respect to facts which establish that a defense does not exist, if the defense is defined in chapters 12.1-01 through 12.1-06; otherwise the least kind of culpability required for the offense is required with respect to such facts.
 - e. A factor as to which it is expressly stated that it must "in fact" exist is a factor for which culpability is not required.
4. Any lesser degree of required culpability is satisfied if the proven degree of culpability is higher.
5. Culpability is not required as to the fact that conduct is an offense, except as otherwise expressly provided in a provision outside this title.

12.1-17-07. Harassment.

1. A person is guilty of an offense if, with intent to frighten or harass another, the person:
 - a. Communicates in writing or by electronic communication a threat to inflict injury on any person, to any person's reputation, or to any property;
 - b. Makes a telephone call anonymously or in offensively coarse language;
 - c. Makes repeated telephone calls or other electronic communication, whether or not a conversation ensues, with no purpose of legitimate communication; or
 - d. Communicates a falsehood in writing or by electronic communication and causes mental anguish.
2. The offense is a class A misdemeanor if it is under subdivision a of subsection 1 or subsection 4. Otherwise it is a class B misdemeanor.
3. Any offense defined herein and committed by use of electronic communication may be deemed to have been committed at either the place at which the electronic communication was made or at the place where the electronic communication was received.
4. A person is guilty of an offense if the person initiates communication with a 911 emergency line, public safety answering point, or an emergency responder communication system with the intent to annoy or harass another person or a public safety agency or who makes a false report to a public safety agency.
 - a. intent to annoy or harass is established by proof of one or more calls with no legitimate emergency purpose.
 - b. Upon conviction of a violation of this subsection, a person is also liable for all costs incurred by any unnecessary emergency response.
5. Any offense defined herein is deemed communicated in writing if it is transmitted electronically, by electronic mail, facsimile, or other similar means. Electronic communication means transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photo-electronic, or photo-optical system.