

FARGO CITY COMMISSION AGENDA

Monday, July 25, 2022 - 5:00 p.m.

Executive Session at 4:00 p.m.

Roll Call.

PLEASE NOTE: The City of Fargo Board of City Commissioners will convene at 4:00 p.m. and retire into Executive Session for the purpose of attorney consultation to discuss ongoing negotiations regarding the Roers-Newman Block Property - Tax Increment Financing District No. 2019-02. The Executive Session will allow discussion of negotiating strategy and to provide negotiating instructions to the City Attorney or other negotiator with respect to the Developer Agreement at issue. Any negotiation between the City and the Developer has financial implications and to discuss this matter in an open meeting will have a negative fiscal effect on the bargaining and/or potential litigation position of the city. Thus, an Executive Session for this matter is authorized pursuant to North Dakota Century Code § 44-04-19.1 subsections 2 and 9.

Regular Meeting at 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, July 11, 2022 and Special Meeting, June 28, 2022).

CONSENT AGENDA – APPROVE THE FOLLOWING:

- 1. Letter of Undertaking with Great Plains Block 3 Holdings, LLC.
- 2. Applications for Games of Chance:
 - a. Hope Blooms for a raffle board on 8/11/22.
 - b. Fargo North High School for a calendar raffle from 11/24/22 through 2/28/23.
 - c. Fargo North High School for a calendar raffle from 8/1/22 through 6/1/23.
 - d. Legacy Children’s Foundation for a raffle on 8/15/22.
 - e. Fargo Davies High School for a calendar raffle from 8/16/22 through 5/23/23.
 - f. Fargo Davies High School for a calendar raffle from 11/22/22 through 2/11/23.
 - g. Holy Spirit Catholic Church for bingo, raffle and calendar raffle from 9/11/22 through 10/9/22.
 - h. Knights of Columbus 4th Degree Assembly 788 for a raffle on 2/20/23.
 - i. YMCA of Cass Clay Counties for a raffle board on 8/2/22.
- 3. Agreement for Special Improvements with LaVerne A. Montplaisir Family Trust and Montplaisir Ag and Rental LLP.
- 4. First Amendment to the Granicus Service Agreement with Granicus, LLC.

Contract and bond for Project No. FM-22-B1.

6. Creation of Project No. UR-22-C1 and include it in the 2022 Capital Improvement Plan.
7. Bid award for Project No. UR-22-B1.
8. Memorandum of Offer to Landowner for a Permanent Easement (Levee and Retaining Wall for Flood Control) and Permanent Easement (Storm Sewer) with Denise M. Thompson (Project No. FM-19-C).
9. Memorandum of Offer to Landowner for a Permanent Easement (Levee and Retaining Wall for Flood Control), Permanent Easement (Storm Sewer) and Easement (Temporary Construction Easement) with Kathleen Bocovich and William Dickson co-personal representatives of Mary Jane Dickson (Project No. FM-19-C).
10. Storm Sewer Easement Payment Form with Dalton P. and Gabriela J. Yagow.
11. Reallocation of funds in the amount of \$137,500.00 for the Newman Outdoor Field repairs, pending approval by the Finance Committee.
12. Sole Source Procurement in the amount of \$51,908.24 with Christiansons Business Furniture for furniture at the Mercantile PD Substation and Interstate Parking offices, pending approval by the Finance Committee (SSP21082).
13. Receive and file General Fund-Budget to Actual through June 2022 (unaudited).
14. State Water Commission request for cost reimbursement for the Fargo-Moorhead Metropolitan Area Flood Risk Management Project in the amount of \$1,224,134.73.
15. Notice of Grant Award from the ND Department of Health for Women's Way (CFDA #93.898).
16. Notice of Grant Award from the ND Department of Commerce/DCS for the Emergency Solutions Grant (CFDA #14.231).
17. Contract with JLG Architects for the Fargo Public Library Facilities Master Planning.
18. Inter-local Agreement with Cass County and allocation of the 2022 Edward Byrne Memorial Justice Grant (JAG) Program Funding (CFDA #16.738).
19. Bid award for fuel purchasing in the 1st and 2nd Quarters of 2023 (RFV23003).
20. Public Transportation Agency Safety Plan.
21. North Dakota Department of Transportation State Aid for Public Transit Agreement.
22. Bills.
23. Change Order Nos. 38-40 in the amount of \$28,019.70 and three-day calendar time extension to Improvement District No. BN-19-A2.
24. Change Order No. 2 in the amount of \$69,910.00 for Improvement District No. BN-21-A0.
25. Change Order No. 1 in the amount of \$120,385.00 and time extension for Milestone No. 2 adjusting the completion date to 9/28/22 for Improvement District No. BN-22-A1.

Change Order No. 1 in the amount of \$50,197.73 and time extension to the substantial and final completion dates to 8/8/22 and 9/8/22 for Improvement District No. BN-22-B1.

27. Change Order No. 1 in the amount of \$2,665.00 and time extension to the substantial and final completion dates to 9/28/22 and 10/26/22 for Improvement District No. BR-22-F1.
28. Create Improvement District No. BN-22-C.

REGULAR AGENDA:

29. **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).**
30. ***Public Input Opportunity* - PUBLIC HEARINGS - 5:15 pm:**
 - a. Urban Plains by Brandt First Addition (2901 Uptown Way South); approval recommended by the Planning Commission on 7/5/22:
 1. Zoning Change to repeal and re-establish a C-O, Conditional Overlay in the LC, Limited Commercial zoning district.
 2. 1st reading of rezoning Ordinance.
31. Request for Resolution of Necessity for acquisition easements for the properties at 131 South Woodcrest Drive North, 137 South Woodcrest Drive North and 149 South Woodcrest Drive North.
32. Recommendation to create a fact sheet and modify the process to require residents to contact Engineering prior to starting work on sanitary sewer repairs.
33. Request from Commissioner Strand to direct the City Attorney to draft a Resolution for an Amendment to the Home Rule Charter to add two Commissioners to the Board of City Commissioners.
34. Recommendation for the City Administrator selection process.
35. Recommendation to direct the Engineering Department to amend the Documented CatEx and present a Change Order to the contract for the 32nd Avenue Reconstruction project to include a right turn lane onto 25th Street.
36. Request for an extension to the Compliance Order for 717 3rd Avenue North (Beebe House).
37. Recommendations for the Sidewalk Entertainer, Pushcart Vendors and Noise Ordinances.
38. Application for Property Tax Exemptions for Improvements Made to Buildings for Bunnie R. Messelt T/O/D, 3302 11th Street South (5 year).
39. 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.

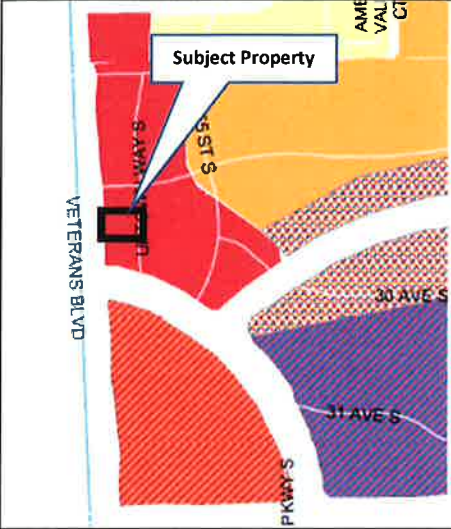
Minutes are available on the City of Fargo website at www.FargoND.gov/citycommission.

30a

City of Fargo Staff Report			
Title:	Urban Plains by Brandt Fifth Addition	Date:	6/29/2022
		Update:	7/20/2022
Location:	2901 Uptown Way South	Staff Contact:	Maegin Eishaug, planning coordinator
Legal Description:	Lot 4, Block 1, Urban Plains by Brandt Fifth Addition		
Owner(s)/Applicant:	Midwest Fidelity Partners LLC / Houston Engineering	Engineer:	N/A
Entitlements Requested:	Zoning Change to repeal and re-establish a C-O, Conditional Overlay in the LC, Limited Commercial zoning district		
Status:	City Commission Public Hearing: July 25, 2022		

Existing	Proposed
Land Use: vacant	Land Use: carwash
Zoning: LC, Limited Commercial with a C-O, Conditional Overlay (5153)	Zoning: No change
Uses Allowed: Limited Commercial allows colleges, community service, day care facilities of unlimited size, health care facilities, parks and open areas, religious institutions, safety services, basic utilities, offices, commercial parking, retail sales and services and telecommunications facilities of limited size. Self-service storage, vehicle repair and limited vehicle service are typically allowed in LC, but are prohibited by the C-O, which also requires approval of a Conditional Use Permit for Off-premise advertising.	Uses Allowed: Limited Commercial allows colleges, community service, day care facilities of unlimited size, health care facilities, parks and open areas, religious institutions, safety services, basic utilities, offices, commercial parking, retail sales and services, telecommunications facilities of limited size, and limited vehicle service . C-O would continue to prohibit self-service storage and vehicle repair, and require approval of a Conditional Use Permit for off-premise advertising.
Maximum Building Coverage Allowed: 55%	Maximum Building Coverage Allowed: 55%

Proposal:
<p>The applicant is seeking a zoning change to repeal and re-establish a C-O, Conditional Overlay in the LC, Limited Commercial zoning district. The property is located at 2901 Uptown Way South, which is Lot 4, Block 1, Urban Plains by Brandt 5th Addition.</p> <p>The applicant is requesting to modify the conditional overlay to allow the use of limited vehicle service in order to construct a car wash on the property. The Land Development Code identifies a car wash as a limited vehicle service use and the Conditional Overlay (Ordinance 5153) identifies the use as prohibited. No other changes to the conditional overlay are proposed.</p> <p>This project was reviewed by the City's Planning and Development, Engineering, Public Works, and Fire Departments ("staff"), whose comments are included in this report.</p> <p>Surrounding Land Uses and Zoning Districts:</p> <ul style="list-style-type: none"> • North: LC, Limited Commercial with C-O (5153) with retail sales and service use (restaurant); • East: LC, Limited Commercial with C-O (5153) with mixed use development under construction; • South: LC, Limited Commercial with C-O (5153) with vacant property; • West: Veterans Boulevard and the City of West Fargo with multi-dwelling residential use.

Area Plans:	
	<p>The subject property was included in the 2003 Southwest Future Land Use Plan, where it was identified as appropriate for commercial development.</p>
Context:	
<p>Neighborhood: Urban Plains Neighborhood</p> <p>Schools: The subject property is located within the West Fargo Public School District and is served by Freedom Elementary, Liberty Middle, and Sheyenne High Schools.</p> <p>Parks: The project site is located within a half-mile of Urban Plains Park (3020 51st Street South) which offers amenities of playground equipment, restrooms, shelter and recreational trails.</p> <p>Pedestrian / Bicycle: A shared use path runs along the south and east sides of the subject property.</p> <p>Transit: This location is served by MATBUS Route 24 that travels along on 55 Street South (east of the property) with two designated stops within about a third-mile of the subject property.</p>	
Staff Analysis:	
<p>Zoning</p> <p>Section 20-906. F (1-4) of the LDC stipulates the following criteria be met before a zone change can be approved:</p> <ol style="list-style-type: none"> 1. Is the requested zoning change justified by a change in conditions since the previous zoning classification was established or by an error in the zoning map? Staff is unaware of any error in the zoning map as it relates to this property. The applicant is requesting to modify the conditional overlay to allow the use of limited vehicle service in order to construct a car wash on the property Staff finds that the requested zoning change is justified by change in conditions since the previous zoning classification was established. (Criteria Satisfied) 2. Are the City and other agencies able to provide the necessary public services, facilities, and programs to serve the development allowed by the new zoning classifications at the time the property is developed? City staff and other applicable review agencies have reviewed this proposal. Staff finds no deficiencies in the ability to provide all of the necessary services to the site. The subject property is adjacent to existing developed public rights-of-way, which provide access and public utilities to serve the property. (Criteria Satisfied) 	

3. Will the approval of the zoning change adversely affect the condition or value of the property in the vicinity?

Staff has no documentation or supporting evidence to suggest that the approval of this zoning change would adversely affect the condition or value of the property in the vicinity. In accordance with the notification requirements of the Land Development Code, notice was provided to neighboring property owners within 300 feet of the project site. To date, staff has not received any comment or inquiry. Staff finds that the proposal will not adversely affect the condition or value of the property in the vicinity.
(Criteria Satisfied)

4. Is the proposed amendment consistent with the purpose of this LDC, the Growth Plan, and other adopted policies of the City?

The purpose of the LDC is to implement Fargo's Comprehensive Plan in a way that will protect the general health, safety, and welfare of the citizens. Staff finds that the proposed amended PUD overlay is consistent with the purpose of the LDC, the Go2030 Comprehensive Plan, 2003 Southwest Future Land Use Plan, and other adopted policies of the City.
(Criteria Satisfied)

Update 7/20/2022: At the July 5, 2022 Planning Commission meeting, the Commission discussed the history of the restriction of limited vehicle service use in Urban Plains, and the compatibility of the use with walkability within the development. The Planning Commission, with a 6-3 vote, recommended approval to the City Commission.

Staff Recommendation:

Suggested Motion: "To accept the findings and recommendations of the Planning Commission and staff, and hereby waive the requirement to receive the rezoning Ordinance one week prior to the first reading and place the rezoning Ordinance on for first reading, and approve the proposed zone change to repeal and re-establish a C-O, Conditional Overlay in the LC, Limited Commercial zoning district, on the basis that it satisfactorily complies with the Go2030 Fargo Comprehensive Plan, 2003 Southwest Future Land Use Plan, Standards of Section 20-0906.F (1-4) and all other applicable requirements of the LDC."

Planning Commission Recommendation: July 5, 2022

At the July 5, 2022 Planning Commission meeting, by a vote of 6-3 with two Commission seats vacant, the Planning Commission moved to accept the findings and recommendations of staff and recommended approval to the City Commission of the proposed zoning change to repeal and re-establish a C-O, Conditional Overlay in the LC, Limited Commercial zoning district, on the basis that it satisfactorily complies with the Go2030 Fargo Comprehensive Plan, 2003 Southwest Future Land Use Plan, Standards of Section 20-0906.F (1-4) and all other applicable requirements of the LDC.

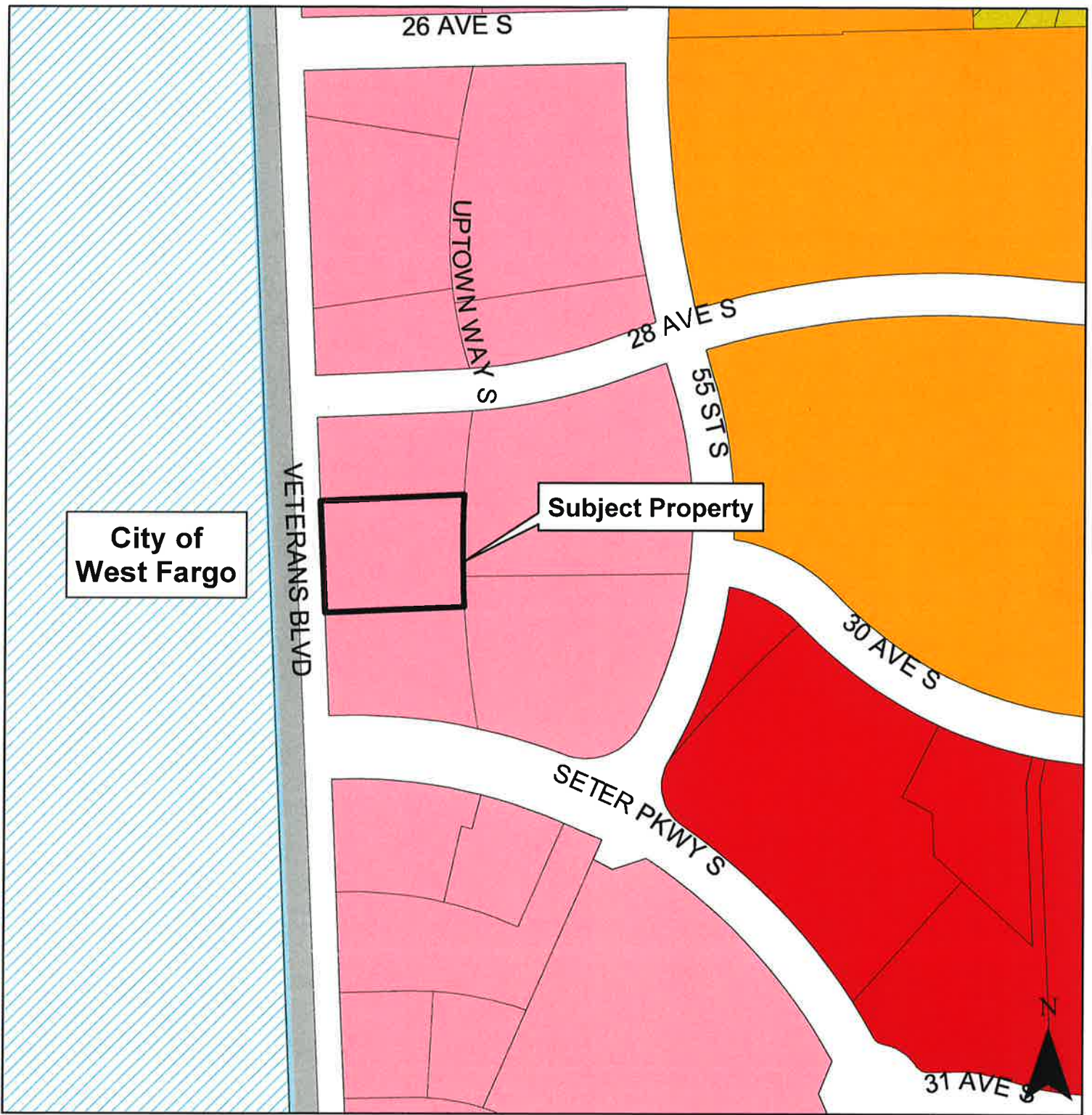
Attachments:

1. Zoning Map
2. Location Map

Zone Change (repeal and re-establish a C-O, Conditional Overlay)

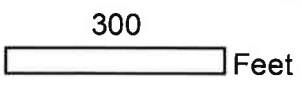
Urban Plains by Brandt Fifth Addition

2901 Uptown Way S



Legend

AG	DMU	LC	MHP	Office
CC	MR-1	MR-2	MR-3	UMU
GO	MR-3	MR-3	UMU	City Limits



Fargo Planning Commission
July 5, 2022

Zone Change (repeal and re-establish a C-O, Conditional Overlay)

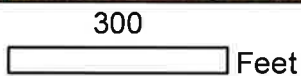
Urban Plains by Brandt Fifth Addition

2901 Uptown Way S



City of West Fargo

Subject Property



30a2

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

AN ORDINANCE REZONING CERTAIN PARCELS OF LAND
LYING IN URBAN PLAINS BY BRANDT FIFTH ADDITION
TO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA

1 WHEREAS, the Fargo Planning Commission and the Board of City Commissioners of the
2 City of Fargo have held hearings pursuant to published notice to consider the rezoning of certain
3 parcels of land lying in Urban Plains by Brandt Fifth Addition to the City of Fargo, Cass County,
4 North Dakota; and,

5 WHEREAS, the Fargo Planning Commission recommended approval of the rezoning
6 request on July 5, 2022; and,

7 WHEREAS, the rezoning changes were approved by the City Commission on July 25,
8 2022,

9 NOW, THEREFORE,

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

11 Section 1. The following described property:

12 Lot Four (4), Block One (1) of Urban Plains by Brandt Fifth Addition to the City of
13 Fargo, Cass County, North Dakota;

14 is hereby retaining the base zoning of "LC", Limited Commercial, District, with a "C-O",
15 Conditional Overlay, District, as established by Fargo Municipal Ordinance No. 5153, repealing
16 the existing "C-O", Conditional Overlay, District to the above-described property and replacing
17 with the following "C-O", Conditional Overlay, District:

18 **Part A): The following requirements apply to all mixed-use and non-residential
19 development:**

20 1) Description

21 This C-O, Conditional Overlay district is primarily intended to encourage high-
22 Quality, durable, and long-lasting investments in order to enhance the quality of life
23 and discourage blight. To that end, it is intended that all properties be designed to a
human scale and that buildings should have architectural interest and variety
through the use of articulated façades. In order to avoid the effect of a single, long,
or massive wall with no relation to human scale, it is intended that articulated
façades should include elements such as setbacks, change in materials, roof pitch or
height variability.

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2) Building form and style

2.1 Entrances and pedestrian walkway features leading to entrances shall be provided from both the parking areas and the street right-of-way.

2.2 All building elevations/façades greater than 150 feet in length, measured horizontally from vertical edge to vertical edge, shall incorporate wall plane projections or recesses. Each projection and/or recess shall have a depth of at least two feet, and the cumulative total horizontal width of all projections and/or recesses within a façade shall equate to at least an accumulated total of 20 percent of the overall horizontal length of the façade. No uninterrupted length of any façade shall exceed 150 horizontal feet.

2.3 Ground floor façades of non-residential buildings that face public right-of-way shall have arcades, display windows, entry areas, awnings, or other such features along no less than 50 percent of its horizontal length.

2.4 All buildings, regardless of size, shall have clearly-defined, highly-visible, public entrances that connect to public spaces, streets, pedestrian paths and plazas with no fewer than two of the following:

- i. Canopies, awnings or porticos
- ii. Recesses/projections varying the façade
- iii. Raised corniced parapets over the door
- iv. Peaked roof forms
- v. Arches or arcades
- vi. Entry courts
- vii. Raised landscape planters and/or wing walls integrated with the building

2.4 Principle Materials – Unless otherwise deemed acceptable by the Zoning Administrator, all exterior walls shall be constructed or clad with natural stone, synthetic stone, brick, stucco, integrally-colored and textured concrete masonry units or systems, exterior insulation finishing systems (EIFS), fiber cement, curtain walls, rainscreen systems or glass. All materials shall be commercial grade, durable, and have a multi-generational life span.

2.5 Accent Materials – In conjunction with the principal materials listed above, the following accent materials may also be used to construct or clad exterior walls: finished wood, architectural metal panels, and vinyl. Accent materials shall be applied to no greater

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than 20 percent of each building façade.

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2.6 Flat roofs and rooftop mechanical equipment, such as HVAC units, shall be concealed from public view at ground level by parapets or other enclosures. The average height of such parapets shall not exceed fifteen percent of the height of the supporting wall.

2.7 Loading/unloading areas, building service entrances, loading docks, overhead doors, and ground level HVAC units shall be visually screened from adjacent public right-of-way by structures and/or landscaping. All structures used for visual screening shall be constructed or clad with the same materials used for the primary building.

2.8 Dumpsters, refuse containers, and outdoor storage areas shall be located at the side or rear of buildings and shall be visually screened from adjacent public right-of-way by permanent walls. The permanent walls shall be constructed or clad with the same materials used for the primary building. Dumpsters and refuse containers shall contain permanent walls on at least three sides with the service opening not directly facing any public right-of-way or residentially zoned property. The fourth side shall incorporate a metal gate to visually screen the dumpsters or refuse containers.

3) Site Design

3.1 A minimum of 5% of the internal surface area of the parking lot shall be landscaped through the use of planter islands and peninsulas.

3.2 Separate vehicular and pedestrian circulation systems shall be provided. Adjacent properties may share pedestrian circulation systems that connect to public sidewalks with Zoning Administrator approval. An on-site system of pedestrian walkways shall be provided between building entrances and the following:

- i. Parking lots or parking structures
- ii. Any public sidewalk or multi-use path along the perimeter of the lot
- iii. Entrances of other buildings on the site
- iv. Any public sidewalk system along the perimeter streets adjacent to the development
- v. Adjacent pedestrian origins and destinations—including but not limited to transit stops, residential development, office buildings, and retail shopping buildings—where deemed practical and appropriate by the Zoning Administrator

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4) Prohibited Uses

1 For the purposes of this Conditional Overlay, the following uses are prohibited:

2 4.1 Portable advertising signs

3 4.2 Detention facilities

4 4.3 Self-service storage

5 4.4 Vehicle repair

6 4.5 Industrial uses

7 4.6 Adult entertainment center

8 5) Conditional Uses

9 For the purposes of this Conditional Overlay, the following uses require approval of
10 a Conditional Use Permit in accordance with Section 20-0909 of the LDC:

11 5.1 Off-premise advertising

12 6) Definitions

13 For the purposes of this Conditional Overlay, the following terms shall have the meanings
14 ascribed to them:

15 6.1 *Façade*: Any exterior side of a building as viewed from a single direction. Said
16 direction is typically perpendicular to the exterior side of the building being viewed.

17 6.2 *Depth*: A horizontal distance that is perpendicular to a building façade.

18 6.3 *Elevation*: A horizontal orthographic projection of a building on to a vertical plane,
19 the vertical plane being parallel to one side of the building

20 **Part B): The following requirements apply to all residential development:**

21 1) Description

22 This C-O, Conditional Overlay district is primarily intended to encourage high-

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1 quality, durable, and long-lasting investments in order to enhance the quality of life
2 and discourage blight. To that end, it is intended that all properties be designed to a
3 human scale and that buildings should have architectural interest and variety through
4 the use of articulated façades. In order to avoid the effect of a single, long, or massive
5 wall with no relation to human scale, it is intended that articulated façades should
6 include elements such as setbacks, change in materials, roof pitch or height variability.

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18 2) Building form and style

19 2.1 Principle Materials – Unless otherwise deemed acceptable by the Zoning
20 Administrator, all exterior walls shall be constructed or clad with natural stone,
21 synthetic stone, brick, stucco, integrally-colored and textured concrete masonry units
22 or systems, exterior insulation finishing systems (EIFS), fiber cement, curtain walls,
23 rainscreen systems or glass. All materials shall be commercial grade, durable, and
have a multi-generational life span. Horizontal metal lap siding and vertical metal
batten shall be allowed on residential structures but should not exceed 75% of the
building elevation.

2.2 Accent Materials – In conjunction with the principal materials listed above, the
following accent materials may also be used to construct or clad exterior walls:
finished wood, architectural metal panels, and vinyl. Accent materials shall be applied
to no greater than 20 percent of each building façade.

2.3 Dumpsters, refuse containers, and outdoor storage areas shall be located at the side or
rear of buildings and shall be visually screened from adjacent public right-of-way by
walls or fencing. Dumpsters and refuse containers shall contain walls or fencing on at
least three sides with the service opening not directly facing any public right-of-way or
residentially zoned property. The fourth side shall incorporate a gate to visually
screen the dumpsters or refuse containers.

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23 3) Site Design

3.1 Separate vehicular and pedestrian circulation systems shall be provided. An on-site
system of pedestrian walkways shall be provided between building entrances and
the following:

- i. Parking lots or parking structures
- ii. Any public sidewalk or multi-use path along the perimeter of the lot
- iii. Entrances of other buildings on the site

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- iv. Any public sidewalk system along the perimeter streets adjacent to the development
- v. Adjacent pedestrian origins and destinations—including but not limited to transit stops, residential development, office buildings, and retail shopping buildings—where deemed practical and appropriate by the Zoning Administrator.
- vi. Upon approval of the Zoning Administrator, adjacent properties may share pedestrian circulation systems that connect to public sidewalks.

Section 2. The City Auditor is hereby directed to amend the zoning map now on file in his office so as to conform with and carry out the provisions of this ordinance.

Section 3. This ordinance shall be in full force and effect from and after its passage and approval.

Timothy J. Mahoney, M.D., Mayor

(SEAL)

Attest:

Steven Sprague, City Auditor

First Reading:
Second Reading:
Final Passage:

31

July 21, 2022

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

Re: Resolution of Necessity for 131, 137 & 149 South Woodcrest Drive North (Project #FM-19-C)

Honorable Commissioners:

As you will recall, City staff has been working on developing the Woodcrest Flood Risk Management project since it was identified by the Metro Flood Diversion Authority and Fargo City Commission back in 2018 as being necessary for the overall operation of the Fargo-Moorhead Metro Flood Risk Management Project (FM Diversion). This past year's work has included completing the final design of the project as well as negotiations for the easement acquisitions on private property. These easements, in addition to the previously completed seven full property acquisitions, are necessary for the construction of the levee associated with the project.

To date, we have been able to acquire temporary and permanent easements on eight of the affected properties. Unfortunately, we have not been able to reach an agreement with four property owners for the necessary easements. Staff presented initial offers for the easement acquisitions in November and December of 2021. Since presenting these offers, we have been continually having communications with the affected property owners with the goal of coming to an agreement on the easement valuations that are fair for both parties.

At this time, the negotiations have reach an impasse and therefore the next step in the Eminent Domain process pursuant to North Dakota Century Code Ch. 32-15 is to secure the Resolution of Necessity, authorizing the commencement of the action to secure the property interests needed to complete the flood protection project.

Finally, please be aware that staff intends to continue to negotiate with the remaining property owners despite moving forward with the eminent domain proceedings with the hope that agreements can be reached on the easement values without having to go into the court proceedings.

Recommended Motion:

Approve the attached Resolution of Necessity for the acquisition of easements on the properties located at 131 South Woodcrest Drive North, 137 South Woodcrest Drive North and 149 South Woodcrest Drive North.

Respectfully,



Nathan Boerboom
Division Engineer

CITY OF FARGO RESOLUTION OF NECESSITY

WHEREAS, the city of Fargo is a Municipal Corporation under North Dakota Century Code Chapter 40-06;

WHEREAS, the city of Fargo is vested with the powers enumerated in Chapter 32-15 of the North Dakota Century Code, including the power to secure control of property necessary to create, construct, operate, and maintain flood control and protection projects;

WHEREAS, the Red River of the North, its tributaries, and associated drain system, are prone to frequent flooding which presents significant risk to the inhabitants of the city, property, infrastructure, and the economy of the city of Fargo and the surrounding communities;

WHEREAS, the city of Fargo has identified viable flood control and protection options;

WHEREAS, the city of Fargo has undertaken considerable effort, at considerable expense, to construct flood control and protection projects to protect the city of Fargo from anticipated flood events;

WHEREAS, the city of Fargo, based on information and recommendation provided by the city of Fargo Engineering Department and consulting engineers, have identified properties necessary to be acquired in order to accomplish real and meaningful flood protection to the inhabitants, property, infrastructure, and economy of the city of Fargo;

WHEREAS, this project is necessary for the overall operation of the Fargo-Moorhead Metropolitan Flood Risk Management Project, which includes passing a flow through the Fargo-Moorhead Metropolitan area that results in a river stage of 37-feet at the USGS Fargo stream gage during the 1-percent annual chance (100-year) flood event and a river stage of 40-feet during the 0.2%-percent annual chance (500-year) flood event; and

WHEREAS, the city of Fargo has negotiated in good faith to secure the identified necessary properties by voluntary means;

NOW, THEREFORE, BE IT RESOLVED THAT the public use for the properties identified is a use provided for by law.

BE IT FURTHER RESOLVED THAT it is necessary for the city of Fargo to acquire easements on the following identified properties to allow for such use as the construction of a flood protection project to protect the city of Fargo:

137 South Woodcrest Drive N
Fargo, ND 58102

131 South Woodcrest Drive N
Fargo, ND 58102

149 South Woodcrest Drive N
Fargo, ND 58102

BE IT FURTHER RESOLVED THAT the city of Fargo shall proceed with the requisite legal proceedings in accordance with North Dakota Century Code Chapter 32-15 to acquire the necessary property interests.

Dated this _____ day of July, 2022.

The City of Fargo, a North Dakota municipal
corporation

Dr. Timothy J. Mahoney, M.D., Mayor

ATTEST:

Steve Sprague, City Auditor

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

32

Type: Updated Sanitary Sewer Service City Participation Procedure

Location: Citywide

Date of Hearing: 7/18/2022

<u>Routing</u>	<u>Date</u>
City Commission	<u>7/25/2022</u>
PWPEC File	<u>X</u>
Project File	<u>Kevin Gorder</u>

The Committee reviewed a communication from Division Engineer, Kevin Gorder, regarding proposed changes to the process requiring residents to contact the City prior to signing a contract so residents can better understand the cost share and yearly payment for sanitary sewer repairs.

Engineering proposes no changes to the participation policy but would like to add conditions to obtaining the City match. Some Contractors completing the repairs do all the paperwork on behalf of the resident resulting in occasions where the resident is surprised by the yearly payments. Engineering would like to require residents to contact the City prior to signing a contract so the City can answer questions and concerns relating to the repair. We also would like to create a fact sheet to be placed on our website to better explain the process and include contacts for the residents to get more information.

On a motion by Bruce Grubb, seconded by Ben Dow, the Committee voted to recommend approval of creating a fact sheet and modifying the process to require residents to contact Engineering prior to starting work effective August 1.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve the creation of a fact sheet and modifying the process to require residents to contact Engineering prior to starting work on sanitary sewer repairs qualified for the City cost participation effective August 1.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: N/A

	<u>Yes</u>	<u>No</u>
Developer meets City policy for payment of delinquent specials	<u>N/A</u>	<u> </u>
Agreement for payment of specials required of developer	<u>N/A</u>	<u> </u>
Letter of Credit required (per policy approved 5-28-13)	<u>N/A</u>	<u> </u>

COMMITTEE

	<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Unanimous</u>
				<u> </u> <input checked="" type="checkbox"/>
Tim Mahoney, Mayor	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Nicole Crutchfield, Director of Planning	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Mark Williams
Steve Dirksen, Fire Chief	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Bruce Grubb, Temporary City Administrator	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Ben Dow, Director of Operations	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Steve Sprague, City Auditor	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Brenda Derrig, City Engineer	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Terri Gayhart, Finance Director	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

ATTEST:

Brenda E. Derrig, P.E.
City Engineer

C: Kristi Olson

Memorandum

To: Members of PWPEC
From: Kevin Gorder, Division Engineer
Date: July 15, 2022
Re: Sanitary Sewer Service City Participation Procedure Update

Background:

Engineering, along with the Auditor's Office, take phone calls from residents asking questions about City participation on sanitary sewer service repairs. Engineering proposes no changes to the participation policy but would like to add some conditions to obtaining the City match. Some of the Contractors completing this repair do all the paperwork on behalf of the resident and the resident is sometimes surprised by the yearly payment for the repair. Engineering has placed a list of Excavators on the City website to encourage residents to call multiple contractors to get competitive quotes for the repair.

Engineering would like to require residents to contact the City prior to signing a contract so the City can answer questions and concerns relating to the repair of their sanitary sewer service. The City would also verify the amount of the City match and give the resident an approximate yearly payment for the work so the resident can make an informed decision on repairing their service.

Attached is a question and answer sheet that would be a starting point to create a fact sheet that could be placed on our website and handed out as needed to residents. This fact sheet would explain the process and include contacts for residents to get more information.

Recommended Motion:

Approve creating a fact sheet and modify the process to require residents to contact Engineering prior to starting work so they can better understand cost sharing and yearly payments for sanitary sewer repairs.

KOG/klb
Attachment

Who is responsible for the sanitary sewer?

The City of Fargo is responsible for all sanitary sewer mains in the city. Each property owner is responsible for their sanitary sewer service from their property to the sanitary sewer main. Property owners are also responsible for the connection to the main.

If my sanitary sewer service needs to be repaired or replaced, who should I contact??

Property owners should contact a plumber or a licensed excavator. A list of excavators that are licensed to perform work within the City of Fargo's right-of-way can be found at <https://fargond.gov/city-government/departments/wastewater/sanitary-sewer-repair-assistance> under the resource tab.

Is this sanitary sewer service work part of a City contract?

Sanitary Sewer Service Repair work is a contract between the property owner and the excavation contractor. The City inspects the work through our Inspections Department and oversees the work in the Right of Way to ensure everything meets specifications and applicable codes. The City will provide reimbursement as per approved policy. This reimbursement will be paid to the Contractor or to the Property Owner if proof of payment is provided by the Property Owner.

How much will it cost to repair or replace my sanitary sewer service?

The cost to repair or replace a sanitary sewer service can vary greatly depending on a number of factors. The type of repair being made, the depth of the service, the location of the service, and the roadway surface material are just a few factors that will influence the cost to repair or replace a sanitary sewer service. For this reason, the City of Fargo highly recommends that property owners get quotes from multiple plumbers or licensed excavators. The City of Fargo has seen typical repairs vary from about \$15,000 to \$30,000.

Does the City of Fargo assist property owners with the cost to repair or replace sanitary sewer services?

The City of Fargo has a couple of programs to help property owners with the cost to repair or replace sanitary sewer services. The City of Fargo offers an assistance program for "eligible repairs". Details on this participation can be found at <https://fargond.gov/city-government/departments/wastewater/sanitary-sewer-repair-assistance>.

Another way the City of Fargo provides assistance to property owners is by providing the option to assess the cost of repairs to their property. This allows the property owner to make payments, through their property tax bill, until the balance is paid in full.

What do I need to do to receive assistance from the City of Fargo?

1. The City strongly encourages property owners to get a quote from multiple plumbers or licensed contractors to ensure the price is reasonable, but requires at least one quote that includes, at a minimum, the following itemized costs:
 - a. Quantity and unit price to remove and replace pavement;
 - b. Total cost to excavate, make repair or replace the service connection to the main, and backfill with gravel to finish grade;
 - c. Quantity and unit price to remove and replace the sewer service line including all excavation and restoration.
2. The property owner must submit all quotes to the City of Fargo Engineering Department at SewerServiceRepair@fargond.gov prior to any work taking place.
3. The Engineering Department will determine the costs that are eligible for City participation and determine the annual payment that would be required if the property owner chooses to assess the remaining costs to their property.
4. City Engineering will share this information with the property owner and the property owner can determine when to schedule the work.
5. Engineering will work with the Auditor's Office to determine the estimated yearly payment and share this with the property owner. Engineering will also work with the property owner to complete the petition for assessment if the property owner wishes to choose this option.

What if I have a sewer emergency and can't submit this information before work takes place?

In the case of a true emergency, work can be started immediately and the property owner must provide documentation, such as pictures of the backup, and the work invoice should be submitted to the City at sewerservicerepair@fargond.gov on the first business day following the event.



MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

FROM: MAYOR TIMOTHY J. MAHONEY

DATE: JULY 25, 2022

SUBJECT: CITY ADMINISTRATOR SELECTION PROCESS

In light of the discussion at the last City Commission meeting related to the City Administrator selection process, I am proposing the following selection committee for the City Administrator position:

Mayor Tim Mahoney
Deputy Mayor Dave Piepkorn
Commissioner Arlette Preston
Commissioner John Strand
Commissioner Denise Kolpack
Department Heads (to be determined)

Human Resources will extend invitations to around five department heads to participate in the selection committee in the coming days.

As the liaison commissioner for City Administration, I would like to maintain the role of the hiring manager. The hiring manager serves as the primary point of contact for Human Resources and the search firm in order to plan for and guide the selection process so that it is not necessary for the full committee to convene to discuss details such as posting the position, recruiting materials, etc. The full committee will be engaged in interviewing and the actual selection of the candidates.

Please see the attached section of the North Dakota Century Code ND 44-04-18.27 related to applications for public employment and confidential records for your reference.

As we discussed at the last meeting, we are in the process of engaging an executive search firm to conduct a nationwide search for our next administrator. The search firm will collaborate with the Human Resources Team on all aspects of the selection process.

SUGGESTED MOTION: To approve the formation of the selection committee to include all members of the City Commission and to have the Mayor serve as the hiring manager for the position.

44-04-18.27. Applications for public employment - Hiring process - Confidential records and open records.

If a public entity or any person delegated authority by a public entity to review applications or make hiring decisions receives applications from three or more applicants who meet the minimum qualifications for a vacant position, the public entity or other person shall designate three or more of the qualified applicants as finalists for further consideration before the public entity or other person may issue an offer of employment to fill the position. However, if the public entity or other person does not wish to consider any of the applications further and decides not to make an offer of employment for the vacant position, the public entity need not designate any finalist. The applications and any records related to the applications which contain information that could reasonably be used to identify an applicant are exempt. Once the finalists are designated, the applications and related records of the finalists are open to the public. The public entity or other person reviewing applications on behalf of the public entity shall comply with all requirements for an executive session to discuss exempt applications. If, by the close of the application period for a vacant position, a public entity receives applications from fewer than three applicants who meet the minimum qualifications, the applications and records related to the applications are open to the public. A public entity may adopt policies regarding the release of exempt records under this section.



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Denise Kolpack, City Commissioner
Fargo City Hall
225 4th Street North
Fargo, ND 58102-4817
Phone: 701.715-4895 | Fax: 701.476.4136
www.FargoND.gov

MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

FROM: COMMISSIONER DENISE KOLPACK

DATE: JULY 25, 2022

SUBJECT: 32ND AVENUE RECONSTRUCTION PROJECT

At the last City Commission meeting the Engineering Department sought our approval of the award for the reconstruction of 32nd Avenue. At the time of the presentation, there was considerable discussion about whether a right turn lane should or should not be an amendment to the motion presented, and a motion was made to amend the motion to include the right turn lane. I voted to reject the amendment, because I did not feel I had enough information as to costs or process, and I also knew there were some time constraints regarding the bid award.

During the summary by Engineering Assistant City Engineer Tom Knakmuhs stated that the turn lane could be addressed by a change order after proper steps were taken, including an amendment to the Documented Catex and the presentation of an appropriate change order, both of which would require further approval by this Commission. I am of the opinion that these additional steps should be undertaken and the matter of the right turn lane properly brought to this Commission for consideration. For this reason I make the following suggested motion:

SUGGESTED MOTION: To direct Engineering to amend the Documented Catex and present a change order to the Contract for the 32nd Avenue reconstruction project for purposes of consideration of the addition of a right turn lane on 32nd Avenue and 25th Street, and bring the same back for final approval.



July 21, 2022

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

RE: Compliance Order Extension for 717 3rd Avenue North

Commissioners:

BACKGROUND:

On February 8, 2021, the City Commission ordered the property owner of 717 3rd Avenue North to obtain two permits for repair of the "dangerous building" at this address. Ultimately, if the owner failed to obtain required permits and repair said "dangerous building" within the timelines for compliance, City of Fargo departments were directed to demolish the building.

Since this Order, Permit #1 of the Order has been fulfilled. Furthermore, new ownership has been secured and a clearly defined purpose for the property has been established. Cass Clay Community Land Trust (CCCLT) is now the permanent owner and is working with Kilbourne Group for restoration and construction work. This property will be used as CCCLT's office and a permanent community resource. This property will remain in the organization's portfolio forever, no matter its charitable use.

CCCLT requests the City Commission to take action by approving an extension of the Order, allowing CCCLT to apply for a commercial construction permit and restore this property for impactful, permanent community use.

Upon approval, CCCLT will utilize secured funding to pour a new full basement in Fall 2022..

RECOMMENDED MOTION:

Approve the extension of the February 8, 2021 Order issued to the property owner of 717 3rd Avenue North to July 31, 2023.

Respectfully submitted,

Trenton Gerads
Executive Director
Cass Clay Community Land Trust

CITY ATTORNEY
Nancy J. Morris

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ASSISTANT CITY ATTORNEYS
Ian R. McLean ▪ Alissa R. Farol ▪ William B. Wischer

July 21, 2022

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

RE: Sidewalk Entertainers, Pushcart Vendors and Noise Ordinances

Dear Mayor and Commissioners,

Presented to you today is a staff coordinated response to the issues recently raised by continued operation of the sidewalk entertainers and pushcart vendors, initiated by a joint department memorandum to this Commission and recent social media exchanges and outreach. This letter is intended to advise as to issues and possible recommendations to resolve, short term and long term. Following the consideration of the Board of City Commissioners, public input will be sought for a brief period and recommendations will be brought back for final approval.

One of the early issues identified is an inconsistency in an interpretation of the amplified sound permit applications. As you know, the Planning Department has been responsible for granting Sidewalk Entertainer Permits. There is no mention of the use of amplified sound, but the permittees have interpreted the issuance to allow them to use amplified sound. However, the use of amplified sound permit is within the province of the police department. Thus, a police officer issued a ticket to a sidewalk performer for failing to secure an amplified sound permit. The sidewalk performer had a sidewalk entertainer permit issued by Planning. Long story made short, the ticket was voided and the performer was permitted for amplified sound by the Police Department until November, 2022. Unfortunately, that further resulted in conflict between the public, sidewalk entertainers and pushcart vendors.

First, in the short term, staff is recommending revocation of the amplified sound permits that have been issued to sidewalk entertainers. Specifically, staff is recommending that there be no amplified sound permits to pushcart vendors and sidewalk entertainers operating on the public right of way (not applicable to physical brick and mortar structures adjacent to the right of way), except as applicable to special events which otherwise require permits for safety, specific as to time, place and manner requirements. Thus, the amplified sound permits for the sidewalk entertainers would be terminated (in addition to eliminating the need for the sidewalk entertainer permit as discussed below). Note that pushcart vendors are not permitted to use amplified sound at any time, and that no such permits have been issued. Thus, this decision would not directly

impact pushcart vendors. Sidewalk entertainers who received amplified sound permits being revoked by this action could request a refund from Police.

Police have been active participants/partners in these discussions, and have indicated a willingness to take an active role in enforcement, and consideration of rules that will work to benefit all. This raises another recommendation which might appear counterintuitive, but law enforcement is recommending an increase in the permitted decibel levels for non-amplified sound. Enforcement of the present 55 decibels has proven not feasible, as normal conversation approaches that level. If the decibel level were to be increased to 80 decibels between 7:00 a.m. and 10:00 p.m., detection and enforcement of violations would be more attainable. A violation of Fargo Municipal Code § 11-0204 is a non-criminal offense resulting in a \$120 fine. At a decibel level of 80 in the DMU/Central Business District, the Police have expressed that it feels it would be able to issue tickets for violations. The decibel limit could stay the same, or decrease slightly to 60 decibels (an increase from the present 50 decibels), between 10:00 p.m. and 7:00 a.m. to accommodate normal sidewalk activity (redlined ordinance provisions attached). Note that staff is recommending that the time constraints for the amplified sound permits be changed to end at 10:00 p.m. on weekend nights as well, consistent with weekdays.

Which brings us to the toughest nut to crack-- enforcement. The present ordinances have good and important rules for both sidewalk entertainers and pushcart vendors. But enforcement tools available may need some "teeth", including higher fines for violations of the existing rules, ways to hold the pushcart vendors more directly responsible, and revocation of the pushcart vendor permits for repeated violations. To this end, staff is recommending some ordinance changes to encourage voluntary compliance, with more penalty for violations.

Littering has been a primary complaint of the sidewalk entertainers and pushcart vendors activity. Fargo Municipal Code § 11-0813 does not specify a particular penalty for littering on public property. However, Fargo Municipal Code § 11-0814 addresses littering on private property, and violations are subject to a \$150 fine. The littering and other cleanliness issues created by the pushcart vendor and sidewalk entertainer activities could carry this higher fine as well. And as for pushcart vendors, if the littering or sound violations are directly attributable to their operations and there is a persistent failure to rectify the issues, the vendor would receive a permit violation notice. A specified number of tickets or other permit violation notices could result in revocation of the pushcart vendor permit.

The permit requirement in the ordinance for sidewalk entertainers has been raised as unconstitutional by one permittee, who has requested a refund of the fee paid for the present season. While the matter of constitutionality can be debated, there appears to be no specific reason for the permit requirement for sidewalk entertainers. Thus, elimination of the sidewalk entertainer permit requirement would not only free up valuable staff time, but also remove any impediments to speech otherwise permitted on the right of way. An immediate cessation of the permit requirements for sidewalk entertainers only (not pushcarts or other vending on the right of way) until the ordinance can be changed to strike the provision referencing the same would be appropriate. Persons engaging in the sidewalk entertainment on the right of way would be

required to comply with all rules provided in Fargo Municipal Code §18-0310 (redlined version attached), to be amended to remove the permit references. Violations of the remaining rules, not addressed elsewhere (noise violations and littering) could be classified as non-criminal offenses with a fine associated, somewhere in the vicinity of \$100. The Police could be provided a placard to present to the sidewalk entertainer to advise of the violation by way of warning, and if the sidewalk entertainer fails to comply, such entertainer would be subject to ticketing. Enforcement activity would be stepped up in order to ensure public safety and to minimize the conflicts presented by the sidewalk entertainer activity with other businesses, residents and the public enjoying the many amenities downtown Fargo has to offer.

Note that it is important to separate the pushcart vendors from the sidewalk entertainers, and address the ordinance deficiencies in terms of compliance and enforcement. Fargo Municipal Code § 18-0311 requires pushcart vendors to first obtain a permit, to be issued by the Planning Director or designee (redlined version attached). That permit requirement would remain. Unfortunately, much of the regulation incorporated in the sidewalk entertainer permit provisions is lacking from the pushcart vendor process, some of which are found in Fargo Municipal Code § 18-0313.3. In other words, staff is recommending that the pushcart vendors not only continue to be required to obtain an appropriate permit, but also provide assurances of compliance with the ordinance terms, insurance, and acknowledge the permit is non-transferable. In addition, the pushcart vendor ordinance could be further expanded to address the process to be employed in the event the permit is denied, and appropriate processes if violations of the ordinance are found to exist such that suspension or revocation of the permit is warranted. In addition to permit consequences, the pushcart vendors could be subject to a noncriminal offense for those violations not separately addressed (littering and noise ordinances) for fines in the amount of \$100. Noncriminal violations could serve as a means of proof of the permit violations for purposes of determine suspension or revocation. However, not all violations would necessarily be evidenced by ticketing by Police; some violation notices may be issued by Planning, Health, Inspections or Engineering for violations such as size of cart and health and safety issues relating to the food preparation.

I will end this letter with additional considerations expressed by staff in order to address some of the complaints that have been raised. First, several complaints have been received stating that the hours of operation of the sidewalk entertainers and pushcart vendors are too late. Sidewalk performers are required to cease at 10:00 p.m. Pushcart vendors are presently permitted to operate until 2:00 a.m. Enforcement is an issue. Consideration could be given to changing the hours going forward. Second, there has been some discussion as to whether or not the pushcart vendors should contribute to the BID, or perhaps a monetary deposit of a certain amount made to the BID operations through the permitting process, given that much of the garbage created is likely deposited in trash cans emptied by the BID, and the sidewalks and cleared by BID personnel.

Suggested Motions: I move to immediately suspend the requirement that sidewalk entertainers obtain a permit in accordance with Fargo Municipal Code § 18-0310 and authorize a refund of requested permit application fees.

I further move to immediately revoke the amplified sound permits issued to sidewalk entertainers in accordance with Fargo Municipal Code §11-0209, and authorize the refund of permit fees collected if so requested by the permittees presently engaging in sidewalk entertainment.

I further move to direct staff to engage with the stakeholders and public generally to vet proposed and other possible changes to the Sidewalk Entertainment and Pushcart Vendor sections of the Fargo Municipal Code, as well as the Article 11-02, Noise Control and Radio Interference, and work with the City Attorney Office to present amended ordinance provisions for further consideration.

Sincerely,



Nancy J. Morris

NJM/lmw

Enclosures

ARTICLE 11-02 NOISE CONTROL AND RADIO INTERFERENCE**11-0201. Definitions.**

For purposes of this article, certain words and phrases used herein are defined as follows:

1. "Ambient noise" is the all-encompassing noise associated with a given environment, being usually composite of sounds from many sources, near and far.
2. "'A' band level" is the total sound level of all noise as measured with a sound level meter using the "A" weighting network. The unit measurement is the dB(A). "dB" is the abbreviation for decibel. "dB(A)" is a weighted decibel which closely approximates the human ear response to sound.
3. "Bel" is the common logarithmic value of any sound intensity as related to the standard threshold of audibility (minimum detectable sound 10^{-12} watts per square meter).
4. "Decibel" is one-tenth (1/10) of a bel as measured on the "A" scale of a standard sound meter.
5. "Central Business District" as defined in § 8-0101.
6. "Cycle" is the complete sequence of value of a periodic quantity that occur during a period.
7. "Frequency" of a function periodic in time is the reciprocal of the primitive period. The unit is the cycle per unit time and must be specified.
8. "Outdoors" shall include any location not inside of a totally enclosed permanent structure.
9. "Sound amplifying equipment" is:
 - A. Equipment that uses alternating current (AC) or direct current (DC) to amplify any sound.
 - B. Equipment that amplifies sound to a level that equals or exceeds 85 dB(A) measured at or corrected to 25 feet.
10. "Sound-level meter" is an instrument including a microphone, an amplifier, an output meter, and frequency weighting networks for the measurement of noise and sound levels in a specified manner.
11. "Person" is a person, person's firm, association, co-partnership, joint venture, corporation or any entity public or private in nature.
12. "Emergency work" is work made necessary to restore property to a safe condition following a public calamity or work required to protect persons or property from an imminent exposure to danger.
13. "Emergency vehicles" are those vehicles such as ambulance, fire, police, and other city vehicles operating in time of emergency.

Source: 2017 (1981), 4839 (2012), 5275 (2020).

11-0202. Unlawful noise prohibited.

It shall be unlawful for any person to make any loud, unnecessary or unusual noise or any noise which either annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of others within the limits of the city of Fargo.

Source: 2017 (1981), 4839 (2012).

11-0203. Unlawful noise—Determination.

The standards which shall be considered in determining whether a violation of § 11-0202 exists shall include, but shall not be limited, to the following:

- A. The volume of the noise.
- B. The intensity of the noise.
- C. Whether the nature of the noise is usual or unusual.
- D. Whether the origin of the noise is natural or unnatural.
- E. The volume and intensity of the background noise, if any.
- F. Within the Downtown Business District and all residential zoning districts, the following noises between the hours of 10:00 p.m. and ~~6~~7:00 a.m. ~~Sunday evening through Friday morning and 11:00 p.m. and 7:00 a.m. Friday evening through Sunday morning are specifically prohibited:~~
 - 1. Radios, tape players or other sound amplifiers, whether portable or installed in vehicles, at a level which can be heard by a person more than 10 feet away from said vehicle or amplifier.
 - 2. Any horn, bell or other noise-making device except burglar alarms or similar emergency warning devices.
 - 3. Shouting or yelling where the voice is clearly audible at a distance of more than 10 feet.

Source: 2017 (1981), 2372 (1987), 4392 (2004), 4839 (2012).

11-0204. Projection of sound unlawful.

It shall be unlawful to project a sound or noise excluding noise emanating from a moving motor vehicle from one property into another, within the boundary of a use district which exceeds the limiting noise criteria set forth in Table 1 below, except as permitted under section 11-0208 and 11-0209.

- A. Sound or noise projecting from one use district, into another use district with a different noise level limit, shall not exceed the limits of the district into which the noise is projected.
- B. The permissible levels in decibels set forth in Table 1 shall be modified so that any noise occurring on property deemed to be nonconforming use property shall be determined upon the conforming zoning designation of the property.

TABLE 1. LIMITING NOISE LEVELS FOR ZONING DISTRICTS

	Zoning District		
	Residential AG, SR-0, SR-1, SR-2, SR-3, SR-4, MR-1, MR-2, MR-3, MHP, NO, NC, DMU	Commercial GO, LC, GC	Industrial LI, GI
Maximum number of decibels permitted from 6:00 a.m. to 10:00 p.m., Monday through Thursday and 6 7:00 a.m. to 11:00 p.m. on Friday and 7:00 a.m. to 11:00 p.m. Saturday and 7:00 a.m. to 10:00 p.m. on Sunday	5580	6580	80

Maximum number of decibels permitted from 10:00 p.m. to 6:00 a.m. Sunday evening through Friday morning and 11:00 p.m. to 7:00 a.m. Friday evening through Sunday morning	50/60	60	75
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For purposes of the decibel levels listed in Table 1, zoning districts that are comprised of a mixed use, having a residential land-use component, shall be designated as residential and the more restrictive decibel levels applicable for residential zoning shall apply.

Source: 2017 (1981), 4553 (2006), 4839 (2012).

11-0205. Motorized vehicles—compression brakes prohibited.

It shall be unlawful to operate a motorized vehicle within the city limits which creates a noise or sound which exceeds the noise level limits set out in Table 2, as follows:

TABLE 2. LIMITING NOISE LEVELS FOR MOTOR VEHICLES

- A. Trucks, buses, construction equipment, or any motor vehicle with a gross weight rating of 10,000 pounds or more: Maximum allowable limit: 88 dB(A) measured at or corrected to 25 feet.
- B. Passenger cars, pickups, vans, motorcycles, snowmobiles, or any motor vehicle with a gross weight rating less than 10,000 pounds: Maximum allowable limit: 80 dB(A) measured at or corrected to 25 feet.
- C. Interstate Motor Carrier:
Maximum allowable limit:
 - 1. 92 dB(A) measured at or corrected to 25 feet when traveling on roadways with speed limits of 35 mph or less.
 - 2. 92 dB(A) measured at or corrected to 25 feet when traveling on roadways with speed limits of more than 35 mph.
- D. Notwithstanding any other provision of the Fargo Municipal Code, it shall be unlawful for any person within the city limits to make, or cause to be made, loud or disturbing noises with any mechanical devices operated by compressed air and used for purposes of assisting braking on any semi-tractor.

Source: 2017 (1981), 4731 (2010).

11-0206. Aircraft.

It shall be unlawful for any person to operate or cause to be operated any type of aircraft over the city which produces noise levels exceeding 88 dB(A) within the city.

Source: 2017 (1981).

11-0207. Exemptions.

The following uses and activities shall be exempt from noise level regulations:

- A. Noises of safety signals, warning devices, and emergency relief valves.
- B. Noises resulting from any authorized emergency vehicles, when responding to an emergency call or acting in time of emergency.
- C. Noises resulting from emergency work as defined in § 11-0201(10).
- D. Any construction or maintenance activities at the construction or maintenance site.
- E. Any other noise resulting from activities of a temporary duration permitted by law and for which a license or permit therefor has been granted by the city in accordance with § 11-0208 or § 11-0209.
- F. Any aircraft operated in conformity with, or pursuant to, federal law, federal air regulations, and air traffic control instruction used pursuant to and with the duly adopted federal air regulations shall be exempt from the provisions of § 11-0206 as well as other regulations of this section. Any aircraft operating under technical difficulties, in any kind of distress, under emergency orders of air traffic control or being operated pursuant to and subsequent to the declaration of an emergency under federal air regulations shall also be exempt from the provisions of § 11-0206 as well as the other regulations of this section.
- G. Any regulation of railroad noise will be subject to the following:
Title 40, Code of Federal Regulations, part 201:
 - 1. 201.1 (c), (m), (p), (t), (aa), (dd), (ee)
 - 2. 201.10
 - 3. 201.11 (a), (b)
 - 4. 201.12 (a), (b)
 - 5. 201.13
 - 6. 201.22, 201.23, 201.24
- H. Non-amplified sound generated at a scheduled stadium event, which includes noise generated by parade spectators and participants on the parade route during a lawful parade.
- I. Amplified announcements at scheduled stadium events or other lawful outdoor events.

Source: 2017 (1981), 4839 (2012).

11-0208. Application for special permit for construction or demolition equipment.

In the event certain construction or demolition equipment noise will exceed prohibited noise levels, the owner or operator of such equipment may apply for relief from this article on the basis of undue hardship. Applications for a permit for relief from the noise level designated in this section on the basis of undue hardship may be made to the city engineer or a duly authorized representative. Any permit granted by the city engineer hereunder shall contain all conditions upon which said permit has been granted and shall specify a reasonable time that the permit shall be effective. The city engineer, or his duly authorized representative, may grant the relief as applied for if the city engineer finds:

- A. That additional time is necessary for the applicant to alter or modify his activity or operation to comply with this section; or
- B. The activity, operation or noise source will be of temporary duration, and cannot be done in a manner that would comply with other provisions within this article; and
- C. That no other reasonable alternative is available to the applicant.

The city engineer may prescribe any conditions or requirements he deems necessary to minimize adverse effects upon the community or the surrounding neighborhood.

Source: 2017 (1981), 4839 (2012).

11-0209. Application for permit for sound amplifying equipment used outdoors- Permit Required.

No person shall use or maintain any sound amplifying equipment outdoors without first having obtained a permit.

- A. Application— A complete application for a permit must be submitted to the chief of police or his authorized designee in a form established by the chief of police, along with a non-refundable fee that has been established by resolution of the board of city commissioners. The application must be made at least 30 days in advance of the requested permit date unless a waiver is granted by the chief of police. The application shall contain the following information or, in lieu thereof, a detailed statement of the reason why such information cannot be furnished:
 - 1. The name, address and telephone number of the applicant;
 - 2. The address and a site plan showing the location of the property where the sound amplifying equipment will be used, a listing of the type of sound amplifying equipment and the direction to which the amplified sound will be directed.
 - 3. The date and time period the sound amplifying equipment will be used.
 - 4. A statement that the applicant understands the requirements of this chapter and agrees to comply with all applicable requirements.
- B. Regulations for Use.— The following regulations apply to all permits issued pursuant to Section 11-0209.
 - 1. The only sound permitted shall be music or human speech or both.
 - 2. No permits shall be issued for any property located within a residential zoning district. For the purpose of this section the Downtown Mixed-Use Zoning District is not considered residential.
 - 3. Permits are valid for the day or days listed on the permit only.
 - 4. Permits issued for any property where the source of the sound is located within 500 feet of a residential zoning district shall be valid for no longer than one day.
 - 5. With respect to any permit for a property where the source of the sound is within 500 feet of a residential zoning district, no more than one permit may be issued every 30 days.
- C. Waiver—The requirement of filing an application at least 30 days before the event may be waived by the chief of police upon a showing that the 30-day period may substantially burden protected rights, including rights of speech and assembly as to matters of public concern.
- D. Issuance of Permit— The chief of police has the discretion to grant or deny a permit that pertains to a property for which a permit has been revoked within the prior 24-month period. In deciding whether to deny a permit on such grounds, the chief of police shall consider:
 - 1. Whether the ownership of the property has changed since a prior permit was denied.
 - 2. What steps, if any, the property owner has taken to correct the violation which led to the permit revocation.

With respect to all other applications for permits, the chief of police shall issue a permit to any applicant who has submitted a properly completed application along with the applicable fee unless such permit is prohibited because the application pertains to property in a residential zoning district.

- E. Revocation— A permit may be revoked by the chief of police upon:
 - 1. Violation of one or more regulations of the permit;
 - 2. Material misrepresentation of fact in the permit application; or
 - 3. Material change in any of the circumstances relied upon by the chief of police in granting the permit.
 - 4. A permit may be revoked at any time, even after the permitted event, if the chief of police learns of any violation listed above.

- F. Exemptions - The following shall be exempt from the requirement of obtaining a permit under this section:
 - 1. Community events and festivals permitted by Section 18-0314 of the Fargo Municipal;
 - 2. Other community-wide events or festivals;
 - 3. An event that is open to the general public for which no admission is charged and when the purpose for the event is generally not for commercial gain; and,
 - 4. All land and property owned by the Park District is exempt from the requirements of this section.

The chief of police is authorized to determine whether a proposed event is exempt pursuant to this subsection, and shall consider the factors provided under Section 18-0314.C. of the Fargo Municipal Code in making such determination. The Fargo Moorhead Marathon, currently operated by Fargo Marathon, Inc., is hereby deemed to be a community-wide event that is exempt.

- G. Appeal—~~The permit applicant or any person actually or potentially aggrieved by the issuance or denial of a permit or the granting or denial of an exemption may appeal the denial of a permit said decision to the board of city commissioners.~~

Source: 4839 (2012), 4966 (2015).

11-0210. Radio interference between six o'clock p.m. and eleven o'clock p.m. prohibited.

It shall be unlawful for any person, firm or corporation to operate in the city any device or apparatus, either electrical or mechanical, which generates or causes high frequency oscillations or electrostatic or electromagnetic waves which interfere with radio broadcast reception between the hours of six o'clock p.m. and eleven o'clock p.m., except that a person duly licensed to practice medicine, osteopathy, chiropractic, or dentistry by the laws of the state of North Dakota, in a case of absolute emergency arising in the course of the practice of his profession, which case demands immediate treatment between the aforementioned hours, may operate or cause to be operated under his immediate direction and supervision any machinery necessary to give emergency in such case.

This prohibition shall be construed to apply to radio equipment either of the regenerative or any other type, violet ray machines, X-ray machines, diathermy machines, vibrating battery charges, sign changers or electric signs or devices using a blinking device where a make and break contact is maintained, electric refrigeration machines, electrically driven oil pumps or furnace equipment, high tension ignition systems, electric transmission lines, defective insulators and transformers, defectively sparking motors and generators, and all other electrical or mechanical devices which, because of the manner of construction, state of repair, or condition or manner of operation, interfere with radio reception.

Source: 2017 (1981), 4839 (2012).

11-0211. Unlawful interference defined.

Unlawful interference with radio reception within the meaning of this article shall exist where radio reception interference arises from the use or operation of any device or apparatus such as violet ray machines, machines using Tesla coil or principle, X-ray machines and diathermy machines described in § 11-0210, under all of the following conditions:

- A. Such device or apparatus must be situated not less than 100 feet from the radio receiving set with which it interferes.
- B. The radio receiving equipment interfered with shall be operated at a volume comparable to a person's normal tone of voice.
- C. The broadcasting station whose program is being received when the interference occurs must have a power output of not less than one kilowatt and must be located not more than 300 miles from the receiving set.

It is expressly provided, however, that this article shall not apply to radio stations, either broadcast, commercial, or amateur, duly licensed by the government of the United States; and unlawful radio reception interference shall not be deemed to arise or exist from the operation of duly licensed broadcasting stations.

Source: 2017 (1981), 4839 (2012).

11-0212. Interference—When permitted.

Unlawful radio reception interference, within the meaning of this article, shall not be deemed to arise or exist under the following conditions:

- A. It shall not be unlawful to cause radio reception interference except between the hours of six o'clock p.m. and eleven o'clock p.m.
- B. It shall not be unlawful to cause radio reception interference where the devices mentioned in § 11-0210 are operated by any agency or department of the city, the county of Cass, the state of North Dakota, or the United States of America; provided, that such devices be equipped so far as is reasonably possible with filters, chokes, condensers, shields, and grounds and are operated and maintained exclusively in the exercise of public or governmental functions.

Source: 2017 (1981), 4839 (2012).

11-0213. Building inspector—Powers and duties.

The building inspector of the city, or his duly authorized deputies, shall have the right to enter upon any premises, other than private residences, at all reasonable hours for the purpose of inspecting the same. He may enter upon the premises and inspect private dwellings with the consent of the owner or occupant thereof. If it is found that equipment, apparatus, or devices described in § 11-0210 are being operated or maintained in violation of this article, the building inspector shall notify, in writing, the person, firm or corporation responsible for the unlawful operation or maintenance of such devices, equipment, or apparatus to discontinue the use thereof, or to make additions, repairs, or modifications thereof, in order that the same may be operated or used in a manner which complies with this article. The mailing of a registered or certified letter to the owner or operator of such machine, device, or apparatus, addressed to such owner or operator at the premises where such machine, device, or apparatus is operated or maintained, or the personal service of such notice upon the said owner or operator shall constitute sufficient notice for the purposes of this article. In the event that the owner or operator of such machine, device or apparatus shall not, within three days after the giving of such notice, either entirely discontinue

the use or operation of such machine, device, or apparatus during the hours when the same is prohibited to be used or operated by the terms of this article or repair the same so that it complies with the provisions of this article, such owner or operator thereof shall be deemed to be operating the same in violation of the provisions of this article.

Source: 2017 (1981), 4839 (2012).

11-0214. Wires over streets, alleys, and private property—Consent of owner.

No person, firm, or corporation shall install, operate, or maintain any aerial ground wire or other wire used in connection with any radio receiving set over, upon or across any public street or alley; nor over, upon, or across the private property of any other person, firm, or corporation without the consent of the owner thereof; nor within five feet of any telephone, electric light or telegraph pole, or any exterior telephone, telegraph, or electric light service wire. Such aerial, ground wire, or any other device used in connection with the maintenance of any radio receiving set shall be properly grounded or protected against lightning or other improper foreign electrical conductivity.

Source: 2017 (1981), 4939 (2012).

11-0215. Advertising or making announcements from buildings or on streets with sound trucks or noise-making devices prohibited—Exceptions.

The word "person" as use in this section shall include the singular and the plural and shall also mean and include any person, firm, corporation, association, club, co-partnership, society, or any other organization.

No person owning, leasing, or operating any building, structure, or vehicle shall play, use, operate, or permit to be played, used, or operated any radio receiving set, musical instrument, phonograph, loud speaker, sound amplifier, sound truck, or other machine or device for the producing or reproducing of sound for the purpose of advertising, making announcements, or attracting the attention of the public to such building, structure, or vehicle, except that the board of city commissioners may issue a permit for the use of sound trucks upon specified city streets during stated hours if the announcements or programs to be broadcast are in the public interest and not for commercial purposes.

Each person shall be deemed guilty of a separate offense for each day during any portion of which any violation of the provisions of this article be committed, continued, or permitted.

Source: 2017 (1981), 4839 (2012).

11-0216. Public nuisance—Remedy—Penalty.

Any noises found to be in violation of this ordinance and the maintenance, use, or operation of any of the apparatus, machinery, or devices defined in § 11-0210 in violation of the terms of the article, are hereby declared to be a public nuisance and may be abated, enjoined or repressed in the same manner as any other public nuisance, including restraining order or injunction issued by a court of competent jurisdiction. A violation of any of provision of this article shall constitute an infraction, punishable in accordance with § 1-0301 of the Fargo Municipal Code. Each day a violation exists shall be deemed to be a separate offense. The remedy provided by this section shall not be deemed to be exclusive, and violations may be prosecuted in municipal court in the same manner as violations of other ordinances.

Source: 2017 (1981), 4553 (2006), 4839 (2012).

CHAPTER 18 - PUBLIC WAYS AND PLACES
ARTICLE 18-03 USE AND CARE OF STREETS AND SIDEWALKS

ARTICLE 18-03 USE AND CARE OF STREETS AND SIDEWALKS

18-0301. Removal of snow and ice from sidewalks.

The owner or occupant of any building or grounds within the city fronting upon or adjoining any street, when a sidewalk exists, shall clear the sidewalk in front of or adjoining such building and grounds or unoccupied lot or building, as the case may be, of snow and ice to the width of such sidewalk on or before nine o'clock p.m.

If the owner or occupant shall refuse or fail to remove such snow and ice by nine o'clock p.m. of each day and cause the sidewalk to be kept clear of snow and ice, the director of public works may remove, or cause to be removed, all snow and ice from the sidewalks along or in front of any buildings, grounds or premises, and the necessary costs and expenses of such removal of snow and ice by the director of public works shall be chargeable and assessed against, and shall be a lien upon such premises. Assessment of costs and expenses shall be in accordance with article 3-17 of the Fargo Municipal Code.

Source: 1952 Rev. Ord. 18-0301, 2692 (1994).

18-0302. Riding or driving on sidewalk prohibited.

No person shall ride, drive, place, push, draw, or back any horse or other animal, wagon, car, automobile, or other vehicle or heavy object upon or over or across any sidewalk except at a regular crossing or concrete driveway or where alleys intersect the streets. The occupant of any yard, lot, or warehouse may have access across the sidewalk by placing in front of the yard, lot, or warehouse, at his expense, with the consent of the city engineer, a temporary bridge or carriageway over the sidewalk, gutter, and curbing in such manner as will preserve the same from injury.

Source: 1952 Rev. Ord. 18-0302.

18-0303. Regulating movement of tractors and heavy vehicles on pavement.

Repealed by omission.

Note: This section is repealed by omission from the 1965 Revised Ordinance. The subject matter of this section is covered in 8-0921.

18-0304. Sale of merchandise from stands on streets prohibited.

Except as authorized under sections 18-0307 through 18-0317 herein, it shall be unlawful for any person, firm, or corporation to set up any stand or wagon upon any of the streets, alleys, sidewalks, crosswalks, or public grounds within the city for the purpose of selling therefrom, or exposing for sale, any meats, provisions, refreshments, or any goods or merchandise whatsoever.

Source: 1952 Rev. Ord. 18-0304, 4378 (2004).

18-0305. Selling on streets restricted.

Except as authorized under sections 18-0307 through 18-0317 herein, no person, persons, firm, or corporation shall sell, offer, or expose or sale at any point upon any of the streets, alleys, sidewalks, crosswalks, or public

grounds, including but not limited to the berm, boulevard, return or apron abutting a private driveway, within the city any goods, wares, or merchandise whatsoever contrary to the provisions of articles 25-5 and 25-7 of chapter 25.

Source: 1952 Rev. Ord. 18-0305, 4378 (2004), 4740 (2010).

18-0306. Amusements on streets prohibited.

No person shall, upon any street or alley within the city, take part in any game of ball, nor shall any person, upon any such street or alley, take part in any game of tossing ball or flying kite, or any other game or play, so as to impede or endanger public travel thereon.

Source: 1952 Rev. Ord. 18-0306.

18-0307. Limited use of sidewalks in Central Business District allowed.

Except as allowed under the provisions of this article 18-03 for locations within the Central Business District, it shall be unlawful for any person to sell, offer for sale, exhibit or any goods, wares, merchandise, mechanical devices, animals or any article of any kind whatsoever, by whatever name called, upon any public street, sidewalk, square, avenue or alley within the corporate limits of the city.

- A. None of the requirements of this article for permits or encroachment agreements shall apply to outdoor dining areas or outdoor merchandise areas which are otherwise allowed under the community events and festivals permit set forth in section 18-0314.
- B. Permits issued for pushcarts and outdoor merchandise areas under the provisions of this article shall be temporarily suspended at locations designated for the community events and festivals permitted under section 18-0314 of this code. Permit holders may, however, apply to continue their operation during the community event or festival pursuant to the procedures set up by the community event or festival permit holder. Permits issued for outdoor dining areas shall not be temporarily suspended in areas designated for a community event or festival.
- C. The authority granted to Sidewalk Performers under this article shall be temporarily suspended at locations designated for community events and festivals permitted under section 18-0314 of this code. Sidewalk Performers may, however, apply to continue their operation during the community event or festival pursuant to the procedures set up by the community event or festival permit holder.

Source: 4379 (2004).

18-0308. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this article, except where the context clearly indicates a different meaning:

- A. "Central Business District" as defined in § 8-0101. For purposes of defining this boundary, the sidewalk on both sides of the streets, above-named, shall be included within the Central Business District.
- B. "Grilling" shall mean the cooking of raw animal products such as meat, poultry or fish on a flat top or charbroil style high-heat surface designed for such purpose, but does not include smoking, deep-fat frying, wok or skillet-style cooking, barbecuing/roisserie-style cooking or any other type of cooking.
- C. "Grilling pushcart" shall mean a pushcart that includes equipment for grilling.

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- D. "Merchandise" shall include, but is not limited to, plants, flowers, wearing apparel, jewelry, ornaments, art work, household or office supplies, food or beverages of any kind, whether or not for immediate consumption, or other goods or wares.
 - E. "Outdoor dining area" shall mean an area in front of or adjacent to a business maintaining a restaurant or limited restaurant license issued by the city health department and located on a public sidewalk whereon tables, chairs or benches are placed for purposes of serving food and/or alcoholic beverages.
 - F. "Outdoor merchandise area" shall mean an area in front of or adjacent to a retail business where merchandise is located on a public sidewalk for the purpose of displaying, exhibiting, selling or offering for sale merchandise.
 - G. "Pedestrian way" shall mean the area of sidewalk adjacent to the property line and extending therefrom to the edge of the curb or for a distance of ten (10) feet, whichever is narrower.
 - H. "Planning Director" shall mean the department head of the Department of Planning and Development of the city of Fargo.
 - I. "Professional sidewalk entertainer" shall mean a sidewalk entertainer who, through direct or passive behavior, asks for or solicits any form of remuneration and "professional sidewalk entertainment" shall mean sidewalk entertainment performed while the performer is thus soliciting any form of remuneration.
 - J. "Pushcart" shall mean a wheeled cart which may be moved by one person without the assistance of a motor and which is designed and used for displaying, keeping or storing any food, beverages or other articles for sale by a vendor. To the extent a pushcart is used for displaying, keeping or storing food or beverages, the pushcart must be limited to service of potentially hazardous foods or commissary-wrapped food maintained at proper temperatures, or limited to the preparation and service of frankfurters, as is defined by North Dakota Administrative Code Chapter 33-33-04. Cooking will only be allowed on an approved grilling pushcart.
 - K. "Review Committee" shall consist of five members to be appointed by the mayor with the consent of the board of city commissioners. Such membership of the review committee may be comprised of one or more city employees from one or more departments within the city.
 - L. "Sidewalk entertainer" shall mean a person who engages in sidewalk entertainment.
 - M. "Sidewalk entertainment" shall mean performances which may include, but not be limited to, music, dance, mimes, magicians, clowns, jugglers and theatrical presentations, but specifically excluding speeches, lectures, and sermons.

Source: 4379 (2004), 4644 (2008), 5275 (2020).

18-0309. Pedestrian signs.

Notwithstanding any other requirements of this article, pedestrian signs may be on public sidewalk that is within the Central Business District and that is at least six (6) feet in width, provided the dimensions and proposed location of the sign meet the following standards and provided a permit is obtained from the planning director.

- A. A pedestrian sign permit application must be submitted to the planning director in a form established by the planning director along with a nonrefundable fee established by the board of city commissioners.
 - 1. The application must include the name, address and telephone number of the applicant, the dimensions of the proposed sign and the specific location of where the sign will be displayed, including the distance the sign will be from the adjacent curb and building. A photograph or drawing of the sign shall be submitted, along with a complete description of the materials from which the sign will be made and the manner in which the sign is self-supporting.

2. The height of the sign shall not exceed four feet (48 inches) above the surface of the sidewalk. A height of five feet (60 inches) above the surface of the sidewalk is permitted if the sign is mounted on an easel.
3. The width of the sign shall not exceed 30 inches, or a width that ensures that at least 44 inches of unobstructed clearance will exist on the sidewalk (after sign placement), whichever results in the lesser sign width.
4. Spacing between sign locations shall be 25 feet, so that no portable sign application may be approved for any sign that is proposed to be located within 25 feet, measured along the same side of the street, of any other portable sign location.
5. No sign shall extend past the curb or into any portion of the street surface or parking lane.
6. Pedestrian signs shall be self-supporting and freestanding. Sign supports or features shall not protrude into the pedestrian area adjacent to the sign.
7. The application and permit shall clearly state that the applicant agrees to indemnify and hold the city harmless from any and all claims, demands or causes of action which may result from placement of the sign on public property. The applicant shall, at the time of making application for the permit, provide proof of insurance to cover the risk of injury to person or property caused by the presence of the sign. Said insurance shall provide minimum coverage for bodily injury of \$1,000,000 per occurrence and in the aggregate.
8. Signs requiring electrical connections shall be prohibited.
9. The permit shall state the name, address and telephone number of the applicant, the date of issuance of the permit and the date of expiration of the permit. The permit must be securely fastened to the sign at all times while the sign is being displayed or evidence of a permit made visible on the store front.
10. The permit shall be valid for a period of one (1) year, but may be renewed upon application of the permittee for another period of one (1) year, without payment of an additional fee.
11. Permitted pedestrian signs may be displayed or located on the sidewalk only between the hours of 7:00 a.m. and 11:00 p.m. or at business closure, whichever is earlier.

Source: 4379 (2004).

18-0310. Performers of sidewalk entertainment.

Performers of sidewalk entertainment, ~~who perform pursuant to a permit issued pursuant to this article,~~ may perform on any sidewalk or pedestrian way within the Central Business District provided that such performers shall:

- A. Not violate the prohibitions on disturbing, annoying and unnecessary noise as set forth in article 11-02 of the Fargo Municipal Code.
- B. Not violate the prohibitions on panhandling as set forth in Fargo Municipal Code section 10-0311.
- C. Not obstruct or cause to be obstructed pedestrian or vehicular traffic, including but not limited to not obstructing or causing to be obstructed sidewalks, doorways or other access areas. Entertainer must provide a minimum of 6 feet of pedestrian passageway. If a performer attracts a crowd sufficient to obstruct the public way, a police officer may disperse the crowd if the officer determines the crowd is resulted in an obstructed pathway. The officer may ask the performer to temporarily suspend a performance or to move to a less congested area. ~~Failure to cooperate with such request can lead to suspension and/or revocation of the sidewalk entertainer permit.~~

- D. Not sell records, tapes or other products.
- E. Perform only at times between the hours of 9:00 a.m. and 10:00 p.m.
- F. Not consume nor be under the influence of alcoholic beverages or other controlled substances while performing, in compliance with the North Dakota laws and regulations.
- G. Not perform any nearer than 150 feet from another professional sidewalk entertainer who is also performing.
- H. Not perform at locations designated for a community event or festival, unless permitted to play at the community event or festival by the event or festival coordinator, pursuant to section 18-0313.
- I. Comply with all federal, state and local laws when performing within the city, including but not limited to, the panhandling ordinance and the noise ordinance.
- J. ~~Display at all times the city issued permit for sidewalk entertainment so that it can be easily seen by city staff or Fargo police. If such permit is not displayed as required, it will be assumed that the performer has no valid permit and the police will have authority to order the person to cease performing and move from the location if appropriate.~~
- K. Not perform within fifty (50) feet of a pushcart or permitted outdoor eating area.
- L. Maintain the permitted area within a radius of ten feet free of trash and debris.
- M. Not create a fire hazard or use fire, knives, or dangerous items during a performance.
- N. Not engage in the application of tattoos or body piercing.
- O. Not include obscenity in a performance.
- P. Not engage in harassment or coercion of passersby.
- Q. Not display or offer food or drink for sale.
- R. Not display tables, lounge chairs, push carts or mobile display racks.
- S. Not block access to an entrance to a building.
- T. Not perform in a street, or not interfere with a motorist, either regarding the passage of a vehicle or the sight of its driver.
- U. Make no effort to reserve a location for sidewalk entertainment; performance locations shall be on a daily, first-come, first-served basis. ~~Permit holders~~ Sidewalk entertainers shall abandon the location at the end of the day, including the removal of all personal property by 10:00 p.m.
- V. ~~Not engage in fraudulent practices or solicitations, including, but not limited to misrepresentation about the nature and type of organization with which the permit holder is associated or misrepresentation or concealment of any material fact in the application process.~~
- W. Not connect to electric outlets or power sources owned by the city or others without the express written permission to do so.

Source: 4379 (2004), 4644 (2008).

~~18-0310.1. Performers of sidewalk entertainment for remuneration—permit required.~~

~~No person shall engage in any form of sidewalk entertainment on public property in the Central Business District while requesting, either through direct or passive solicitation, any form of remuneration without having first obtained a professional sidewalk entertainment permit pursuant to this article.~~

Source: 4644 (2008).

~~18-0310.2. Sidewalk entertainer or performer for remuneration—permit required seventy-two hours prior to performance.~~

~~No person shall engage in professional sidewalk entertainment unless he has obtained, at least seventy-two (72) hours prior thereto, a permit for professional sidewalk entertainment.~~

Source: 4644(2008).

~~18-0310.3. Professional sidewalk entertainer application—fee—agreement to comply with regulations.~~

- ~~A.—Application.—An application for professional sidewalk entertainment shall be submitted to the Planning Director. The permit applicant shall complete the application form provided by the city and shall provide the applicant's name, address, and telephone number along with a recent photograph showing the head and shoulders in a clear and distinguishable manner. The Planning Department may take the photograph if the applicant is unable to provide a photograph. The applicant shall also provide a description of the entertainment. Persons under the age of eighteen may apply for a permit provided that the parent or guardian of the minor co-signs the application and hold harmless statement and accompanies the minor at all times during a performance.~~
- ~~B.—Fee.—Permit fees for sidewalk entertainment for remuneration shall be set by resolution of the board of city commissioners. The permit fee shall be payable at the time an application is submitted.~~
- ~~C.—Hold harmless agreement.—As part of applying for and obtaining a professional sidewalk entertainer permit, the permittee agrees to hold the city and its employees harmless from any and all claims or causes of action arising out of or related to the permitted activity.~~
- ~~D.—Permits nontransferable.—Permits for professional sidewalk entertainment may not be transferred to, or held by, a person, firm, or entity other than the permittee.~~
- ~~E.—Receipt of permit—agreement to comply with regulations.—Upon receipt of and signing the permit for professional sidewalk entertainment, the applicant agrees to comply with all rules and regulations established under this article as well as with all other applicable Fargo city ordinances or related regulations. The applicant also acknowledges that the permit may be immediately revoked or suspended as a result of any violation of applicable city ordinances or related regulations.~~
- ~~F.—Effective date of permit.—Each professional sidewalk entertainment permit shall be effective for a period of one year from the time that it is issued; provided, however, that a shorter effective period may be prescribed for professional sidewalk entertainment by resolution of the board of city commissioners.~~

Source: 4644 (2008).

~~18-0310.4. Denial of professional sidewalk entertainment permit—appeal.~~

~~A person whose application for a professional sidewalk entertainment permit is denied may appeal to the city administrator for review of the denial. The appellant shall file the appeal in writing to the office of the city commission within ten days from the date the application is denied. The city administrator shall provide notice and opportunity to be heard. Further right of appeal shall be to the city commission, which shall constitute the final administrative decision.~~

Source: 4644 (2008).

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18-0310.5. Suspension of sidewalk entertainer permit—review process.

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A. Suspension based on violations. If the planning director determines that a professional sidewalk entertainer is in violation of one or more of the provisions of this article, the planning director may suspend professional sidewalk entertainer's permit for a period of not more than ninety (90) days. The planning director shall provide written notice to the permittee of the suspension, including the period of suspension and the basis for the suspension. The period of suspension shall commence from the time of delivery of the written notice to the permittee. Delivery shall be deemed to have been completed upon the earlier of (1) personal delivery of the written notice upon the permittee, (2) the expiration of three days after delivery of the written notice by any form of mail or third-party commercial delivery addressed to the address noted on the permittee's application and requiring a signed receipt and resulting in delivery to that individual.

B. Review of suspension order. The permittee may appeal the suspension by filing written notice of appeal with the office of the city commission within ten (10) days of delivery of the notice of suspension. The permittee's appeal shall be heard by the city administrator who shall provide the permittee with an opportunity to explain the basis for his challenge of the suspension. The city administrator is authorized to affirm, reverse, modify or amend the order of suspension, or to remand the matter to the planning director for further action as the city administrator may deem appropriate. A decision of the city administrator may be appealed to the board of city commissioners by filing a notice of appeal with the office of the city commission within ten (10) days of delivery of the notice of decision by the city administrator with the executive assistant. The permittee may not engage in sidewalk entertainment after revocation of the permit or during a suspension period even if an appeal of the order of revocation or suspension is pending.

Source: 4644 (2008).

18-0310.6. Revocation of professional sidewalk entertainer permit.

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A. A professional sidewalk entertainer permit obtained through fraud or material misrepresentation on the permittee's application shall be void and the city administrator is authorized to revoke the permit. Prior to revocation, the city administrator or his designee shall provide the permittee notice and an informal opportunity to be heard on the decision to revoke.

B. A professional sidewalk entertainer permit may be revoked by the city administrator if the Planning Director or court has made a finding that the professional sidewalk entertainer has violated one or more provisions of this article at least two times within any twelve-month period, or if it is found that continued operation by the permittee would jeopardize the health, safety or general welfare of the public. Prior to revocation, the city administrator or his designee shall provide the permit holder notice and an informal opportunity to be heard regarding the decision to revoke a permit.

C. Any revocation of a permit under subsections A or B of this section shall be for the remainder of the current permit period.

D. The decision of the city administrator or his designee to revoke a sidewalk entertainer permit under subsection A or B shall be provided in writing to the permittee. The revocation decision may be appealed to the city commission upon the filing of a written appeal with the city commission office within ten days of receiving the city administrator's written decision concerning revocation of the permit.

Source: 4644 (2008).

18-0310.7. Trespass—sidewalk entertainer.

Nothing in this article shall be construed to allow a sidewalk entertainer, professional or otherwise, to trespass upon privately owned property.

Source: 4644 (2008).

~~**18-0310.8. Requests for remuneration during sidewalk performance without a permit—
infraction.**~~

~~Any person who performs or engages in sidewalk entertainment without a sidewalk entertainment permit and who requests any form of remuneration, either directly or passively, shall be guilty of an infraction. Only performers with a valid sidewalk entertainment permit issued pursuant to the provisions in this article may solicit remuneration, either directly or indirectly, during their sidewalk entertainment.~~

~~Source: 4644 (2008).~~

18-0311. Pushcarts.

Pushcarts meeting the requirements of this article shall be allowed in the pedestrian way of the Central Business District provided a permit is first obtained and provided that all pushcarts and their operators shall meet the following:

- A. The pushcart shall not be motorized or propelled in any manner other than the walking motion of person operating the pushcart, with the exception that persons with disabilities may use a motorized system to propel the pushcart. No motorized assistance shall be used to locate the pushcart on the sidewalk or public place, with the exception that persons with disabilities may use motorized assistance.
- B. With the exception of grilling performed on approved grilling pushcarts, pushcarts may not be utilized to cook foods, but only to heat and hold previously cooked foods at a safe temperature. The city health department shall have the authority to determine whether a food product requires cooking or may be re-heated. The pushcart shall be covered with an appropriate material to prevent exposure of the food or food product to wind, dust, insects and the elements and shall meet any such other regulations as may be required by the city health department or any other applicable regulatory agency. The pushcart operator shall display, in plain view, all required permits as set forth by federal, state, and local laws and shall provide a copy of health department and other regulatory agency permits and/or licenses to the city prior to the issuance of a permit by the city for the pushcart. The pushcart operator shall continuously maintain the required approvals, permits and/or licenses and provide evidence to the city of the continuous maintenance of them.
- C. The pushcart shall have attached to it a proper container for the collection of waste and trash. The pushcart operator shall be responsible for the proper disposal of waste and trash associated with the pushcart operation. No grease, waste, trash or other debris from the pushcart operation shall be deposited on or released onto city property, which includes the streets, sidewalk or other public place nor into the gutter or storm drainage system. The pushcart operator shall keep the immediate area in a ~~5~~10-foot radius from the center of the pushcart clean of garbage, trash, paper, cups, cans or litter associated with the pushcart operation. Unless otherwise permitted by the city, a pushcart operator shall not locate a container for the collection of waste and trash on the streets, sidewalks or public places nor use city trash receptacles, city street cans or other city waste disposal containers for the disposal of waste and trash associated with the pushcart operation. A three-foot by five-foot (3' x 5') mat shall be used with pushcarts from which foodstuff is sold. Said mat must comply with standards set by the National Sanitation Foundation, or with equivalent standards.

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- D. The pushcart shall not have attached to it any bell, siren, horn, loudspeaker or any similar device to attract the attention of possible customers, nor shall the permit holder use any such device to attract attention.
 - E. Signs attached to the pushcart shall comply with the requirements article 25-03 of the Fargo Municipal Code, regarding outdoor advertising, including the Fargo Sign Code incorporated by reference therein.
 - F. The pushcart shall be set up only in the location set forth in the operator's permit issued by the city, and shall not impede, endanger or interfere with pedestrian or vehicular traffic.
 - G. The pushcart shall be set up so that a minimum of six feet of passage for pedestrians shall be provided at all times.
 - H. The pushcart shall not be stored, parked or left overnight on any street or sidewalk or in any parking space of the city.
 - I. The pushcart shall operate only at times between the hours of 7:00 a.m. and 2:00 a.m.
 - J. No item related to the operation of the pushcart shall be placed on the street, sidewalk, public place or anywhere other than in or on the pushcart.
 - K. Pushcart operators shall not consume nor be under the influence of alcohol or controlled substance while operating the pushcart.
 - L. The dimensions of the pushcart shall be no greater than the following:
 - 1. 4 feet 6 inches in height as measured from the ground to the highest point of the pushcart; and
 - 2. 24 square feet as measured in length and width (the overall footprint), excluding any trailer hitch; and
 - 3. 5 feet for the height of any umbrella affixed to the pushcart, as measured from the base of the umbrella to the highest point of the umbrella. No freestanding umbrella or canopy shall be used.

The city reserves the right to require smaller dimensions based upon such factors as, but not limited to, pedestrian and vehicular safety and adequate sight distances.
 - M. The pushcart permit holder or her/his designee shall be in attendance at the pushcart at all times, except in case of an emergency.
 - N. The pushcart operator shall comply with all federal, state and local laws when operating the pushcart.
 - O. Design of pushcarts which are to be permitted for the Central Business District must be approved by the planning director or her/his designee, using the city's downtown design review guidelines, prior to a permit being issued for their use in the Central Business District. The applicant must provide a photograph, drawing or sketch of the design of pushcart as part of the application for a permit.
 - P. Pushcarts may not be located nearer than 65 feet from any other pushcart vendor. Pushcarts may not be located nearer than 65 feet from a business that holds a limited restaurant license or a restaurant license issued by the city health department; provided, however, that a pushcart may be located in front of the sponsoring restaurant for said pushcart or the base of commissary operations for the pushcart, as the case may be.
 - Q. No pushcart vendor shall sell, offer for sale, or solicit offers to purchase from any motor vehicle.
 - R. The owner or operator of a grilling pushcart must obtain permission from the city health department and the planning director before the grilling pushcart may be used for grilling. A grilling pushcart must meet the standards set by the National Sanitation Foundation, or equivalent nationally-recognized standards for food equipment and must be constructed of appropriate material, must be of adequate

size, must be readily cleanable and must be in good repair, as approved by the city health director. In addition, a grilling pushcart must comply with all requirements of a pushcart set forth herein.

Source: 4379 (2004).

18-0312. Outdoor merchandise areas.

No person may own, set up or operate an outdoor merchandise area without first obtaining a permit. The planning director is authorized to issue a permit for an outdoor merchandise area that extends no more than thirty-six (36) inches beyond the property boundary adjacent to a public sidewalk. An outdoor merchandise area that extends more than thirty-six (36) inches beyond the property boundary adjacent to a public sidewalk shall not be allowed without the owner or operator first obtaining a permit in the form of an encroachment agreement pursuant to the provisions of this article.

Permit holders for outdoor merchandise areas and their employees shall meet the following:

- A. Outdoor merchandise areas shall be located only in the area designated by the city and indicated in the encroachment agreement or on the permit, specifically excluding roadways. Merchandise and the fixtures or devices on which it is displayed shall be located so that they do not impede, endanger or interfere with pedestrian or vehicular traffic.
- B. Merchandise and the fixtures or devices on which it is displayed shall be located so that a minimum of 6 feet of unobstructed clearance for pedestrian traffic, or the minimum required by the Fargo Building Code or the Americans with Disabilities Act, whichever requirement is more restrictive, shall be provided at all times.
- C. No fixtures or devices on which outdoor merchandise is displayed shall be attached to the sidewalk or other public area without the permission of the city in the encroachment agreement.
- D. Outdoor merchandise areas will be permitted only adjacent to the building or structure in which the retail business is located and shall not be permitted next to the curb of the street or in the middle of the sidewalk. In no event shall outdoor merchandise areas be permitted in roadways.
- E. Merchandise and the fixtures or devices on which the merchandise is displayed must not block regulatory signs, crosswalks or intersections and shall be sufficiently lit during times of low light in order to provide for safe pedestrian passage alongside the outdoor merchandise area.
- F. All merchandise located within an outdoor merchandise area shall be placed so that the outdoor merchandise and the fixtures or devices on which the merchandise is displayed are stable and not easily tipped and do not include sharp edges, protrusions, or other features which may be hazardous to the public. No canopy may be placed over a building exit.
- G. All displays of merchandise within the outdoor merchandise area must meet a minimum height of 28 inches tall or of sufficient size or height so that safe pedestrian traffic is not impeded or must comply with the requirements of the Americans with Disabilities Act, whichever requirement is more restrictive.
- H. All merchandise and the fixtures or devices on which the merchandise is displayed shall be moved inside the building or structure wherein the retail business is located during hours the retail business is open and during inclement weather, including, but not limited to, heavy rain, wind, ice or snow.
- I. All merchandise and the fixture, or devices on which the merchandise is displayed must be secured so that it may not be dislodged during windy or stormy weather prior to being moved inside the building or structure wherein the retail business is located.

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- J. In the event of a declared emergency or in a situation where exigent circumstances arise, a permit holder shall remove all articles from the sidewalk when directed to do so by any law enforcement officer, fire official or emergency medical personnel.
 - K. The permit holder for the outdoor merchandise area shall be responsible for the maintenance, upkeep and security of the devices on which the merchandise is displayed and the city shall not be responsible for the same.
 - L. The permit holder for the outdoor merchandise area shall be responsible for keeping the outdoor merchandise area clean of garbage, trash, paper, cups, cans or litter associated with the operation of the outdoor merchandise area, and shall be responsible for clean up or repair of the sidewalk caused by use of the outdoor merchandise area.
 - M. The permit holder for the outdoor merchandise area shall not have on the premises any bell, siren, horn, bullhorn or similar loudspeaker or any such device to attract the attention of possible customers nor shall the permit holder use any such device to attract attention.
 - N. Outdoor merchandise areas shall not include merchandising of any live animals.
 - O. Alcoholic beverages may not be displayed or sold from outdoor merchandise areas.

Source: 4379 (2004).

18-0313. Outdoor dining areas.

No person may own, set up or operate an outdoor dining area without first obtaining a permit. The planning director is authorized to issue a permit for an outdoor dining area that extends no more than forty-two (42) inches beyond the property boundary adjacent to a public sidewalk. An outdoor dining area that extends more than forty-two (42) inches beyond the property boundary adjacent to a public sidewalk; includes placement of a fence, rope or similar structure, as may be necessary for the serving of alcoholic beverages, or a canopy or similar structure on the sidewalk; or which is placed at a location other than immediately adjacent to the appurtenant building shall not be allowed without the owner or operator first obtaining a permit in the form of an encroachment agreement pursuant to the provisions of this article.

Permit holders for outdoor dining areas and their employees shall meet the following:

- A. The permit holder shall set up the outdoor dining area, including, but not limited to, the furniture, canopies, fencing and/or other accessories used for the outdoor dining area, only in the area designated by the city in the encroachment agreement or on the permit, specifically excluding roadways. The outdoor dining area shall not impede, endanger or interfere with pedestrian or vehicular traffic.
- B. Furniture, canopies, fencing and/or other accessories used for the outdoor dining area shall be located so that a minimum clearance of 44 inches of unobstructed clearance within the pedestrian way, or the minimum required by the Fargo Building Code or the Americans with Disabilities Act, whichever is more restrictive, shall be provided at all times.
- C. The permit holder shall provide proper containers or some other means for the collection of waste and trash within the outdoor dining area permitted. The permit holder shall keep the immediate area around the outdoor dining area and the outdoor dining area clean of garbage, trash, paper, cups, cans or litter associated with the operation of the outdoor dining area. All waste and trash shall be properly disposed of by the permit holder.
- D. The permit holder shall comply with all city health and other applicable regulatory agency requirements, including, but not limited to, the requirements for food service. The permit holder shall

display in a conspicuous location all such required permits and/or licenses and shall provide copies of those permits and/or licenses to the city prior to issuance of a permit for an outdoor dining area by the city. The permit holder shall continuously maintain the required approvals, permits and/or licenses and provide evidence to the city of the continuous maintenance of them.

- E. The permit holder shall be responsible for the maintenance, upkeep and security of the furniture and accessories of the outdoor dining area and the city shall not be responsible for the same.
- F. The permit holder shall not have on the premises any bell, siren, horn, loudspeaker or any similar device to attract the attention of possible customers nor shall the permit holder use any such device to attract attention.
- G. Employees of the permit holder for the outdoor dining area shall not consume alcoholic beverages while working in the outdoor dining area.
- H. For any outdoor dining area where alcoholic beverages are served, the permit holder shall comply with all state and local regulations for the sale, possession and/or consumption of alcoholic beverages and shall provide the city with a copy of any and all required permits or licenses for the sale, possession and/or consumption of alcoholic beverages and the diagram and/or plans showing the location of the outdoor dining area which were submitted for the permit or license. In addition, the area where alcoholic beverages are sold, possessed and/or consumed must be effectively partitioned by rope, temporary fence, or other device designed and intended to separate the outdoor dining area from passersby.
- I. The permit holder shall comply with the prohibitions on disturbing, annoying and unnecessary noises set forth in article 11-02 of the Fargo Municipal Code.
- J. Design of the furniture and accessories for an outdoor dining area to be located in the Central Business District must be approved by the planning director prior to a permit being issued for their use in the Central Business District. The applicant must provide a photograph, drawing or sketch of the design of the furniture and accessories to be used for the outdoor dining area as part of the application for a permit.
- K. Tables, chairs, ropes, fences and any other structure or item placed on the sidewalk must be removed from the sidewalk at the end of the business day, at business closure, or in the event of inclement weather, unless arrangements for assembly and storage of such items on a part of the sidewalk are approved in an encroachment agreement.
- L. Cooking, food preparation or self-service food shall not be allowed in such outdoor dining areas.
- M. No canopy may be placed over a building exit.

Source: 4379 (2004).

18-0314. Community events and festivals.

The planning director is hereby authorized to grant a permit, after notice, a hearing before the review committee and approval by vote of the majority of the members of the review committee in attendance, for certain types of community events or festivals to take place upon the public streets, sidewalks, squares, avenues or alleys of the city.

- A. The sponsor of the event or festival shall submit to the planning director a written application for a permit at least 45 days prior to the opening of the community event or festival for which a permit is desired. The application shall state:
 - 1. The time, date and location of the festival or event;

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2. The group, firm or individual by whom the festival or event will be sponsored;
 3. The purpose of the festival or event;
 4. The activities that will be held.
- B. A hearing must be held by the review committee, after notice of the application and of the hearing is given. The provisions of sections 20-0901 through 20-0904 of the Land Development Code shall apply to the requirements for such applications, notice, the burden of proof or persuasion and date of decision and time period for appeals, with the exception that appeals of final decisions must be filed within 24 hours of the date of the decision. The decision of the review committee may be appealed to the board of city commissioners.
- C. In granting permits for community events and festivals, the review committee shall consider the following:
1. The nature of the event or festival and how it can serve the community of the city and its citizens;
 2. The time period during which the event or festival will occur;
 3. The location of the event or festival and whether the location inhibits the safe flow of traffic in the city;
 4. Whether the activities would be in compliance with other applicable laws;
 5. Whether the event or festival is to benefit nonprofit community service organizations. Commercial events or festivals which generate profit for the private sector, other than profit incidental to the festival or event which is made by persons other than the sponsor of the festival or event, shall be permitted only if the applicant submits evidence to the review committee that the event or festival constitutes a community service; and
 6. The general health, safety and welfare of the participants in the event or festival and the citizens of the city.
- D. The annual Downtown Street Fair, sponsored by the Downtown Community Partnership, is deemed a festival and shall be automatically allowed.
- E. The sponsor of the event or festival shall provide all cleaning services necessary to rid the festival area of all debris and litter created as a result of the event or festival.
- F. The issuance of a permit to a sponsor shall authorize only that sponsor and participants specifically authorized by the sponsor to participate in that community event or festival without the restrictions imposed by this chapter.
- G. Authorized participants in a community event or festival for which a permit has been issued shall not be required to obtain a city permit required by the provisions of sections 18-0307 through 18-0316, for the period during which the community event or festival takes place; provided, however, that in no event may any person affix any structure to the sidewalk or other public right of way during such community event or festival without an encroachment agreement.
- H. Community events and festivals will be posted in city hall, near the office of the city auditor and on the city's website.

Source: 4379 (2004).

18-0315. Planning director to issue permits.

The planning director shall be authorized to issue permits under this article for a term of up to one year. Such permits may be extended for additional periods of up to one year per extension. The denial of a permit by the planning director may be appealed to the review committee by delivery of notice of appeal within five business days of the date notice of decision is mailed to the applicant whose application has been denied. The planning director may designate one or more city employee to exercise the planning director's functions under this article.

Source: 4379 (2004).

18-0316. Application.

Businesses or property owners within the Central Business District are eligible to obtain a permit under this article for use of the sidewalk fronting said business or property and of the sidewalk in general as to pushcart operators. Each application for an encroachment agreement for an outdoor dining area or outdoor merchandise area shall be filed with the planning director and shall include, but not be limited to, the following:

- A. The name, address and telephone number of the applicant.
- B. For permits to allow outdoor dining areas, the application shall include a site plan showing the proposed location of furniture, canopies, fencing and other accessories for the outdoor dining area; a description, drawing, sketch, or photograph showing the design of all furniture, fencing, canopies and accessories to be used in the outdoor dining area; location for the outdoor dining area; and other pertinent information related to the use of the outdoor dining area. For permits to allow outdoor merchandise areas, the application shall include a site plan showing the location of the outdoor merchandise area, the proposed location of fixtures or devices on which the merchandise is to be displayed, and other pertinent information related to the use of the outdoor merchandise area.
- C. For permits to allow pushcarts, the application shall include the name and phone number of the sponsoring restaurant or the location of the base of commissary operations that has been approved by the city health department and the application shall include information about the type of food or other product to be sold; proposed times and area of operation; description, drawing, sketch, or photograph of the type of pushcart to be used; and other pertinent information related to the method of doing business under the permit.
- D. For permits for pushcarts to allow the sale of food, food products and/or beverages and for permits or encroachment agreements for outdoor dining areas, the applicant shall provide and maintain a certificate of insurance for comprehensive general liability and products and completed operations coverage in a minimum amount of \$1,000,000.00 per occurrence and in the aggregate, provided that those certificates may be furnished as evidence of such coverage purchased for the applicant's principal place of business for serving food, food products and/or beverages, so long as such certificates meet the minimum acceptable requirements established in this section. For permits or encroachment agreements for outdoor merchandise areas, the applicant shall provide and maintain a certificate of insurance for comprehensive general liability and products and completed operations coverage in a minimum amount of \$1,000,000.00 per occurrence and in the aggregate, provided that those certificates may be furnished as evidence of such coverage purchased for the applicant's retail business, so long as such certificates meet the minimum acceptable requirements established in this section. All certificates shall be issued by an insurance company authorized to do business in North Dakota, shall name the city as additional insured and shall provide that the policy shall not terminate or be canceled prior to the expiration date without 30 days advance written notice to the city. The permit holder or encroachment agreement party shall continuously maintain the insurance required by this section and shall continuously provide the city with evidence of the insurance required by this section.

- E. The permit holder shall execute a statement on the permit application wherein the applicant holds harmless and indemnifies the city from any claims or causes of action arising out of or related to the permitted activity, including, but not limited to, compliance with the Americans with Disabilities Act, the Fargo Building Code and all other health and safety laws and regulations.
- F. Written approval from the city health department and/or other applicable regulatory agency showing that the outdoor dining area has been inspected and is in compliance with current requirements for food handling establishments or sale of other product.
- G. Such additional information as may be requested by the planning director or review committee which may be necessary to determine compliance with this article.
- H. Payment of the permit fee and/or encroachment fee set by resolution of the board of city commissioners.
- I. The planning director shall have the same remedies and enforcement powers as are set forth in article 20-011 of the Land Development Code.

Source: 4379 (2004).

18-0317. Encroachment agreements.

The planning director is hereby authorized to execute encroachment agreements only in the Central Business District, as defined in article 18-03, after notice, a hearing before the review committee and approval by vote of the majority of the members of the review committee in attendance.

The procedure for obtaining an encroachment agreement authorizing a structure or merchandise on the sidewalk or other public place shall be as follows:

- A. Written application shall be made to the planning director or her/his designee. If the property is being leased, the lessee shall also sign the application.
- B. The application shall include those items described in section 18-0316.
- C. The application shall state the reason the encroachment is being requested.
- D. Before approving an encroachment agreement, a hearing must be held by the review committee, after notice of the application and of the hearing is given. The provisions of sections 20-0901 through 20-0904 of the Land Development Code shall apply to the requirements for such applications, notice, the burden of proof or persuasion and date of decision and time period for appeals, with the exception that appeals of final decisions must be filed within 24 hours of the date of the decision. The decision of the review committee may be appealed to the board of city commissioners.
- E. An encroachment agreement with property owners (and lessees, where applicable) may only be executed by the planning director after a hearing on the application and approval by vote of a majority of the members of the review committee in attendance. An application for an encroachment agreement with property owners (and lessees, where applicable) may only be approved if the review committee determines that the encroachment can be allowed without detriment to the health, safety and welfare of the general public. In determining what constitutes detriment to the health, safety and welfare of the general public, the following factors, among others not specifically enumerated, shall be considered:
 - 1. The location, type and size of the encroachment, including the encroaching structure(s) or merchandise.
 - 2. The proximity of the encroaching structure(s) or merchandise to a traveled road, whether public or private.

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3. Whether the encroaching merchandise, display, tables, chairs or other structure(s) will unreasonably interfere with pedestrian or vehicular passage or safety.
 4. Whether the encroaching structure(s) or merchandise will interfere with an existing water or wastewater line, storm water facility or other utility.
- F. The review committee shall set forth in writing the reason for granting or denying an encroachment pursuant to this section. The terms of an encroachment agreement shall include, but not be limited, to the following:
1. The agreement shall be subject to termination upon 30 days notice at such time as the review committee may deem the encroachment, including activities associated with the encroachment, to create a safety hazard to pedestrians or vehicular traffic or other safety hazard or a public nuisance or otherwise not be in keeping with the health, safety and welfare of the general public.
 2. The owner (and lessee, where applicable) obtaining the encroachment agreement shall agree that, upon such termination, if the owner (or lessee, where applicable) shall fail to remove the encroachment within 30 days following the giving of the notice by the city in accordance with subsection F(1) of this section, the city shall be authorized to remove the encroaching structure and recover all costs associated therewith from the property owner.
 3. The property owner (and lessee, if applicable) shall agree to indemnify and hold harmless the city from any and all liability that may arise by virtue of the encroachment, including, but not limited to, compliance with the Americans with Disabilities Act, the Fargo Building Code and all other health and safety laws and regulations. The applicant shall provide and maintain a certificate of insurance for comprehensive general liability and products and completed operations coverage in a minimum amount of \$1,000,000.00 per occurrence and in the aggregate providing coverage for all the dates of the approved festival or community event, including the days allowed for set up and tear down of such festival or event. All certificates shall be issued by an insurance company authorized to do business in North Dakota, shall name the city as additional insured and shall provide that the policy shall not terminate or be canceled prior to the expiration date without 30 days advance written notice to the city.
 4. If the property is sold or, where applicable, if the lease is terminated after execution of the encroachment agreement, the encroachment agreement shall be null and void and a new encroachment agreement with the new property owner and, where applicable, with the lessee, shall be required prior to the encroachment being permitted to continue.
 5. The length of the term of the encroachment agreement, which term may not exceed three years. Upon filing and review of a renewal application, an encroachment agreement may be extended for additional periods of up to three years per extension.
- G. No structure may be affixed to the sidewalk, or any street or other public property, without an encroachment agreement approved by the board of city commissioners. Neither the review committee nor the planning director have authority to approve or enter into encroachment agreements for any such fixture.

Source: 4379 (2004).



ASSESSMENT DEPARTMENT

38

June 23, 2022

Board of City Commissioners
City Hall
Fargo, ND 58102

Dear Commissioners:

Chapter 57-02.2 of the North Dakota Century Code provides for a property tax exemption for certain types of improvements made to existing buildings.

I have attached a copy of an application for real estate tax exemption of building improvements for the property at 3302 11 St S as submitted by Bunnie R Messelt T/O/D. A description of the property involved, types of improvements to be made, and assessment information are indicated on the application.

It is my opinion that the value of some of the improvements, referred to in the application, qualifies for the exemption. This exemption would be for 5 years.

The estimated annual tax revenue lost by granting the exemption, based upon the estimated cost of the improvements, would be about \$158 with the City of Fargo's share being \$27.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike Splonskowski".

Mike Splonskowski
City Assessor

nlb
attachment

Application For Property Tax Exemption For Improvements To Commercial And Residential Buildings

N.D.C.C. ch. 57-02.2

(File with the city assessor or county director of tax equalization)

Property Identification

1. Legal description of the property for which exemption is claimed Lot 5 Blk 2
Harwood Groves 5th

2. Address of Property 3302 11 St S

3. Parcel Number 01-1148-00080-000

4. Name of Property Owner Bunnie Messelt T/O/D Phone No. 701-799-8317

5. Mailing Address of Property Owner 3302 11 St S

Description Of Improvements For Exemption

6. Describe type of renovating, remodeling, alteration or addition made to the building for which exemption is claimed (attach additional sheets if necessary). Bath remodel

7. Building permit No. 22010949 8. Year built (residential property) 1992

9. Date of commencement of making the improvements 1/28/22

10. Estimated market value of property before the improvements \$ _____

11. Cost of making the improvement (all labor, material and overhead) \$ 18,875.50

12. Estimated market value of property after the improvements \$ _____

Applicant's Certification And Signature

13. I certify that the information contained in this application is correct to the best of my knowledge.

Applicant Bunnie R Johnson-Messelt Date 6-8-22

Assessor's Determination And Signature

14. The assessor/county director of tax equalization finds that the improvements described in this application do not meet the qualifications for exemption for the following reason(s): _____

Assessor/Director of Tax Equalization Mike Starbuck Date 7-8-2022

Action Of Governing Body

15. Action taken on this application by the governing board of the county or city: Approved Denied

Approval is subject to the following conditions: _____

Exemption is allowed for years 20 __, 20 __, 20 __, 20 __, 20 __.

Chairperson _____ Date _____