FARGO CITY COMMISSION AGENDA
Monday, July 26, 2021 - 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 12, 2021).

CONSENT AGENDA – APPROVE THE FOLLOWING:

1. 2nd Reading and final adoption of the following Ordinances:
   a. Relating to Classification of Ordinance Violations (tobacco products to minors).
   b. Relating to Classification of Ordinance Violations (minors in liquor establishments).
   c. Relating to Ordinances – Violation.
   d. Rezoning Certain Parcels of Land Lying in Valley View Estates Second Addition.
   e. Rezoning Certain Parcels of Land Lying in Eagle Valley Fifth Addition.

2. Findings of Fact, Order and Notice for property located 305 University Drive South.

3. Concur with the findings of staff and the Liquor Control Board and apply the penalty matrix to the liquor license violations identified at Brewtus Clubhouse.

4. Concur with the findings of staff and the Liquor Control Board and apply the penalty matrix to the liquor license violations identified at the Avalon.

5. Concur with the findings of staff and the Liquor Control Board and apply the penalty matrix to the liquor license violations identified at Chipotle.

6. Concur with the findings of staff and the Liquor Control Board and apply the penalty matrix to the liquor license violations identified at West Acres Bowl/Cactus Jacks.

7. Amended Gaming Site Authorization for Metro Sports Foundation at Brewtus Clubhouse.

8. Application for Games of Chance for bingo and a calendar raffle at Holy Spirit Catholic Church from 9/15/21 to 10/10/21.

9. Milestone No. 1 (Change Order No. 1) for a time extension to 8/20/21 for Project No. FM-19-A3.

10. Pipeline Easement with Northern States Power Company (Xcel Energy).

11. Land Use Agreement with Epic Gateway East Real Estate Holdings, LLC.

12. Payment to Dirt Dynamics in the revised amount of $116,138.87 for emergency sanitary sewer repair at 23rd Street and 1st Avenue South.

13. Receive and file General Fund – Budget to Actual through June 2021 (unaudited).

14. Bid award for a Technology Consultant for planning and management of the financial operating systems upgrade project (RFP21029).

15. Agreement with Center Point Tactical LLC.

16. Notice of Grant Award with the ND Department of Health for water pollution – EPA block (CFDA #66.605).

17. Financial Award from the ND Department of Commerce/Division of Community Services for a ND Homeless Grant at the Gladys Ray Shelter.

18. Notice of Grant Award from the ND Department of Health and Human Services for gardening in the child care setting (CFDA #93.898).

19. Request for out-of-grade pay for Michael Sanden at the Police Department effective 7/12/21.

20. Proposal from NewIntelligence for the conversion of the COGNOS report writing software (SSP21093).

21. Bid award for conduit and fiber for the City of Fargo (RFV21124).

22. Set August 9, 2021 at 5:15 p.m. as the date and time for a Hearing on a dangerous building at 711 10th Avenue North.

23. Change Order No. 1 in the amount of $5,160.00 and No. 2 in the amount of $60,000.00 for the Mid America Steel demolition.

24. Bid award for 2022 spring tree order (RFP21122).

25. Bid award for fuel purchase for the 1st and 2nd quarters of 2022 (RFV21123).

26. Task Order No. 2 with AE2S in the amount of $39,500.00 related to the development of a Revenue Adequacy Model for the Solid Waste Division.

27. ND Department of Transportation Section 5310 Transit Grant Agreement for mobility management activities (Contract No. 38210812).

28. Bills.

29. Change Order Nos. 1-5 in the amount of $221,143.38 ($112,321.69-City Portion) for Improvement District No. FM-20-C0.

30. Bid award for Improvement District No. BN-21-K1.

31. Contracts and bonds for Improvement District Nos. NR-20-A2 and NR-20-A3.

REGULAR AGENDA:

32. **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).**
    a. Mayor Mahoney would like to have a discussion on the Resident Comment period.

33. ***Public Input Opportunity* - PUBLIC HEARINGS - 5:15 pm:**
    a. CONTINUE to 8/9/21 – Application for a Class "GH" Alcoholic Beverage License for Youngblood Coffee Roasters d/b/a Youngblood Coffee to be located at 623 2nd Avenue North.

    b. CONTINUE to 8/9/21 – Application for a Class "A-Club" Alcoholic Beverage License for Touchmark at Harwood Groves, LLC d/b/a Touchmark at Harwood Groves to be located at 1200 Harwood Drive South.

    c. Community Development Block Grant (CDBG) and HOME Investment Partnerships Program (HOME) Amendments to the 2020 Action Plan, 2019 Action Plan (CDBG-CV) and Citizen Participation Plan.

    d. Application filed by Tecton Products, LLC for a Payment in Lieu of Tax Exemption (PILOT) for a project located at 4401 15th Avenue North which the applicant will use in the operation of design and manufacturing custom fiberglass pultrude parts.

34. Drought Status and Water Supply Project Update:
    a. Recommendation to approve the Interim Financing Agreement, Series C with Garrison Diversion Conservancy District, Lake Agassiz Water Authority, City of Fargo and Grand Forks.

35. Construction Update.

36. COVID-19 Update.

37. Request for a new Alcoholic Beverage License Classification.

38. Receive and file the Brownfield Assessment Report for the Mid America Steel site.

39. Recommendation to Adopt a Resolution Approving the 2021-2022 Wildlife Management Program.

40. Recommendation to Adopt a Resolution Authorizing the Sale of the Island Park Parking Ramp at 500 Main Avenue.

41. Letter from the City Attorney regarding his opinion on the City's term limits Ordinance.

42. Request from Commissioner Preston to develop a Rental Licensure Program.

43. Applications for property tax exemptions for improvements made to buildings:
    a. RT Sliwinkski, 2831 27th Street South (3 year).
    b. ADOC Property II LLC, 2901 12th Avenue North (3 year).
    c. Nicole Mord, 1617 2nd Street North (5 year).

44. Appointments to the Library Board.

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.

THE CITY OF Fargo FAR MORE

Planning & Development
225 4th Street North
Fargo, ND 58102
Office: 701.241.1474 | Fax: 701.241.1526
Email: planning@FargoND.gov
www.FargoND.gov

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MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

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

DATE: JULY 20, 2021

RE: PUBLIC HEARING & APPROVAL OF PROPOSED AMENDMENTS TO COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG, CDBG-CV) / HOME INVESTMENT PARTNERSHIPS PROGRAM (HOME) 2019 ACTION PLAN, 2020 ACTION PLAN, & CITIZEN PARTICIPATION PLAN

The Department of Planning & Development is proposing various actions related to its Community Development Block Grant (CDBG, CDBG-CV) and HOME Investment Partnerships (HOME) programs, which are grants awarded to the City by the U.S. Department of Housing and Urban Development (HUD). The proposed amendments to the 2019 Action Plan, 2020 Action Plan, and Citizen Participation Plan are summarized below. The City Commission is asked to hold a public hearing and then consider the following actions:

Summary of Proposed Amendments:

1. **2020 Annual Action Plan - Project Site, Activity, and Budget Identified under "Affordable Single-Family Housing for Ownership" Project: 1529 10 Avenue South – Lake Agassiz Habitat for Humanity**
   The location of one housing unit has been identified and is located at 1529 10 Avenue South. The activity will include new construction of a single family home. The proposed HOME allocation for this site is up to $185,000. The project will be carried out by Lake Agassiz Habitat for Humanity.

2. **2020 Annual Action Plan - Project Site, Activity, and Budget Identified under "Affordable Single-Family Housing for Ownership" Project: 1410 1 Avenue South – Cass Clay Community Land Trust**
   The location of one housing unit has been identified and is located at 1410 1 Avenue South. The activity will include new construction of a single family home. The proposed HOME allocation for this site is $50,000. The project will be carried out by Cass Clay Community Land Trust.

3. **2020 Annual Action Plan - Project Site, Activity, & Budget Identified under "Affordable Single-Family Housing for Ownership" Project: 1412 1 Avenue South – Cass Clay Community Land Trust**
   The location of one housing unit has been identified and is located at 1412 1 Avenue South. The activity will include acquisition, demolition, and new construction of a single family home. The proposed HOME allocation for this site is $150,000. The project will be carried out by Cass Clay Community Land Trust.

4. **2019 Annual Action Plan - CDBG-CV COVID-19 Prevention, Preparation & Response**
   Proposed change will reallocate the remaining fund balance of $98,936.06 from the CDBG-CV Planning and Administration activity to the CDBG-CV temporary emergency housing assistance, housing navigation, and operational support for homeless prevention and diversion efforts activities. Temporary emergency housing assistance includes rent, mortgage, non-City-owned utilities, and

EQUAL HOUSING OPPORTUNITY

other homeless or eviction prevention-type assistance as approved by the City of Fargo. Providers will make emergency assistance payments directly to the payees (i.e., rental office, utility company, etc.) on behalf of an individual or household. Project partners are SouthEastern North Dakota Community Action Agency (SENDCAA) and Presentation Partners in Housing. *National Objective, Eligibility & Regulation Citation: Low-Mod Clientele Benefit [24 CFR Part 570.208(a)(2)], 03T Operating Costs of Homeless/Aids Patient Programs, 24 CFR Part 570.201(e) or 05Q Subsistence Payments, 24 CFR 570.207(b)(4)*

5. **Citizen Participation Plan**
   HUD requires its Grantees to adopt and periodically update a Citizen Participation Plan that sets forth the City's policies and procedures for citizen participation related to its HUD HOME & CDBG programs. A draft copy of the amended plan may be reviewed at www.FargoND.gov or by request through the Planning & Development Department.

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

Public Notice Published	June 23, 2021
Public Comment Period Begins	June 24, 2021
Provided Information to the Community Development Committee	June 28, 2021
Public Comment Period Ends	July 26, 2021
Public Hearing and Final City Commission Consideration	July 26, 2021

To date, no public comments have been received and the comment period ends on July 26, 2021. Each proposed amendment is detailed in the attached public notice. Once approved, the amendment will be submitted to HUD for approval.

Recommended Motion: Approve proposed amendments to Community Development Block Grant (CDBG, CDBG-CV)/HOME 2019 Action Plan, 2020 Action Plan, and Citizen Participation Plan.

Notice of Public Hearing & Public Comment Period
Community Development Block Grant (CDBG) and HOME Investment Partnerships Program (HOME)
Amendments to 2020 Action Plan, 2019 Action Plan (CDBG-CV), & Citizen Participation Plan

The City of Fargo is proposing various actions related to its Community Development Block Grant (CDBG & CDBG-CV) and HOME Investment Partnerships (HOME) programs, which are grants awarded to the City by the U.S. Department of Housing and Urban Development (HUD). Following a public comment period and subsequent City Commission action on July 26, 2021, a recommendation regarding these actions will be forwarded to HUD for their consideration and approval. All citizens are welcome to submit comments at any time during the public comment period or at the public hearing.

Public Comment Period: June 24 – July 26, 2021

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

Electronic Comments: Planning@FargoND.gov

Public Hearing and Final City Commission Consideration:
Monday, July 26, 2021 - 5:15 p.m.
Fargo City Commission Chambers
225 4th Street North, Fargo ND 58102

Summary of Proposed Amendments:

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Comments & Suggestions

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

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

RESOLUTION APPROVING AMENDMENTS TO THE COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG, CDBG-CV)/HOME 2019 ACTION PLAN, 2020 ACTION PLAN & CITIZEN PARTICIPATION PLAN

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

WHEREAS, the City of Fargo receives Community Development Block Grant (CDBG, CDBG-CV)/HOME funds from United States Department of Housing and Urban Development (HUD); and

WHEREAS, in compliance with federal regulations, the City of Fargo has amended its CDBG, CDBG-CV/HOME 2019 Action Plan, 2020 Action Plan, and Citizen Participation Plan to make available housing and community development resources that primarily address the needs of low to moderate income persons in Fargo; and

WHEREAS, the City of Fargo has conducted a required citizen participation process including a draft publication of the amendments, a public hearing, and a 30-day public comment period.

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

CERTIFICATE

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

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

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

DO HEREBY CERTIFY:

That the foregoing is a full, true and correct copy of the original Resolution, and the whole thereof approving the amendments to the City of Fargo's 2019 Action Plan, 2020 Action Plan, and Citizen Participation Plan for the Community Development Block Grant (CDBG, CDBG-CV) & HOME programs as described in the foregoing Resolution; which Resolution was duly adopted by the Board of City Commissioners of the City of Fargo, North Dakota, at the meeting of the Board held July 26, 2021 at which Regular Meeting all members present voted in favor of the adoption of the Resolution; and

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

(SEAL)

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

ATTEST:

_____
Steven Sprague, City Auditor

On this ____ day of _____, 2021, before me, _____, a Notary Public in and for Cass County, in the State of North Dakota, personally appeared Timothy J. Mahoney, known to me to be the Mayor of the City of Fargo, North Dakota, and Steven Sprague, City Auditor of the City of Fargo, a municipal corporation under the laws of the State of North Dakota, and they acknowledged to me that they executed the foregoing instrument.

_____
Notary Public, Cass County, North Dakota

THE CITY OF Fargo FAR MORE

Tax Exempt Review Committee
Fargo City Hall
225 4th Street North
Fargo, ND 58102
Phone: 701.241.1340 | Fax: 701.241.1339
www.FargoND.gov

33d

July 22, 2021

Board of City Commissioners
City Hall
Fargo, ND 58102

RE: Payment in Lieu of Tax (PILOT) for Tecton Products LLC

Dear Commissioners:

Attached is the application made by Tecton Products LLC. for a 10 year payment in lieu of tax (PILOT) according to N.D.C.C. Chapter 40-57.1. This application is for an addition to the existing building to expand their operation, which involves the manufacture of custom fiberglass building components. This is an expansion of the addition previously approved in March 2021.

Notices to competitors have been published. The Tax Exempt Review Committee has met to consider this application. No potential competitors appeared at the Tax Exempt Review meeting. This project meets our current policy. The application contains information regarding projected value of the expansion, the nature of jobs to be created, and a description of the product line. The applicant will pay the full land tax estimated at approximately $45,600 annually.

The recommendation of the Tax Exempt Review Committee is to approve a 10-year payment in lieu of tax (PILOT).

SUGGESTED MOTION:
Approval of a 10-year payment in lieu of tax for Tecton Products LLC at 4401 15th Ave N with the following terms:

YEAR	IN LIEU PAYMENT	PILOT, Taxable Improvements & Land Tax
1	$0	$116,357
2	$0	$118,685
3	$0	$121,012
4	$0	$123,339
5	$0	$125,666
6	$16,770	$144,763
7	$34,150	$164,470
8	$52,139	$184,787
9	$70,739	$205,714
10	$80,953	$218,255

Sincerely,

Mike Splonskowski
City Assessor

Application For Property Tax Incentives For New or Expanding Businesses

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

Project Operator's Application To Fargo
City or County

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

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

This application is a public record

Identification Of Project Operator

1. Name of project operator of new or expanding business Tecton Products LLC
2. Address of project 4401 15th Ave NW
   City Fargo County Cass
3. Mailing address of project operator PO Box 2712
   City Fargo State ND Zip 58102
4. Type of ownership of project
   ☐ Partnership ☐ Subchapter S corporation ☐ Individual proprietorship
   ☐ Corporation ☐ Cooperative ☑ Limited liability company
5. Federal Identification No. or Social Security No. [redacted]
6. North Dakota Sales and Use Tax Permit No. [redacted]
7. If a corporation, specify the state and date of incorporation N/A
8. Name and title of individual to contact Lisa Giese
   Mailing address PO Box 2712
   City, State, Zip Fargo, ND 58102 Phone No. 701-433-3600

Project Operator's Application For Tax Incentives

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

☐ **Property Tax Exemption**
_____ Number of years
_____ Percent of exemption

☑ **Payments In Lieu of Taxes**
2022 Beginning year 2031 Ending year
See schec Amount of annual payments (attach schedule if payments will vary)

10. Which of the following would better describe the project for which this application is being made:
☐ New business project ☑ Expansion of a existing business project

24734
(Rev. 2/14)

Description of Project Property

11. Legal description of project real property

~~Lot: 1 Block: 1 MARVIN SUBD LT 1 BLK 1 ALSO PT LOT 2 BLK 1 TECTON GPK DESC AS BEG AT SE COR LT 2~~ THE N S 89 DEG 05 MIN 57 SEC W ALG SLY LN LT 2 1163.34 ' TO SW COR LT 2 THEN N 00 DEG 06 MIN 20 SEC W ALG WLY LN LT 2 349.84' THEN N 89 DEG 49 MIN 50 SEC E 1162.86' TO PT OF INTER WITH ELY LN LT 2

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

If the answer to 12 is leased, will the benefit of any incentive granted accrue to the project operator?
☐ Yes ☐ No

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

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

If existing facility, when was it constructed? 1992 and expanded in 1997

If new construction, complete the following:

a. Estimated date of commencement of construction of the project covered by this application July 2021

b. Description of project to be constructed including size, type and quality of construction
Approximately 50,000 square feet manufacturing facility expansion. The construction will be pre-cast concrete.

c. Projected number of construction employees during the project construction 50-60

14. Approximate date of commencement of this project's operations 9/1/2022

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

a. Land ..... $ 0

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

c. Newly constructed buildings and structures when completed ..... $ 5,500,000

d. Total ..... $ 5,500,000

e. Machinery and equipment ..... $

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

a. Land (not eligible) ..... [redacted]

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

c. Newly constructed buildings and structures when completed ..... $ 275,000

d. Total taxable valuation of property eligible for exemption (Add lines b and c) ..... $ 275,000

e. Enter the consolidated mill rate for the appropriate taxing district 277.19

f. Annual amount of the tax exemption (Line d multiplied by line e) ..... $ 76,227.25

Description of Project Business

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

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

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

Tecton Products designs and manufactures custom fiberglass pultruied parts as an OEM supplier to several industries. Pultrusion is the process of pulling fiberglass through a proprietory resin and heated die to form a profile shape. We coat our products with a high quality finish to withstand the harshest environments. Our products are ideal for use as window and door parts, fence posts, deck railing or any application where durability, weatherability, and performance are key.

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

None

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

Year *(12 mo. periods)*	New/Expansion Project only Year 1	New/Expansion Project only Year 2	New/Expansion Project only Year 3	New/Expansion Project only Year 4	New/Expansion Project only Year 5
Annual revenue	See schedul				
Annual expense					
Net income					

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

Current positions & positions added the initial year of project

# Current Positions		New Positions Under $13.00	New Positions $13.01-$15.00	New Positions $15.01-$20.00	New Positions $20.01-$28.00	New Positions $28.01-$35.00	New Positions Over $35.00
249				12	3	1	

Year		(Before project)	Year 1	Year 2	Year 3	Year 4	Year 5
No. of Employees	(1)	239	255	274	289	303	320
	(2)	10	10	10	10	10	10
Estimated payroll	(1)	12,578,0	13,374,0	14,204,0	14,933,0	15,629,0	16,443,0
	(2)	153,000	153,000	153,000	153,000	153,000	153,000

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

Previous Business Activity

22. Is the project operator succeeding someone else in this or a similar business? ☐ Yes ☑ No

23. Has the project operator conducted this business at this or any other location either in or outside of the state?

☑ Yes ☐ No

24. Has the project operator or any officers of the project received any prior property tax incentives? ☑ Yes ☐ No

If the answer to 22, 23, or 24 is yes, give details including locations, dates, and name of former business (attach additional sheets if necessary).

~~Teeton Products Fargo location at the same address above received a payment in lieu of property tax incentive for 20 years beginning in 1998 with the first 5 years at 100% exempt, years 6-10 at 75% exempt, years 11-15 at~~

Business Competition

25. Is any similar business being conducted by other operators in the municipality? ☐ Yes ☑ No

If YES, give name and location of competing business or businesses

_____

_____

Percentage of Gross Revenue Received Where Underlying Business Has ANY Local Competition %

Property Tax Liability Disclosure Statement

26. Does the project operator own real property in North Dakota which has delinquent property tax levied against it? ☐ Yes ☑ No

27. Does the project operator own a greater than 50% interest in a business that has delinquent property tax levied against any of its North Dakota real property? ☐ Yes ☑ No

If the answer to 26 or 27 is Yes, list and explain

_____

_____

Use Only When Reapplying

28. The project operator is reapplying for property tax incentives for the following reason(s):

☑ To present additional facts or circumstances which were not presented at the time of the original application

☐ To request continuation of the present property tax incentives because the project has:

- ☐ moved to a new location
- ☐ had a change in project operation or additional capital investment of more than twenty percent
- ☐ had a change in project operators

☐ To request an additional annual exemption for the year of _____ on structures owned by a governmental entity and leased to the project operator. (See N.D.C.C. § 40-57.1-04.1)

Notice to Competitors of Hearing

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

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

Lisa Giese — Signature

Director of Finance — Title

5/24/2021 — Date

PRIVACY ACT NOTIFICATION

In compliance with the Privacy Act of 1974, disclosure of a social security number or Federal Employer Identification Number (FEIN) on this form is required under N.D.C.C. §§ 40-57.1-03, 40-57.1-07, and 57-01-15, and will be used for tax reporting, identification, and administration of North Dakota tax laws. Disclosure is mandatory. Failure to provide the social security number or FEIN may delay or prevent the processing of this form.

Certification of Governing Body (To be completed by the Auditor of the City or County)

The municipality shall, after granting any property tax incentives, certify the findings to the State Tax Commissioner and Director of Tax Equalization by submitting a copy of the project operator's application with the attachments. The governing body, on the _____ day of _____, 20____, granted the following:

☐ **Property Tax Exemption**

_____ Number of years

_____ Percent of exemption

☐ **Payments in lieu of taxes**

_____ Beginning year _____ Ending year

_____ Amount of annual payments (Attach schedule if payments will vary)

_____
Auditor

Tecton 2021	
Project Operator	Tecton
Parcel Number	01-1884-00010-000
Address	4401 15 Ave N
Date Application Received	6/15/2021
1st Publication Date	6/23/2021
2nd Publication Date	6/30/2021
TRC Meeting Date	6/22/2021
Commission Hearing Date	7/26/2021
Notice Delivery To School/County	06/16/2021 wfsd & 7/2/2021 cass
School/County 30-Day Response	07/16/2021 wfsd & 8/3/2021 cass
Exemption Type	PILOT
Estimated Improvements Value	$5,500,000
Building Value to Remain Taxable	$5,107,500
Estimated Land Value	$3,288,000
County Share of Levy (%)	17.3%
Anticipated Tax Growth	2.0%
Current Mill Levy	277.19
Number of Years Granted	10
Total Gross Estimated Benefit	$576,126

Benefit Summary	
Full Taxes w/o Incentives	
Land	$45,570
Existing Building	$70,787
Building	$76,227
Total Payment	$192,585
Benefit	$0
Full Incentives	
Land	$45,570
Existing Building	$70,787
Building	$0.00
Total Payment	$116,357
Benefit	$76,227
Partial Incentives (County Opt Out)	
Land	$45,570
Existing Building	$70,787
Building	$13,178
Total Payment	$129,535
Benefit	$63,049

Year	% Bd Ex	PILOT Pymt	Full Bldg Tax	Benefit	PILOT W/O County	PILOT, Taxable Improvements & Land Tax
1	100%	$0	$76,227	$76,227	$0	**$116,357**
2	100%	$0	$77,752	$77,752	$0	**$118,685**
3	100%	$0	$79,276	$79,276	$0	**$121,012**
4	100%	$0	$80,801	$80,801	$0	**$123,339**
5	100%	$0	$82,325	$82,325	$0	**$125,666**
6	80%	$16,770	$83,850	$67,080	$13,871	**$144,763**
7	60%	$34,150	$85,375	$51,225	$28,246	**$164,470**
8	40%	$52,139	$86,899	$34,760	$43,126	**$184,787**
9	20%	$70,739	$88,424	$17,685	$58,510	**$205,714**
10	10%	$80,953	$89,948	$8,995	$66,958	**$218,255**
TOTALS		$254,751	$830,877	$576,126		
Building Tax To Remain		$70,787			Current Land	$45,570

CITY OF Fargo

(34)

OFFICE OF THE CITY ADMINISTRATOR
Bruce P. Grubb

July 22, 2021

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

Subject: Red River Valley Water Supply Project (RRVWSP) – Series C Interim Financing Agreement

Dear Commissioners:

Attached for your reference, please find an Interim Financing Agreement Series C related to the continuation of construction activities on certain components of the RRVWSP. As you may recall, at the November 1, 2020, Commission meeting, the Commission approved Series A and Series B Interim Financing Agreements to allow the initiation of construction on strategic components of the RRVWSP. The strategic components included an intake at the Missouri River, pipeline segments, and a discharge on the Sheyenne River. The reason for two separate agreements was because Series A was subject to a 10% local cost-share (2017-2019 biennium) and Series B was subject to a 25% local cost-share (2019-2021 biennium). The parties to the Agreements were the Garrison Diversion Conservancy District (GDCD), the Lake Agassiz Water Authority (LAWA) and the cities of Fargo and Grand Forks. A Series C Agreement is now being requested for the 25% local cost-share associated with 2021-2023 State funding for project construction activities.

Background

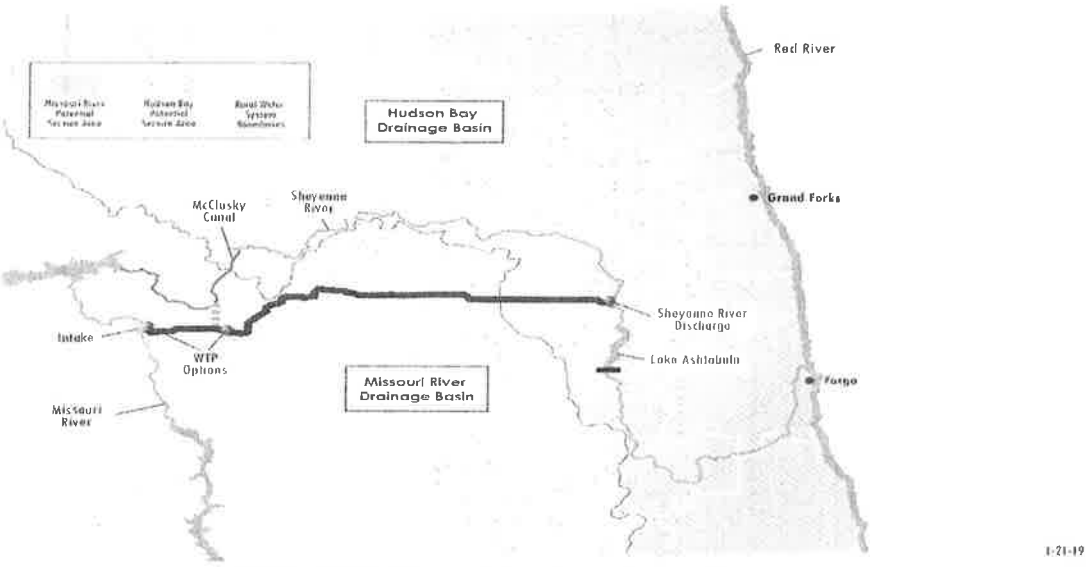
The RRVWSP is a project to deliver Missouri River water to the Red River Valley and central North Dakota. The project is necessary due to the susceptibility of existing water supplies under drought conditions. Thus, the project is critical for our region to establish climate resiliency during periods of drought.

Red River - 1930s

Red River - 1988

The project is being funded through a State and local partnership with the GDCD representing the State of North Dakota and LAWA representing the local water users. Fargo, as a member of LAWA and a key sponsor of the RRVWSP, was previously asked to approve Series A and Series B agreements to enable

startup construction of three project components. The three components include the Missouri River Intake Wetwell, Transmission Pipeline Segments and the Sheyenne River Discharge Structure. All necessary State and Federal permits for the construction have been obtained and it was important to get the project started in advance of the permits expiring.



Red River Valley Water Supply Project – Plan Overview

Interim Financing Agreement – Series C

- Series A

The previously approved Series A Interim Financing Agreement was for a local cost-share participation associated with the 2017-2019 State biennial funding allocation. The State allocation was subject to a 10% local cost-share match.

- Series B

The previously approved Series B Interim Financing Agreement was for a local cost-share participation associated with the 2019-2021 State biennial funding allocation. The State allocation was subject to a 25% local cost-share match.

- **Series C**

The Series C Interim Financing Agreement is for local cost-share participation associated with a 2021-2023 State funding allocation of $67.27 million. The State allocation is subject to a 25% local cost-share match of $22.43 million. GDCD is financing the local cost-share through an infrastructure revolving loan with the Bank of North Dakota. Fargo's share of the local cost-share match will be in the form of annual debt service payments of $680,000. Cost estimates for Series C work items have been summarized below:

Intake Screen Structure & Tunnel Contract 2	$21.16 million
Transmission Pipeline East Contract 5b	$51.60 million
Scope A Budget Contingencies	$ 3.27 million
Continued Project Development Activities	$13.67 million
Total	**$89.70 million**

Plan of Financing – Series A, B and C

Fargo's share of the Series A and B local project cost-share was been included in the annual Water Utility budgets over three budget cycles in 2019, 2020 and 2021. Fargo's annual debt service obligation for the Series C local project cost-share has been included in the 2022 Water Utility budget.

Budget Year	2019	2020	2021	*2022 (Proposed)*
Budget Amount	$850,000	$900,000	$800,000	***$700,000***

SUGGESTED MOTION

Approve the attached Interim Financing Agreement Series C for Fargo's portion of the 25% local cost-share for 2021-2023 construction activities associated with the Red River Valley Water Supply Project.

Your consideration in this matter is greatly appreciated.

Sincerely,

Bruce P. Grubb

Bruce P. Grubb
City Administrator

C: Michael Redlinger, Assistant City Administrator
Troy Hall, Water Utility Director
Merri Mooridian, Garrison Diversion Conservancy District
Erik Johnson, City Attorney

INTERIM FINANCING AGREEMENT
SERIES C

BY AND BETWEEN

GARRISON DIVERSION CONSERVANCY DISTRICT

AND

LAKE AGASSIZ WATER AUTHORITY

AND

CITY OF FARGO, NORTH DAKOTA

AND

CITY OF GRAND FORKS, NORTH DAKOTA

Dated as of July ____, 2021

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INTERIM FINANCING AGREEMENT, SERIES C

THIS INTERIM FINANCING AGREEMENT, SERIES C (the "Series C Agreement"), is entered this _____ day of _____, 2021 (the "Effective Date"), by and between GARRISON DIVERSION CONSERVANCY DISTRICT, a governmental agency, body politic and corporate of the State of North Dakota ("Garrison Diversion"); LAKE AGASSIZ WATER AUTHORITY, a governmental agency, body politic and corporate of the State of North Dakota ("LAWA"); CITY OF FARGO, NORTH DAKOTA, a municipal corporation and political subdivision of the State of North Dakota ("Fargo"); and CITY OF GRAND FORKS, NORTH DAKOTA, a municipal corporation and political subdivision of the State of North Dakota ("Grand Forks"); individually, a "Party," and collectively, the "Parties."

WHEREAS, the State of North Dakota, acting through the legislature, created Garrison Diversion in order to, among other things, construct and operate the Garrison Diversion Unit (the "GDU") of the Missouri River basin project, and to develop municipal, rural and industrial water supplies, irrigation and recreation. The legislature also authorized Garrison Diversion to acquire, construct, improve and own the Red River Valley Water Supply Project (the "Project") and sell a bulk water supply to end users; and

WHEREAS, the State of North Dakota, acting through the legislature, created LAWA to, among other things, acquire, construct, improve, own, and utilize the Project, to store and distribute water to eastern and central North Dakota, and to provide for the supply and distribution of water to the people of eastern and central North Dakota through the bulk purchase of water from Garrison Diversion for beneficial and public uses; and

WHEREAS, the State of North Dakota, acting through the legislature, authorized LAWA to enter one or more contracts to acquire bulk water from Garrison Diversion; and

WHEREAS, Garrison Diversion intends to finance, construct, own and operate the Project, and thereafter to sell to LAWA, and LAWA intends to purchase from Garrison Diversion all or a portion of the water derived therefrom as determined in accordance with separate agreements addressing capital repayment through a future project participation agreement (PPA), water supply purchase agreement, as well as this, prior and possibly more future interim financing agreements for design, planning, construction and operations before the PPA and water supply purchase agreements are entered into; and

WHEREAS, Garrison Diversion and LAWA desire to join together to have Garrison Diversion finance, construct, and operate a water supply and distribution system that will ultimately convey water from the Missouri River and/or the GDU System to LAWA, with initial construction governed by the terms set forth herein; and

WHEREAS, the Parties have not completed negotiations of the PPA or a water supply purchase agreement and are still identifying which entities will ultimately participate in the Project. Garrison Diversion, LAWA, Fargo, and Grand Forks enter this Series C Agreement subject to the parties' obligations in certain previous Project financing agreements, including the Cooperation Agreement dated May 8, 2020, Interim Financing Agreement Series A dated November 15, 2020, and Interim Financing Agreement Series B dated November 15,, 2020. Through this Series C

Agreement, the parties wish to continue with the construction contemplated in the 2021-2023 budget ("Project Costs," see Exhibit A) despite not having final agreements in place on the PPA and water supply agreement; and

WHEREAS, Garrison Diversion agrees to pay the full local share of Project Costs not otherwise covered by the State cost share as well as any other non-reimbursable costs (collectively referred to as "Local Project Costs"), subject to reimbursement by LAWA and/or its members entities pursuant to the terms of this Series C Agreement. Fargo and Grand Forks herein agree to pay a portion of the Local Project Cost based upon their proportion of water supply nominations for the RRVWSP. These payments are made by Fargo and Grand Forks on behalf of LAWA. Their respective maximum payment obligations for Local Project Costs are identified on Exhibit B. Garrison Diversion agrees to be pay for and carry the remaining Local Project Costs on behalf of LAWA, subject to reimbursement by LAWA and its members when the RRVWSP Project financing is obtained for the PPA and Water Supply Contract. Garrison Diversion's maximum payment obligations for Local Project Costs are identified on Exhibit B. The parties will continue to negotiate the PPA and water supply purchase agreement; and

WHEREAS, Garrison Diversion and LAWA entered into a Cooperation Agreement dated May 8, 2020, which governs their general relationship. The terms of the Cooperation Agreement are incorporated herein by reference as if the terms are stated herein, and they apply to Fargo and Grand Forks in the same manner they apply to LAWA. If the specific terms of this Series C Agreement are inconsistent with the Cooperation Agreement in any manner, the terms of this Series C Agreement govern; and

NOW THEREFORE, in consideration of the mutual covenants made herein and for other valuable consideration, the receipt of which is hereby acknowledged, Garrison Diversion, LAWA, Fargo, and Grand Forks agree as follows:

ARTICLE I.
DEFINITIONS AND INTERPRETATION

Section 1.01 DEFINITIONS. All capitalized terms used, and not otherwise defined herein, shall have the meanings given to them in this Series C Agreement and as defined in the Cooperation Agreement unless a different meaning clearly applies from the context.

"CFS" shall mean cubic feet per second.

"Cooperation Agreement" means an agreement entered into between Garrison Diversion and LAWA dated May 8, 2020, which governs their general relationship.

"Debt Obligation" means any loan, note, bond, credit facility or other security instrument issued by a party to this Series C Agreement to provide either temporary or permanent financing of the Project.

"Early Out Construction Features" means the features of the Project identified in Exhibit A to this Series C Agreement.

"Interim Financing Agreement Series A" means the Interim Financing Agreement, Series A, by and between Garrison Diversion, LAWA, City of Fargo, and City of Grand Forks, dated November 15, 2020.

"Interim Financing Agreement Series B" means the Interim Financing Agreement, Series B, by and between Garrison Diversion, LAWA, City of Fargo, and City of Grand Forks, dated November 15, 2020.

"Project" means the Red River Valley Water Supply Project.

"Series C Agreement" has the same meaning set forth herein in the Recitals.

Section 1.02 INTERPRETATION.

(a) The headings of articles and sections are provided for convenience of reference only and will not affect the construction, meaning, or interpretation of this Series C Agreement. Any and all exhibits to this Series C Agreement are hereby incorporated by reference. The definition of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine, and neuter forms. The words "include," "includes," and "including" shall be deemed to be followed by the phrase "without limitation." The word "will" shall be construed to have the same meaning and effect as the word "shall." Unless the context requires otherwise (i) any definition of or reference to any agreement, instrument, or other document herein shall be construed as referring to such agreement, instrument, or other document as from time to time amended, supplemented, or otherwise modified (subject to any restrictions on such amendments, supplements, or modifications as set forth herein), (ii) any reference herein to any person shall be construed to include such person's permitted assigns, (iii) the words "herein," "hereof," and "hereunder," and words of similar import, shall be construed to refer to this Series C Agreement in its entirety and not to any particular provision hereof, (iv) all references herein to articles, sections, exhibits, and schedules shall be construed to refer to articles and sections of, and exhibits and schedules to, this Series C Agreement, and (v) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts, and contract rights. In the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including" and the words "to" and "until" mean "to and including."

(b) This Series C Agreement is not to be interpreted or construed against the interests of a Party merely because that Party proposed this Series C Agreement or some provision of it or because that Party relies on a provision of this Series C Agreement to protect itself. The Parties acknowledge and agree that this Series C Agreement has been prepared jointly by the Parties and has been the subject of arm's length and careful negotiation, that each Party has been given the opportunity to independently review this Series C Agreement with legal counsel, and that each Party has the requisite experience and sophistication to understand, interpret, and agree to the particular language of the provisions of this Series C Agreement. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of this Series C Agreement, this Series C Agreement will not be interpreted or construed against the Party preparing it simply as a consequence of preparing it.

ARTICLE II.
CONSTRUCTION CONTEMPLATED

Section 2.01 INTENT. Throughout this Series C Agreement, Garrison Diversion, subject to reimbursement from LAWA member entities, agrees to finance the local cost share to allow for the continued development of the 2021-2023 Biennium work plan items. The budget for the 2021-2023 Biennium work plan items is attached as Exhibit B, and the items to be financed through this Series C Agreement from the 2021-2023 Biennium are identified in detail in Exhibit A.

Section 2.02 MEMBER ENTITY REPRESENTATIVE AND POINT OF CONTACT. As indicated in the Cooperation Agreement, LAWA will work collaboratively with Garrison Diversion in the planning, construction, and operation and maintenance for the Project. Additionally, LAWA will continue to negotiate an agreement with Garrison Diversion for a PPA that addresses capital repayment and operation and maintenance agreements on the full Project, as well as a water supply agreement outlining the agreement and terms on which LAWA and/or its member entities will purchase a bulk water supply from Garrison Diversion. Regardless of which member entities participate in this Series C Agreement, LAWA will be the point of contact for the users and will represent all LAWA member entities in discussion. Garrison Diversion will apprise LAWA of any LAWA user meetings on the Project and offer LAWA an opportunity to participate. A representative of LAWA will attend all such user meetings.

Section 2.03 PROJECT GENERALLY. As indicated in the Cooperation Agreement and unless otherwise agreed between the Parties, Garrison Diversion shall finance, design, build, construct, own, maintain, and operate the features contemplated by this Series C Agreement. Garrison Diversion, in cooperation with LAWA as identified herein, may choose to use any legally authorized project delivery method to design, construct, own, maintain, and/or operate the early out construction features, as agreed under the terms of this and future agreements.

Section 2.04 CONTRACT INPUT. As indicated in the Cooperation Agreement, Garrison Diversion will present all draft contracts and consultant task orders to LAWA for review and seek input from LAWA on the terms of the agreements and financial considerations. The provisions governing Garrison Diversion and LAWA engagement provided in the Cooperation Agreement apply to this Series C Agreement and are not restated herein, including those provisions governing contracts, task orders, consultant communication, and decision-making.

ARTICLE III.
COST SHARE COMPONENTS

Section 3.01 COST SHARE FOR 2021-2023 BIENNIUM BUDGET. The North Dakota Legislature provided a grant for the Project during the 2021-2023 Biennium that authorized a budget of $50 million in State funding, subject to a seventy-five percent (75%) cost share of eligible costs, with the remainder paid by local entities. The work contemplated in the 2021-2023 revised budget includes Missouri River Intake screens and tunnel construction, Segment 1 of the main pipeline design and construction and further land acquisition as detailed on the attached Exhibit A. Garrison Diversion will obtain LAWA's approval of task orders that will obligate local cost share payments under this Section. After obtaining LAWA's approval of task orders, Garrison

Diversion will diligently pursue the work contemplated thereunder. Garrison Diversion will manage contracts and consultants. Garrison Diversion will initially pay all related costs, subject to seventy five percent (75%) reimbursement from the State. The Local Project Cost will consist of the local 25% cost share of reimbursable costs plus any non-reimbursable costs. The 2021-2023 work plan budget may include additional funding beyond what was authorized by the 2021 legislature if funding becomes available through the State Water Commission. If the State Water Commission appropriates such additional funding, all projects approved and constructed with that funding during the 2021-2023 biennium will be subject to the terms of this Series C Agreement.

Section 3.02 INITIAL COST RESPONSIBILITY. This Series C Agreement solely addresses the Parties' responsibilities for their share of the initial costs associated with and limited to the specific categories identified in Exhibit A through the later of (1) June 30, 2023 if budgeted funds are expended by that date or (2) thereafter if the completion of the scope of work extends beyond that date and so long as there are budgeted funds available to complete the approved budget items

Section 3.03 GARRISON DIVERSION WILL OBTAIN LOAN FOR LOCAL PROJECT COST. As set forth herein, Garrison Diversion is responsible for initially financing the Local Project Costs. To pay for the Local Project Costs, Garrison Diversion will obtain a loan from the Bank of North Dakota. The legislatively authorized repayment terms of the Bank of North Dakota loan will include a 30 year loan repayment term and 2 percent interest rate. Garrison Diversion is actively seeking a longer repayment term or other more favorable loan terms from the Bank of North Dakota to cover all or a portion of the Local Project Costs. The final loan terms and repayment schedule will be identified in an Addendum to this Series C Agreement when the loan package is finalized. The Parties understand and agree that Fargo and Grand Forks will repay their respective proportion of Garrison Diversion's cost of financing and the interest paid on the loan as part of their payment obligations to Garrison Diversion, which will be included in the referenced Addendum.

Section 3.04 PAYMENT BY FARGO AND GRAND FORKS. Fargo and Grand Forks will each reimburse Garrison Diversion for their proportion of Local Project Costs, subject to the maximums identified in Exhibit B, plus costs identified in Section 3.03. Once the loan payment schedule is established in the Addendum, Fargo and Grand Forks will be responsible for payment of their proportionate share of each loan payment, to be paid at least 10 days in advance of Garrison Diversion's loan payment due date. Fargo will make payment to Garrison Diversion amounting to 67.82% of the payment due. Grand Forks will make payments amounting to 13.39% of each loan payment due. If construction contracts are approved and work progresses before the loan is funded, Fargo and Grand Forks agree to pay Garrison Diversion for their respective proportionate share of any contactor invoices as they become due prior to loan proceeds becoming available. All payments made by Fargo and Grand Forks will be deemed to be made on behalf of LAWA and will extinguish Fargo and Grand Forks' contribution requirements for Local Project Costs on behalf of LAWA. Fargo and Grand Forks do not have the authority to seek reimbursement from the other LAWA member entities for the funds they pay pursuant to this Series C Agreement.

Section 3.05 GARRISON DIVERSION'S RESPONSIBILITY FOR LAWA SMALL SYSTEMS. Garrison Diversion agrees to pay for and carry 18.79% of the Local Project Cost obligations on behalf of all LAWA members besides Fargo and Grand Forks ("Small Systems"), subject to the

maximum identified in Exhibit B ("Small System Obligations"). Garrison Diversion's payment of Small System Obligations are and will remain a debt of LAWA. Garrison Diversion will be reimbursed for these Small System Obligations when the Project Participation Agreement long term funding is put in place or as otherwise agreed to in a future interim agreement. At that time, unless otherwise agreed to, the Small System Obligations, along with other debt advanced by Fargo, Grand Forks and Garrison Diversion on behalf of LAWA's other members, will be equitably attributed to all participating LAWA member based upon their final nominations. The reimbursement to Garrison Diversion will include Local Project Costs advanced by Garrison Diversion and the Small System's prorated financing costs referenced in Section 3.03. If Small Systems do not sign the Project Participation Agreement during this initial contracting period, any future Project Participation Agreement with Small Systems will also be subject to an assessment of an Administrative Fee. The Administrative Fee will be calculated as an additional 10% above the Small Systems' pro rata share of the Local Project Costs incurred by others on the Small Systems' behalf in the Interim Financing Agreements Series A, B or C. The pro rata share will be a percentage of the Small Systems' water nomination as compared to the entire amount nominated by all entities as of that time, unless otherwise agreed to by the Parties hereto. Any Administrative Fee collected will be used for Project expenses. Garrison Diversion will not charge interest or other financing costs to LAWA for the Small System Obligations. If there are insufficient water nominations in the final Project Participation Agreement to repay Garrison Diversion's Small System Obligations herein, the unclaimed nominations will be deemed held in the name of Garrison Diversion until other water users request water. The Parties agree that Garrison Diversion may market and sell those water nominations to any third party at any rate, so long as Garrison Diversion, Grand Forks and Fargo are reimbursed any prior costs advanced on behalf of the nominations, including costs advanced in the Cooperation Agreement costs, Interim Financing Agreement Series A, and Interim Financing Agreement Series B.

Section 3.06 REFUNDING. Garrison Diversion, Fargo and Grand Forks agree that the funds they pay pursuant to this Series C Agreement are non-refundable in any and all cases except in the event Garrison Diversion does not award a contract for the construction of the infrastructure described in Exhibit A. If no construction contract is issued or if the Project is delayed indefinitely, as determined by Garrison Diversion and LAWA, Garrison Diversion will return any remaining unused funds remitted to Fargo and Grand Forks.

Section 3.07 PROJECT RISKS. The Parties acknowledge and agree that there are a number of risks, any or all of which could occur, that could have the effect of increasing the cost of the Project and/or delaying and/or terminating the Project. This includes, by way of illustration and not limitation, the following: (i) litigation; (ii) court order; (iii) changes in legislation affecting the Project, LAWA, and/or the Garrison Diversion; (iv) environmental risks; (v) increased labor costs or costs of materials; (vi) the need to obtain Federal approvals, Federal permits, or additional Federal environmental review; (vii) the Federal Government's decision regarding any permitting or approvals required for the Project; (viii) a change in the State of North Dakota's financial ability to fund its portion of the Project; (ix) climate change and variability; and (x) political interference at the local, state, federal, or tribal level. That said, any increase in the identified budgeted costs would require approval of the LAWA Board and Garrison Diversion.

Section 3.08 ASSIGNMENT. This Series C Agreement (and any interest herein or hereunder) may not be assigned, transferred, pledged, hypothecated, or encumbered without the prior written consent of the other Parties.

ARTICLE IV.
FINANCING AND INVOICING

Section 4.01 FINANCING ADMINISTRATION. Garrison Diversion will lead planning, design, construction, operation and maintenance of the items that are subject to this Series C Agreement. Garrison Diversion will advance funds for the initial work, subject to reimbursement from the State and LAWA through Fargo, Grand Forks, and other LAWA members. Fargo, Grand Forks, and other LAWA members will use whatever sources of funds available to them to make payments, with no expectation that they will issue Debt Obligations.

Section 4.02 SEPARATE PROJECT FUND. Garrison Diversion has a Project Fund for the financial administration of the Project. The Project Fund is a separate fund used by Garrison Diversion only to pay costs and expenses that, under accepted accounting practices, constitute costs necessarily incurred to construct the Project, including but not limited to land, easements, buildings, structures, administration costs, office space, vehicle costs, and all other costs related to Project implementation, along with machinery and equipment, and the cost of all architectural, engineering, legal and other professional services, printing and publication, and other costs reasonable, necessary, and incidental thereto, including issuance costs as it relates to the work contemplated under this Series C Agreement.

Section 4.03 INVOICES AND PAYMENT. If any contractor invoices are due prior to the Bank of North Dakota loans being funded, Garrison Diversion will pay the contractor invoice and remit the same to Fargo and Grand Forks for payment of their respective share of each invoice. The amount included in invoices will not exceed the respective maximum amounts included on Exhibit B. Subject to any dispute by Fargo or Grand Forks, each will remit payment on an invoice for any undisputed balance within thirty (30) calendar days after receiving an invoice.

Section 4.04 DISPUTE. If Fargo or Grand Forks disputes any portion of a Garrison Diversion invoice, any undisputed portion of the invoice must be paid within thirty (30) days of the receipt of invoice. For any portion of an invoice in dispute, the disputing party must provide an explanation in writing regarding the specific basis of the dispute. Garrison Diversion will review the explanation and provide a written response within thirty (30) days of the receipt of the disputing party's explanation. If the Parties' staff members are unable to help the Parties reach consensus, representatives of each Party will follow the dispute resolution process outlined in the Cooperation Agreement.

ARTICLE V.
OPERATIONS AND MAINTENANCE

Section 5.01 GENERALLY. While the PPA will govern the responsibility for operation and maintenance (O&M) of the Project when the PPA is executed, this Series C Agreement addresses any interim O&M needs that arise relating to the projects constructed pursuant to this Series C Agreement. Garrison Diversion will be responsible for conducting all operation and

maintenance required for any portion of the Project constructed prior to the PPA effective date and through the term of this Series C Agreement. The O&M expenses will be presented in an annual work plan and budget, brought to LAWA as provided in the Cooperation Agreement. LAWA may choose to task the Technical Advisory Committee to review the O&M Plan and annual work plan. The annual O&M costs will be invoiced to LAWA as part of the monthly payments after the infrastructure on Exhibit A is completed. The Parties will enter future interim financing agreements setting forth the structure of these monthly payments.

Section 5.02 DISPUTES. If there is a dispute between any Parties regarding deferred maintenance or the need for changes to operation, maintenance or repairs, the provisions of the Cooperation Agreement at Section 3.05 will govern the resolution of the dispute.

Section 5.03 O&M PLAN AND MANUAL. At least six (6) months prior to the first Project Element Service Commencement Date, Garrison Diversion and LAWA shall collaborate to draft a plan and manual for operations and maintenance of the particular items constructed pursuant to this Series C Agreement ("Plan and Manual"). The Technical Advisory Committee will be consulted and provide input on this Plan and Manual. The Plan and Manual will continue to be supplemented as new Project infrastructure comes online. Once a draft Plan and Manual is completed, Garrison Diversion and LAWA will submit the draft Plan and Manual to Garrison Diversion and LAWA for approval using the decision-making protocol in Section 3.05 of the Cooperation Agreement to obtain approval of the Plan and Manual.

ARTICLE VI.
INSURANCE AND LIABILITY

Section 6.01 PARTIES' INSURANCE. Garrison Diversion is working with AON as an insurance consultant, who is providing advice on the insurance limitations to be included in each RRVWSP construction contract. Garrison Diversion will require reasonable insurance limits for all contractors working on the infrastructure described herein. Garrison Diversion will also insure the herein described infrastructure, with the insurance costs classified as an O&M expense to the Project. In addition, all Parties will maintain their own adequate political subdivision liability insurance coverage, as well as coverage for officers and directors.

Section 6.02 INSURANCE CONSULTANT RECOMMENDATION. Once the insurance consultant recommends coverages and limits, Garrison Diversion and LAWA will approve the construction documents that include coverage limits for the infrastructure herein described, which will be charged as an expense both during and after construction.

Section 6.03 LIABILITY. The funding provided through this Series C Agreement does not create any liability for LAWA, Fargo and Grand Forks as an owner of the Project. LAWA, Fargo and Grand Forks will be named as additional insureds on the construction contracts that are funded by this Series C Agreement.

ARTICLE VII.
TERMINATION AND STAY

Section 7.01 TERM. This Series C Agreement will be valid through June 30, 2023, or until the funds authorized and approved hereunder are spent on the identified construction expenses, whichever occurs later.

Section 7.02 TERMINATION BY MUTUAL AGREEMENT. The Parties may mutually agree, in writing, to terminate this Series C Agreement. Any and all payments due and owing by Fargo and Grand Forks at the time of termination of this Series C Agreement must be fully paid before Fargo's and Grand Forks' responsibility to make payments hereunder will terminate.

Section 7.03 COST SHARE THRESHOLD. The Cost Share Threshold termination provision of the Cooperation Agreement does not apply to this Series C Agreement.

ARTICLE VIII.
MISCELLANEOUS

Section 8.01 ENTIRE AGREEMENT. This Series C Agreement contains the entire and exclusive understanding of the Parties with respect to the subject matter thereof, and this Series C Agreement supersedes all prior agreements, understandings, statements, representations, and negotiations, in each case oral or written, between the Parties with respect to the subject matter. This Series C Agreement includes all provisions of the Cooperation Agreement between LAWA and Garrison Diversion, as if all provisions were included herein unless a contrary provision is included herein.

Section 8.02 NOTICE. All notices under this Series C Agreement will be in writing and: (a) delivered personally; (b) sent by certified mail, return receipt requested; (c) sent by a recognized overnight mail or courier service, with delivery receipt requested; or (d) sent by facsimile or email communication followed by a hard copy and with receipt confirmed by telephone or return receipt (in the case of email communication), to the following addresses:

If to Garrison Diversion:
General Manager
Garrison Diversion Conservancy District Headquarters
PO Box 140
Carrington, ND 58421

If to LAWA:
LAWA Board Chair
Lake Agassiz Water Authority
PO Box 140
Carrington, ND 58421

If to Fargo:
City Administrator
Fargo City Hall
225 4th St. N
Fargo, ND 58102

If to Grand Forks: City Administrator
Grand Forks City Hall
255 N 4th St.
Grand Forks, ND 58203

Section 8.03 GOVERNING LAW. This Series C Agreement shall be controlled by the laws of the State of North Dakota. Any action brought as a result of any claim, demand, or cause of action arising under the terms of this Series C Agreement shall be venued in Cass County in the State of North Dakota, and the Parties waive any objection to personal jurisdiction.

Section 8.04 SEVERABILITY. Each provision, section, sentence, clause, phrase, and word of this Series C Agreement is intended to be severable. If any provision, section, sentence, clause, phrase, and word hereof is held by a court with jurisdiction to be illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this Series C Agreement.

Section 8.05 MODIFICATIONS. Any modifications or amendments to this Series C Agreement must be in writing and signed by all Parties to this Series C Agreement.

Section 8.06 BINDING EFFECT. This Series C Agreement shall be for the benefit of, and may be enforced only by, the Parties and is not for the benefit of, and may not be enforced by any third party.

Section 8.07 REPRESENTATION. The Parties, having been represented by counsel or having waived the right to counsel, have carefully read and understand the contents of this Series C Agreement, and agree they have not been influenced by any representations or statements made by any other parties.

Section 8.08 HEADINGS. Headings in this Series C Agreement are for convenience only and will not be used to interpret or construe its provisions.

Section 8.09 REPRESENTATION OF AUTHORITY. Each Party signing this Series C Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Series C Agreement and that the Series C Agreement is a valid and legal agreement binding on such Party and enforceable in accordance with its terms.

Section 8.10 FORCE MAJEURE. A Party shall not be held responsible for any delay or failure in performance of any part of this Series C Agreement to the extent such delay or failure is caused by fire, flood, explosion, war, embargo, government requirement, civil or military authority, act of God, or other similar causes beyond its control and without the fault or negligence of the delayed or non-performing party. The affected Party will notify the other Parties in writing within ten (10) days after the beginning of any such cause that would affect its performance. Notwithstanding, if a Party's performance is delayed for a period exceeding thirty (30) days from the date the other Parties receive notice under this section, the non-affected Parties will have the right, without any liability to the other Parties, to terminate this Series C Agreement. Ongoing litigation and any construction injunction do not qualify as force majeure events.

Section 8.11 COUNTERPARTS; ELECTRONIC SIGNATURES. This Series C Agreement may be executed in two or more counterparts, each of which together shall be deemed an original, but all of which together shall constitute one and the same instrument. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a ".pdf" format data file, such signature shall create a valid and binding obligation of the Party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or ".pdf" signature page were an original thereof.

IN WITNESS WHEREOF, Garrison Diversion, LAWA, Fargo, and Grand Forks caused this Series C Agreement to be executed.

(Remainder of page intentionally left blank.)

Signature Page for the Garrison Diversion Conservancy District

The governing body of the Garrison Diversion Conservancy District approved this Series C Agreement on the _____ day of _____, 2021.

GARRISON DIVERSION
CONSERVANCY DISTRICT, a
governmental agency, body politic and
corporate

By: _____
Alan Walter, Chair

ATTEST:

_____
Secretary

Signature Page for the Lake Agassiz Water Authority

The governing body of the Lake Agassiz Water Authority approved this Series C Agreement on the _____ day of _____, 2021.

LAKE AGASSIZ WATER AUTHORITY, a governmental agency, body politic and corporate

By: _____
Dr. Timothy Mahoney, Chair

ATTEST:

_____
Secretary

Signature Page for the City of Fargo

The governing body of the City of Fargo approved this Series C Agreement on the _____ day of _____, 2021.

City of Fargo, a governmental agency, body politic and corporate

By: _____
Dr. Timothy Mahoney, Mayor

ATTEST:

_____
Secretary

Signature Page for the City of Grand Forks

The governing body of the City of Grand Forks approved this Series C Agreement on the _____ day of _____, 2021.

City of Grand Forks, a governmental agency, body politic and corporate

By: _____
Brandon Bochenski, Mayor

ATTEST:

_____
Secretary

EXHIBIT A
2021 - 2023 Biennium Budget Features

RED RIVER VALLEY WATER SUPPLY PROJECT

Lake Agassiz Water Authority

2021 to 2023 Biennium Budget
($89.7 mil Total Funding: $67.3 mil State & 22.4 mil Local Share)

June 8, 2021

No.	Scope of Work	Feature	Date Task Orders Auth	21/23 Biennium Project Development Budget (mil $) Total	State 75%	Local 25%	Construction Budget per Biennia (mil $)[1,2,3] 19/21	21/23 Biennium Total	State 75%	Local 25%	23/25	Future
1.	**Financial, Administration, Misc. Legal, Insurance, Etc.** Scope: Administration, legal, and financial modeling/planning. Need: Annual Garrison Diversion budget allocation.	Owner's administration of project, including management, financial, legal, engineering, public communication, administrative, insurance advisory, etc., professional services.		$ 2.40	$ 1.80	$ 0.60						
2.	**Missouri River Intake Screen Structure & Tunnel Contract 2** Scope: Facility construction and construction phase engineering services. Need: Construct critical facility elements under expiring USACE Nationwide Permit No. 12.	165-cfs screen structure; 1,600-ft long, 72-in diameter tunnel; and 40-ft diameter by 65-ft deep reinforced concrete wet well/shaft liner, with temporary wet well/shaft cover.	Jul-21 Jun-21				$ 5.60	$ 2.26 $ 18.90	$ 1.70 $ 14.18	$ 0.56 $ 4.72	$ -	$ 61
3.	**Easement Acquisition[4]** Scope: Professional services and real estate costs necessary to obtain easements for the Transmission Pipeline East and the Red River Valley Transmission Pipeline. Need: Secure land for installing future pipeline segments staying years ahead of pipeline design/construction needs.	Acquire remaining easements from Wells County east to the outfall at Cooperstown. Provide surveying and acquisition services along with legal support for landowner holdouts. Pay for property. Obtain options from McClusky Canal to break tanks.	Surv/LA Legal Property	$ 0.73 $ 0.80 $ 1.47	$ 0.55 $ 0.60 $ 1.10	$ 0.18 $ 0.20 $ 0.37					$ 0.7 $ 1.2 $ 2.9	$ 0.9 $ 1.9 $ 3.6
4.	**Transmission Pipeline East Contract 5b** Scope: Final design wrap-up (90% docs to biddable plans and specifications); pipeline installation, including construction phase engineering services. Need: Continue progress of transmission pipeline installation.	8.8± miles of 72" pipeline, including 96" diameter trenchless crossings at several locations. Pipeline section extends eastward from Contract 5a, which is just south of Carrington.	Jul-21 Dec-21 Dec-21	$ 0.55	$ 0.41	$ 0.14		$ 48.00 $ 3.60	$ 36.00 $ 2.70	$ 12.00 $ 0.90		
5.	**Transmission Pipeline East Contract 5c & 5d** Scope: Final design wrap-up (90% docs to biddable plans and specifications); bidding assistance. Need: Have the next pipeline segment bid-ready if additional State money becomes available.	18.2± miles of 72" pipeline, including 96" diameter trenchless crossings at several locations. Portions of the pipeline extend east of Contract 5b and also west of Contract 5a and Carrington.		$ 0.83	$ 0.62	$ 0.21					$ 114	
6.	**RRVWSP System Operational Plan** Scope: System modeling, evaluation, planning, and report development documenting results/findings/outcomes. Need: Better delineate Garrison Diversion, State Water Commission, and USACE roles for system operation.	Determine timing/rate/duration of diversions to/from Lake Ashtabula based upon multiple factors. Define roles and responsibilities of the three parties as it relates to system operation.		$ 0.40	$ 0.30	$ 0.10						
7.	**Project Management Information System (PMIS)** Scope: Software/hardware solution for Project's data management and organized retention of records. Need: Create greater efficiency and record of documentation for voluminous construction related deliverables.	Procure and implement PMIS software. Develop, refine, and implement workflow processes. Provide organized and indexed data for financial and legal auditing teams. Organize data and archive for long-term retention.		$ 0.40	$ 0.30	$ 0.10						
8.	**Red River Valley Pipeline Contract 6** Scope: Soil borings along with final design services (30% docs to biddable plans/specifications); bidding assistance. Need: Have a $100+ million pipeline segment bid-ready for the next biennium.	25± miles of 72" pipeline, including 96" diameter trenchless crossings at several locations. Pipeline segment extends eastward toward outfall from end of Contract 5c.		$ 4.99	$ 3.74	$ 1.25						$ 165
9.	**Program Management** Scope: Overall program management, planning, and support by the engineering team to Garrison Diversion. Need: Consulting services of a broad programmatic nature not under project-specific design and construction task orders.	Overall project planning, management, administration, scheduling, coordination, meeting preparation/ attendance, regulatory interface, etc., not included in individual task orders.		$ 0.50	$ 0.37	$ 0.13						
10.	**Owner's Reserve for Expected but Yet Undefined Projects** Scope: A budget contingency. Need: Address and pay for changes that are sure to occur.	A reserve providing Garrison Diversion flexibility to adapt to professional services work plan changes and to pay for construction change orders typically running from 3 to 5% above original construction cost at bid time.		$ 0.60	$ 0.45	$ 0.15		$ 3.27	$ 2.45	$ 0.82		
TOTAL PROGRAM BUDGET				**$ 13.67**	**$ 10.24**	**$ 3.43**	**$ 5.60**	**$ 76.03**	**$ 57.03**	**$ 19.00**	**$ 118.8**	**$232.4**

Notes:

1. Construction costs include management, engineering services during construction, inspection, field quality control, and construction.
2. Projects indicated for construction funding in a given biennium will be shovel ready for construction at the start of the biennium.
3. Future capital costs are escalated to an anticipated midpoint of construction at 3 percent per annum for the respective component with the RRVWSP expected to be finished by 2032. All future RRVWSP construction projects and costs are not shown.
4. Future land services costs are the amount likely to be paid for real estate, easements, legal support, crop damage, and field obstructions. Estimates include all pipeline easements required for the RRVWS and ENDAWS projects.

EXHIBIT B

Local Project Cost Distribution

2021 – 2023 BIENNIUM
TIERED LOCAL COST-SHARE DISTRIBUTION

TOTAL WORK PLAN	$89.7M
LOCAL COST-SHARE	25%

	TIER %	TOTAL LOCAL	ANNUAL PAYMENT	
		22.43M	40 Years, 2%	30 Years, 2%
Fargo (with West Fargo and Cass Rural)	67.82%	15.21M	$555,963	$679,064
Grand Forks (With East Grand Forks)	13.39%	3.00M	$109,766	$134,071
Cost-Share Needed Small System (all but GF & FAR)	18.79%	4.21M	$154,033	$188,139

THE CITY OF Fargo FAR MORE

AUDITOR'S OFFICE
Fargo City Hall
225 4th Street North
PO Box 2471
Fargo, ND 58108
Phone: 701.241.8108 | Fax: 701.241.8184
www.FargoND.gov

37

Date: July 22, 2021

To: Fargo City Commission

From: Steven Sprague, City Auditor

Re: New Liquor License Classification

The Liquor Control Board received a request for consideration of a new liquor license classification. The request cannot be accommodated with our existing license classes. The new concept would be a venue specializing in on and off sale wine. It would only operate when there is an event and would allow for on premise wine tasting and also allow wine to be sold and removed from the premise.

The proposed location is in the DeLaundracies building in the old VIP Room location. The business would specialize in education, offering wines not available at current retailers and would be open for private events, food service will be available through caterers.

The Liquor Control Board is requesting the City Commission direct the City Attorney and the City Auditor work with the requestor to create a new classification of liquor license, Venue On/Off sales Wine only license.

RECOMMENDED MOTION

DIRECT THE CITY ATTORNEY AND CITY AUDITOR TO CREATE A NEW LIQOUR LICENSE CLASSIFICATION; VENUE LICENSE WITH ON AND OFF SALE SERVING WINE ONLY

CELLAR 624

A VENUE ON MAIN

Proposal for an On/Off-Sale Wine License for Event Only Use

PLANS FOR THE 624 MAIN AVE LOCATION

- Educational wine events
  - Wine classes offered to restaurants and retailers in the area
  - Expanding wine knowledge through tastings
  - Introductory level wine tasting classes for beginners
  - Experienced wine connoisseur pairing events
- Taste and Take concept
- Extensive wine list not offered at your generic retail locations
  - Offer a new understanding for wines and share our passion
- Venue space open for private events
  - Cooperate, business, weddings, special events
  - Food will be catered in

WHY CURRENT LIQUOR LICENSES WILL NOT WORK

- No concept similar to this exists
- Boutique event space specifically geared towards the atmosphere surrounding the wine community
- No on/off sale license for wine currently

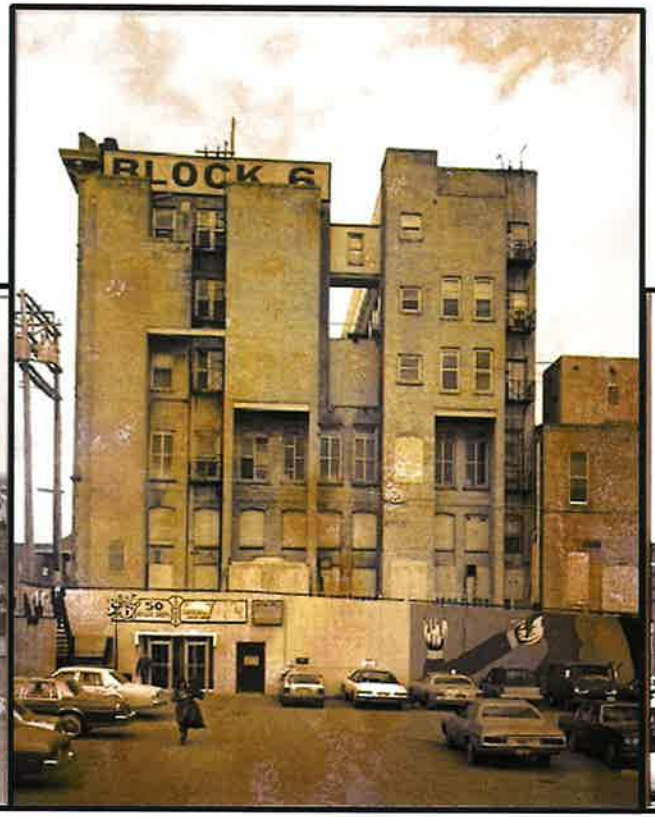
- Parameters
  - Event Only
  - Food Sales with Wine Pairing
  - Extensive Wine List

EXAMPLE WINE EVENT

- Five Bottles of Wine to Sample
  - 1-2 oz per sample
- Paired with Charcuterie Boards
- Wine Presentation
  - In Person or Virtual
- Customized to Wine Region & Vineyards
- Option to Purchase Sampled Wine

ARCHITECT RENDERINGS

https://api2.enscape3d.com/v3/view/a7d4aae0-48fa-430c-adb9-6fb8ff21f837



THE CITY OF Fargo FAR MORE

Planning & Development
225 4th Street North
Fargo, ND 58102
Office: 701.241.1474 | Fax: 701.241.1526
Email: planning@FargoND.gov
www.FargoND.gov

(38)

MEMORANDUM

TO: Fargo City Commissioners

FROM: Nicole Crutchfield, Planning Director NC

DATE: July 26, 2021

SUBJECT: Brownfield Assessment for Mid America Steel Site

Over the past three months the City has been working with SRF Consulting, Inc. and Braun Intertec to provide Brownfield Assessment expertise for the Mid America Steel Site. The primary focus was brownfields cleanup and reuse planning as part of a Brownfields Assessment Grant from the EPA. During this time SRF held two open houses and three stakeholder meetings. The outcome of this work is to gain a community level understanding of the brownfield assessment and future opportunities for redevelopment in order to build community support for future activity, and to give the City of Fargo the tools to operationalize future brownfield assessment and development work.

SRF compiled a Brownfields Assessment Report with recommended land use options based upon their analysis of the site in combination with stakeholder and public input received through the assessment process.

History

In 2016 The City of Fargo was awarded a $400,000 Grant for Hazardous Substance and Petroleum Brownfields from the EPA. In order to satisfy the grant by the June 31, 2021 deadline the City of Fargo needed to complete the following tasks:

- Task 3: Cleanup & Reuse Planning
  - Develop and lead presentations to public to educate about brownfields work, involve the community in cleanup and reuse planning, and conduct outreach on results of Mid America Steel sites Phase II results and get community feedback on reuse options
  - Creation of Analysis of Brownfield Cleanup Alternatives (ABCA) based on outcomes of public outreach with staff coordination; incorporation of Green and Sustainable Practices (GSP) principles and techniques within the ABCA
  - Present outcomes to City Commission and development community
- Task 4: Public Outreach Strategy
  - Give Brownfield presentation to two community organizations

The City sent out a project scoping request based on the tasks above in March of 2021, which was awarded to SRF Consulting. Representatives from SRF Consulting will be at the July 26th City Commission

EQUAL HOUSING OPPORTUNITY

THE CITY OF Fargo FAR MORE

Planning & Development
225 4th Street North
Fargo, ND 58102
Office: 701.241.1474 | Fax: 701.241.1526
Email: planning@FargoND.gov
www.FargoND.gov

meeting to provide a brief presentation of their findings. The original document of the report can be found at the Planning Department at City Hall and at the City Commission office. A digital link to the report can be found at https://fargond.gov/city-government/departments/planning-development/plans-studies

Suggested Motion:
Receive and file the Brownfield Assessment Report

EQUAL HOUSING OPPORTUNITY

SRF

Memorandum

To: Kylie Bagley, Planner
City of Fargo

From: Scott Harmstead, AICP

Date: July 21, 2021

Subject: Mid America Steel Site Brownfield Assessment – Recommended Land Use Priorities

SRF Consulting, Inc. (SRF) and Braun Intertec were contracted with the City of Fargo Planning Department to provide a brownfield assessment of the Mid America Steel site located along the Red River on the eastern edge of Downtown Fargo. A key element of this effort included a report with site findings and recommendations for five different land use options and associate environmental remediation needs. Planning Department staff has asked SRF to prioritize the recommended land use options based upon our analysis of the site in combination with stakeholder and public input received through the assessment process.

The five land use options for the redevelopment of the Mid America Steel site are prioritized below. Note that park space located within the eastern floodway portion of the site is an element of each option. The largest developable portion of the site (northwest portion) would be the primary location for buildings associated with these land uses.

Priority	Description
1	Public entertainment/institutional facility
2	Vertical mixed use (commercial and residential)
3	Residential multistory
4	Horizontal mixed use (commercial and residential)
5	Commercial multistory

Public Entertainment/Institutional Facility

Both community and stakeholder input strongly favored a "public amenity" use to the be the predominate land use onsite. Various public entertainment or institutional facilities were desired. Examples include a performing arts center, indoor skate park, children's museum, or science center. A prevalent comment throughout the process noted the need to develop a unique amenity that can help draw people to the Downtown and riverfront area. Our site analysis shows that such facilities should be located on the largest developable portion of the site—the northwest corner. Note that

the size of the northwest portion (3.9 acres) may limit the scale or feasibility of any facility, especially when considering potential off-street parking needs.

Vertical Mixed Use

Input was generally favorable for vertical mixed use. Street frontage would be permissible along a portion of NP Avenue and at the intersection of NP Avenue and 2nd Street North. Lower-level retail and/or office could be included with higher-level residential use. With the installation of flood protection onsite (either a berm or wall), higher-level residential units would benefit from views of the river corridor to the east. The well-documented need for residential use downtown, as well as proximity to public green space, also makes the site attractive to residential use. The commercial aspect of vertical mixed use concentrated toward the intersection of NP Avenue and 2nd Street North make commercial a valuable component.

Other Options

Other land uses listed are viable options, but the characteristics of a public entertainment/institutional facility or vertical mixed use and the opportunities around those uses far exceed those of the other land use options. However, it should be noted that stand-alone residential use may still have some merit due to the location and need for residential capacity Downtown.

Floodway Area

Various park and open space-related uses are recommended for the floodway portion of the site.

"South Developable Area"

Input and site analysis favors limited development of the strip of land located on the southwest portion of the site between Main Avenue and the BNSF Railway (consists of 1.3 developable acres). Recommended land use is open space and/or parking in connection with greenway amenities along the Red River. If private use is desired, a use with limited associated traffic (vehicular, bike, and pedestrian) is recommended, such as residential or commercial office.

THE CITY OF Fargo FAR MORE

CITY OF FARGO POLICE DEPARTMENT

Chief David B. Zibolski

105 25th Street North, Fargo, North Dakota 58102
Office: 701-241-1400 Fax: 701-297-7789
www.fargopolice.com

FARGO POLICE NORTH DAKOTA

(39)

July 21, 2021

Board of City Commissioners
City Hall
222 4th Street North
Fargo, ND 58102

COPY

RE: 2021-2022 Wildlife Management Resolution

Dear Commissioners:

Please find attached for your review the proposed resolution, which provides the parameters for the City's 2021-22 Wildlife Management Program. The City's deer hunt will run from September 3, 2021 through January 31, 2022. City turkey hunting will run from October 9, 2021 to January 31, 2022.

The program's existing structure will remain as is, however, it is subject to change based on recommendations that may result from the findings of the study group, whose development was requested and approved at the June 28, 2021 City Commission Meeting. The study group will present their findings at the September 7, 2021 City Commission Meeting.

Recommended Motion:

Approve the City's Wildlife Management Program 2021-2022 Resolution as written, allowing for any future study group recommendations to be implemented in the 2021-2022 management year.

Please contact me if you have any questions or concerns.

Respectfully,

Travis S. Stefonowicz
Assistant Chief of Police

On behalf of David B. Zibolski
Chief of Police

RESOLUTION

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

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

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

WHEREAS, Article 3(G) of the Home Rule Charter of the City of Fargo, North Dakota grants the City of Fargo power to provide for the adoption, amendment, and repeal of ordinances and resolutions, and regulations to carry out its governmental and proprietary powers and to provide for public health, safety, morals, and welfare, and penalties for a violation thereof; and

WHEREAS, the Board of City Commissioners, Fargo, North Dakota, pursuant to authority granted to it under Home Rule, has adopted and approved City of Fargo Ordinance 12-04, Chapter 12 to establish a City Wildlife Management Program, including such rules and regulations as are necessary to carry out the City Wildlife Management Program; and

WHEREAS, the Board of City Commissioners desires to designate a season for the City's Wildlife Management Program for 2021-2022, to designate areas for inclusion within the 2021-2022 season, and to decide the number of deer and turkey which may be taken by each permit holder for the 2021-2022 season.

NOW, THEREFORE, BE IT RESOLVED that the Board of City Commissioners hereby designates two Regions for the City Wildlife Management Program for 2021-2022. The City Wildlife Management Program deer season for each Region shall run from noon, September 3rd, 2021 through ½ hour after sunset January 31, 2022. Legal shooting hours shall run concurrent with ND Game & Fish Department regulations (½ hour before sunrise to ½ hour after sunset).

The City Wildlife Management Program turkey season for each Region shall run from October 9th, 2021 through ½ hour after sunset January 31, 2022. Legal shooting hours shall run from ½ hour before sunrise to ½ hour after sunset.

BE IT FURTHER RESOLVED that the Board of City Commissioners hereby authorizes issuance of a total of 45 permits to participate in the 2021-2022 City Wildlife Management season. Each permit holder may initially purchase two (2) ND Game & Fish Department licenses for antlerless deer in their respective Region, and one (1) turkey ND Game & Fish Department license in their respective Region. After November 1, 2021, permit holders may purchase any of the remaining ninety (90) ND Game & Fish Department deer licenses and forty-five (45) ND Game & Fish turkey licenses, issued on a first come, first served basis.

BE IT FURTHER RESOLVED that the Board of City Commissioners hereby designates the following Regions within the city limits of Fargo to be included within the 2021-2022 City Wildlife Management Program and hereby also approves the associated number of permits for the designated areas:

1. **Region One:** **Deer Permits to be issued: 25**
   Turkey Permits to be issued: 25

The area along the Red River corridor between 16th Avenue N. and 45th Avenue N., described as:

A. Undeveloped property, owned by the City of Fargo, east of Grandwood Drive North;
B. Undeveloped property, owned by the Fargo Park District, east of Grandwood Drive North;
C. Undeveloped property, owned by the Fargo Park District, between 32nd and 35th Avenue North;
D. Undeveloped private property extending east of Lilac Lane and Peterson Parkway, and from points north of Holm Park to 32nd Avenue North, subject to the owner's written consent to have such property included within the City Wildlife Management Program;
E. Undeveloped property, owned by the City of Fargo, east of Peterson Parkway, from points north of Holm Park to 32nd Avenue North;
F. Undeveloped property, owned by the Fargo Park District, east of North Woodcrest Drive North (Holm Park);
G. Undeveloped property, owned by the City of Fargo, between Holm Park and VA Hospital Park;
H. Undeveloped property, owned by the Fargo Park District, between 18th Avenue North and 22nd Avenue North (VA Hospital Park);
I. Undeveloped property, owned by the City of Fargo, between 15th Avenue North and VA Hospital Park.

2. Region Two: **Deer Permits to be issued: 20**
Turkey Permits to be issued: 20

The area along the Red River corridor between 21st Avenue S. and 58th Avenue S., described as:

A. Undeveloped private property adjacent to Riverside Cemetery, 2102 5th Street S, subject to the owner's written consent to have such property included within the City Wildlife Management Program;
B. Undeveloped property, owned by the Fargo Park District, between 32nd Avenue South and 35th Avenue South (Lemke Park);
C. Undeveloped property, owned by the City of Fargo, east of River Drive South from 35th Avenue South to 11th Street South;
D. Undeveloped private property, owned by Forum Publishing Co., surrounding its transmission tower located in the 4000 block of University Drive South, subject to the owner's written consent to have such property included within the City Wildlife Management Program;
E. Undeveloped property, owned by the Fargo Park District, between 40th Avenue South and 52nd Avenue South (Lion's Conservancy Park);
F. Undeveloped property, owned by the City of Fargo, between Lion's Conservancy Park and 52nd Avenue South;
G. Undeveloped private property, owned by Villa Nazareth, 5300 12th Street South, subject to the owner's written consent to have such property included within the City Wildlife Management Program;
H. Undeveloped property, owned by the City of Fargo, from 54th Avenue South extending to the 5800 Block of University Drive South.

Timothy J. Mahoney, Mayor Date

Attest:

Steven Sprague, City Auditor

THE CITY OF Fargo FAR MORE

(40)

MEMORANDUM

TO: **BOARD OF CITY COMMISSIONERS**

FROM: **JIM GILMOUR, STRATEGIC PLANNING DIRECTOR**

DATE: **JULY 21, 2021**

SUBJECT: **SALE OF 500 MAIN AVENUE – ISLAND PARK RAMP**

Bell Bank is interested in acquiring the Island Park Ramp to meet their parking needs. The parking ramp is greatly underutilized, and conditions of a sale can include allowing existing tenants to park in the facility, providing parking for the proposed 501 Main Avenue project, and continued free public parking in the evening and on weekends.

Additional parking is needed in the core of the downtown, and the income from the sale of the parking ramp can be used to meet those parking needs. The proposed sale price is $9.5 million.

A resolution authorizing the sale is attached for your consideration. This authorizes offering the property for sale and begins the sale process. The City Commission will review offers at a future meeting and make a decision on the sale at that time.

RECOMMENDED MOTION:
Adopt a resolution authorizing the sale of the Island Park Ramp at 500 Main Avenue.

Attachment

COMMISSIONER _____ introduced the following resolution and moved its adoption:

RESOLUTION AUTHORIZING SALE OF PROPERTY

[500 Main Avenue – Island Park Ramp]

WHEREAS, the city of Fargo is the owner of real property located at 500 Main Avenue [hereinafter the "Subject Property"]

WHEREAS, the property is the Island Park parking ramp, and that ramp is greatly underutilized

WHEREAS, it is the wish and desire of the Board of City Commissioners that the Subject Property be sold, so that the property can be returned to the tax rolls and put into good use.

NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE BOARD OF CITY COMMISSIONERS,

1. The Subject Property is no longer required for entirely a public purpose and, therefore, should be offered for public sale;

2. The Strategic Planning Director is hereby authorized to dispose of the above described property by way of public sale.

3. Notice of the sale, together with the conditions and limitations to be placed on the sale, shall be published in the City's official newspaper once each week for two consecutive weeks with the last publication being at least ten (10) days prior to the date of the sale and said notice shall seek sealed bids containing both a bid price offered by the bidder along with a proposal for a use that meets the following conditions and limitations:

   a. The minimum acceptable bid price will be $9,500,000.

   b. Proposed use of the property must include:

      - Bringing at least 250 employees to the downtown
      - Leasing at least 100 parking places to the proposed 501 Main Avenue project if that project is constructed.
      - In addition to leasing parking to the 501 Main development, lease another 25 to 50 parking spaces to other downtown employees or residents.
      - Provide at least 100 free parking spaces to the public between 6:00 pm and 7:00 am weekdays, and all day on Saturday and Sunday. The parking ramp owner may charge for parking evenings and weekends if the City of Fargo is charging for parking at the

same times in City operated downtown parking facilities. Continue these terms for at least 10 years.

4. The Strategic Planning Director shall coordinate the opening of the bid proposals and make a recommendation to the City Commission.

5. The City Commission will select the successful bid, which selection will be a conditional approval that will be subject to the City and the selected bidder agreeing upon terms of an agreement that will be finally approved by the City Commission before execution of the agreement.

The motion for the adoption of the foregoing resolution was duly seconded by COMMISSIONER _____, and upon roll call vote, the following voted in favor thereof: COMMISSIONERS _____. The following were absent and not voting: _____, and the following voted against the same: _____, whereupon the resolution was declared duly passed and adopted.

THE CITY OF Fargo FAR MORE

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Office of the City Attorney

City Attorney
Erik R. Johnson

Assistant City Attorney
Nancy J. Morris

July 22, 2021

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

RE: City Commission Term Limits – City Attorney opinion letter

Dear Commissioners,

Enclosed for your review is my opinion as to the interpretation of the City's term limits ordinance, Section 2-0106 of the Fargo Municipal Code, and my opinion as to how the term limit ordinance affects sitting members of the city commission along with a calculation as to when each member will be "termed out" as you requested. Accompanying my letter opinion is an Appendix, also enclosed.

You have already heard from Mayor Mahoney as to his intention to run for reelection in June 2022 and the Mayor's lawyer, Tami Norgard, gave a presentation at the July 12th meeting explaining her interpretation of the same ordinance which prompted discussion among the commissioners and which prompted your request for my opinion. Therefore, I assume that you will have discussion about this matter again at the upcoming regular city commission meeting. In order to assist you in your discussion, I thought it may be helpful to provide some options or talking points. There may be other approaches as well of course. The list below may not be exhaustive.

1. Receive and file the City Attorney opinion letter. As a starting point in the discussion, it is not necessary that you take specific action on Monday night's meeting. You can decide to receive and file my opinion letter, including the appendix. My opinion does not independently resolve the question of Mayor Mahoney's eligibility to run for reelection. There are a number of possible ways in which the issue may come to a head.

2. Amend the Term Limits Ordinance. Section 2-0106 is an ordinance and the City Commission has the power to amend it.

3. Seek city-wide voter input. The City Commission can refer proposed revisions to the City's term-limit regulations to the residents for a city-wide vote. If changes were made

by voter-approval in the June 2022 election, those changes would not be applicable to the June 2022 elections.

4. Petition to District Court. It is possible to request an interpretation of a city ordinance by the court—in this case, presumably, Cass County District Court. Such an interpretation may be sought not solely by a city but by interested persons or parties in more than one form of action; however, should the City Commission wish to do so, the Commission can direct the City Attorney's office to initiate the process. If so, I would engage the City's litigation counsel to undertake the matter.

I hope this is of assistance to you.

Sincerely,

Erik R. Johnson

Enclosures

Office of the City Attorney

City Attorney
Erik R. Johnson

Assistant City Attorney
Nancy J. Morris

July 22, 2021

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

RE: Fargo's "term limits" ordinance (F.M.C. §2-0106)

Dear Commissioners,

At your July 12th meeting you asked for my opinion interpreting Fargo's "term limits" ordinance. You also asked for my opinion as to how the term limit ordinances affects any sitting city commissioner or the sitting mayor and you asked me to provide a calculation as to when each of the seated members of the city commission will be "termed out" as a result of the ordinance. Each member of the city commission has somewhat differing circumstances regarding their term in office—differing facts—and I will address each such member individually, starting with the service of Mayor Mahoney. For clarity, since Mayor Mahoney has served in capacities of city commissioner and mayor, unless the context suggests otherwise, I will refer to Mayor Mahoney as "Dr. Mahoney".

The language of Fargo Municipal Code Section 2-0106 is as follows:

> 2-0106. Limitation on terms.--No member of the board of city commissioners may serve more than three (3) successive four-year terms; provided, that such term limitation shall be subject to the following:
>
> A. Any member elected to a term of less than four years as a result of a vacancy on the board shall be eligible to serve three additional four-year terms.
>
> B. Any member who has completed three successive four-year terms shall not be eligible for re-election until the next regular election following the expiration of such member's third successive term.

C. Any member who has served in the capacity of mayor, as well as city commissioner, may not serve more than four (4) successive four-year terms.

D. This ordinance shall not apply to any member of the board whose first election as either mayor or commissioner occurred prior to April of 1992.

I
Term Limits Ordinance and Mayor Timothy J. Mahoney, M.D.

Mayor Mahoney first became a city commissioner on September 27, 2005, two weeks after he won a September 13th special city election to fill the seat vacated when Commissioner Thomas Lane relocated to another state, thereby resigning his position with the City. Lane's four-year term was to end in June 2006 and Dr. Mahoney was re-elected in 2006 (some 9+ months after the special election) and 2010 to his first and second full four-year terms as a city commissioner. In 2014, Dr. Mahoney was re-elected again to another term as city commissioner. Mayor Dennis Walaker died in office on December 2, 2014. Dr. Mahoney, serving as the elected (by his fellow city commissioners) Deputy Mayor under Mayor Walaker, assumed the role of acting mayor. A special city election was held on April 28, 2015, at which time Dr. Mahoney was elected as the mayor. As a result of the special election victory, Dr. Mahoney served the remaining portion of the June 2014 to June 2018 term as the mayor, taking his seat as mayor on May 12, 2015. Dr. Mahoney was reelected mayor in the City's regular election in June 2018 for a four-year term running to June 2022. Dr. Mahoney has publicly announced his intention to run again for reelection as mayor in the City's regular election to occur June 14, 2022. The announcement of his intention is what prompts this analysis of the City's term limits ordinance.

Two important details about Fargo election law at the time of the April 2015 special election must be understood with the first being the Fargo Home Rule Charter provision in effect at the time that provided: "No person who is currently serving as a city commissioner may become a candidate for the office of mayor without first resigning as a member of the board of city commissioners; provided, that such resignation shall be effective on such day as is specified by city ordinance following the election." Fargo Home Rule Charter Art. A.12.[1] As a result of this requirement, on January 28, 2015, Dr. Mahoney submitted his petition to run for the vacated mayoral position. He also submitted to the City Auditor his written resignation, to take effect

[1] This resignation requirement was initially enacted by city-wide vote in 1996 and it was amended in 2000 by city-wide vote when the City converted the time for biennial city elections from March of each biennium to align with the June primary elections statewide to change the effective date from May 20th to "such day as is specified by city ordinance." Relevant supporting materials are included in the appendix to this letter.

two weeks after the election. A copy of the letter of resignation given to City Auditor is included in the appendix to this letter. This resignation requirement allowed the City Auditor undertake all the required steps to notify the public of the soon-to-be-vacated commission seat in a timely manner so that candidates could participate in the same special election. As a result, Anthony Gehrig succeeded in winning the election for that seat in the same April 28th special election and Commissioner Gehrig took office two weeks thereafter—on May 12th, 2015. The second important election law detail is Fargo's law identifying the day when an elected official takes office. Fargo's Home Rule Charter provides "The mayor and all other members of the governing body shall hold office for four years and until a successor has been duly elected and qualified." Fargo Home Rule Charter Art. 2.A.2. See also: Fargo Home Rule Charter Art. 2.A.10 and .11. The city commission member is qualified after election by taking an oath or affirmation specified by the City Home Rule Charter and filing a signed copy with the city auditor. Id. The starting date for both the mayor and the commissioners' terms following election are on "...such day as is specified by city ordinance." Fargo Home Rule Charter Art. 2.A.10 and 2.A.11. The city ordinance being referenced is F.M.C. §4-0101.1, which provides that the "... term of each elective officer in the city of Fargo shall commence two weeks after the date of the election."[2] Since the special election was held on April 28, 2015, the terms for Dr. Mahoney as mayor and Mr. Gehrig as a city commissioner started May 12, 2015. The resignation requirement, as it pertained to Dr. Mahoney and Mr. Gehrig, meant that Dr. Mahoney's seat as a city commissioner took effect on the same day—May 12th—as Mr. Gehrig took his seat as a commissioner.[3] Therefore, although Dr. Mahoney changed offices on May 12th from that of a commissioner to mayor, there was no time during the June 2014 to June 2018 term that he was not "a member of the board of city commissioners" as referenced in the term limits ordinance. This fact will be important to bear in mind as the intent of the term limits ordinance is analyzed.

In view of the issues raised leading up to your request for my opinion, it may be well to state here certain principles that have been established either by statute, case law, or both that are considered in establishing an interpretation of a statute or ordinance. Municipal ordinances are interpreted in the same manner as are statutes. GO Comm. v. City of Minot, 2005 ND 136, 701 N.W.2d 865, 2005 N.D. LEXIS 171 (N.D. 2005). "All of the provisions of the Fargo Municipal Code are to be construed according to the fair import of their terms with a view to effecting their objects and granting justice." F.M.C. §1-0104. "Words used in any statute are to be understood in their ordinary sense, unless a contrary intention plainly appears, but any words explained in [the North Dakota Century Code] are to be understood as thus explained." N.D.C.C. §1-02-02.

A statute should be construed so that an ordinary person reading it would get from it the usual, accepted meaning. Wills v. Schroeder Aviation, 390 N.W.2d 544, 1986 N.D. LEXIS 353 (N.D. 1986). "When the wording of a statute is clear and free of all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit." N.D.C.C. §1-02-05. "In enacting a

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[2] In addition to the members of the city commission, the municipal judge is an elective officer.
[3] Fargo's Home Rule Charter was amended at the same April 28, 2015, special election to delete the sentence in Article 2.A.12, and the resignation requirement was eliminated. See Resolution approved by City Comm 01-05-2015 in appendix to this letter.

statute, it is presumed that: . . . [t]he entire statute is intended to be effective . . . [a] just and reasonable result is intended . . . [a] result feasible of execution is intended . . . [and] . . . [p]ublic interest is favored over any private interest." N.D.C.C. §1-02-38. Ordinances and statutes should be construed to require an element of reasonableness and should not be construed to arrive at an absurd result. Aanenson v. Bastien, 438 N.W.2d 151, 1989 N.D. LEXIS 56 (N.D. 1989). State v. Altru Health Sys., 2007 ND 38, 729 N.W.2d 113, 2007 N.D. LEXIS 38 (N.D. 2007) (Statute authorizing Workforce Safety Department to do "anything necessary" as part of its investigative activities should not be interpreted to allow the Department to require treating doctors to review extrinsic evidence that was not part of their normal treatment process thus converting the treating doctors into a form of expert witness for the State as such an interpretation would be unreasonable or cause absurd consequences.) While rules of interpretation of statutes and ordinances require one to look at the words of the statute to determine its meaning, if the statute is ambiguous or of doubtful meaning, certain sources outside of the words of the ordinance may be utilized to determine the intent of the ordinance. N.D.C.C. §1-02-39. See also: District One Republican Comm'n v. District One Democrat Comm'n, 466 N.W.2d 820, 1991 N.D. LEXIS 35 (N.D. 1991); City of Fargo v. Ness, 529 N.W.2d 572, 1995 N.D. LEXIS 41 (N.D. 1995).

Fargo's term limits ordinance, Section 2-0106, has been the subject of reviews and analysis in recent months and years by two other lawyers and by me. I prepared a Memo to Mayor Mahoney regarding the term limits ordinance dated December 11, 2017. Dr. Mahoney requested an opinion from attorney Howard Swanson, of Grand Forks, which was dated October 16, 2019, and from attorney Tami Norgard of Fargo, which opinion was dated June 25, 2021. All three of these documents are included in the appendix to this letter.

The term limits ordinance establishes a basic premise by which "[n]o member of the board of city commissioners may serve more than three (3) successive four-year terms". The ordinance contains four subsections each of which describe differing situations that may be needed in order to determine whether a particular member of the city commission is eligible to run for another election. With respect to Dr. Mahoney's time as an elected City official, it is Subsection A that becomes pivotal.

With respect to Dr. Mahoney's time in office as a member of the city commission, he has participated in two special elections that were both held to fill a vacancy. The first was the September 2005 election to fill the vacancy resulting from a resignation by Commissioner Thomas Lane, whose four-year term as a member of the commission would have ended in June 2006. Subsection A became operative in identifying that when Dr. Mahoney won the vacated seat in the September 2005 special election, he was "...elected to a term of less than four years as a result of a vacancy on the board shall be eligible to serve three additional four-year terms." F.M.C. §2-0106.A. The second of Dr. Mahoney's two "special elections" was the April 2015 special election. Under circumstances in which, at the time of the 2015 special election, Dr. Mahoney had already served two four-year terms and he was "running for a term of less than four years as a result of a vacancy on the board" the issue arises as to how to interpret the consequent to the condition in Subsection A, to-wit: that Dr. Mahoney became "...eligible to serve three additional four-year

terms." Id. There are at least three concepts—I will call them models—for interpreting the term limits ordinance. I will identify or describe the models, and will then analyze the term limits ordinance in the context of those models.

Three Interpretative Models

The "Cumulative Model". Is the term limits ordinance to be read in a cumulative sense, where a member of the commission begins with the base term limit of three successive terms and then, if the member qualifies for additional four-year terms by meeting conditions expressed in subsections A through D of the ordinance, the member becomes eligible for additional four-year terms in office. Under this cumulative model, because Dr. Mahoney's service would come to include a combination of service as both commissioner and mayor, he became eligible for a fourth additional four-year term. Still under this cumulative model, when, for a second time, Dr. Mahoney ran in April 2015 for "a term of less than four years as a result of a vacancy on the board", Dr. Mahoney would become eligible for "three additional four-year terms." Id. In other words the cumulative model would establish for Dr. Mahoney a "term limit" of seven four-year terms (a base of 3 terms + a single term under Subs. C + 3 additional terms under Subs. A).

The "Clarification Model". In the alternative, rather than the cumulative model, perhaps Subsection A is intended to serve as a fail-stop measure, designed to clarify that although it may be clear that by its own definition, the partial term created from a vacancy is not to be treated as one of the "three (3) successive four-year terms" described in the basic premise of the ordinance. Under this clarification model for Subsection A, the 2015 special election won by Dr. Mahoney would not trigger any added four-year terms but this model does include the interpretation that the mid-term election that caused the partial term somehow interrupts it as a full four-year term. The model would only clarify that the partial term (May 2015 to June 2018) created by Mayor Walaker's death still leaves Dr. Mahoney with a term limit of three successive four-year terms with the addition of the fourth successive four-year term resulting from his combination of service as commissioner and mayor. The 2014-2018 term, having been interrupted by the vacancy-related mid-term election, model would not count as one of the four successive four-year terms. Therefore, under the clarification model Dr. Mahoney would currently be serving his third successive four-year term (2006-2010; 2010-2014; skip 2014-2018; 2018-2022) and he would be eligible to run for a fourth four-year term under this clarification model.

The "Commission Member Model". The commission member model begins with the first eight words of the term limits ordinance: "No member of the board of city commissioners ...." The commission member model focuses upon a particular elected official's time "as a member" of the city commission in whatever office—the office of a city commissioner, the office of a mayor or a combination of such offices during the time one serves "as a member". Under this model, one determines the date when the elected official became a member of the city commission and that member's term limits are determined by the rest of the term limits ordinance. For Dr. Mahoney, he took office two weeks after the special election of September 2005. He was reelected in 2006, 2010, 2014 and 2018, all four four-year terms. He has, of course, served in the capacity as mayor and, therefore pursuant to Subsection C, he is eligible for not three but four successive four-year

terms. As to the 2014 to 2018 term, while it is true that Dr. Mahoney was elected in June 2014 to a four-year term as a city commissioner and to the May 12, 2015 to June 2018 partial term created by the death/vacancy of Mayor Walaker, his service during that four-year term "as a member of the board of city commissioners" was continuous and uninterrupted. Dr. Mahoney has served continuously as a member of the board of city commissioners from September 2005 until the present. Therefore, under the commission member model Dr. Mahoney's June 2018 to June 2022 term is his fourth consecutive four-year term.

Analysis

Cumulative model. Of the above-three models, the cumulative model is the only one that lends itself toward an interpretation that would result in Dr. Mahoney theoretically[4] becoming eligible for as many as seven successive four-year terms (not including his initial 8-month partial term). It is the word "additional" in Subsection A that is the genesis of the cumulative model. Dr. Mahoney was elected to a partial term beginning May 12, 2015, that resulted from the death/vacancy by Mayor Walaker. As a result, he becomes eligible to serve three "additional" four-year terms. In plain and ordinary usage, more times than not, the word is used in situations where "something is added to what one already has." Someone has to mow the lawn and wash the car "in addition to" doing the laundry, cleaning the windows and sweeping the garage. If you buy Product A now, you will get two additional bottles. This plain and ordinary meaning would assume that Dr. Mahoney was already entitled to the three successive four-year term limit (plus a fourth because he has served in commissioner/mayor combination) and since his 2015 special election meets the condition of Subsection A, he gets three more four-year terms. That is a plain and ordinary meaning interpretation. From a more technical sense, a dictionary definition of "additional" is that it is an adjective for "added, extra, supplementary". Concise Oxford Dictionary of Current English, Clarendon Press-Oxford, 1995. This definition is consistent with its plain and ordinary meaning. Thus, when one looks at the plain and ordinary meaning of Subsection A alone and with no reference to the entirety of the term limits ordinance, the language appears quite clear but, of course, statutory interpretation and construction discourages, if not prohibits, reading portions of an ordinance without reference to the whole. As stated in Harding v. City of Dickinson:

> In construing a statute the ordinary sense in which words are used (§ 1-0202 ND Rev Code 1943) and the context in which they are placed (§ 1-0203 ND Rev Code 1943) and the background for its enactment as far as that can be ascertained from the whole act must be considered. The main object sought in the construction of a statute is to ascertain and give effect to [*77] the intention of the lawmakers as expressed therein. Murie v. Cavalier County, 68 ND 242, 278 NW 243; State v. Rother, 56 ND 875, 219 NW 574.

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[4] Dr. Mahoney has publicly stated that he has no intention of being mayor any longer than one additional term (2022 to 2026) which I do not question in the least; however, for purposes of interpreting the term limits ordinance, we are obligated to determine the intent of the ordinance, itself—not to interpret it in the context of the intentions of an individual who may be affected by the ordinance.

> "All statutes must be construed if possible, so as to give them validity, force and effect and carry out the will of the [***9] legislator. In doing this respect must always be had to the language of the statute, the plain and obvious meaning of the words used and . . . their objects and purposes." People v. Sweetser, 1 Dak 308, 46 NW 452.
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> "There is always difficulty in extending the operation of words beyond their plain import; but the cardinal rule of construction is, that where any doubt exists, the intent of the legislature, if it can be plainly perceived, ought to be pursued. It is also a rule that the whole law is to be taken together, and one part expounded by any other which may indicate the meaning annexed by the legislature itself to ambiguous phrases." Chief Justice Marshall in Postmaster Gen. v. Early, 12 Wheat (U.S.) 136, 6 L Ed 577.

Harding v. City of Dickinson, 76 N.D. 71, 76-77 (N.D. 1948). See also: County of Stutsman v. State Historical Soc'y, 371 N.W.2d 321, 1985 N.D. LEXIS 354 (N.D. 1985)(A statute is to be read to give effect to each of its provisions, whenever fairly possible). Further, when looking at an ordinance in its entirety, one must use the principles identified in N.D.C.C. §1-02-38, which provides that when a statute is enacted, it is presumed that "the entire statute is intended to be effective...a just and reasonable result is intended...a result feasible of execution is intended...[and] public interest is favored over any private interest." Aanenson v. Bastien, 438 N.W.2d 151, 156-157, 1989 N.D. LEXIS 56 (N.D. 1989)(When a court interprets a statute, it must presume that the legislature intended a just and reasonable result. N.D.C.C. §1-02-38(3). A statute must be construed to avoid absurd and ludicrous results.) State v. Altru Health Sys., 2007 ND 38, 729 N.W.2d 113, 2007 N.D. LEXIS 38 (N.D. 2007)(Statute authorizing Workforce Safety Department to do "anything necessary" as part of its investigative activities should not be interpreted to allow the Department to convert treating medical doctors to become expert witnesses for the Department by requiring the treating doctors to review extrinsic evidence that was not part of their normal treatment process as such an interpretation would have unreasonable or absurd consequences). The term limits ordinance establishes a baseline of three four-year terms as the limitation with a possible extension by a fourth four-year term if a member serves in a commissioner-mayoral combination. Is it a reasonable interpretation to find that the baseline term limits should be doubled because a member happens to have his/her successive terms interrupted by a mid-term special election that was caused by a vacancy? There is nothing in the ordinance that would supply a plausible explanation by which such a duplication of the baseline term limits would be reasonable. In my opinion, the cumulative model—the additive concept--is not a reasonable interpretation of the term limits ordinance.

Clarification Model. Again, the clarification model assumes that the "additional three four-year terms" in Subsection A is not additive in nature but is a clarification and it assumes that the existence of a "partial term" resulting from a vacancy will disqualify the "partial term" from being counted toward the three-term or four-term limit, as applicable, to the elected official in question. This model gives full throat to the language of Subsection A. There is nothing in the plain and ordinary meaning of Subsection A that denies the legitimacy of this model, so long as one does not

look too far. If we look at the circumstances of Dr. Mahoney's time as an elected official, since this model is not additive, the "additional three four-year terms" that were triggered by the 2015 mayoral partial term can be applied retrospectively to the 2006-2010 and 2010-2014 terms and, if the 2014-2018 term is disqualified from being counted toward the term limitation, the result is that Dr. Mahoney's third term is the 2018-2022 term and his fourth would be the 2022-2026 term. One may argue to the contrary, but it probably is not completely untenable to think that (a) the uncommon occurrence of a death of a mayor so early in a four-year term combined with (b) the presence of a commissioner in Dr. Mahoney's position being ready to transition to the position of mayor meets the reasonableness test, especially when one assumes that the extra four-year term supplied to a combination commissioner-mayor elected official is for the purpose of allowing the elected official to get comfortable and become effective in both positions. In that context, the consequence of Subsection A rendering the 2014-2018 term as disqualified in the counting of Dr. Mahoney's four-term limitation is not absurd. There is, however, a challenge with the clarification model when one looks at the repeated use of the word "successive" throughout the term limits ordinance. The baseline term limit consists of three (3) successive four-year terms. Subsection C adds a fourth "successive four-year term". The term limits ordinance does focus on "successive" terms and the ignoring of the 2014-2018 term in the calculation of "successive" terms is problematic.

Subsection B sheds some light on this. It can be argued that Subsection B either creates another means by which one can ignore the 2014-2018 term, because the partial term prevented the "completion" of Dr. Mahoney's succession of four-year terms or it can be argued that the only intent of Subsection B is to establish reset of the term-limits clock—that it becomes something of a statute of repose that quashes any objection. In order for this clarification model to succeed, one must adopt the former interpretation.

A reading of Section 2-0106 in its entirety does not provide an explanation as to how Dr. Mahoney's 2014-2018 term should be treated. The ordinance doesn't state how to consider it in the counting of a term limits calculation—not in express words. Howard Swanson identified the 2014-18 term as consisting of three "partial terms" consisting of one as "commissioner", one as "acting mayor" and one as "elected mayor" and, while factually there is nothing wrong with that characterization, one cannot ignore the four-year term without noting that there has been a break in the "succession" of four-year terms. Similarly, Tami Norgard's opinion fails to make note of this problem. Under a plain and ordinary meaning interpretation, a gap in a succession of anything usually interrupts the succession. To use a baseball example, would one ordinarily say that a batter hit back to back home runs (or in succession) when the batter had four at-bats in which he hit a homer in his first and fourth at bat and struck out in his second and third at bats. Frankly, it is difficult to think of examples in ordinary usage because people ordinarily do not encounter events that some "rule" requires them to ignore. Such analysis isn't so much "plain and ordinary" usage as it is a technical usage requiring interpretation in a more technical context (i.e. the baseball hitting example might be more of a technical application). The dictionary meaning of "successive" provides that it is an adjective meaning, "following one after another; running, consecutive" and "[f]ollowing one after another in a line or series." Respectively, Concise Oxford Dictionary of Current English, Clarendon Press-Oxford, 1995, and Black's Dictionary of Law, 4th Ed. Rev'd.

(1968)(citing In re Buchholtz, Cust. & Pat.Appl, 54 F.2d 965, 966). Thus, both the plain and ordinary meaning, as well as the technical or defined meaning of this initial phrase of the term limits ordinance are the essentially the same, that a succession of four-year terms means terms lined up end-to-end in a series and a gap in the series—in this case the 2014-2018 term that contains the "partial term" contemplated by Subsection A--interrupts the succession. Under the clarification model of interpretation, the term limits ordinance does not provide any assistance in resolving the question of what to do when a vacancy-caused partial term occurs in the middle of a series of successive four-year terms. This interpretation requires the 2014-2018 term to essentially be ignored in counting successive terms—it leaves the 2014-2018 term hanging out there without resolution, at least in terms of interpreting the term limits ordinance in its entirety. I see nothing in either Mr. Swanson's or Ms. Norgard's analysis that helps with this problem. I think it is possible to arrive at an interpretation of a statute or ordinance that identifies a result without providing answers to every question—every situation—but when there are other interpretations that are more comprehensive and that provide answers to those questions, the North Dakota statutory and case law cited above require us to look carefully at such an interpretation. In this context, it is my opinion the "clarification model" is not a completely unreasonable interpretation but it is lacking to a significant degree in serving as a legitimate interpretation of the term limits ordinance as a whole for the reasons I have provided.

Commission Member Model. Under the commission member model, Subsection A would be interpreted by concluding that, in the case of Dr. Mahoney's 2014-2018 term, he served the entire four-year term from June 2014 to June 2018 as a member of the board of city commissioners. If the main focus and intent of the term limits ordinance, when read in its entirety, is to establish a base limit of three terms (with a fourth successive term for a commissioner-mayor combination), then this interpretation as to Subsection A is a just and reasonable result. The reader need not be concerned about whether the "three additional four-year terms" in Subsection A are additive in nature because the underlying condition—the partial-term resulting from a vacancy—has not been met. As to Subsection B, if the plainly-worded intention is for the subsection to describe how the term-limits clock is reset, then the commissioner member model, which essentially allows the reader to start the clock when the elected official first takes office and allows the reader to stop the clock as soon as the official has served three (3) consecutive four-term limits (with a partial term at the beginning not counting as a four-year term and with a fourth term allowed for a commissioner-mayor combination situation), accomplishes that intention with a simple application of the plain and ordinary meaning of the words of the ordinance. In my opinion, the commission member model is an interpretation of the intent of the ordinance that completes the basic objective apparent from a reading the plain language of the entire ordinance of a three-term limit with suitable allowances for certain conditions that are consistent with the basic objective, are just and reasonable and are most cleanly and neatly enforceable. This meets criteria outlined by our rules for statutory interpretation. N.D.C.C. §1-02-38.

Ambiguity

As previously mentioned, whenever the language of an ordinance is clear and unambiguous, that language cannot be disregarded under the pretext of pursuing the legislative intent because the intent is presumed to be clear from the face of the statute; however, if the statutory language is ambiguous or of doubtful meaning, courts may look to extrinsic aids to interpret the statute. District One Republican Comm'n v. District One Democrat Comm'n, 466 N.W.2d 820, 1991 N.D. LEXIS 35 (N.D. 1991); City of Fargo v. Ness, 529 N.W.2d 572, 1995 N.D. LEXIS 41 (N.D. 1995). N.D.C.C. Section 1-02-39 provides a list of such extrinsic aids, as follows:

> If a statute is ambiguous, the court, in determining the intention of the legislation, may consider among other matters:
>
> 1. The object sought to be attained.
> 2. The circumstances under which the statute was enacted.
> 3. The legislative history.
> 4. The common law or former statutory provisions, including laws upon the same or similar subjects.
> 5. The consequences of a particular construction.
> 6. The administrative construction of the statute.
> 7. The preamble.

N.D.C.C. §1-02-39. I have provided analysis of three models or three concepts upon which an interpretation of Fargo's term limits ordinance may be based. Perhaps there are more. While I have already stated my opinion that the commission member model provides an interpretation that better fits the plain and ordinary meaning of the ordinance, when read as a whole, better than do the other two models or interpretations. Having said that, I acknowledge that the language of the term limits ordinance is sufficiently capable of being interpreted in more than one way and, therefore, that the term limits ordinance contains ambiguities or matters of "doubtful meaning". District One Republican Comm'n, supra, and City of Fargo v. Ness, supra. As a result, it is appropriate to look to extrinsic sources as described above. The legislative history of Fargo's term limits ordinance, proposed and enacted in 1992—the minutes of the city commission meetings occurring May 26th through July 13, 1992, is of particular value. The minute entries for the term limits ordinance from those meetings are included in the appendix to this letter and your attention is called to them. At the May 26, 1992, meeting, City Commissioner Furness submitted correspondence to the city commission that proposed a term limits ordinance. The following are excerpts of the minutes from that meeting:

> June 1, 1992
>
> City Attorney Directed to Prepare an Ordinance Limiting the Terms of the Mayor and City Commissioners:
>
> ...Commissioner Furness said the intent of this ordinance will be that:

1. No Mayor or City Commissioner will serve more than three successive four-year terms.
2. A Mayor or City Commissioner elected for a term of less than four years as a result of a vacancy will still be eligible to serve three successive terms.
3. A person ineligible for election because of this ordinance may again become eligible after a two-year absence.
4. A Mayor or City Commissioner serving at the time this ordinance become effective will not be subject to its terms.
5. Any combination of service as City Commissioner and/or Mayor is subject to this restriction.

* * *

Commissioner Furness stated the intent is that this will not apply to Commissioners sitting before the last election. He said he discussed this with Commissioner Preston and they would be inclined to live with the limits if the Ordinance passes.

* * *

Commissioner Furness stated there is competition and there is competition. He said he feels this ordinance would encourage people who may not run because they do not want to get involved in a time-consuming election against an incumbent.

* * * *

At the following meeting, on June 15, 1992, City Attorney Wayne Solberg presented a draft ordinance, which was received and filed and for which first reading in full length was waived. Among other things, City Attorney Solberg explained the basis in the Home Rule Charter for referring to both the mayor and commissioners as being "members of the board of city commissioners". The following are excerpts of the minutes from that meeting:

June 15, 1992

<u>Ordinance Relating to Limitation on Terms of the Mayor and City Commissioners to be Placed on First Reading at the Next Regulation Meeting of the Board:</u>

The Board received a communication from Wayne Solberg, City Attorney, stating in accordance with the Board's May 26, 1992 directive, he has prepared a draft of a proposed ordinance, which he attached, that would limit the number of terms of members of the Board of City Commissioners. Mr. Solberg said if adopted this section would become a part of Article 2-01 which contains various provisions relating to the Board of City Commissioners. He stated Section 2-0101 establishes the governing body of the City as "the mayor and four commissioners, hereafter collectively known as the board of city commissioners" and since the mayor is specifically designated as a member of the board, the three term limitation would apply, whether or not a portion of the service is as mayor and the remainder as a commissioner.

* * *

Commissioner Preston stated her concern is that the Commission might be a preparatory step to be Mayor and this Ordinance would provide that someone who has served two terms as a Commissioner could only serve one term as Mayor.

* * * *

At the June 29th meeting, Commissioner Arlette Preston suggested an amendment that ultimately resulted in the fourth consecutive four-year term being added to the draft ordinance to allow a commissioner who might later become mayor to have a fourth term. Commissioner Preston stated her intentions and the proposed amendment that was approved and contained in the enacted version of the term limits ordinance. The following are excerpts of the minutes from that meeting:

June 29, 1992

Amendment and First Reading of an Ordinance Relating to Limitation on Terms of the Mayor and City Commissioners:

* * *

Commissioner Preston reiterated her concern about the Mayor being included in the three-term limitation. For instance, she said, if a person is a City Commissioner for eight years the person should also be allowed to serve as Mayor for eight years.

Commissioner Preston moved the motion be amended to amend the Ordinance to allow for an additional term for a total of 16 years if there is a combination of service as a City Commissioner and Mayor.

* * *

Commissioner Preston stated the rationale is the way the Ordinance is set up there is a disincentive for someone to sit on the City Commission and then run for Mayor. She said the Mayor position is different from a City Commission position and has different responsibilities and different duties and she believes sitting on the Commission is going to prepare someone for being Mayor and she believes one more term would help.

* * * *

[The motion to amend was seconded and upon call of the roll, approved.]

The term limits ordinance was approved for final passage at the July 13, 1992 meeting without further comment.

I find the following comments provided in the minutes—the legislative history--quoted above to be particularly helpful in resolving ambiguities in the term limits ordinance:

1. It is significant that Commissioner Furness treated commissioners and the mayor with equal status in his June 1st, 1992, four-point proposal. His proposal of a three-term

limitation included "any combination of service as commissioner and/or mayor". Furness' language is consistent with a holistic viewpoint in which the elected official's time in office is agnostic to the official's roles of commissioner and mayor and this augers against the 2015 "partial term" argument.

2. Commissioner Preston expressed her June 29th motion to amend the draft ordinance to allow a total term limit of 16 years, by adding a fourth four-year term if a commissioner later opts to run for mayor. At the prior meeting, June 15th, Preston "...stated her concern is that the Commission might be a preparatory step to be Mayor and this Ordinance would provide that someone who has served two terms as a commissioner could only serve one term as Mayor." It is significant that neither Preston nor anyone else on the city commission at the time expressed the possibility that this ordinance would permit anything longer than four 4-year terms.

3. City Attorney Solberg's explanation of his June 15th draft ordinance (which did not yet include the Preston amendment to add a fourth term for a commissioner-mayoral combination of service), was helpful. He took pains to explain how the city ordinances treated the commissioners and the mayor as being "members of the board of city commissioners" and, thus, Furness' expression of "mayor and commissioners" was converted to "member" throughout Solberg's proposed draft. This explanation is supportive of, and consistent with, the commissioner member model of interpretation.

4. The intent of Subsection B becomes clearer by looking at Commissioner Furness' June 1st testimony, when his "version" is expressed as "A person ineligible for election <u>because of this ordinance</u> may again become eligible after a two-year absence." [Underline added.] Furness' language doesn't sound like the conditional hypothesis that became Subsection B, meaning, it doesn't establish a condition that, if met, results in a consequence. As such, we are not pushed into evaluating whether a member of the commission has "completed three successive four-year terms". We may still wonder whether that evaluation is necessary in order to determine if the person has become eligible "because of this ordinance" but the subsection itself doesn't insert an additional set of rules to interpret. In other words, Furness' intention would be more consistent with an interpretation, as expressed in my analysis above, that Subsection B exists for the purpose and intention of establishing how an elected official's term limits clock is reset. It is reset by a two-year absence after the official has been "termed out".

5. Commissioner Furness' stated intent that in the case of a partial term caused by a vacancy, the mayor or commissioner "...will still be eligible to serve three successive terms" closes the door on an interpretation that Subsection A might trigger the "addition" of three 4-year terms.

I find that the legislative history of the term limits ordinance supports the intention of the ordinance consistent with the commission member model of interpretation as I have described. Therefore, it is my opinion that Dr. Mahoney has served as a member of the board of city

commissioners without interruption since he took office in September 2005 and he has served as a member—in a combination of service as commissioner and as mayor—since that time in consecutive terms; that Dr. Mahoney's 2014-2018 term should be treated as the third in a series of consecutive four-year terms beginning with the 2006 term, that Dr. Mahoney was a "member of the board of city commissioners" throughout the 2014-2018 term without interruption even though he served in a combination of roles as commissioner and mayor during that term; and, therefore, that Dr. Mahoney's 2018 to 2022 term is his fourth successive term. As such, it is my opinion that the Fargo's term limits ordinance, Section 2-0106, will render Dr. Mahoney ineligible to serve as mayor in the June 2022 to June 2026 term.

II
Term Limits Ordinance and Commissioner David Piepkorn

David Piepkorn was elected to the city commission in the June 2008 regular election for a term of four years. He was defeated in a reelection bid in 2012. He was elected to the city commission again in the June 2014 regular election and he was reelected in June 2018. His 2008-2012 term in office is not consecutive with his election in June 2014 and its four-year term from 2014 to 2018. Therefore, he is currently in the middle of his second four-year term.

Deputy Mayor. Commissioner Piepkorn's role as deputy mayor must be considered. Commissioner Piepkorn serves as the deputy mayor, having been elected by his fellow members of the board of city commissioners. Throughout his time as deputy mayor, Dr. Mahoney has been the elected mayor of the City. While there have been occasions when Commissioner Piepkorn assumed his role as deputy mayor to run city commission meetings and performed other duties of the office of mayor during the absence of Mayor (I am unaware of any time when Mayor Mahoney was "unable" to act) at no time during his time as the deputy mayor has the mayor's office become vacant. Pursuant to Fargo's Home Rule Charter, Art. 2.A.5:

> 5. At the first meeting of the new governing body after each biennial election, the governing body shall elect one of its members as deputy mayor. The deputy mayor shall perform all of the duties of the office of mayor in the absence or inability of the mayor to act. <u>If the mayor's office becomes vacant, the deputy mayor shall become the acting mayor until the vacancy is filled as provided for in this charter.</u> [Emphasis added.]

As has been discussed above, Subsection C of the City's term limits ordinance adds a fourth successive four-year term to the basic three-term limit for "[a]ny member who has served in the capacity of mayor, as well as city commissioner...." Section 2-0106.C. The question is whether Commissioner Piepkorn's service as deputy mayor constitutes service "in the capacity of mayor" in such a manner that his term limits expand from three to four successive four-year terms. In looking at the plain and ordinary meaning of the above-quoted home rule charter

provision, Mr. Piepkorn's activities in performing duties of the office of mayor during Mayor Mahoney's occasional absences are part of his role as the deputy mayor—he is serving in the capacity of deputy mayor, but not in "the capacity of mayor" and, therefore, the fourth term for a commissioner-mayoral combination of service is not in effect.

Therefore, as stated, Commissioner Piepkorn is currently in the middle of his second four-year term. His successive time in office is currently limited to three successive four-year terms commencing with the June 2014 to June 2018 term.

III
Term Limits Ordinance and
Commissioner Anthony Gehrig

As mentioned, Anthony Gehrig was elected in the April 2015 special election. He was reelected for a four-year term in 2018 and he is currently in his first four-year term which will end in June 2022. His successive time in office is currently limited to three successive four-year terms commencing with the June 2018 to June 2022 term.

IV
Term Limits Ordinance and
Commissioner John Strand

John Strand was elected in the June 2016 regular election, his first four-year term. He was reelected in 2020 and, therefore, he is in the middle of his second four-year term which will end in June 2024. His successive time in office is currently limited to three successive four-year terms commencing with the June 2016 to June 2020 term.

V
Term Limits Ordinance and
Commissioner Arlette Preston

Arlette Preston was elected in the June 2020 regular election, her first four-year term.

Commissioner Preston previously served as a member of the City Commission from 1992 to 2000, which coincidentally, prompts inquiry as to the effect of Subsection D of the City term limits ordinance (F.M.C. §2-0106) which provides, "This ordinance shall not apply to any member of the board whose first election as either mayor or commissioner occurred prior to April of 1992." Commissioner Preston was first elected to the Fargo city commission on April 21, 1992, taking office, according to the home rule charter at the time, on May 20, 1992. Thus, the legislative history referenced above included Arlette Preston as a member of the city commission when the term limits ordinance was considered and enacted. Because Commissioner Preston's first election as a city commission member did not occur "prior to April 1992", she was not, and is not, exempted by Subsection D from the application of the term limits ordinance.

Therefore, as mentioned, Commissioner Preston is currently in her first four-year term. Her successive time in office is currently limited to three successive four-year terms commencing with the June 2020 to June 2024 term.

I trust you will find this letter to be responsive to your requests. Please let me know if you have any questions.

Sincerely,

Erik R. Johnson

Enclosure

APPENDIX

TO

LETTER-OPINION OF CITY ATTORNEY

RE: TERM LIMITS ORDINANCE

July 22, 2021

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Exhibit A

Letter of Resignation

From Mayor Mahoney

Re: Special Election-2015

CITY OF Fargo

Steve Sprague -
Auditor of Fargo -

Dear Steve Sprague

I resign my City Commissioner Office as of April 28th Election. It would be two week after election —

Sincerely,
Jim Malloy

Exhibit B

Memo to Mayor Mahoney

from Erik Johnson

December 11, 2017

CITY OF Fargo

Office of the City Attorney

City Attorney
Erik R. Johnson

Assistant City Attorney
Nancy J. Morris

MEMO

DATE: December 11, 2017

TO: Mayor Mahoney

FROM: Erik Johnson, City Attorney

RE: Mayoral term limits

Mayor,

For at least a couple reasons, I took it upon myself during the last special election (Spring 2015) to look into the question of terms limits for city commissioners and mayors. In Fargo, term limits are a creature of city ordinance, which provides:

Fargo Municipal Code §2-0106. - Limitation on terms. No member of the board of city commissioners may serve more than three (3) successive four-year terms; provided, that such term limitation shall be subject to the following:

A. Any member elected to a term of less than four years as a result of a vacancy on the board shall be eligible to serve three additional four-year terms.

B. Any member who has completed three successive four-year terms shall not be eligible for re-election until the next regular election following the expiration of such member's third successive term.

C. Any member who has served in the capacity of mayor, as well as city commissioner, may not serve more than four (4) successive four-year terms.

D. This ordinance shall not apply to any member of the board whose first election as either mayor or commissioner occurred prior to April of 1992. [Source: 2416 (1988), 2620 (1992).]

I interpret subsections A, B and C as being sequential in nature—each subsection builds upon the prior subsection. You were initially elected as a commissioner in a special election on September 13, 2005, to fill the vacancy left by Commissioner Thomas Lane whose four-year term was scheduled to expire nine-months later, in June 2006. As a result, subsection A provided that you were eligible for three additional four-year terms and you were successful in being elected to three successive four-year terms in June 2006, 2010 and 2014. Before your 2014 – 2018 term expired, you were then elected as mayor of the City at a special election held on April 28, 2015, to fill the position vacated as a result of the death of Mayor Dennis Walaker in December 2014. As a result of serving in the capacity of mayor, you became eligible to run for re-election in June 2018, which would be your fourth four-year term.

Exhibit C

Letter to Mayor Mahoney from

Howard Swanson

October 16, 2019

SWANSON & WARCUP, LTD.

*Howard D. Swanson
John A. Warcup
*Kellie E. Ebertowski

1397 Library Circle Suite 202
P.O. Box 12909
Grand Forks, ND 58208-2909
Telephone: (701) 772-3407
Facsimile: (701) 772-3833

Cindy R. Savage
Paralegal

*Also Licensed in Minnesota

October 16, 2019

via email - irishsurgeon@msn.com

Dr. Timothy Mahoney
4628 Timberline Dr.
Fargo, ND 58104

RE: Application of Fargo Municipal Code §2-0106

Dear Dr. Mahoney:

At your request, I have considered whether Fargo Municipal Code §2-0106 prohibits you from seeking re-election as the Mayor of the City of Fargo in the 2022 general election.

Documents Reviewed.

I have reviewed and considered the following documents:

- City of Fargo Home Rule Charter Article 2 – Governing body and mayor (as amended April 28, 2015);
- City of Fargo Home Rule Charter Article 2 – Governing body and mayor (effective prior to April 28, 2015 special election);
- Fargo Municipal Code §2-0106;
- April 2 and April 3, 2019 Email communications between Gregg Schlidberger, Steve Sprague, and Erik Johnson regarding elections;
- Your handwritten notes;
- Resignation letter dated January 19, 2015; and
- Miscellaneous media reports.

Factual Summary.

Based upon the information provided to me, it is my understanding that the following timeline reflects your service on the Fargo City Commission, including your service as Deputy Mayor, Acting Mayor, and Mayor of the City of Fargo, since 2005:

2005	Elected on September 13, 2005 to serve partial term on the City Commission expiring in June 2006. This partial term was completed
2006	Elected in June 2006 to serve a four-year term on the City Commission. This full four-year term was completed.
2010	Elected in June 2010 to serve a four-year term on the City Commission. This full four-year term was completed.
2014	Elected in June 2014 to serve a four year term on the City Commission. Appointed by Commission to serve in capacity of Deputy Mayor. This full four-year term was not completed.
	Began serving as acting Mayor in December 2014 following the death of Mayor Walaker.
2015	Submitted resignation letter for position on board of commissioners on January 19, 2015, effective May 12, 2015. Resignation submitted to participate in contested mayoral election. The full term as Commissioner which started in 2014 was not completed.
	Elected Mayor at special election held on April 28, 2015 to complete the remaining unexpired term of 3 years and 1 month vacated as a result of the death of Mayor Walaker. This partial term as Mayor was completed.
	On April 28, 2015 Tony Gehrig was elected to complete your vacated unexpired term of 3 years and 1 month on the board of commissioners.
2018	Elected in June 2018 to serve a four-year term as Mayor of the City of Fargo.
2019	You continue to serve as Mayor as of the date of this opinion.

Issue Presented.

Whether you are eligible to seek re-election as Mayor of the City of Fargo in the 2022 general election under the limitations set forth in Fargo Municipal Code §2-0106?

Relevant Provisions of law.

The City of Fargo Home Rule Charter (effective prior to the April 28, 2015 special election) provided, in relevant part, as follows:

Article 2 - Governing body and mayor

A. Subject to the limitations imposed by the constitution of the United States of America, the constitution of the state of North Dakota, state law, and this charter, all powers of the city shall be vested in the elected governing body. The elected governing body shall enact ordinances, adopt annual and long-range budgets, raise revenue, determine policies and prescribe the functions of government to be performed by the city's elected and

appointed officials under the authority of this charter.

1. The Fargo city government shall operate with the commission form of government. The governing body shall consist of the mayor and four commissioners, forming the board of city commissioners. The mayor is the presiding officer of the commission and the city's chief executive officer. The mayor may participate in all respects in commission action.

...

5. At the first meeting of the new governing body after each biennial election, the governing body shall elect one of its members as deputy mayor. The deputy mayor shall perform all of the duties of the office of mayor in the absence or inability of the mayor to act. If the mayor's office becomes vacant, the deputy mayor shall become the acting mayor until the vacancy is filled as provided for in this charter.

...

12. Candidates for the governing body must be qualified electors of the city of Fargo, and must have been in continuous residence in the city for at least six months prior to filing their nomination papers. No person who is currently serving as a city commissioner may become a candidate for the office of mayor without first resigning as a member of the board of city commissioners; provided, that such resignation shall be effective on such day as is specified by city ordinance following the election.

...

18. Any member of the governing board may resign by filing a written resignation with the city auditor. When a vacancy occurs or whenever a resignation is submitted pursuant to section 12 of this Article, the governing body must call a special election to fill such vacancy for the unexpired term unless a city-wide election occurs within the next six months. In that case, the governing body may fill the position by appointment until the vacancy is filled by election.

An amendment to the City of Fargo Home Rule Charter was adopted at a special election taking place on April 28, 2015, which amended the language of Article 2 Section A(12) as follows:

12. Candidates for the governing body must be qualified electors of the city of Fargo, and must have been in continuous residence in the city for at least six months prior to filing their nomination papers. ~~No person who is currently serving as a city commissioner may become a candidate for the office of mayor without first resigning as a member of the board of city commissioners; provided, that such resignation shall be effective on such day as is specified by city ordinance following the election.~~

No additional amendments to Article 2 of the Home Rule Charter have been adopted since April 28, 2015.

The Home Rule Charter does not contain any limitations on terms for members of the board of commissioners. Term limitations are established by Fargo Municipal Code §2-0106, which provides as follows:

> No member of the board of city commissioners may serve more than three (3) successive four-year terms; provided, that such term limitation shall be subject to the following:
>
> A. Any member elected to a term of less than four years as a result of a vacancy on the board shall be eligible to serve three additional four-year terms.
>
> B. Any member who has completed three successive four-year terms shall not be eligible for re-election until the next regular election following the expiration of such member's third successive term.
>
> C. Any member who has served in the capacity of mayor, as well as city commissioner, may not serve more than four (4) successive four-year terms.
>
> D. This ordinance shall not apply to any member of the board whose first election as either mayor or commissioner occurred prior to April of 1992.

(Source: Ordinance Number 2416 (1988), Ordinance Number 2620 (1992)).

Interpretation of an Ordinance.

The interpretation of an ordinance is governed by the rules of statutory construction. *Hentz v. Elma Twp. Bd. of Supervisors*, 2007 ND 19, ¶ 9, 727 N.W.2d 276; *Mertz v. City of Elgin, Grant Cty.*, 2011 ND 148, ¶ 4, 800 N.W.2d 710, 713; *Pulkrabek v. Morton Cnty.*, 389 N.W.2d 609, 614 (N.D.1986). When construing an ordinance, the enacting body's intent is ascertained by giving language its plain, ordinary, and commonly understood meaning. *Hentz*, at ¶ 9; *Pulkrabek*, at 614–15. Courts will not disregard unambiguous language to pursue the spirit of an ordinance. *Id.* at ¶ 9. Ordinances are construed as a whole, harmonizing and giving meaning to related provisions. *Id.*

Analysis.

Article 2 of the City of Fargo Home Rule Charter defines the "board of city commissioners" as consisting of "the mayor and four commissioners." (Home Rule Charter, Article 2, Secton (A)(1)). Fargo Municipal Code §2-0106 limits the tenure of any member of the board of city commissioners to three successive four-

year terms, subject to four enumerated exceptions. Subsection (A) provides that "a partial term of less than four years" does not count as a full term for the purposes of the term limitations. The ordinance specifically states: [a]ny member elected to a term of less than four years as a result of a vacancy on the board shall be eligible to serve three additional four-year terms."

Under the language provided in §2-0106(A), it is clear that your service on the board of city commissioners from September 2005 through June 2006 is a partial term, which would not preclude you from serving three additional successive four-year terms on the board of commissioners. Following this partial term, you were subsequently elected to, and served, two complete four-year terms commencing in 2006 and 2010. You were elected to serve a third successive four-year term on the board of commissioners in 2014.

In addition to being elected to serve a four-year term on the board of commissioners in 2014, you were also elected by the board of commissions to serve as deputy mayor pursuant to City of Fargo Home Rule Charter Article 2, Section 5, which provides that "[a]t the first meeting of the new governing body after each biennial election, the governing body shall elect one of its members as deputy mayor... If the mayor's office becomes vacant, the deputy mayor shall become the acting mayor until the vacancy is filled as provided for in this charter." As a result of the death of Mayor Walaker, the office of Mayor of the City of Fargo became vacant in December of 2014. As deputy mayor, you became acting Mayor based upon your position as deputy mayor on the board of city commissioners.

The City of Fargo Home Rule Charter further provides that "[w]hen a vacancy occurs... the governing body must call a special election to fill such vacancy for the unexpired term unless a city-wide election occurs within the next six months." (Home Rule Charter, Article 2, Section (A)(18)). Apart from serving as acting mayor of the City of Fargo from December 2014 until May 2015, you decided to independently seek election as Mayor of the City of Fargo to fill the unexpired term left vacant by Mayor Walaker. At the time you announced your intention to run for mayor, the City of Fargo Home Rule Charter Article 2 Section 12 provided that "[n]o person who is currently serving as a city commissioner may become a candidate for the office of mayor without first resigning as a member of the board of city commissioners; provided, that such resignation shall be effective on such day as is specified by city ordinance following the election." You submitted a letter of resignation from your elected position on the Fargo Board of Commissioners on January 19, 2015. Such resignation was effective May 12, 2015. As a result of your resignation, your vacated position on the board of commissioners was placed on the ballot for the April 28, 2015 special election, for an unexpired term of 3 years and 1 month. You did not complete the four-year term on the board of commissioners for which you were elected in June 2014.

You were elected as Mayor of the City of Fargo at the special election taking place on April 28, 2015 to serve a partial term of 3 years and 1 month. Your vacant position on the board of commissioners was filled by Tony Gehrig at the same special election.

Fargo Municipal Code §2-0106(A) explicitly provides that "[a]ny member <u>elected to a term of less than four years as a result of a vacancy on the board</u> shall be elligible to serve three additional four-year terms."(Emphasis added). Therefore, your election as Mayor on April 28, 2015 to serve a term of three years and 1 month is a partial term. Your partial term as Mayor of the City of Fargo expired in June 2018.

Following your election to and service of the partial term, you were elected to serve your first four-year term as Mayor in June 2018. This term expires in June 2022. This term is not successive with your full four-year terms served from 2006-2010 and 2010-2014.

In addition to the exclusion of partial terms from the calculation of term limits for members of the City of Fargo Board of Commissioners, Fargo Municipal Code §2-0106(C) provides that "[a]ny member who has served in the capacity of mayor, as well as city commissioner, may not serve more than four (4) successive four-year terms. The Fargo Municipal Code does not contain any limitation on the number of non-successive four-year terms on the board of commissioners. As such, under the plain language of Fargo Municipal Code §2-0106(A) and (C) your service, and eligibility for future service, on the board of commissioners can be summarized as follows:

September 2005 – June 2006	Partial term (Commissioner)
June 2006 – June2010	1st four-year term (Commissioner)
June 2010 – June 2014	2nd successive four-year term (Commissioner)
June 2014 – April 2015	Partial term (Commissioner)
Dec. 2014 effective April 2015	Resignation
April 2015 – June 2018	Partial term (Mayor)
June 2018 – June 2022	Anticipated 1st four-year term (Mayor)
June 2022 – June 2026	Potential 2nd successive four-year term (Mayor)

Conclusion.

Following your service of one partial term on the City of Fargo board of commissioners from September 13, 2005 to June 2006, under the terms Fargo Municipal Code §2-0106(A) you were eligible to serve three additional successive four-year terms on the board of commissioners. You were elected to serve the available three four-year terms in 2006, 2010, and 2014. However, before the expiration of your third successive four-year term, you resigned your position on the board of commissioners to seek election as Mayor of the City of Fargo pursuant to the City of Fargo Home Rule Charter Article 2 Sections 12 and 18. This service on the board of commissioners from June 2014 to May 2015 was a partial term.

You were then elected Mayor of the City of Fargo to serve a partial term of 3 years and 1 month as Mayor. Under the express language of Fargo Municipal Code §2-0106(A), this partial term does not prevent you from subsequent election as Mayor. Although you served in some capacity on the board of commissioners from 2014 through 2018, such service was comprised of two partial terms, separated by your resignation from your commission seat and subsequent and independent election to the mayoral vacancy. You have since been elected in June 2018 to your first four-year term as Mayor. Based upon the foregoing, it is my opinion that you are eligible to seek re-election as Mayor in 2022.

The provisions of Section 2-0106 of the Fargo City Code can be described as open to interpretation. In that regard it would not be inappropriate to consider an amendment to remove any potential ambiguities with respect to partial terms.

I remain available to discuss these matters further should you have any questions or concerns.

Sincerely,

SWANSON & WARCUP, LTD.

Howard D. Swanson
hswanson@swlawltd.com

HDS/gkf

Exhibit D

Memo-Tami Norgard

June 25, 2021

MEMO

To: Erik Johnson, Fargo City Attorney

From: Tami Norgard

CC: Fargo Mayor Tim Mahoney

Date: June 25, 2021

Re: Fargo Municipal Code and Election Eligibility of Mayor Mahoney

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In our meeting today, you advised that you interpret the language of the Fargo Municipal Code to not allow Mayor Mahoney to run for reelection as Fargo Mayor. I offered to send you my research that establishes the foundation for my legal opinion that Mayor Mahoney is allowed to seek another term under the Fargo Ordinance.

Mayor Mahoney sought an opinion from Howard Swanson of Swanson & Warcup, which was provided on October 16, 2019 (the "Swanson Memorandum"). Mr. Swanson provided his interpretation of the Ordinance, without much legal support. My office conducted fairly wide-ranging legal research regarding the ordinances at issue, relevant case law, and legal treatises. After review of this legal authority, I can advise that I agree with the Swanson Memorandum conclusions. Mayor Mahoney's past partial terms do not get included in the calculation of what constitutes a "term" for the purpose of calculating term limits pursuant to Fargo Municipal Code § 2-0106. Accordingly, Mayor Mahoney is eligible to seek re-election as mayor in 2022.

ANALYSIS

For purposes of this memorandum, we rely on the facts as presented in the Swanson Memorandum.

The Fargo Municipal Code (the "Code") limits the terms of members of the board of city commissioners to no more than three successive four-year terms. Fargo Municipal Code § 2-0106. Section 2-106 provides:

> No member of the board of city commissioners may serve more than three (3) successive four-year terms; provided, that such term limitation shall be subject to the following:
>
> A. Any member elected to a term of less than four years as a result of a vacancy on the board shall be eligible to serve three additional four-year terms.
>
> B. Any member who has completed three successive four-year terms shall not be eligible for re-election until the next regular election following the expiration of such member's third successive term.
>
> C. Any member who has served in the capacity of mayor, as well as city commissioner, may not serve more than four (4) successive four-year terms.
>
> D. This ordinance shall not apply to any member of the board whose first election as either mayor or commissioner occurred prior to April of 1992.

Ordinance interpretation is governed by the rules of statutory construction. *Hentz v. Elma Twp. Bd. of Supervisors*, 2007 ND 19, ¶ 9, 727 N.W.2d 276; *Mertz v. City of Elgin, Grant Cty.*, 2011 ND 148, ¶ 4, 800 N.W.2d 710, 713; *Pulkrabek v. Morton Cty.*, 389 N.W.2d 609, 614 (N.D. 1986). In construing an ordinance, courts review the ordinance as a whole and determine the "intent by giving language its plain, ordinary, and commonly understood meaning, and will not disregard unambiguous language to pursue the spirit of an ordinance." *Mertz*, at ¶ 4. The last sentence quoted is crucial to this analysis. While you opine as to the spirit of the ordinance, if there is unambiguous language in the ordinance, it is the language that will apply and govern the situation. The language in the Fargo Ordinance is unequivocal and unambiguous.

The ordinance at issue here, Code § 2-0106, provides four exceptions to the general rule that members of the board of city commissioners are limited to three successive four-year terms. First, subsection (A) provides "[a]ny member elected to a term of less than four years as a result of a vacancy on the board shall be eligible to serve three additional four-year terms." This is the "partial term" exception. Additionally, subsection (C) provides that a member serving in the capacity as mayor, as well as a city commissioner, is limited to four successive four-year terms, rather than the standard three.

As discussed in the Swanson Memorandum, Mayor Mahoney's initial service with the city commission from September 2005 to June 2006 was a partial term. Mayor Mahoney's first full term was from June 2006 to June 2010. The second successive full term was from June 2010 to June 2014. Mayor Mahoney was elected for a third term as a city commissioner in June 2014, but did not complete that City Commission term, since he was appointed as deputy mayor by his colleagues upon the death of Mayor Walaker in accordance with City of Fargo Home Rule Charter Art. 2, Section 5. Pursuant to the Home Rule Charter, if the office of the mayor becomes vacant, the deputy mayor is to become the acting mayor until the vacancy is filled by the method provided for by the charter. Home Rule Charter, Art. 2, Section 5. The method to fill the vacancy provided for by the charter is to call a special election for the unexpired term unless a city-wide election occurs within the next six months. Home Rule Charter, Art. 2, Section (A)(18).

In December 2014, the office of mayor became vacant as a result of the death of Mayor Walaker. As a result of the vacancy, Mayor Mahoney became acting mayor. During his time, Acting Mayor Mahoney determined he would independently seek the office of the mayor in the upcoming special election. Accordingly, he resigned from the city commission in January 2015, effective May 2015, pursuant to Home Rule Charter Art. 2 Section (A)(12) in order to serve as mayor, if elected. At the time of his resignation, the Home Rule Charter provided that "[n]o person who is currently serving as a city commissioner may become candidate for the office of mayor without first resigning as a member of the board of city commissioners." Home Rule Charter, Art. 2, Section (A)(12). Acting Mayor Mahoney's recently vacated position on the city commission was filled by Tony Gehrig at the same special election that Mayor Mahoney sought the office of the mayor. Accordingly, Mayor Mahoney's service as a commissioner from June 2014-April 2015 was a partial term and does not get included in any "successive term" analysis.

The Special Election was conducted on April 28, 2015, where citizens voted to fill the unexpired term of Mayor Walaker and to fill the commissioner seat that was vacated through Acting Mayor Mahoney's resignation. This was a partial term as a commissioner of 3 years and 1 month and is subject to the exception outlined in Code § 2-0106(A). The City law in effect at that time stated that the term of office for any elected officer began two weeks after the election. Mayor Mahoney was sworn in as mayor on May 11, 2015. Mayor Mahoney finished Mayor Walaker's unexpired term, which was a partial term as mayor, from May 11, 2015 to June 2018. Mayor Mahoney was re-elected as mayor for his first full four-year term in June 2018. As such, Mayor Mahoney served two terms as a city commissioner, then served partial terms as commissioner, deputy mayor, acting mayor and mayor during the next 4 year period, none of which amount to a full "term" for any office. Finally, Mayor Mahoney is in his first term as mayor.

The facts of this case are similar to those at issue in a recent Florida case, where the Florida Court of Appeals held a partial term served by the mayor, consisting of the remaining term of the preceding mayor who resigned, did not count as a full term for purposes of the city charter's two-term limit. *Martinez v. Hernandez*, 227 So.3d 1257 (Fla. Dist. Ct. App. 2017). In *Martinez*, the City of Hialeah's charter provided "a mayor shall be elected who shall serve for a term of 4 years or until a successor shall be duly qualified to take office." *Id.* at 1259. Additionally, as to vacancies and term limits, the charter provided

> If the office of the mayor becomes permanently vacant by reason of death, resignation, recall or other lawful action, such vacancy shall be filled with the person holding the office of council president, who shall exercise all of the duties of the office of mayor and shall perform the duties and assume the responsibilities of that office and **shall become mayor and serve out only that portion of the former mayor's term** that precedes the next regularly scheduled municipal election or state or federal general election for which there is sufficient time to adopt a special election ordinance establishing qualifying periods and related provisions, when an **election shall be held to fill the balance of the term**, if any,
>
> ...
>
> **No person shall be elected to serve as mayor for more than 2 consecutive terms** on and after November 13, 1997.

Id. (emphasis in original). Carlos Hernandez become mayor of Hialeah in May 2011 when the then-serving mayor, Julio Robaina, permanently resigned the office. *Id.* Hernandez was then serving as council president, and thus became mayor to "serve out only that portion of the former mayor's term that preceded the next regularly scheduled municipal election...for which there is sufficient time to adopt a special election ordinance establishing qualifying periods and related provisions, when an election shall be held to fill the balance of the term, if any," as provided in the city's charter. *Id.* The City Council scheduled a special election for November 15, 2011 to fill the permanent vacancy for the balance of the prior mayor's term (roughly two years rather than the standard four-year term). *Id.* Hernandez ran and was elected in that special election. *Id.* Hernandez ran again and was elected in the general election of November 2013 for a four-year term. *Id.*

As the November 2017 general election approached, Julio Martinez brought a citizen suit for declaratory and injunctive relief alleging that the charter's term limits for the office of mayor precluded Hernandez from qualifying to run for a further term. *Id.* Martinez argued that the "consecutive terms" language of the charter included partial terms of less than four years because if it didn't, Hernandez would be allowed to be mayor for ten and one-half years rather than the eight years envisioned by the charter. *Id.* In rejecting Martinez' arguments, the trial court initially reviewed the plain language of the ordinance. *Id.*

> First, as a matter of statutory interpretation and plain meaning, the text of [the charter] expressly provides for elections every four years to select a mayor for a four-year term. The unusual circumstances resulting in a particular four-year term not being fully served affect the "former mayor's term," implying that whatever part of that term remains is not counted as a full "term" attributable to the successor.
>
> This common-sense conclusion also was reached in the two closest reported cases in Florida: *Ervin v. Collins*, 85 So.2d 852 (Fla. 1956) (concluding that the Governor, who had been elected in a special election to fill a portion of an unexpired term, could not be considered ineligible to run for re-election for a full term); and *Vieira v. Slaughter*, 318 So.2d 490 (Fla. 1st DCA 1975) (holding that a two-year, nine-month transitional term, followed by a full four-year term, did not constitute a term of office within the meaning of a charter provision prohibiting a mayor who has served for two consecutive terms from running for a third term).

The plain language of the ordinance at issue in *Martinez* is strikingly similar to the ordinance here. The City of Fargo Home Rule Charter provides "[t]he mayor and each of the commissioners shall be elected by all the voters in the city, and shall serve four-year terms. The mayor will be elected in the regular 1986 city election and every four years thereafter." Home Rule Charter, Art. 2, Section (A)(10). Just as in *Martinez*, the City of Fargo Home Rule Charter expressly provides for elections every four years to select a mayor for a four-year term. Mayor Mahoney's service as deputy mayor and acting mayor affect Mayor Walaker's term, and should not be attributable to Mayor Mahoney's initial term, which began in June 2018.

This same conclusion has been applied since the early 20th century. *See e.g. Black v. Pate*, 30 So. 434; *Bozeman v. Laird*, 45 So. 722 (Miss. 1908). In *Black*, the Supreme Court of Alabama held that the

defendant's previous tenure as sheriff for the remainder of an unexpired term, caused by the death of the preceding sheriff, did not render him ineligible to succeed himself for a full four-year term. *Black*, at 434.

Similarly, in *Bozeman*, the Legislature of Mississippi authorized the creation of a new county in 1906. *Id.* An election was held that summer for officers of the newly created county and the defendant in the case was elected sheriff, to hold office until January 1908. *Id.* At the general election of 1907, the incumbent sheriff was elected as sheriff for the full four-year term. *Id.* The Constitution of Mississippi provided that "[t]here shall be a sheriff . . . for each county, to be selected as elsewhere provided herein, who shall hold their offices for four years. *Id.* The sheriff [] shall be ineligible to immediately succeed themselves or each other in office." *Id.* Upon the incumbent sheriff's election, the plaintiff filed a petition to contest the election and determine the incumbent's eligibility to immediately succeed himself. *Id.*

The Supreme Court of Mississippi held that because the office of sheriff is fixed to four-year terms, the incumbent sheriff, who served as the initial sheriff of the newly created county for one and one-half years, was not ineligible to succeed himself. *Id.* The Court in that case was of the opinion that the ineligibility provision did not apply to an officer who had served only a partial term. *Id.*

As explained by the Court of Appeals of Kentucky, a term for the office of mayor commences when the mayor is elected and inducted into office, and ends on the expiration of the four year for which he is elected. *Schardein v. Harrison*, 18 S.W.2d 316, 317 (Ky. 1929). The duties of the office might be discharged by one or more persons during this period, but the term was not divided into smaller subterms by the number of persons who might fill the office, but remained one and indivisible, recurring in successive cycles of four years each. *Id.* Accordingly, the Court held that the term limitation and disqualification provisions only applied to mayors elected to a full term, not to officers appointed to fill an unexpired term of a preceding mayor. *Id.*

Further, in Mayor Mahoney's case, there is an exception to the general rule regarding partial terms. In the cases mentioned above, the courts in those cases came to the conclusion that partial terms are not subject to the term limitation provision based on the plan language of the ordinance or constitution establishing four-year terms. Here, the partial term exception is codified in the ordinance. Code § 2-0106(A).

While the North Dakota Supreme Court has not yet had the opportunity to review this issue, it has held the term of office is separate and distinct from the tenure of the individual officer, and the tenure of an officer may be greater or less than the fixed term of office. *See State ex rel. Spaeth v. Olson ex rel Sinner*, 359 N.W.2d 876 (N.D.1985); N.D.A.G. 2004-L-19. The "term," as applied to an office, refers to a fixed and definite period of time. *Id.* That is, the "term" is the fixed period of time an appointee is authorized to serve in office, a period that is established by law and/or specified in the letter of appointment. *Id.*

According to the most recent edition of the legal treatise, *American Jurisprudence*, "Public Officers and Employees," the word "tenure" has a more extended meaning than the word "term," and tenure of an office means the manner in which the office is held, especially with regard to time. "Tenure" generally is the time the appointee actually serves in office. The tenure of the person holding an office may vary from the term of the office, and, depending on the circumstances, the tenure can be shorter or longer than the officer's term. The term of an office is not affected by a shortening of the officer's tenure. 63C Am. Jur. 2d Public Officers and Employees § 135

Under the cases and authority cited above, in conjunction with the exceptions provided in Code § 2-0106(A), it is clear that Mayor Mahoney's service as acting mayor from December 2014 to April 2015 cannot be counted towards the term limitation provision because he, himself, was not elected to that term as the Code specifically requires. Additionally, his service as mayor from May 11, 2015 to June 2018, only constituted a portion of Mayor Walaker's unexpired term. Thus, it would not be subject to subjection (C) of Code § 2-0106.

The Fargo City Ordinance Section 2-106 limits service to three "successive terms," or if someone is both a commissioner and mayor, the limit is four "successive terms." The term "successive" means "following in order: following each other without interruption." Miriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/successive. Synonyms for 'successive' include: 'back-to-back,' 'consecutive,' and 'sequential.' Id. Mayor Mahoney's second term as a commissioner expired in June 2014. He is currently serving his first term as mayor, which started June 2018, four years after his last full term as a commissioner expired. While he will have served three total full terms as of June 2022, his three total terms are not successive given the four year gap between the second commissioner term and the mayoral term.

CONCLUSION

The plain language of the statute, in addition to the persuasive authority from sister jurisdictions, leads to the conclusion that Mayor Mahoney is eligible to seek re-election to the office of the mayor in June 2022. Given this clear and unambiguous language, if you are asked whether Mayor Mahoney has the ability to run for reelection, I hope your answer is simply "yes" rather than to invite any challenges or changes to the Ordinance. You raised the conflict of interest issue in our conversation today, advising that you did not think you had a conflict of interest on this issue. As City Attorney, I assume you are charged with representing the City as a whole and no particular city councilperson or the mayor. If you ventured beyond interpreting the plain language of the Ordinance and began suggesting changes, you would insert yourself into a role of impacting the election and favoring one candidate over another, which would not be within the purview of the City Attorney.

Please feel free to contact me to discuss this research further.

Exhibit E

1992 Legislative History

Minutes of CC Meetings

June-July 1992

the new Sign Ordinance, she said, one was approved, two turned down and one tabled to a future date and this shows the extreme caution the Board of Adjustment uses in deciding if a variance should be approved. She stated the Board of Adjustment feels there certainly should be a "Board" to hear the requests for relief under the Sign Ordinance, however, they think it highly irregular for the Planning Commission to request a change before the two boards meet to discuss the issue. Ms. Seabold said she is requesting the matter of changing the Sign Ordinance be tabled until the two board have a chance to meet and decide who should hear sign variance requests.

Commissioner Furness moved the communications from Dr. Samuel and Ms. Seabold be received and filed.

Second by Preston. All the Commissioners voted aye and the motion was declared carried.

Commissioner Furness asked if there is criteria that should be followed when a variance request is received.

Keith Burkholder, Director of Planning and Development, stated at the present time the Ordinance states there must be a hardship in order to grant a variance, however, that is a matter of interpretation.

Commissioner Preston stated perhaps discussions between the Board of Adjustment and the Planning Commission would result in better clarification.

Commissioner Furness moved this matter be tabled to allow the Planning Commission and Board of Adjustment to meet to discuss this issue.

Second by Preston.

Commissioner Bromenschenkel stated if the original Ordinance is to be amended, the sign industry representatives should again be involved in those discussions.

All the Commissioners voted aye and the motion was declared carried.

Mr. David Kegel of Kegel Sign Company, stated to get a variance there has to be four votes in favor of the request which makes it practically impossible to get a variance. He said the sign ordinance is a bad one and it would be appreciated if representatives of the sign industry and the business industry could be involved in discussions to change the ordinance.

Dr. Samuel stated out of 9 requests for variances that were received by the Board of Adjustment in the last two years, seven were granted, one is being considered on the Commission agenda tonight and one was tabled.

<u>City Attorney Directed to Prepare an Ordinance Limiting the Terms of the Mayor and City Commissioners:</u>

The Board received a communication from Commissioner Furness stating today in America there is much interest in the concept of limiting terms for elected officials and he feels this is an excellent idea for the following reasons: encourages new persons to run for office; assures more competition in the election process; minimizes the advantage of incumbency; prevents "professional" office-holders; attracts more qualified candidates; already in place for President and some Governors. Commissioner Furness said though some of these advantages pertain more to state and federal elections, he feels such action must begin at the local level and, during his campaign for City Commissioner, he proposed such a restriction and received many expressions of support. Consequently, he stated, at the June 1, 1992 meeting he will move to direct the City Attorney to draft an ordinance limiting terms of the Mayor and City Commissioners for the City of Fargo. Commissioner Furness said the intent of this ordinance will be that:

1. No Mayor or City Commissioner will serve more than three successive four-year terms.

2. A Mayor or City Commissioner elected for a term of less than four years as a result of a vacancy will still be eligible to serve three successive terms.

3. A person ineligible for election because of this ordinance may again become eligible after a two year absence.

4. A Mayor or City Commissioner serving at the time this ordinance becomes effective will not be subject to its terms.

5. Any combination of service as City Commissioner and/or Mayor is subject to this restriction.

Commissioner Furness urged the Board's support of this effort to encourage more participation in local government.

Commissioner Furness moved the communication from himself be received and filed.

Second by Sydness. All the Commissioners voted aye and the motion was declared carried.

Commissioner Furness stated the intent is that this will not apply to Commissioners sitting before the last election. He said he discussed this with Commissioner Preston and they would be inclined to live with the limits if the Ordinance passes.

Commissioner Furness moved the City Attorney be directed to prepare the appropriate ordinance limiting terms of the Mayor and City Commissioners for the City of Fargo.

Second by Preston.

Commissioner Furness stated this could be done as a change in the Home Rule Charter which would make it more permanent, however, he feels it might be better if it is in Ordinance form in case it turns out to be a bad situation.

Commissioner Bromenschenkel stated when this item appeared on the agenda he thought it would be good to go back into the past history of those elected to the City Commission. He said he went back to when the City was incorporated in 1875 and since then there have been five people that have served more than 12 consecutive years. He said it does not appear this is a big problem and he sees no need to have an Ordinance at this point.

Commissioner Furness stated he would agree the problem is less acute at the local level, but he feels it is important this begin at the local level and move up to the state and federal level. He said there would be no harm in having the Ordinance if the situation is as described.

Mayor Lindgren stated all elections have been competitive and he cannot understand how this Ordinance would encourage more people to run for office.

Commissioner Furness stated there is competition and there is competition. He said he feels this ordinance would encourage people who may not run because they do not want to get involved in a time-consuming election against an incumbent. He said if there is a vacancy it might encourage people to run.

Mayor Lindgren stated an analogy between the business and elective process would mean that no corporation should exist more than 12 years because during that period of time it has the advantages of incumbency and

it is unfair to the competitors and, therefore, at the end of 12 years it should close down. He said that would minimize the unfair advantages of incumbency and encourage new companies to start.

Commissioner Furness stated he is not talking about City government closing down and the analogy is wrong. He said in business typically there is change at the top and 12 years would be a long time for someone to be at the top.

Commissioner Bromenschenkel stated he understands Commissioner Furness's concern relative to the state and national term limitations, however, as far as local government, the voters are close enough to their elected officials and know how their Commissioners are. He said the City Commission does not have to tell the voters that they are not smart enough to decide when a Commissioner or Mayor is not serving them in a proper way and should be replaced with someone who can do a better job.

On call of the roll Commissioners Furness, Sydness and Preston voted aye.

Commissioners Bromenschenkel and Lindgren voted nay.

The motion was declared carried.

Application Filed By Courtside, Inc. for a Class "H" (On Sale Beer) Alcoholic Beverage License at 3491 University Drive South Approved:

A Hearing had been set for this day and hour on the application filed by Courtside, Inc. for a Class "H" (On Sale Beer) Alcoholic Beverage License at 3491 University Drive South, Notice of which had been published in the official newspaper for the City of Fargo on May 11, 1992.

No written protest or objection to the granting of the application has been received or filed in the office of the City Auditor, and said application has been approved by the Police Department as to the character of the applicant.

The Board determined that no person is present at this Hearing to protest or offer objection to the granting of the application.

Commissioner Bromenschenkel moved the above application be approved.

Second by Furness. On call of the roll Commissioners Preston, Furness, Bromenschenkel, Sydness and Lindgren voted aye.

No Commissioner being absent and none voting nay, the motion was declared carried.

Request for a Sign Variance for Lunde Lincoln Mercury Granted:

The Board received a communication from Bernie Dardis, Vice President, Cook Sign Company, stating Cook Sign Company is appealing the April 28, 1992 decision of the Board of Adjustment on a variance request for Lunde Lincoln Mercury. Mr. Dardis said the Board of Adjustment voted three to two to grant the variance to allow Lunde to move an existing Jeep Eagle sign 112'6" to the west of where it is presently located, however, the City's ordinance requires that "a concurring vote of four members of the board shall be necessary to reverse any order, requirement, decision, or determination of any such administrative official or to decide in favor of the applicant any matter upon which it is required to pass under any such ordinance". He stated the display would be the same height, the same distance from the street, exactly as it is presently installed and the reason it needs to be moved is because Mr. Lunde is opening another dealership on the east side of his present facility and, thus, the Jeep Eagle sign must be relocated to an area in front of the facility that sells that product line. Mr. Dardis said they appeal that the original intent of the ordinance was not intended to restrict existing

$82,480.00 to be the lowest and best bid received for mechanical construction work and the bid of Midstates Electric, Inc. of Fargo, North Dakota in the sum of $648,927.00 to be the lowest and best bid received for electrical construction work.

NOW, THEREFORE, BE IT RESOLVED, That the Board of City Commissioners finds and declares the bid received from Peterson Mechanical, Inc. in the sum of $82,480.00, is the lowest and best bid received for mechanical construction work and the bid received from Midstates Electric, Inc. in the sum of $648,927.00, is the lowest and best bid received for electrical construction work.

BE IT FURTHER RESOLVED, That the contracts for Phase 3 Wastewater Treatment Plant Expansion Improvement District No. 4022-3 in the City of Fargo, North Dakota, be and the same are hereby awarded to Peterson Mechanical, Inc. for the sum of $82,480.00 for mechanical construction work and to Midstates Electric, Inc. for the sum of $648,927.00 for electrical construction work, subject to the approval of the North Dakota State Department of Health.

Second by Furness. On the vote being taken on the question of the adoption of the Resolution Commissioners Preston, Sydness, Furness, Bromenschenkel and Lindgren voted aye.

No Commissioner being absent and none voting nay, the Resolution was adopted.

Wayne Solberg, City Attorney, stated his first involvement with this issue was late Friday and it is very complex. He said the low bidder is authorized to withdraw his bid in the event of a mistake within 24 hours and this bid was not withdrawn within 24 hours.

Commissioner Bromenschenkel moved the award of the bid for the general construction work for Phase 3 Wastewater Treatment Plan Expansion Improvement District No. 4022-3 be deferred and that the matter be referred to the City Attorney for consideration and recommendation.

Second by Preston. On call of the roll Commissioners Furness, Sydness, Bromenschenkel, Preston and Lindgren voted aye.

No Commissioner being absent and none voting nay, the motion was declared carried.

Change Orders for the Fargodome Through June, 1992 Approved:

The Board received a communication from Craig Helenske, Architect, Triebwasser, Helenske and Associates, Ltd., listing a summary of new Change Orders for general, mechanical and electrical construction for the Fargodome through June, 1992 for a total of $134,915.94.

Commissioner Bromenschenkel moved the communication from Mr. Helenske be received and filed.

Second by Furness. All the Commissioners voted aye and the motion was declared carried.

Commissioner Bromenschenkel moved the Change Orders in the amount of $134,915.94 be approved.

Second by Furness. On call of the roll Commissioners Sydness, Preston, Bromenschenkel, Furness and Lindgren voted aye.

No Commissioner being absent and none voting nay, the motion was declared carried.

Ordinance Relating to Limitation on Terms of the Mayor and City Commissioners to be Placed on First Reading at the Next Regular Meeting of the Board:

The Board received a communication from Wayne Solberg, City Attorney, stating in accordance with the Board's May 26, 1992 directive, he has

prepared a draft of a proposed ordinance, which he attached, that would limit the number of terms of members of the Board of City Commissioners. Mr. Solberg said if adopted this section would become a part of Article 2-01 which contains various provisions relating to the Board of City Commissioners. He stated Section 2-0101 establishes the governing body of the City as "the mayor and four commissioners, hereafter collectively known as the board of city commissioners" and since the mayor is specifically designated as a member of the board, the three term limitation would apply, whether or not a portion of the service is as mayor and the remainder as a commissioner.

Commissioner Furness moved the communication from Mr. Solberg be received and filed.

Second by Sydness. All the Commissioners voted aye and the motion was declared carried.

Mayor Lindgren questioned if Commissioner Furness, who proposed the Ordinance, will propose that appointed boards and commissions be included in the limitations as well.

Commissioner Furness stated he had not considered that, but it makes sense.

Commissioner Preston stated her concern is that the Commission might be a preparatory step to be Mayor and this Ordinance would provide that someone who has served two terms as a Commissioner could only serve one term as Mayor.

Commissioner Furness stated that was the intent when he proposed the Ordinance. He said he had not considered appointed boards and commissions in his proposal and does feel there is a difference between being appointed and being elected.

Commissioner Furness moved the Ordinance Relating to Limitations on Terms of the Mayor and City Commissioners be received and filed and placed on first reading at the next Regular Meeting of the Board.

Second by Sydness. On call of the roll Commissioners Furness, Sydness and Preston voted aye.

Commissioners Bromenschenkel and Lindgren voted nay.

The motion was declared carried.

Engineering Department Reclassifications Approved:

The Board received a communication from Jenifer Erickson, Personnel Coordinator, submitting the Engineering Department's reclassification request. Ms. Erickson stated Personnel Policy and Civil Service approved the entire reorganization request with the exception of the Office Supervisor to Engineering Administrative Aide request which has been deferred.

In the reclassification request, the Board received a communication from Mark Bittner, City Engineer, addressed to the Civil Service Commission, stating recent administrative changes in the Engineering Department have resulted in the reassignment of job responsibilities within the technical staff and he is proposing the following staff changes:

"1. Upon the retirement of Kirk Sundin effective August 1, 1992 upgrade this Engineering Aide I (EA I, Range 18) position to an Engineering Technician position (E Tech, Range 24) and assign the following responsibilities to the upgraded position:

a) This person will be responsible for managing all graphic records, files, plans, etc. in the Engineering Department as presently they have no one with direct responsibility

City Commissioner Arlette Haugen Preston
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Civil Service Commissioner Sandra Holbrook
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Personnel Policy Member Fire Chief Martinson
Mike Hulett - Fargo Clinic MeritCare
Harriette McCaul - NDSU Business Administration

Second by Bromenschenkel.

Mayor Lindgren stated the task force must be cognizant of the amount of money that can be spent on the personnel operation. He said there is a lot that could be done in several departments and the City should not expand a lot in one department without being aware of other areas such as public safety.

All the Commissioners voted aye and the motion was declared carried.

Amendment and First Reading of an Ordinance Relating to Limitation on Terms of the Mayor and City Commissioners:

Commissioner Furness moved first reading of an Ordinance Enacting Section 2-0106 of Article 2-01 of Chapter 2 of the Fargo Municipal Code Relating to Limitation on Terms of the Mayor and City Commissioners.

Second by Sydness.

Mayor Lindgren stated it has been said that people who have been in office for too long lose touch with the people, however, some who have been in office for just a short time lose touch with the people.

Commissioner Preston reiterated her concern about the Mayor being included in the three-term limitation. For instance, she said, if a person is a City Commissioner for eight years the person should also be allowed to serve as Mayor for eight years.

Commissioner Preston moved the motion be amended to amend the Ordinance to allow for an additional term for a total of 16 years if there is a combination of service as a City Commissioner and Mayor.

Second by Bromenschenkel.

Commissioner Preston stated the rationale is the way the Ordinance is set up there is a disincentive for someone to sit on the City Commission and then run for Mayor. She said the Mayor position is different from a City Commission position and has different responsibilities and different duties and she believes sitting on the Commission is going to prepare someone for being Mayor and she believes one more term would help.

On call of the roll Commissioners Furness, Sydness, Bromenschenkel, Preston and Lindgren voted aye.

No Commissioner being absent and none voting nay, the motion was declared carried.

On call of the roll to place the Ordinance on first reading as amended Commissioners Preston, Furness and Sydness voted aye.

Commissioners Bromenschenkel and Lindgren voted nay.

The motion was declared carried.

Requests for Personnel Approved:

The Board received the following requests for personnel:

1 Engineering Technician
1 Registered Nurse
1 Temporary Building Inspector
1 Office Associate II in the City Auditor's Office
1 Part-time Clerk in the Health Department

NOW, THEREFORE, BE IT RESOLVED, That the petition for a Special Use Permit to allow a 22' x 22' rental office building on the above-described property in the City of Fargo, Cass County, North Dakota, be granted with the aforementioned conditions.

Second by Furness. On the vote being taken on the question of the adoption of the Resolution Commissioners Sydness, Furness, Preston, Bromenschenkel and Lindgren voted aye.

No Commissioner being absent and none voting nay, the Resolution was adopted.

Hearing on Special Assessments for Sidewalks and Approaches for 1991:

A Hearing had been set for this day and hour on the special assessment list for the construction or rebuilding of Sidewalks and Approaches in the City of Fargo.

No appeals have been filed in writing against any item appearing on such special assessment list, and no person is present at this Hearing to appeal or offer any objection thereto.

Commissioner Bromenschenkel moved that the special assessment list for the construction or rebuilding of Sidewalks and Approaches for 1991 in the City of Fargo be and the same is hereby approved and confirmed and ordered filed in the office of the City Auditor, and that the City Auditor's Office be instructed to proceed to collect the assessments in the manner provided by law.

Second by Furness. On call of the roll Commissioners Sydness, Preston, Bromenschenkel, Furness and Lindgren voted aye.

No Commissioner being absent and none voting nay, the motion was declared carried.

Second Reading and Final Adoption of an Ordinance Relating to Limitation on Terms of the Mayor and City Commissioners:

Commissioner Furness moved that the proposed Ordinance Enacting Section 2-0106 of Article 2-01 of Chapter 2 of the Fargo Municipal Code Relating to Limitation on Terms of the Mayor and City Commissioners which was amended and placed on its first reading June 29, 1992 be now placed on its second reading and a vote taken on the question of its final passage and adoption.

Second by Preston. On call of the roll Commissioners Furness, Sydness, Preston voted aye.

Commissioners Bromenschenkel and Lindgren voted nay.

The motion was declared carried.

There was unanimous consent to waive reading of the Ordinance in its entirety and no one was present to request that the Ordinance be read.

On the vote being taken on the question of the final passage and adoption of the Ordinance, Commissioners Furness, Sydness and Preston voted aye.

Commissioners Bromenschenkel and Lindgren voted nay.

The Ordinance was duly passed and adopted.

Mayor Lindgren stated he feels this is something that should have been decided by the voters of the City. He said the rest of the rules that govern the election process were passed by the voters and he feels this one should have been handled the same way.

Commissioner Bromenschenkel stated in the past a City Commissioner ran for the position of Mayor and still held his City Commission seat. He said if a City Commissioner is successful in being elected to the Mayor seat a special election would be needed to fill the vacant City Commission seat. Therefore, he said, it would be proper to have an Ordinance to

require that the Commissioner relinquish his or her Commission seat to run for Mayor.

Action Taken on Report and Recommendations Received from the Civil Service Commission Regarding their Investigation of Test Improprieties in the Fargo Fire Department:

The Board received a communication from Sandra Holbrook, Chair, Civil Service Commission, stating Civil Service Commissioners Adam Boehler, Jean Hannig and Carolyn Monzingo join her in submitting the report of their investigation of test improprieties in the Fargo Fire Department, which she attached. Ms. Holbrook said it represents a diligent effort to fulfill their responsibility to the City in this matter.

The report said the findings of the investigation support not only recommendations for disciplinary action but recommendations for a variety of changes in the practices of both the Fire Department and the Personnel Office. The Civil Service Commissioners stated they strongly believe that additional discipline is required but they also believe that changes in policy and practice are important steps to help assure that the improprieties addressed by this investigation will not be repeated. They recommended that Assistant Chief Neil Roscoe be given a 30 calendar-day suspension including the loss of one month's pay but with credit for the five-day suspension already imposed by Chief Martinson and a permanent letter of reprimand be added to Mr. Roscoe's personnel file. They recommended that Training Director Loren Piersall be relieved of his duties as training director and that he be reassigned to a job in the Fire Department that does not involve supervisory responsibilities and that a permanent letter of reprimand be added to Mr. Piersall's personnel file. Regarding firefighters Davis Smith, Bruce Shirley and Ervin Wolff who were former lieutenants and demoted as a result of this case, they recommended that a letter of reprimand be added to each of these men's personnel files and that they remain there for the next 36 months. They stated Captain Gerald Splitt and former Lieutenant Bruce Shirley both admitted they had written at least one EMT recertification test for other people at the request of the Training Director and these actions are inappropriate and disturbing. They said Captain Splitt has done this several times and during his testimony he expressed no qualms about such a practice and former Lieutenant Shirley has further testified under oath that Assistant Chief Upton was present when he was asked to write the exam for someone else. The Commissioners stated his testimony is disputed by Assistant Chief Upton's sworn testimony but if Mr. Shirley's testimony is correct, the condoning of this practice by a high ranking officer would merit reprimand. They recommended that Fire Chief Martinson take action to clarify to all Fire Department personnel that such actions are unethical and will result in discipline and special attention should be given to the negative effect such actions have when they are practiced by officers whose behavior should be a model to others. They said the department should have in place an internal grievance procedure that is respected by the officers charged with leading the department and open to use without fear of retaliation and its availability should be regularly communicated to all Fire Department personnel. The Civil Service Commissioners recommended no discipline for Fire Chief Martinson. The Commissioners listed a number of changes they felt should be made in the Personnel Office with the majority of them relating to testing procedures and in the Fire Department with the main items relating to procedures for the promotional exams, establishing a regular rotation schedule, and EMT testing. The Commissioners stated they also considered the request of the

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. 2620

AN ORDINANCE ENACTING SECTION 2-0106
OF ARTICLE 2-01 OF CHAPTER 2 OF THE
FARGO MUNICIPAL CODE RELATING TO
LIMITATION ON TERMS OF THE MAYOR AND CITY COMMISSIONERS

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

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

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

WHEREAS, the Board of City Commissioners deems it necessary and desirable to adopt an ordinance limiting the length of service of members of the Board of City Commissioners;

NOW, THEREFORE,

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

Section 1. Enactment.

Section 2-0106 of Article 2-01 of Chapter 2 of the Fargo Municipal Code is hereby enacted to read as follows:

2-0106.--Limitation on Terms. No member of the board of city commissioners may serve more than three (3) successive four-year terms; provided, that such term limitation shall be subject to the following:

A. Any member elected to a term of less than four years as a result of a vacancy on the board shall be eligible to serve three additional four-year terms.

B. Any member who has completed three successive four-year terms shall not be eligible for re-election until the next regular election following the expiration of such member's third successive term.

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. 2620

C. Any member who has served in the capacity of mayor, as well as city commissioner, may not serve more than four (4) successive four-year terms.

D. This ordinance shall not apply to any member of the board whose first election as either mayor or commissioner occurred prior to April of 1992.

Section 2. Effective Date.

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

Jon G. Lindgren, Mayor

(SEAL)

Attest:

City Auditor

First Reading: June 29, 1992

Second Reading: July 13, 1992

Final Passage: July 13, 1992

ws35809/ord

the new Sign Ordinance, she said, one was approved, two turned down and one tabled to a future date and this shows the extreme caution the Board of Adjustment uses in deciding if a variance should be approved. She stated the Board of Adjustment feels there certainly should be a "Board" to hear the requests for relief under the Sign Ordinance, however, they think it highly irregular for the Planning Commission to request a change before the two boards meet to discuss the issue. Ms. Seabold said she is requesting the matter of changing the Sign Ordinance be tabled until the two board have a chance to meet and decide who should hear sign variance requests.

Commissioner Furness moved the communications from Dr. Samuel and Ms. Seabold be received and filed.

Second by Preston. All the Commissioners voted aye and the motion was declared carried.

Commissioner Furness asked if there is criteria that should be followed when a variance request is received.

Keith Burkholder, Director of Planning and Development, stated at the present time the Ordinance states there must be a hardship in order to grant a variance, however, that is a matter of interpretation.

Commissioner Preston stated perhaps discussions between the Board of Adjustment and the Planning Commission would result in better clarification.

Commissioner Furness moved this matter be tabled to allow the Planning Commission and Board of Adjustment to meet to discuss this issue.

Second by Preston.

Commissioner Bromenschenkel stated if the original Ordinance is to be amended, the sign industry representatives should again be involved in those discussions.

All the Commissioners voted aye and the motion was declared carried.

Mr. David Kegel of Kegel Sign Company, stated to get a variance there has to be four votes in favor of the request which makes it practically impossible to get a variance. He said the sign ordinance is a bad one and it would be appreciated if representatives of the sign industry and the business industry could be involved in discussions to change the ordinance.

Dr. Samuel stated out of 9 requests for variances that were received by the Board of Adjustment in the last two years, seven were granted, one is being considered on the Commission agenda tonight and one was tabled.

City Attorney Directed to Prepare an Ordinance Limiting the Terms of the Mayor and City Commissioners:

The Board received a communication from Commissioner Furness stating today in America there is much interest in the concept of limiting terms for elected officials and he feels this is an excellent idea for the following reasons: encourages new persons to run for office; assures more competition in the election process; minimizes the advantage of incumbency; prevents "professional" office-holders; attracts more qualified candidates; already in place for President and some Governors. Commissioner Furness said though some of these advantages pertain more to state and federal elections, he feels such action must begin at the local level and, during his campaign for City Commissioner, he proposed such a restriction and received many expressions of support. Consequently, he stated, at the June 1, 1992 meeting he will move to direct the City Attorney to draft an ordinance limiting terms of the Mayor and City Commissioners for the City of Fargo. Commissioner Furness said the intent of this ordinance will be that:

1. No Mayor or City Commissioner will serve more than three successive four-year terms.

2. A Mayor or City Commissioner elected for a term of less than four years as a result of a vacancy will still be eligible to serve three successive terms.

3. A person ineligible for election because of this ordinance may again become eligible after a two year absence.

4. A Mayor or City Commissioner serving at the time this ordinance becomes effective will not be subject to its terms.

5. Any combination of service as City Commissioner and/or Mayor is subject to this restriction.

Commissioner Furness urged the Board's support of this effort to encourage more participation in local government.

Commissioner Furness moved the communication from himself be received and filed.

Second by Sydness. All the Commissioners voted aye and the motion was declared carried.

Commissioner Furness stated the intent is that this will not apply to Commissioners sitting before the last election. He said he discussed this with Commissioner Preston and they would be inclined to live with the limits if the Ordinance passes.

Commissioner Furness moved the City Attorney be directed to prepare the appropriate ordinance limiting terms of the Mayor and City Commissioners for the City of Fargo.

Second by Preston.

Commissioner Furness stated this could be done as a change in the Home Rule Charter which would make it more permanent, however, he feels it might be better if it is in Ordinance form in case it turns out to be a bad situation.

Commissioner Bromenschenkel stated when this item appeared on the agenda he thought it would be good to go back into the past history of those elected to the City Commission. He said he went back to when the City was incorporated in 1875 and since then there have been five people that have served more than 12 consecutive years. He said it does not appear this is a big problem and he sees no need to have an Ordinance at this point.

Commissioner Furness stated he would agree the problem is less acute at the local level, but he feels it is important this begin at the local level and move up to the state and federal level. He said there would be no harm in having the Ordinance if the situation is as described.

Mayor Lindgren stated all elections have been competitive and he cannot understand how this Ordinance would encourage more people to run for office.

Commissioner Furness stated there is competition and there is competition. He said he feels this ordinance would encourage people who may not run because they do not want to get involved in a time-consuming election against an incumbent. He said if there is a vacancy it might encourage people to run.

Mayor Lindgren stated an analogy between the business and elective process would mean that no corporation should exist more than 12 years because during that period of time it has the advantages of incumbency and

it is unfair to the competitors and, therefore, at the end of 12 years it should close down. He said that would minimize the unfair advantages of incumbency and encourage new companies to start.

Commissioner Furness stated he is not talking about City government closing down and the analogy is wrong. He said in business typically there is change at the top and 12 years would be a long time for someone to be at the top.

Commissioner Bromenschenkel stated he understands Commissioner Furness's concern relative to the state and national term limitations, however, as far as local government, the voters are close enough to their elected officials and know how their Commissioners are. He said the City Commission does not have to tell the voters that they are not smart enough to decide when a Commissioner or Mayor is not serving them in a proper way and should be replaced with someone who can do a better job.

On call of the roll Commissioners Furness, Sydness and Preston voted aye.

Commissioners Bromenschenkel and Lindgren voted nay.

The motion was declared carried.

Application Filed By Courtside, Inc. for a Class "H" (On Sale Beer) Alcoholic Beverage License at 3491 University Drive South Approved:

A Hearing had been set for this day and hour on the application filed by Courtside, Inc. for a Class "H" (On Sale Beer) Alcoholic Beverage License at 3491 University Drive South, Notice of which had been published in the official newspaper for the City of Fargo on May 11, 1992.

No written protest or objection to the granting of the application has been received or filed in the office of the City Auditor, and said application has been approved by the Police Department as to the character of the applicant.

The Board determined that no person is present at this Hearing to protest or offer objection to the granting of the application.

Commissioner Bromenschenkel moved the above application be approved.

Second by Furness. On call of the roll Commissioners Preston, Furness, Bromenschenkel, Sydness and Lindgren voted aye.

No Commissioner being absent and none voting nay, the motion was declared carried.

Request for a Sign Variance for Lunde Lincoln Mercury Granted:

The Board received a communication from Bernie Dardis, Vice President, Cook Sign Company, stating Cook Sign Company is appealing the April 28, 1992 decision of the Board of Adjustment on a variance request for Lunde Lincoln Mercury. Mr. Dardis said the Board of Adjustment voted three to two to grant the variance to allow Lunde to move an existing Jeep Eagle sign 112'6" to the west of where it is presently located, however, the City's ordinance requires that "a concurring vote of four members of the board shall be necessary to reverse any order, requirement, decision, or determination of any such administrative official or to decide in favor of the applicant any matter upon which it is required to pass under any such ordinance". He stated the display would be the same height, the same distance from the street, exactly as it is presently installed and the reason it needs to be moved is because Mr. Lunde is opening another dealership on the east side of his present facility and, thus, the Jeep Eagle sign must be relocated to an area in front of the facility that sells that product line. Mr. Dardis said they appeal that the original intent of the ordinance was not intended to restrict existing

$82,480.00 to be the lowest and best bid received for mechanical construction work and the bid of Midstates Electric, Inc. of Fargo, North Dakota in the sum of $648,927.00 to be the lowest and best bid received for electrical construction work.

NOW, THEREFORE, BE IT RESOLVED, That the Board of City Commissioners finds and declares the bid received from Peterson Mechanical, Inc. in the sum of $82,480.00, is the lowest and best bid received for mechanical construction work and the bid received from Midstates Electric, Inc. in the sum of $648,927.00, is the lowest and best bid received for electrical construction work.

BE IT FURTHER RESOLVED, That the contracts for Phase 3 Wastewater Treatment Plant Expansion Improvement District No. 4022-3 in the City of Fargo, North Dakota, be and the same are hereby awarded to Peterson Mechanical, Inc. for the sum of $82,480.00 for mechanical construction work and to Midstates Electric, Inc. for the sum of $648,927.00 for electrical construction work, subject to the approval of the North Dakota State Department of Health.

Second by Furness. On the vote being taken on the question of the adoption of the Resolution Commissioners Preston, Sydness, Furness, Bromenschenkel and Lindgren voted aye.

No Commissioner being absent and none voting nay, the Resolution was adopted.

Wayne Solberg, City Attorney, stated his first involvement with this issue was late Friday and it is very complex. He said the low bidder is authorized to withdraw his bid in the event of a mistake within 24 hours and this bid was not withdrawn within 24 hours.

Commissioner Bromenschenkel moved the award of the bid for the general construction work for Phase 3 Wastewater Treatment Plan Expansion Improvement District No. 4022-3 be deferred and that the matter be referred to the City Attorney for consideration and recommendation.

Second by Preston. On call of the roll Commissioners Furness, Sydness, Bromenschenkel, Preston and Lindgren voted aye.

No Commissioner being absent and none voting nay, the motion was declared carried.

Change Orders for the Fargodome Through June, 1992 Approved:

The Board received a communication from Craig Helenske, Architect, Triebwasser, Helenske and Associates, Ltd., listing a summary of new Change Orders for general, mechanical and electrical construction for the Fargodome through June, 1992 for a total of $134,915.94.

Commissioner Bromenschenkel moved the communication from Mr. Helenske be received and filed.

Second by Furness. All the Commissioners voted aye and the motion was declared carried.

Commissioner Bromenschenkel moved the Change Orders in the amount of $134,915.94 be approved.

Second by Furness. On call of the roll Commissioners Sydness, Preston, Bromenschenkel, Furness and Lindgren voted aye.

No Commissioner being absent and none voting nay, the motion was declared carried.

Ordinance Relating to Limitation on Terms of the Mayor and City Commissioners to be Placed on First Reading at the Next Regular Meeting of the Board:

The Board received a communication from Wayne Solberg, City Attorney, stating in accordance with the Board's May 26, 1992 directive, he has

prepared a draft of a proposed ordinance, which he attached, that would limit the number of terms of members of the Board of City Commissioners. Mr. Solberg said if adopted this section would become a part of Article 2-01 which contains various provisions relating to the Board of City Commissioners. He stated Section 2-0101 establishes the governing body of the City as "the mayor and four commissioners, hereafter collectively known as the board of city commissioners" and since the mayor is specifically designated as a member of the board, the three term limitation would apply, whether or not a portion of the service is as mayor and the remainder as a commissioner.

Commissioner Furness moved the communication from Mr. Solberg be received and filed.

Second by Sydness. All the Commissioners voted aye and the motion was declared carried.

Mayor Lindgren questioned if Commissioner Furness, who proposed the Ordinance, will propose that appointed boards and commissions be included in the limitations as well.

Commissioner Furness stated he had not considered that, but it makes sense.

Commissioner Preston stated her concern is that the Commission might be a preparatory step to be Mayor and this Ordinance would provide that someone who has served two terms as a Commissioner could only serve one term as Mayor.

Commissioner Furness stated that was the intent when he proposed the Ordinance. He said he had not considered appointed boards and commissions in his proposal and does feel there is a difference between being appointed and being elected.

Commissioner Furness moved the Ordinance Relating to Limitations on Terms of the Mayor and City Commissioners be received and filed and placed on first reading at the next Regular Meeting of the Board.

Second by Sydness. On call of the roll Commissioners Furness, Sydness and Preston voted aye.

Commissioners Bromenschenkel and Lindgren voted nay.

The motion was declared carried.

Engineering Department Reclassifications Approved:

The Board received a communication from Jenifer Erickson, Personnel Coordinator, submitting the Engineering Department's reclassification request. Ms. Erickson stated Personnel Policy and Civil Service approved the entire reorganization request with the exception of the Office Supervisor to Engineering Administrative Aide request which has been deferred.

In the reclassification request, the Board received a communication from Mark Bittner, City Engineer, addressed to the Civil Service Commission, stating recent administrative changes in the Engineering Department have resulted in the reassignment of job responsibilities within the technical staff and he is proposing the following staff changes:

"1. Upon the retirement of Kirk Sundin effective August 1, 1992 upgrade this Engineering Aide I (EA I, Range 18) position to an Engineering Technician position (E Tech, Range 24) and assign the following responsibilities to the upgraded position:

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Mayor Lindgren stated the task force must be cognizant of the amount of money that can be spent on the personnel operation. He said there is a lot that could be done in several departments and the City should not expand a lot in one department without being aware of other areas such as public safety.

All the Commissioners voted aye and the motion was declared carried.

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Commissioner Preston moved the motion be amended to amend the Ordinance to allow for an additional term for a total of 16 years if there is a combination of service as a City Commissioner and Mayor.

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Commissioner Preston stated the rationale is the way the Ordinance is set up there is a disincentive for someone to sit on the City Commission and then run for Mayor. She said the Mayor position is different from a City Commission position and has different responsibilities and different duties and she believes sitting on the Commission is going to prepare someone for being Mayor and she believes one more term would help.

On call of the roll Commissioners Furness, Sydness, Bromenschenkel, Preston and Lindgren voted aye.

No Commissioner being absent and none voting nay, the motion was declared carried.

On call of the roll to place the Ordinance on first reading as amended Commissioners Preston, Furness and Sydness voted aye.

Commissioners Bromenschenkel and Lindgren voted nay.

The motion was declared carried.

Requests for Personnel Approved:

The Board received the following requests for personnel:

1 Engineering Technician
1 Registered Nurse
1 Temporary Building Inspector
1 Office Associate II in the City Auditor's Office
1 Part-time Clerk in the Health Department

NOW, THEREFORE, BE IT RESOLVED, That the petition for a Special Use Permit to allow a 22' x 22' rental office building on the above-described property in the City of Fargo, Cass County, North Dakota, be granted with the aforementioned conditions.

Second by Furness. On the vote being taken on the question of the adoption of the Resolution Commissioners Sydness, Furness, Preston, Bromenschenkel and Lindgren voted aye.

No Commissioner being absent and none voting nay, the Resolution was adopted.

Hearing on Special Assessments for Sidewalks and Approaches for 1991:

A Hearing had been set for this day and hour on the special assessment list for the construction or rebuilding of Sidewalks and Approaches in the City of Fargo.

No appeals have been filed in writing against any item appearing on such special assessment list, and no person is present at this Hearing to appeal or offer any objection thereto.

Commissioner Bromenschenkel moved that the special assessment list for the construction or rebuilding of Sidewalks and Approaches for 1991 in the City of Fargo be and the same is hereby approved and confirmed and ordered filed in the office of the City Auditor, and that the City Auditor's Office be instructed to proceed to collect the assessments in the manner provided by law.

Second by Furness. On call of the roll Commissioners Sydness, Preston, Bromenschenkel, Furness and Lindgren voted aye.

No Commissioner being absent and none voting nay, the motion was declared carried.

Second Reading and Final Adoption of an Ordinance Relating to Limitation on Terms of the Mayor and City Commissioners:

Commissioner Furness moved that the proposed Ordinance Enacting Section 2-0106 of Article 2-01 of Chapter 2 of the Fargo Municipal Code Relating to Limitation on Terms of the Mayor and City Commissioners which was amended and placed on its first reading June 29, 1992 be now placed on its second reading and a vote taken on the question of its final passage and adoption.

Second by Preston. On call of the roll Commissioners Furness, Sydness, Preston voted aye.

Commissioners Bromenschenkel and Lindgren voted nay.

The motion was declared carried.

There was unanimous consent to waive reading of the Ordinance in its entirety and no one was present to request that the Ordinance be read.

On the vote being taken on the question of the final passage and adoption of the Ordinance, Commissioners Furness, Sydness and Preston voted aye.

Commissioners Bromenschenkel and Lindgren voted nay.

The Ordinance was duly passed and adopted.

Mayor Lindgren stated he feels this is something that should have been decided by the voters of the City. He said the rest of the rules that govern the election process were passed by the voters and he feels this one should have been handled the same way.

Commissioner Bromenschenkel stated in the past a City Commissioner ran for the position of Mayor and still held his City Commission seat. He said if a City Commissioner is successful in being elected to the Mayor seat a special election would be needed to fill the vacant City Commission seat. Therefore, he said, it would be proper to have an Ordinance to

require that the Commissioner relinquish his or her Commission seat to run for Mayor.

Action Taken on Report and Recommendations Received from the Civil Service Commission Regarding their Investigation of Test Improprieties in the Fargo Fire Department:

The Board received a communication from Sandra Holbrook, Chair, Civil Service Commission, stating Civil Service Commissioners Adam Boehler, Jean Hannig and Carolyn Monzingo join her in submitting the report of their investigation of test improprieties in the Fargo Fire Department, which she attached. Ms. Holbrook said it represents a diligent effort to fulfill their responsibility to the City in this matter.

The report said the findings of the investigation support not only recommendations for disciplinary action but recommendations for a variety of changes in the practices of both the Fire Department and the Personnel Office. The Civil Service Commissioners stated they strongly believe that additional discipline is required but they also believe that changes in policy and practice are important steps to help assure that the improprieties addressed by this investigation will not be repeated. They recommended that Assistant Chief Neil Roscoe be given a 30 calendar-day suspension including the loss of one month's pay but with credit for the five-day suspension already imposed by Chief Martinson and a permanent letter of reprimand be added to Mr. Roscoe's personnel file. They recommended that Training Director Loren Piersall be relieved of his duties as training director and that he be reassigned to a job in the Fire Department that does not involve supervisory responsibilities and that a permanent letter of reprimand be added to Mr. Piersall's personnel file. Regarding firefighters Davis Smith, Bruce Shirley and Ervin Wolff who were former lieutenants and demoted as a result of this case, they recommended that a letter of reprimand be added to each of these men's personnel files and that they remain there for the next 36 months. They stated Captain Gerald Splitt and former Lieutenant Bruce Shirley both admitted they had written at least one EMT recertification test for other people at the request of the Training Director and these actions are inappropriate and disturbing. They said Captain Splitt has done this several times and during his testimony he expressed no qualms about such a practice and former Lieutenant Shirley has further testified under oath that Assistant Chief Upton was present when he was asked to write the exam for someone else. The Commissioners stated his testimony is disputed by Assistant Chief Upton's sworn testimony but if Mr. Shirley's testimony is correct, the condoning of this practice by a high ranking officer would merit reprimand. They recommended that Fire Chief Martinson take action to clarify to all Fire Department personnel that such actions are unethical and will result in discipline and special attention should be given to the negative effect such actions have when they are practiced by officers whose behavior should be a model to others. They said the department should have in place an internal grievance procedure that is respected by the officers charged with leading the department and open to use without fear of retaliation and its availability should be regularly communicated to all Fire Department personnel. The Civil Service Commissioners recommended no discipline for Fire Chief Martinson. The Commissioners listed a number of changes they felt should be made in the Personnel Office with the majority of them relating to testing procedures and in the Fire Department with the main items relating to procedures for the promotional exams, establishing a regular rotation schedule, and EMT testing. The Commissioners stated they also considered the request of the

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. 2620

AN ORDINANCE ENACTING SECTION 2-0106
OF ARTICLE 2-01 OF CHAPTER 2 OF THE
FARGO MUNICIPAL CODE RELATING TO
LIMITATION ON TERMS OF THE MAYOR AND CITY COMMISSIONERS

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

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

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

WHEREAS, the Board of City Commissioners deems it necessary and desirable to adopt an ordinance limiting the length of service of members of the Board of City Commissioners;

NOW, THEREFORE,

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

Section 1. Enactment.

Section 2-0106 of Article 2-01 of Chapter 2 of the Fargo Municipal Code is hereby enacted to read as follows:

2-0106.--Limitation on Terms. No member of the board of city commissioners may serve more than three (3) successive four-year terms; provided, that such term limitation shall be subject to the following:

A. Any member elected to a term of less than four years as a result of a vacancy on the board shall be eligible to serve three additional four-year terms.

B. Any member who has completed three successive four-year terms shall not be eligible for re-election until the next regular election following the expiration of such member's third successive term.

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. 2620

C. Any member who has served in the capacity of mayor, as well as city commissioner, may not serve more than four (4) successive four-year terms.

D. This ordinance shall not apply to any member of the board whose first election as either mayor or commissioner occurred prior to April of 1992.

Section 2. Effective Date.

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

Jon G. Lindgren, Mayor

(SEAL)

Attest:

City Auditor

First Reading: June 29, 1992

Second Reading: July 13, 1992

Final Passage: July 13, 1992

ws35809/ord

Exhibit F

Letter from Gary Stewart

June Elections and

Term Commencement

August 10, 2000

CITY OF Fargo

OFFICE OF THE CITY ATTORNEY

(i)

APPROVED BY THE BOARD
OF CITY COMMISSIONERS
8/21/00

August 10, 2000

Mayor Bruce Furness
City Hall
200 North Third Street
Fargo, ND 58102

Mr. Steven Sprague, City Auditor
City Hall
200 North Third Street
Fargo, ND 58102

RE: Home Rule Charter Amendments - Resolutions

Dear Mayor Furness and Steve:

Enclosed find a copy of two resolutions concerning the proposed revisions to the Home Rule Charter.

The first of these addresses the issue of taking the incompatible dates for commencement for term from the Home Rule Charter. Incidentally, the city election can be set to coincide with the June primary by virtue of City Ordinance 2-0202. This ordinance will have to be amended to provide the same if the voters approve this Home Rule Charter amendment. We can also, at that time, make the adjustments in the ordinance to provide for commencement of term, etc. As the Home Rule Charter presently exists, requiring terms to commence May 20, would be totally incompatible with a June election.

Please review the draft resolutions and we can discuss the matter early next week. I will then prepare a notice of election to be placed in the paper, together with proposed ballot language to be included in the ballot.

I look forward to hearing from both of you.

Very truly yours,

OFFICE OF THE CITY ATTORNEY

Garylle B. Stewart
City Attorney

GBS/skr
Enclosures
246-ord\home\ltr to mayor, sprague re election changes

P.O. Box 1897 • Fargo, ND 58107-1897 • Phone (701) 237-3166 • Fax (701) 237-4627

DRAFT DRAFT

RESOLUTION

WHEREAS, the Home Rule Charter provides that regular city elections shall be held in every even-numbered year on a date specified by city ordinance; and,

WHEREAS, the Board of City Commissioners deems it necessary and desirable to submit to the voters a proposal to change the date of each biennial election to coincide with the primary election in June; and,

WHEREAS, the Home Rule Charter contains provisions regarding commencement of terms that is incompatible with a June election; and,

WHEREAS, the Board of City Commissioners wishes to submit the question of changing the date of biennial election, as well as term commencement to the voters,

NOW, THEREFORE, BE IT RESOLVED that the question of changing the city biennial election from the third Tuesday in April in each even-numbered year to coincide with the primary election as provided by North Dakota state law be proposed to the voters as follows:

Shall the regular city election presently held on the third Tuesday in April in each even-numbered year be changed to coincide with the time of the primary election as specified in North Dakota state law and the Home Rule Charter be amended to allow the same as follows:

Article 2 - Governing body and mayor

A. 1 through 9 (no change)

10. The mayor and each of the commissioners shall be elected by all the voters in the city, and shall serve four-year terms. The mayor will be elected in the regular 1986 city election and every four years thereafter. The mayor's term will start on ~~May 20 of each mayoral election year~~ such day as is specified by city ordinance.

11. Two city commissioners shall be elected in the 1986 city election and two in the 1988 city election. The terms shall begin on ~~May 20~~ such day as is specified by city ordinance following each election and shall expire on ~~May 20~~ such day as is specified by city ordinance four years thereafter.

12. Candidates for the governing body must be qualified electors of the city of Fargo, and must have been in continuous residence in the city for at least six months prior to filing their nomination papers. No person who is currently serving as a city commissioner may become a candidate for the office of mayor without first resigning as a member of the board of city commissioners; provided, that such resignation shall be effective on ~~May 20~~ such day as is specified by city ordinance following the election.

13 through 19 (no change)

BE IT FURTHER RESOLVED that said question be placed before the voters at the general election to be held November 7, 2000.

DRAFT

DRAFT

RESOLUTION

WHEREAS, the Home Rule Charter provides that in order to win election to the governing body, a candidate must receive a vote total which is at least equal to a majority of the number of ballots cast for the position involved; and,

WHEREAS, the Board of City Commissioners deems it necessary and desirable to submit to the voters a proposal to eliminate the requirement for such a "run-off" election,

NOW, THEREFORE, BE IT RESOLVED that an amendment to the Home Rule Charter be proposed to the voters as follows:

Article 2 - Governing body and mayor

A. 1 through 13 (no change)

14. The regular city election shall be held in every even-numbered year on the date specified by city ordinance. ~~To win election to the governing body in the regular election or a special election, a candidate must receive a vote total which is at least equal to a majority of the number of ballots cast for the position involved. In the event that any seat on the governing body is not filled at the regular city election or a special election because of failure to receive said majority, a run-off election will be held three weeks after the regular or special election. Two candidates will be advanced to the run-off election for each seat which is not filled at the regular election, and the candidate or candidates receiving the most votes shall be elected. Candidates advancing to the run-off election shall be those with the highest vote totals short of a majority in the regular or special election.~~ The governing body shall be the judge of the election and qualifications of its own members.

15 through 19 (no change)

BE IT FURTHER RESOLVED that said question be placed before the voters at the general election to be held November 7, 2000.

246-ord\home\resolution - run-off election changes

April 15, 1997	Annual School Election (3 Candidates) (There was a record breaking flood this day)	436
April 21, 1998	Biennial City Election (Sales Tax Extension to 2012 Y-10,419, N-3,638) Referral of Adult Entertainment Ordinance Y-5,276 N-9,059) Mayor-1; Commissioners-5; Park-5; School-5	14,534
April 20, 1999	General County Election for ½% sales tax for 4 years for Jail – Annual School Election held with the County Election (7 candidates)	14,069
April 18, 2000	Biennial City Election; (60% Majority Extend Sales Tax Multipurpose Arena Y-7,957 N-13,283) (Publish City Commission Minutes Y-6,996 N-13,540) Commissioners-8; Park-6;School-7; Municipal Judge-1	21,529
May 9, 2000	City Run Off Election; Commissioners 4	5,415
November 7, 2000	Amend the Home Rule Charter; Combine Election with County (Yes – 33,983 N – 5,202) Eliminate Run Off Election (Yes – 29,367 N – 8,629)	43,675
June 11, 2002	Biennial City Election; Home Rule Charter Amendment (Change Vice Mayor to Deputy Mayor) Yes – 8,300 N – 2,546 Mayor – 1; Commissioners – 6; Park Board – 6; vote to limit levy of school board, 7,402 yes, 4,725 no (per Dan Hufman)	17,912
June 8, 2004	Biennial City Election; Publish City Commission Minutes (Yes – 7,137 N – 1,967); Municipal Judge – 1; City Commission – 7; Park District – 4	13,790
November 2, 2004	Amend Home Rule Charter ½% Sales tax for 18 Months For Library Expansion (Yes – 28,179 N – 17,284, 61.98%) Smoking Ordinance #1 (allow smoking in bars based on Liquor license class) Yes – 19,643 N – 23,943; Smoking Ordinance #2 (allow smoking in bars that prohibit patrons Under 21 years old) Yes – 25,054 N – 19,006; Smoking Ordinance #3 (complete smoking ban except for JT Cigarro) Yes – 24,551 N – 20,340; Ordinance #2 enacted due to Highest Yes vote total	67,153
May 3, 2005	Extend ½% Sales Tax for 3 ½ years Downtown Events Center (Yes – 4,969 N – 11,925)	16,894
September 13, 2005	Special City Election to fill the unexpired term of Thomas Lane 4 people running for Commissioner; term expires June 2006	8,825
June 13, 2006	Biennial City Election; Amend Home Rule Charter 1% infrastructure sales tax (Yes – 12,518, No – 5,419), ½% School	

Exhibit G

2005 Special Election Results,

Canvas

Mahoney Election

CERTIFICATE OF ELECTION

Dr. Tim Mahoney
4628 Timberline Drive
Fargo, ND 58104

Dear Tim:

You are hereby notified that, upon completion of the canvass of the votes cast at the Special City Election held September 13, 2005, the Board of City Commissioners of the City of Fargo, North Dakota, found and declared you be elected City Commissioner of the City of Fargo, North Dakota, for a term that will be expiring on June 26, 2006.

Please execute two copies of the Oath of Office appearing below before a Notary Public and file one with the City Auditor. The second copy may be retained for your files.

Very truly yours,

(SEAL)

Steven Sprague
City Auditor

OATH OF OFFICE

STATE OF NORTH DAKOTA)
) ss.
County of Cass)

I, Tim Mahoney, having been elected City Commissioner of the City of Fargo, North Dakota,

DO SOLEMNLY SWEAR that I will support the Constitution of the United States, Constitution of the State of North Dakota, and the Home Rule Charter of the City of Fargo and that I will faithfully and impartially to the best of my knowledge and ability, perform the duties of said office according to law.

Signature

Subscribed and Sworn to before me, a Notary Public for and within the County of Cass and the State of North Dakota, this 20 day of SEPTEMBER, 2005.

(SEAL)

BRANDIE L SORENSON
Notary Public
State of North Dakota
My Commission Expires Feb. 21, 2009

Notary Public, Cass County, North Dakota

My Commission Expires:

BOARD OF CITY COMMISSIONERS
Fargo, North Dakota

Adjourned Regular Meeting: Friday: September 16, 2005:

Agreeable with adjournment the Board of City Commissioners of the City of Fargo, North Dakota, convened in Adjourned Regular Meeting in the City Commissioners' Room at the City Hall at 9:00 o'clock a.m., Friday, September 16, 2005.

The Commissioners present or absent were as shown following:
Present: Coates, Cosgriff, Williams, Furness.
Absent: None.
A vacancy exists due to the resignation of Commissioner Lane.
Mayor Furness presiding.

Canvass of Votes Cast at the Special City Election Held on September 13, 2005:

The Board received the returns filed by the 37 election boards for the Special City Election held on September 13, 2005 at which election there was to be elected one Member of the Board of City Commissioners to fill a vacancy due to the resignation of Commissioner Lane.

Commissioner Cosgriff moved that the Board proceed with canvassing of the Election Returns and tabulation of the votes cast for the several candidates.

Second by Williams. On call of the roll Commissioners Cosgriff, Williams, Coates and Furness voted aye.

No Commissioner being absent and none voting nay, the motion was declared carried.

Canvass of Absentee Votes Received for the Special City Election Held on September 13, 2005:

Commissioner Cosgriff moved the four ballots received after the election with a postmark of September 12, 2005 or earlier be accepted.

Second by Coates. On call of the roll Commissioners Cosgriff, Williams, Coates and Furness voted aye.

No Commissioner being absent and none voting nay, the motion was declared carried.

Commissioner Cosgriff moved the one ballot received in which the voter was given a ballot but had not signed the ballot application be accepted.

Second by Williams. On call of the roll Commissioners Cosgriff, Williams, Coates and Furness voted aye.

No Commissioner being absent and none voting nay, the motion was declared carried.

Commissioner Cosgriff moved the one ballot received in which the election board felt the signature on the ballot application and the signature on the absentee envelope did not match be rejected.

Second by Williams. On call of the roll Commissioners Cosgriff, Williams, Coates and Furness voted aye.

No Commissioner being absent and none voting nay, the motion was declared carried.

Commissioner Cosgriff moved the two ballots received by September 15, 2005 without a postmark be accepted.

Second by Williams. On call of the roll Commissioners Cosgriff, Williams, Coates and Furness voted aye.

No Commissioner being absent and none voting nay, the motion was declared carried.

Commissioner Cosgriff moved the three ballots where voters did not sign the ballot return envelopes and it was too late to send back for signatures be rejected.

Second by Williams. On call of the roll Commissioners Cosgriff, Williams, Coates and Furness voted aye.

No Commissioner being absent and none voting nay, the motion was declared carried.

Commissioner Cosgriff moved the one ballot that was damaged by the postal service be accepted.

Second by Williams. On call of the roll Commissioners Cosgriff, Williams, Coates and Furness voted aye.

No Commissioner being absent and none voting nay, the motion was declared carried.

Commissioner Cosgriff moved the two ballots that were hand delivered by the voter to precincts on election day be rejected.

Second by Williams. On call of the roll Commissioners Cosgriff, Williams, Coates and Furness voted aye.

No Commissioner being absent and none voting nay, the motion was declared carried.

Commissioner Cosgriff moved the one ballot that was delivered by the County to the wrong precinct on election day be accepted.

Second by Williams. On call of the roll Commissioners Cosgriff, Williams, Coates and Furness voted aye.

No Commissioner being absent and none voting nay, the motion was declared carried.

Tabulation of Votes Cast Declared Official Canvass:

Commissioner Cosgriff moved that the following tabulation of the votes cast at the Special City Election held September 13, 2005 in the City of Fargo, be declared and approved as the official canvass of the votes cast at such Election:

Total Votes Cast: 8,840

For Members of the Board of City Commissioners

Dave Engebretson	907
Dr. Timothy Mahoney	3,473
Frank Anderson	1,055
Brad Wimmer	3,388

Second by Williams. On call of the roll Commissioners Cosgriff, Williams, Coates and Furness voted aye.

No Commissioner being absent and none voting nay, the motion was declared carried.

City Official Declared Elected:

Commissioner Cosgriff moved that the tabulation of the votes cast at the Special City Election held in Fargo on September 13, 2005 be made a part of the Minutes of this Meeting.

Second by Williams. On call of the roll Commissioners Cosgriff, Williams, Coates and Furness voted aye.

No Commissioner being absent and none voting nay, the motion was declared carried.

Commissioner Cosgriff moved that Dr. Timothy Mahoney, having received the highest number of votes cast is hereby declared elected City Commissioner of the City of Fargo, North Dakota, for a term commencing September 27, 2005.

Second by Williams. On call of the roll Commissioners Cosgriff, Williams, Coates and Furness voted aye.

No Commissioner being absent and none voting nay, the motion was declared carried.

Commissioner Williams moved that the Board adjourn.

Second by Coates. All the Commissioners voted aye and the motion was declared carried.

The time at adjournment was 9:25 o'clock a.m.

Certificate of Executive Assistant for Permanent Minutes

I hereby certify that the foregoing Minutes of the Board held on September ~~13~~ 16, 2005 comprise the full, true and correct record of the proceedings of the Board.

Executive Assistant to the City Commission
City of Fargo, North Dakota

Exhibit H

2015 City Commission Resolution
City-Wide Vote to Remove Resign Requirement

(20)

COMMISSIONER Williams introduced the following resolution and moved its adoption:

RESOLUTION

WHEREAS, the Home Rule Charter presently requires a seated city commissioner to first resign as a member of the board of city commissioners before becoming a candidate for the office of mayor, which resignation can be made effective on a date two weeks after the mayoral election; and

WHEREAS, the board of city commissioners finds it desirable and appropriate to propose for city-wide vote an amendment to the Home Rule Charter to remove the resignation requirement,

NOW, THEREFORE, BE IT RESOLVED that Article 2 of the Home Rule Charter of the city of Fargo be amended to remove the requirement that a city commissioner resign before becoming a candidate for the office of mayor as follows:

Home Rule Charter

* * *

Article 2 – Governing body and mayor

A. 1 through 11 (no change)

12. Candidates for the governing body must be qualified electors of the city of Fargo, and must have been in continuous residence in the city for at least six months prior to filing their nomination papers. ~~No person who is currently serving as a city commissioner may become a candidate for the office of mayor without first resigning as a member of the board of city commissioners; provided, that such resignation shall be effective on such day as is specified by city ordinance following the election.~~

13 through 19 (no change)

BE IT FURTHER RESOLVED that said proposed amendment be placed before the voters at a special city election to be held April 28, 2015.

Mayor

Attest:

City Auditor

The motion for the adoption of the foregoing resolution was duly seconded by COMMISSIONER Sobolik, and upon roll call vote, the following voted in favor thereof: COMMISSIONERS Williams, Sobolik, Piepkorn and Mahoney.
The following were absent and not voting: none,
and the following voted against the same: none,
whereupon the resolution was declared duly passed and adopted.

CERTIFICATE

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

I, Steven Sprague, the duly appointed City Auditor of the City of Fargo, North Dakota, do hereby certify that attached hereto is a full, true, and correct copy of the Resolution adopted by the governing body of the City of Fargo at the meeting held on Monday, January 5, 2015, and that such Resolution is now a part of the permanent records of the City of Fargo, North Dakota, as such records are filed in the office of the City Auditor.

Dated this 5 day of January, 2015.

City Auditor

(S E A L)

ARLETTE PRESTON, CITY COMMISSIONER
Fargo City Hall
225 4th Street North
Fargo, ND 58102-4817
Phone: 701.715.2862 | Fax: 701.476.4136
www.FargoND.gov

42

MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

FROM: COMMISSIONER ARLETTE PRESTON

DATE: JULY 26, 2021

RE: RENTAL LICENSURE PROGRAM

In the development of the Core Neighborhoods Plan (CNP), residents identified a key priority being the "condition and quality of life impacts (on the neighborhoods) of rental housing" (p15). The plan includes upgrading the current rental inspection program to a licensing program.

Over past years, there have been numerous examples of "problem" rental properties when homes have been converted to multi-family dwellings. Almost exclusively, these are not owner-occupied and the condition of the buildings deteriorate, impacting the entire neighborhood. At times, the City has not had updated contact information and when there is a problem with the property, it's difficult to find the owner. In the case of an emergency, this becomes a major concern.

The CNP is very clear about a comprehensive approach to strengthening our core neighborhoods. This is only one strategy of many, but it is an essential one. With the budgeting process, hopefully there will be additional resources made available for owners to update and upgrade their properties. However, there is a need to provide protection for renters, as well as prevent neighborhood deterioration, from recalcitrant rental property owners.

Suggested Motion: To direct staff, in coordination with the City Attorney's office, to further develop a framework for the creation of a Rental Licensure Program and to report the next steps to the City Commission within the next six months.

CITY OF Fargo

ASSESSMENT DEPARTMENT

(43a)

June 21, 2021

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 2831 27 St S as submitted by RT Sliwinkski. 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 the years 2021, 2022 & 2023.

The estimated annual tax revenue lost by granting the exemption, based upon the estimated cost of the improvements, would be about $130 with the City of Fargo's share being $20.

Sincerely,

Mike Splonskowski
City Assessor

bsb
attachment

225 4th Street N. • Fargo, ND 58102 • Phone (701) 241-1340 • Fax (701) 241-1339

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, Block 4, Bluemont Lakes 2nd
2. Address of Property 2831 27 St S
3. Parcel Number 01-0171-01360-000
4. Name of Property Owner Sliwinkski, RT Phone No. 608-220-3510
5. Mailing Address of Property Owner

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). Remodel Bath & fireplace alterations
7. Building permit No. 21020684
8. Year built (residential property) 1986
9. Date of commencement of making the improvements 02/26/2021
10. Estimated market value of property before the improvements $ 414,100.00
11. Cost of making the improvement (all labor, material and overhead) $ 25,000.00
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 [signature] Date 6/16/21

Assessor's Determination And Signature

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

Assessor/Director of Tax Equalization [signature] Date 6-28-2021

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

24840 (Rev. 6-01)

CITY OF
Fargo
ASSESSMENT DEPARTMENT

436

June 21, 2021

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 2901 12 Ave N as submitted by ADOC Property II LLC. 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 the years 2021, 2022 & 2023.

The estimated annual tax revenue lost by granting the exemption, based upon the estimated cost of the improvements, would be about $13,145 with the City of Fargo's share being $2,235.

Sincerely,

Mike Splonskowski
City Assessor

bsb
attachment

225 4th Street N. • Fargo, ND 58102 • Phone (701) 241-1340 • Fax (701) 241-1339

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

North Dakota Century Code ch. 57-02.2

(File with the local city or township assessor)

Property Identification

1. Name of Property Owner ADOC Property II LLC Christopher J. Schmidt Phone No. 701-205-2529
2. Address of Property 2901 17th Ave N
   City FARGO State ND Zip Code 58102
3. Legal description of the property for which the exemption is being claimed: see attached - Exhibit A
4. Parcel Number 01-8771-00100-000 Residential ☐ Commercial ☒ Central Business District ☒
5. Mailing Address of Property Owner 415 Christiansen Dr West Fargo ND 58078
   City Fargo State ND Zip Code

Description Of Improvements For Exemption

6. Describe the type of renovating, remodeling or alteration made to the building for which the exemption is being claimed (attach additional sheets if necessary). see attached - Exhibit B and C
7. Building Permit No 2103-0395 8. Year Built 1984
9. Date of Commencement of making the improvement 2021
10. Estimated market value of property before improvement $ 700,000
11. Cost of making the improvement (all labor, material and overhead) $ 900,000
12. Estimated market value of property after improvement $ 1,600,000

Applicant's Certification and Signature

13. I certify that the above information is correct to the best of my knowledge and I apply for this exemption.
    Applicant's Signature [signature] Date 6/30/21

Assessor's Determination

14. The local assessor finds that the improvements in this application has ☒ has not ☐ met the qualifications for exemption for the following reason(s):
    Assessor's Signature [signature] Date 7-15-2021

Action of Governing Body

15. Action taken on this application by local governing board of the county or city: Denied ☐ Approved ☐
    Approval subject to the following conditions:
    Chairman of Governing Body Date

CITY OF Fargo

ASSESSMENT DEPARTMENT

(430)

June 21, 2021

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 1617 2 St N as submitted by Nicole Mord. 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 the years 2021, 2022, 2023, 2024 & 2025.

The estimated annual tax revenue lost by granting the exemption, based upon the estimated cost of the improvements, would be about $100 with the City of Fargo's share being $20.

Sincerely,

Mike Splonskowski
City Assessor

bsb
attachment

225 4th Street N. • Fargo, ND 58102 • Phone (701) 241-1340 • Fax (701) 241-1339

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

North Dakota Century Code ch. 57-02.2

(File with the local city or township assessor)

Property Identification

1. Name of Property Owner Nicole Mord Phone No. 701/306-2237
2. Address of Property 1617 2nd St. N.

   City FARGO State ND Zip Code 58102
3. Legal description of the property for which the exemption is being claimed.

   Lot 23; Block 5 McDermotts Addn
4. Parcel Number 01-1890-01020-000 Residential ☒ Commercial ☐ Central Business District ☐
5. Mailing Address of Property Owner Same

   City State Zip Code

Description Of Improvements For Exemption

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

   Housing Rehab Project
7. Building Permit No. 20050790 8. Year Built 1950
9. Date of Commencement of making the improvement 9/10/20
10. Estimated market value of property before improvement $ 159,000
11. Cost of making the improvement (all labor, material and overhead) $ 36,100
12. Estimated market value of property after improvement $ 166,700

Applicant's Certification and Signature

13. I certify that the above information is correct to the best of my knowledge and I apply for this exemption.

    Applicant's Signature Nicole Mord Date 2/1/21

Assessor's Determination

14. The local assessor finds that the improvements in this application has ☒ has not ☐ met the qualifications for exemption for the following reason(s):

    Assessor's Signature [signature] Date 6-21-2021

Action of Governing Body

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

    Approval subject to the following conditions:

    Chairman of Governing Body Date

THE CITY OF Fargo FAR MORE

DR. TIMOTHY J. MAHONEY, MAYOR
Fargo City Hall
225 4th Street North
Fargo, ND 58102
Phone: 701.241.1310 | Fax: 701.476.4136
www.FargoND.gov

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MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

FROM: MAYOR TIMOTHY J. MAHONEY

DATE: JULY 26, 2021

SUBJECT: APPOINTMENTS TO THE LIBRARY BOARD

The terms of Mary Batcheller and Carrie Peterson on the Library Board expired on June 30, 2021. Ms. Peterson is willing to continue her service on the Board; however, Ms. Batcheller no longer wishes to serve.

Jenna Reno has submitted an application indicating an interest in serving on the Board and I am recommending her appointment. I have attached a copy of her application for your information.

Your favorable consideration of this recommendation will be greatly appreciated.

RECOMMENDED MOTION: To approve the reappointment of Carrie Peterson and appointment of Jenna Reno to the Library Board for three-year terms ending June 30, 2024.

mmappt21lib

Kember Anderson

From: noreply@cityoffargo.com
Sent: Tuesday, July 06, 2021 12:46 PM
To: Commissions Applications
Subject: New Form Submission: Getting involved in government

Name:
[Jenna Reno]
Mailing Address:
[1625 16 1/2 St S]
City:
[Fargo]
State:
[North Dakota]
Zip:
[58103]
Work Phone:
[701-231-7857]
Home Phone:
[701-866-2533]
E-mail:
[jennareno@yahoo.com]
Which boards or commissions would you like to be considered for?
[Library Board]
Briefly state why you would like to be on this panel:
[Hello, I have been asked to apply for this board by friends MaryBeth Hegstad (who is on the Friends of the Library board) and Carrie Peterson (who is currently on Library board). I'm an avid reader and the library is a wonderful community organization. Libraries connect people in the community to needed resources and help individual develop needed skills to make them better community members, which in the end make the whole city of Fargo a better place.]
How many hours per month could you volunteer as a panel member?
[4-8]
Please list any past experience you have with city government here or in other cities:
[None, put I work at NDSU so I'm accustom to following ND Sate and ND State Board of Higher Education policies.]
Please describe any professional experience you have related to the responsibilities of the panel you are interested in:
[I have a background in Human Resources and budget oversite in my professional career, which I believe would be a great fit for the Library Board.]

We will retain your application for three years and consider you for the board you have indicated interest in when a vacancy arises.

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