FARGO CITY COMMISSION AGENDA
Monday, June 28, 2021 - 5:00 p.m.

Executive Session at 4:30 p.m.

Roll Call.

PLEASE NOTE: The City of Fargo Board of City Commissioners will meet in Executive Session on Monday, June 28, 2021, at 4:30 p.m., for the purposes of an attorney consultation regarding a reasonably predictable litigation matter involving the enactment of North Dakota House Bill 1248 that is scheduled to go into effect August 1, 2021, which Executive Session is authorized by North Dakota open meeting law, specifically, N.D.C. C. § 44-04-19.1(2) and (9), as such discussion during an open meeting would have an adverse fiscal effect on the litigating position of the City.

Regular Meeting at 5:00 p.m.

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

A. Pledge of Allegiance.

B. Roll Call.

C. Approve Order of Agenda.

D. Minutes (Regular Meeting, June 14, 2021).

CONSENT AGENDA – APPROVE THE FOLLOWING:

1. Receive and file an Ordinance Relating to Tobacco Products and Minors.

2. 2nd reading and final adoption of the following Ordinances; 1st reading on 6/14/21:
   a. Petition for Annexation of property described as that part of the Southeast Quarter of Section 15 and the Northeast Quarter of Section 22, Township 140 North, Range 49 West of the 5th Principal Meridian.
   b. Rezoning certain parcels of land lying in the proposed Commerce Center Addition.

3. Findings of Fact and Order and Notice of Entry of Order for property at 1033 5th Street North.

4. Agreement and Bill of Sale for a metal building located at the former Mid-America Steel site.

5. Gaming Site Authorization for Metro Sports Foundation at Country Inn and Suites.

6. Applications for Games of Chance:
   a. St. Anthony of Padua Parish Fall Bazaar for bingo and a raffle on 9/26/21.
   b. North Dakota Autism Center Inc. for a raffle on 9/28/21.

7. Emergency sewer repair by Dirt Dynamics at 23rd Street and 1st Avenue South.

8. Final Balancing Change Order No. 5 in the amount of $2,301.10 for Project No. UR-20-A1.

Change Order No. 1 in the amount of $11,310.00 and time extension for Project No. SL-21-A1.

10. Art Wrap Attachment Agreement for Placement on City-Owned Structures in the Public Right of Way.

11. Receive and file General Fund – Budget to Actual through May 2021 (unaudited).

12. Purchase of Service Agreement with Cass County Human Service Zone Board.

13. Notice of Grant Award – Public Health Emergency Preparedness All Hazards Allocation (CFDA #93.069).

14. Notice of Grant Award – Public Health Emergency Preparedness EPR Statewide Response Team (CFDA #93.069).

15. Notice of Grant Award Amendment from ND Department of Health for Tobacco Prevention and Control Program.

16. Notice of Grant Award – ND Department of Health for Women's Way (CFDA #93.898).

17. Purchase of Service Agreement with ND Department of Health for Public Health Emergency Preparedness/Emergency Response Services (CFDA #93.069).

18. Agreement for Services with Zach Bruns.

19. Notice of Grant Award Amendment from ND Department of Health for Statewide Response Team (CFDA #93.069).

20. Notice of Grant Award Amendment from ND Department of Health for City Readiness Initiative (CFDA #93.069).

21. Notice of Grant Award Amendment from ND Department of Health for All Hazards Allocation (CFDA #93-069).

22. Memorandum of Understanding between Fargo Cass Public Health and ND Department of Health.

23. 45-day unpaid leave of absence for Lauren Schluter.

24. Lease and Vending Agreement with Breezeway Café, LLC at Fargo Public Library main location.

25. 2021 Action Plan for Community Development Block Grant (CDBG) and HOME Programs.

26. Resolution establishing the Arts Partnership as the Local Arts Agency (LAA).

27. License Agreement with the Downtown Community Partnership for parking during the 2021 Downtown Street Fair.

28. Adopt Resolutions approving the following Plats:
    a. Sigma Psi Housing Addition.
    b. Booth Addition.

29. Interlocal Agreement with Cass County to provide $51,327.00 in Edward Byrne Memorial Justice Assistant Grant (JAG) funds (CFDA #16.738).

30. Application for Appropriation from Civil Asset Forfeiture Fund for the Fargo Police Department Criminal Investigation Fund.

31. Amendment (First) to Maintenance Agreement (Public Right of Way) with EOLA Landings, LLC.

32. Services Agreement (Towing and Impound Lot Management) with Brennan's Garage, LLC d/b/a Fargo Moorhead Towing (RFP21050).

33. Change Order for additional work and time extension for the Metro Transit Garage lighting replacement project (AFB20132).

34. Bills.

35. Irrigation repair reimbursement in the amount of $9,090.00 in connection with Improvement District No. BR-20-C1.

36. Payment of $259,866.00 to Cass County Electric Cooperative for the relocation of overhead power lines (Improvement District No. BN-21-A1.)

37. Negative Final Balancing Change Order No. 3 in the amount of -$95,407.98 for Improvement District No. BN-20-K1.

38. Change Order No. 1 in the amount of $30,370.50 for Improvement District No. AN-20-E1.

39. Bid award for Improvement District Nos. NR-20-A1, BN-21-H1, PR-21-F1 and SL-21-C1.

REGULAR AGENDA:

40. **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).**

41. ***Public Input Opportunity* - PUBLIC HEARINGS - 5:15 pm:**
    a. Application to transfer the Class "Z" Alcoholic Beverage License from Big D's Bar & Grille LLC d/b/a Shotgun Sally's Rock N Roll to BB&E Partners-Fargo LLC d/b/a Twin Peaks Restaurant at 1515 42nd Street South.

    b. Application to transfer the Class "Z" Alcoholic Beverage License from Downtown Holdings LLC d/b/a as Fort Knox to Vault Partners LLC d/b/a Fort Knox at 52 Broadway.

    c. Application to transfer the Class "RZ-V" Alcoholic Beverage License for 670 Events Center LLC d/b/a Sanctuary Events Center at 670 4th Avenue North (more than a 5% ownership change).

    d. Application to transfer the Class "F" Alcoholic Beverage License for DTSG Inc. d/b/a Famous Dave's at 2581 45th Street South (more than a 5% ownership change).

e. Application for a Class "FA-Entertainment" Alcoholic Beverage License for Fargo Ts LLC d/b/a Suite Shots to be located at 3400 James Way; continued from the 5/3/21 Regular Meeting.

f. Application for a Class "FA-Entertainment" Alcoholic Beverage License for TC Entertainment LLC d/b/a KingPinz to be located at 3485 Jacks Way; continued from the 6/1/21 Regular Meeting.

g. Application for a Class "GH" Alcoholic Beverage License for Jays Smokin' BBQ, LLC d/b/a Jays Smokin' BBQ to be located at 1322 Main Avenue; continued from the 6/1/21 Regular Meeting.

h. Application for a Class "GH" Alcoholic Beverage License for K&K Management LLC d/b/a Fryn' Pan Family Restaurant to be located at 310 Main Avenue.

i. Application for a Class "GH" Alcoholic Beverage License for Soiree's Sweets d/b/a Soiree Victorian Tea Room to be located at 3 8th Street South.

j. Craigs Oak Grove Second Addition (515 Oak Street North); approval recommended by the Planning Commission on 6/3/21:
   1. Zoning Change from MR-2, Multi-Dwelling Residential to DMU, Downtown Mixed-Use with a C-O, Conditional Overlay.
   2. 1st reading of rezoning Ordinance.

42. Text Amendment to amend Section 20-0402(t)(3) and repeal Section 20-0403(C)(5)(e) of the Fargo Municipal Code (Land Development Code) relating to the prohibition of firearm and ammunition sales as a non-farm commercial use or as a home occupation; action delayed at the 6/14/21 Regular Meeting.
   1. Receive report from City Attorney regarding possible challenge of House Bill 1248 (and N.D.C.C. Section 62.1-01-03).
   2. 1st reading of Ordinance.

43. Receive and file an Ordinance Relating to Boulevard Gardens.

44. 1st reading of an Ordinance Relating to Classification of Ordinance Violations (Minor in Possession/Consumption of Alcohol).

45. 2nd reading and final adoption of the following Ordinances Relating to Public Safety, Morals and Welfare:
   a. Criminal Mischief-Hate Crime.
   b. Harassment-Hate Crime.
   c. Simple Assault-Hate Crime.

46. City of Fargo Wildlife Management Program Update.

47. Allocate $100,000.00 of 2021 Social Service Fund to FM Area Foundation.

48. Construction Update.

49. Recommendations for reappointments to the following Boards and Commissions:
   a. Native American Commission.
   b. Board of Adjustment.
   c. Board of Appeals.

d. Arts and Culture Commission.
e. Human Relations Commission.

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

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4/a

MEMORANDUM

TO: Board of City Commissioners

FROM: Steven Sprague, City Auditor

SUBJECT: Liquor License Transfer Application – Twin Peaks

DATE: June 15, 2021

The following application for a liquor license transfer was received by the Auditor's office and reviewed by the Liquor Control Board:

License Class:	Z Full alcohol, no food sales required
Business Name:	Twin Peaks
Location:	1515 42nd Street South
Applicants:	Samuel Barnett

Being no significant concerns, the Liquor Control Board voted to approve the transfer of a Class Z alcoholic beverage license from Big D's Bar & Grille d/b/a Shotgun Sally's Rock N Roll to BB&E Partners – Fargo LLC d/b/a Twin Peaks Restaurant. The complete application is available for review in the Auditor's Office.

Recommended Motion:

Move to approve the transfer of a Class Z alcoholic beverage license from Big D's Bar & Grille d/b/a Shotgun Sally's Rock N Roll to BB&E Partners Fargo LLC d/b/a Twin Peaks Restaurant.

Fargo Police Department

To: Chief David Zibolski

From: Sergeant Carlos Nestler

Date: June 1, 2021

RE: Liquor License Application (Twin Peaks Restaurant formerly Shotgun Sallys)

A transfer requested of a Class "Z" Alcoholic Beverage License, Big D's Bar & Grille d/b/a Shotgun Sally's Rock N Roll to BB&E Partners-Fargo LLC d/b/a Twin Peaks Restaurant to be located at 1515 42 Street South, Fargo

In accordance with Section 25-1505 of the Fargo Municipal Code, I have conducted an investigation into the character, reputation and fitness of the applicant(s) listed on the supplied application.

During this investigation I examined the applicants' credit reports and public records criminal background.

The following information was discovered through this investigation:

Barnett, Samuel Marcus - Owner

Criminal History- A search of Fargo Police Department criminal records, North Dakota public records (publicsearch.ndcourts.gov), Minnesota public records (https://chs.state.mn.us/) and Oklahoma public records (https://www.oscn.net/dockets/search.aspx) showed a conviction of:

-Driving Under Suspension and Operating a motor vehicle without liability insurance in Fargo, ND in 2009.

Credit History- Samuel M. Barnett's credit report was reviewed. There are no prior bankruptcies. He has one account which is seriously overdue for $1,193. All of his other accounts are current and have never been overdue.

Fargo Police Department

Investigation Notes

This application is for a transfer of a Class "Z" alcoholic beverage license (authorizes the licensee to sell "on-sale" only issued to individuals not currently holding another "A", "AB", "ABH" or "ABH-RZ". A physical bar is allowed and no food sales required.) from Big D's Bar & Grille LLC d/b/a Shotgun Sally's Rock N Roll to BB&E Partners-Fargo LLC d/b/a Twin Peaks Restaurant to be located at 1515 42 Street South, Fargo.

I spoke to Mr. Barnett by phone. I asked him about the one account which is seriously overdue. He said he was notified of a medical bill which was sent to collections before he received the letter. He is working with the company to pay the bill if they will concede they should have contacted him first, before sending the account to collections. Mr. Barnett said the account will be paid.

Mr. Barnett also checked the box on the application which states his driver's license has never been suspended or revoked. I noticed he had a driving under suspension charge in Fargo in 2009. Mr. Barnett had forgotten about that incident from 12 years ago. He remembered he received a speeding ticket which an attorney was supposed to take care of. He was later stopped in Fargo and was informed his license was suspended and he received a ticket. He clear-up the suspension right away.

The investigation into the criminal and credit history of the applicants did not find any current issues related to criminal activity or any current problems with their credit.

Business Location

Twin Peaks Restaurant will be located at 1515 42nd Street South in Fargo. Other businesses in the area with an alcoholic beverage license include: Granite City Food & Brewery, Buffalo Wild Wings Grill and Bar, Delta Hotels, Kobe's Japanese Cuisine and Blaze Pizza.

Fargo Police Department

Conclusion

This background investigation is being forwarded for your review and recommendation to the City of Fargo Liquor Control Board.

Received 6/2/2021
De Anderson [illegible]
Ref: Chief Zibolski
+ approve
Credit issue seems
reasonable to explain

THE CITY OF Fargo FAR MORE

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41b

MEMORANDUM

TO: Board of City Commissioners

FROM: Steven Sprague, City Auditor

SUBJECT: Liquor License Transfer Application – Fort Knox

DATE: June 15, 2021

The following application for a liquor license transfer was received by the Auditor's office and reviewed by the Liquor Control Board:

License Class:	Z Full alcohol, no food sales required
Business Name:	Fort Knox transfer
Location:	52 Broadway
Applicants:	Anthony Lavoy, Brent Kuehne, James Buus

Being no significant concerns, the Liquor Control Board voted to approve the transfer of a Class Z alcoholic beverage license from Downtown Holdings LLC d/b/a Fort Knox to Vault Partners LLC d/b/a Fort Knox. The complete application is available for review in the Auditor's Office.

Recommended Motion:

Move to approve the transfer of a Class Z alcoholic beverage license from Downtown Holdings LLC d/b/a Fort Knox to Vault Holdings LLC d/b/a Fort Knox.

Fargo Police Department

To: Chief David Zibolski

From: Sergeant Carlos Nestler

Date: June 1, 2021

RE: Liquor License Transfer (Fort Nok's)

Application for transfer of a Class "Z" Alcoholic Beverage License for Downtown Holdings LLC d/b/a Fort Nok's to Vault Partners LLC d/b/a Fort Nok's to be located at 52 Broadway North, Fargo

In accordance with Section 25-1505 of the Fargo Municipal Code, I have conducted an investigation into the character, reputation and fitness of the applicant(s) listed on the supplied application.

During this investigation I examined the applicants' credit reports and public records criminal background.

The following information was discovered through this investigation:

Lavoy, Anthony Michael - Owner

Criminal History- A search of Fargo Police Department criminal records, North Dakota public records (publicsearch.ndcourts.gov), Minnesota public records (https://chs.state.mn.us/) showed a conviction of:

-May 2010 Disorderly Conduct in Mahnomen County, MN. He disclosed this on his application. He was 19 years old.

Credit History- Anthony M. Lavoy's credit report was reviewed. There are no prior bankruptcies, recent past due accounts or debts turned over to collections.

Fargo Police Department

Kuehne, Brent David - Owner

Criminal History- A search of Fargo Police Department criminal records, North Dakota public records (publicsearch.ndcourts.gov), Minnesota public records (https://chs.state.mn.us/) showed no criminal activity.

Credit History- Brent D. Kuehne's credit report was reviewed. There are no prior bankruptcies, past due accounts or debts turned over to collections.

Buus, James M. - Owner

Criminal History- A search of Fargo Police Department criminal records, North Dakota public records (publicsearch.ndcourts.gov), Minnesota public records (https://chs.state.mn.us/) showed no criminal activity.

Credit History- James M. Buus' credit report was reviewed. There are no prior bankruptcies, past due accounts or debts turned over to collections.

Fargo Police Department

Hanson, Cassandra (Cassie) - Manager

Criminal History- A search of Fargo Police Department criminal records, North Dakota public records (publicsearch.ndcourts.gov), Minnesota public records (https://chs.state.mn.us/) showed the following criminal activity:

-Four misdemeanor shoplifting convictions in Fargo Municipal Court from 2005 to 2010. No other criminal convictions after 2010.

Investigation Notes

This application is for a transfer of a Class "Z" alcoholic beverage license (authorizes the licensee to sell "on-sale" only issued to individuals not currently holding another "A, "AB", "ABH", or "ABH-RZ". A physical bar is allowed and no food sales are required.) for Downtown Holdings LLC d/b/a Fort Nok's to Vault Partners LLC d/b/a Fort Nok's to be located at 52 Broadway North, Fargo.

I noticed on Brent Kuehne's application (page 5) he checked "yes" for the question asking if he had been issued a citation for any alcohol-related offense. He did not provide the date of arrest, location, or charge of each conviction. I reached out to Mr. Kuehne and he responded. He stated in 1996, when he was 20 years old, he received a minor in possession of alcohol at Gooseberry Park in Moorhead, MN. In March or April of 2000, he pled guilty of selling alcohol without a license at a Concordia College hockey party, his senior year at Concordia. This also happened in Moorhead, MN. These incidents were not listed on the Minnesota Public Records website.

The manager, Cassie Hanson, has been employed with Fort Nok's since June of 2014.

The investigation into the criminal and credit history of the applicants did not find any current issues related to criminal activity or any current problems with their credit.

Fargo Police Department

Business Location

Fort Nok's is located at 52 Broadway North. Other businesses in the area with an alcoholic beverage license include: Old Broadway Food & Brewing Co, Rooter's Bar, Sports Bar, Hotel Donaldson, JL Beers and Taco Shop.

Conclusion

This background investigation is being forwarded for your review and recommendation to the City of Fargo Liquor Control Board.

Received 6/3/2021
Dc Anderson
Ref: Chief Zibolski
+ Approve

THE CITY OF Fargo FAR MORE

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4lc

MEMORANDUM

TO: Board of City Commissioners

FROM: Steven Sprague, City Auditor

SUBJECT: Liquor License Transfer Application – Sanctuary Events Center

DATE: June 15, 2021

The following application for a liquor license transfer was received by the Auditor's office and reviewed by the Liquor Control Board:

License Class:	RZ-V Event Center license, Full alcohol, operation only during events
Business Name:	Sanctuary Events Center transfer
Location:	670 4th Avenue North
Applicants:	Lauren Nelson, Kayla Cash

Being no significant concerns, the Liquor Control Board voted to approve the transfer of a Class RZ-V alcoholic beverage license from 670 Events Center LLC d/b/a Sanctuary Events Center, due to 5% ownership change. The complete application is available for review in the Auditor's Office.

Recommended Motion:

Move to approve the transfer of a Class RZ-V alcoholic beverage license from 670 Events Center LLC d/b/a Sanctuary Events Center, transfer due to more than 5% stock ownership change.

Fargo Police Department

To: Chief David Zibolski

From: Sergeant Carlos Nestler

Date: June 1, 2021

RE: Liquor License Transfer (Sanctuary Events Center)

Application for a transfer of a Class "RZ-V" Alcoholic Beverage License for 670 Events Center LLC d/b/a Sanctuary Events Center located at 670 4 Avenue North, Fargo due to more than a 5% ownership change.

In accordance with Section 25-1505 of the Fargo Municipal Code, I have conducted an investigation into the character, reputation and fitness of the applicant(s) listed on the supplied application.

During this investigation I examined the applicants' credit reports and public records criminal background.

The following information was discovered through this investigation:

Nelson, Lauren Nicole – Owner/Manager

Criminal History-	A search of Fargo Police Department criminal records, North Dakota public records (publicsearch.ndcourts.gov), Minnesota public records (https://chs.state.mn.us/) showed no criminal activity.
Credit History-	Lauren N. Nelson's credit report was reviewed. There are no prior bankruptcies, past due accounts or debts turned over to collections.

Received 6/2/2021
DC Anderson
Ref: Chief Zibolski
+ approve

Fargo Police Department

Cash, Kayla Allison - Owner

Criminal History-	A search of Fargo Police Department criminal records, North Dakota public records (publicsearch.ndcourts.gov), Minnesota public records (https://chs.state.mn.us/) showed no criminal activity.
Credit History-	Kayla A. Cash's credit report was reviewed. There are no prior bankruptcies, past due accounts or debts turned over to collections.

Investigation Notes

This application is for a transfer requested for a "RZ-V" alcoholic beverage license (authorizes the licensee to sell "on-sale" only, located in an approved Renaissance Zone. The venue should be designed and intended to be used as a private event center or entertainment venue with square footage of at least 10,000 square feet and capacity of at least 300 people. The Venue must derive 60% or more of its annual gross receipts from the sale of tickets) for 670 Events Center LLC d/b/a Sanctuary Events Center located at 670 4 Avenue North, Fargo, due to more than a 5% ownership change.

I spoke with Lauren Nelson by phone. She has been the general manager of Sanctuary Events Center since May of 2019. Lauren Nelson and Kayla Cash bought-out two previous owners to become owners in the company. There are still three other owners who have been with the company since the beginning, for a total of five owners.

The investigation into the criminal and credit history of the applicants did not find any current issues related to criminal activity or any current problems with their credit.

Fargo Police Department

Business Location

Sanctuary Events Center is located at 670 4 Avenue North. Other businesses in the area with an alcoholic beverage license include: Spicy Pie, The Empire, Bismarck Tavern, Drunken Noodle, Mezzaluna, Toasted Frog and Side Street Grille and Pub.

Conclusion

This background investigation is being forwarded for your review and recommendation to the City of Fargo Liquor Control Board.

THE CITY OF Fargo FAR MORE

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41d

MEMORANDUM

TO: Board of City Commissioners

FROM: Steven Sprague, City Auditor

SUBJECT: Liquor License Transfer Application – Famous Dave's

DATE: June 15, 2021

The following application for a liquor license transfer was received by the Auditor's office and reviewed by the Liquor Control Board:

License Class:	F Full alcohol, food sales must exceed alcohol, no bar
Business Name:	Famous Dave's
Location:	2581 45th Street South
Applicants:	Julie Card, John Glockner

Being no significant concerns, the Liquor Control Board voted to approve the transfer of a Class F alcoholic beverage license from DTSG Inc. d/b/a Famous Dave's, due to 5% ownership change. The complete application is available for review in the Auditor's Office.

Recommended Motion:
Move to approve the transfer of a Class F alcoholic beverage license from DTSG, Inc. d/b/a Famous Dave's, transfer due to more than 5% stock ownership change.

Fargo Police Department

To: Chief David Zibolski

From: Sergeant Carlos Nestler

Date: June 1, 2021

RE: Liquor License Application (Famous Dave's)

Application for transfer of a Class "F" Alcoholic Beverage License for DTSG Inc d/b/a Famous Dave's to be located at 2581 45 Street South, Fargo for more than 5% ownership change.

In accordance with Section 25-1505 of the Fargo Municipal Code, I have conducted an investigation into the character, reputation and fitness of the applicant(s) listed on the supplied application.

During this investigation I examined the applicants' credit reports and public records criminal background.

The following information was discovered through this investigation:

Card, Julie Wright - Owner

Criminal History- A search of Fargo Police Department criminal records, North Dakota public records (publicsearch.ndcourts.gov) and Minnesota public records (https://chs.state.mn.us/) showed no criminal activity.

Credit History- Julie Wright Card's credit report was reviewed. There are no prior bankruptcies, past due accounts or debts turned over to collections

Received 6/1/2021
DC Anderson
Ref: Chief Zibolski
to approve

Fargo Police Department

Glockner, John Michael - Owner

Criminal History-	A search of Fargo Police Department criminal records, North Dakota public records (publicsearch.ndcourts.gov) and Minnesota public records (https://chs.state.mn.us/) showed no criminal activity.
Credit History-	John M. Glockner's credit report was reviewed. There are no prior bankruptcies, past due accounts or debts turned over to collections.

Olauson, Timothy - Manager

Criminal History-	A search of Fargo Police Department criminal records, North Dakota public records (publicsearch.ndcourts.gov) and Minnesota public records (https://chs.state.mn.us/) showed no criminal activity.

Investigation Notes

This application is for a transfer of a Class "F" alcoholic beverage license (authorizes the licensee to sell "on-sale" only served at a table or booth; no bar allowed. Requires 50% or more of its annual gross receipts from the sale of prepared meals and not alcoholic beverages) for DTSG Inc d/b/a Famous Dave's to be located at 2581 45 Street South, Fargo for more than 5% ownership change.

I spoke to the current general manager, Tim Olauson. He has been the general manager since August of 2020. He does not have any ownership of the restaurant. Tim stated they have not had any issues in the past with serving alcohol. He told me they had a lot of turnover recently with servers, so he is having new servers go through server training in the next few weeks. He believes he will have all the servers trained in the next two weeks. The change in ownership of the restaurant is because of the death of the previous owner.

Fargo Police Department

The investigation into the criminal and credit history of the applicants did not find any current issues related to criminal activity or any current problems with their credit.

Business Location

Famous Dave's is located at 2581 45 Street South, Fargo, ND. Other businesses in the area with an alcoholic beverage license include: Applebee's Neighborhood Grill and Bar, Golf Addiction, Mexican Village and Fargo Residence Inn.

Conclusion

This background investigation is being forwarded for your review and recommendation to the City of Fargo Liquor Control Board.

THE CITY OF Fargo FAR MORE

CITY COMMISSION ACTION
Continued to 6/28/21 on 5/3/21

41e

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MEMORANDUM

TO: Board of City Commissioners

FROM: Steven Sprague, City Auditor

SUBJECT: Liquor License Application – Suite Shots

DATE: April 21, 2021

The following application for a liquor license was received by the Auditor's office and reviewed by the Liquor Control Board:

License Class: FA-Entertainment Full alcohol, must be in an Entertainment complex
Business Name: Suite Shots
Location: 3400 James Way
Applicants: Tyler Brant, Kevin Christianson, Mark Johnson, David Grueneich, Warren Schatz, James Heyer, Chuck Johnson

Being no significant concerns, the Liquor Control Board voted to approve the issuance of a Class FA-Entertainment alcoholic beverage license to Fargo TS LLC d/b/a Suite Shots. The complete application is available for review in the Auditor's Office.

Recommended Motion:
Move to approve the issuance of a Class FA-Entertainment alcoholic beverage license to Fargo TS LLC d/b/a Suite Shots.

Fargo Police Department

To: Chief David Zibolski

From: Sergeant Carlos Nestler

Date: April 12, 2021

RE: Liquor License Application (Suite Shots)

Application for a Class "FA" Alcoholic Beverage License for
Fargo Ts LLC dba Suite Shots to be located at 3400 James Way, Fargo

In accordance with Section 25-1505 of the Fargo Municipal Code, I have conducted an investigation into the character, reputation and fitness of the applicant(s) listed on the supplied application.

During this investigation I examined the applicants' credit reports and public records criminal background.

The following information was discovered through this investigation:

Johnson, Charles Conrad - Owner

Criminal History-	A search of Fargo Police Department criminal records, North Dakota public records (publicsearch.ndcourts.gov) and Minnesota public records (https://chs.state.mn.us/) showed no criminal activity.
Credit History-	Charles C. Johnson's credit report was reviewed. There are no prior bankruptcies, past due accounts or debts turned over to collections.

Fargo Police Department

Schatz, Warren Kenneth – Owner

Criminal History-	A search of Fargo Police Department criminal records, North Dakota public records (publicsearch.ndcourts.gov) and Minnesota public records (https://chs.state.mn.us/) showed no criminal activity.
Credit History-	Warren K. Schatz's credit report was reviewed. There are no prior bankruptcies, past due accounts or debts turned over to collections.

Heyer, James Mark – Owner

Criminal History-	A search of Fargo Police Department criminal records, North Dakota public records (publicsearch.ndcourts.gov), Minnesota public records (https://chs.state.mn.us/) showed no criminal activity.
Credit History-	James M. Heyer's credit report was reviewed. There are no prior bankruptcies, past due accounts or debts turned over to collections.

Christianson, Kevin Lee - Owner

Criminal History-	A search of Fargo Police Department criminal records, North Dakota public records (publicsearch.ndcourts.gov), Minnesota public records (https://chs.state.mn.us/) showed no criminal activity.
Credit History-	Kevin L. Christianson's credit report was reviewed. There are no prior bankruptcies, past due accounts or debts turned over to collections.

Fargo Police Department

Brandt, Tyler Allen - Owner

Criminal History- A search of Fargo Police Department criminal records, North Dakota public records (publicsearch.ndcourts.gov), Minnesota public records (https://chs.state.mn.us/) showed no criminal activity.

Credit History- Tyler A. Brandt's credit report was reviewed. There are no prior bankruptcies, past due accounts or debts turned over to collections.

Grueneich, David Paul - Owner

Criminal History- A search of Fargo Police Department criminal records, North Dakota public records (publicsearch.ndcourts.gov), Minnesota public records (https://chs.state.mn.us/) and Arizona public records (https://apps.supremecourt.az.gov/) showed one criminal conviction.

-Feb. 2011 DUI conviction in North Dakota, which he disclosed in the application as a Feb. 2012 DUI conviction.

Credit History- David P. Grueneich's credit report was reviewed. There are no prior bankruptcies, past due accounts or debts turned over to collections.

Johnson, Kevin Lee - Owner

Criminal History- A search of Fargo Police Department criminal records, North Dakota public records (publicsearch.ndcourts.gov), Minnesota public records (https://chs.state.mn.us/) showed no criminal activity.

Credit History- Kevin L. Johnson's credit report was reviewed. There are no prior bankruptcies, past due accounts or debts turned over to collections.

Fargo Police Department

Johnson, Mark William – Owner/ Manager

Criminal History-	A search of Fargo Police Department criminal records, North Dakota public records (publicsearch.ndcourts.gov), Minnesota public records (https://chs.state.mn.us/) showed no criminal activity.
Credit History-	Mark W. Johnson's credit report was reviewed. There are no prior bankruptcies, past due accounts or debts turned over to collections.

Investigation Notes

This application is for a "FA" liquor license (authorizes the licensee to sell "on-sale" only, physical bar is allowed. Requires 50% or more of its annual gross receipts from the sale of prepared meals and not alcoholic beverages) for Fargo Ts LLC dba Suite Shots to be located at 3400 James Way, Fargo, ND.

According to the application, Suite Shots will contain 60 "Suites" or bays in which visitors can hit golf balls from a temperature controlled covered area to an outdoor field. In addition to 60 golf suites where food and beverage will be consumed, the facility will have meeting space, banquet rooms and an outdoor terrace to accommodate business meeting, parties and fundraising events. There will also be a restaurant and bar on the mail level serving lunches and dinners to golfers and non-golfers.

I spoke to Mark W. Johnson by phone. I asked Mark what his involvement in the business was, since he is listed as a manager. Mark stated he is the manager and he is also an owner. Mark stated all of the individuals listed on the application have ownership in the venture. Mark also told me his MN driver's license number, since it was blank on the application.

The investigation into the criminal and credit history of the applicants did not find any current issues related to criminal activity or any problems with their credit.

Fargo Police Department

Business Location

Suite Shots is located at 3400 James Way, Fargo, ND. James Way is not on many maps yet, it is in the area of 52nd Avenue South and 34th St. Other businesses in the area with an alcoholic beverage license include: Cash Wise Liquors and Frank's Lounge.

Conclusion

This background investigation is being forwarded for your review and recommendation to the City of Fargo Liquor Control Board.

4/12/21

RECEIVED
FARGO POLICE DEPARTMENT
APR 14 2021
DAVID B ZIBOLSKI
CHIEF OF POLICE
REF: STEVE SPRAGUE

THE CITY OF Fargo FAR MORE

41f

AUDITOR'S OFFICE
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www.FargoND.gov

MEMORANDUM

TO: Board of City Commissioners

FROM: Steven Sprague, City Auditor

SUBJECT: Liquor License Application – KingPinz

DATE: June 15, 2021

The following application for a liquor license was received by the Auditor's office and reviewed by the Liquor Control Board:

License Class: FA-Entertainment Full alcohol, must be in an Entertainment complex
Business Name: KingPinz
Location: 3485 Jacks Way
Applicants: Tyler Brant, Kevin Christianson, Michael Jones, David Grueneich, Matthew Eaton, Warren Schatz, Timothy Cary

Being no significant concerns, the Liquor Control Board voted to approve the issuance of a Class FA-Entertainment alcoholic beverage license to TC Entertainment LLC d/b/a KingPinz. The complete application is available for review in the Auditor's Office.

Recommended Motion:
Move to approve the issuance of a Class FA-Entertainment alcoholic beverage license to TC Entertainment LLC d/b/a KingPinz.

Fargo Police Department

To: Chief David Zibolski

From: Sergeant Carlos Nestler

Date: May 4, 2021

RE: Liquor License Application (KingPinz)

Application for a Class "FA-Entertainment" Alcoholic Beverage License for TC Entertainment LLC dba KingPinz to be located at 3485 Jacks Way, Fargo

In accordance with Section 25-1505 of the Fargo Municipal Code, I have conducted an investigation into the character, reputation and fitness of the applicant(s) listed on the supplied application.

During this investigation I examined the applicants' credit reports and public records criminal background.

The following information was discovered through this investigation:

Jones, Michel Andrew - Owner

Criminal History- A search of Fargo Police Department criminal records, North Dakota public records (publicsearch.ndcourts.gov), Minnesota public records (https://chs.state.mn.us/) showed a conviction of:

-DUI through Fargo Municipal Court from a July 14, 2017 arrest.

Credit History- Michel A. Jones' credit report was reviewed. There are no prior bankruptcies or debts turned over to collections. Four of his accounts were 30 days past due on at least one occasion. One account was delinquent for 150 days. All accounts are now current.

Fargo Police Department

Grueneich, David Paul - Owner

Criminal History- A search of Fargo Police Department criminal records, North Dakota public records (publicsearch.ndcourts.gov), Minnesota public records (https://chs.state.mn.us/) and Arizona public records (https://apps.supremecourt.az.gov/) showed one criminal conviction.

-Feb. 2011 DUI conviction in North Dakota, which he disclosed in the application as a Feb. 2012 DUI conviction.

Credit History- David P. Grueneich's credit report was reviewed. There are no prior bankruptcies, past due accounts or debts turned over to collections.

Eaton, Matthew James - Owner

Criminal History- A search of Fargo Police Department criminal records, North Dakota public records (publicsearch.ndcourts.gov), Minnesota public records (https://chs.state.mn.us/) and Wisconsin Circuit Court Access (https://wcca.wicourts.gov) showed no criminal activity.

Credit History- Matthew J. Eaton's credit report was reviewed. There are no prior bankruptcies, past due accounts or debts turned over to collections.

Fargo Police Department

Christianson, Kevin Lee - Owner

Criminal History- A search of Fargo Police Department criminal records, North Dakota public records (publicsearch.ndcourts.gov), Minnesota public records (https://chs.state.mn.us/) showed no criminal activity.

Credit History- Kevin L. Christianson's credit report was reviewed. There are no prior bankruptcies, past due accounts or debts turned over to collections.

Brandt, Tyler Allen - Owner

Criminal History- A search of Fargo Police Department criminal records, North Dakota public records (publicsearch.ndcourts.gov), Minnesota public records (https://chs.state.mn.us/) showed no criminal activity. Arizona Judicial Branch Public Records (https://apps.supremecourt.az.gov/publicaccess) showed:

A December 1st, 2019 disorderly conduct which appeared to have a guilty plea in August of 2020, which was later dismissed by Scottsdale City Court Attorney (2/2/2021). Disclosed in the application.

Credit History- Tyler A. Brandt's credit report was reviewed. There are no prior bankruptcies, past due accounts or debts turned over to collections.

THE CITY OF Fargo FAR MORE

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41f

MEMORANDUM

TO: Board of City Commissioners

FROM: Steven Sprague, City Auditor

SUBJECT: Liquor License Application – KingPinz

DATE: June 15, 2021

The following application for a liquor license was received by the Auditor's office and reviewed by the Liquor Control Board:

License Class: FA-Entertainment Full alcohol, must be in an Entertainment complex
Business Name: KingPinz
Location: 3485 Jacks Way
Applicants: Tyler Brant, Kevin Christianson, Michael Jones, David Grueneich, Matthew Eaton, Warren Schatz, Timothy Cary

Being no significant concerns, the Liquor Control Board voted to approve the issuance of a Class FA-Entertainment alcoholic beverage license to TC Entertainment LLC d/b/a KingPinz. The complete application is available for review in the Auditor's Office.

Recommended Motion:
Move to approve the issuance of a Class FA-Entertainment alcoholic beverage license to TC Entertainment LLC d/b/a KingPinz.

Fargo Police Department

To: Chief David Zibolski

From: Sergeant Carlos Nestler

Date: May 4, 2021

RE: Liquor License Application (KingPinz)

Application for a Class "FA-Entertainment" Alcoholic Beverage License for TC Entertainment LLC dba KingPinz to be located at 3485 Jacks Way, Fargo

In accordance with Section 25-1505 of the Fargo Municipal Code, I have conducted an investigation into the character, reputation and fitness of the applicant(s) listed on the supplied application.

During this investigation I examined the applicants' credit reports and public records criminal background.

The following information was discovered through this investigation:

Jones, Michel Andrew - Owner

Criminal History- A search of Fargo Police Department criminal records, North Dakota public records (publicsearch.ndcourts.gov), Minnesota public records (https://chs.state.mn.us/) showed a conviction of:

-DUI through Fargo Municipal Court from a July 14, 2017 arrest.

Credit History- Michel A. Jones' credit report was reviewed. There are no prior bankruptcies or debts turned over to collections. Four of his accounts were 30 days past due on at least one occasion. One account was delinquent for 150 days. All accounts are now current.

Fargo Police Department

Grueneich, David Paul - Owner

Criminal History- A search of Fargo Police Department criminal records, North Dakota public records (publicsearch.ndcourts.gov), Minnesota public records (https://chs.state.mn.us/) and Arizona public records (https://apps.supremecourt.az.gov/) showed one criminal conviction.

-Feb. 2011 DUI conviction in North Dakota, which he disclosed in the application as a Feb. 2012 DUI conviction.

Credit History- David P. Grueneich's credit report was reviewed. There are no prior bankruptcies, past due accounts or debts turned over to collections.

Eaton, Matthew James - Owner

Criminal History- A search of Fargo Police Department criminal records, North Dakota public records (publicsearch.ndcourts.gov), Minnesota public records (https://chs.state.mn.us/) and Wisconsin Circuit Court Access (https://wcca.wicourts.gov) showed no criminal activity.

Credit History- Matthew J. Eaton's credit report was reviewed. There are no prior bankruptcies, past due accounts or debts turned over to collections.

Fargo Police Department

Christianson, Kevin Lee - Owner

Criminal History- A search of Fargo Police Department criminal records, North Dakota public records (publicsearch.ndcourts.gov), Minnesota public records (https://chs.state.mn.us/) showed no criminal activity.

Credit History- Kevin L. Christianson's credit report was reviewed. There are no prior bankruptcies, past due accounts or debts turned over to collections.

Brandt, Tyler Allen - Owner

Criminal History- A search of Fargo Police Department criminal records, North Dakota public records (publicsearch.ndcourts.gov), Minnesota public records (https://chs.state.mn.us/) showed no criminal activity. Arizona Judicial Branch Public Records (https://apps.supremecourt.az.gov/publicaccess) showed:

A December 1st, 2019 disorderly conduct which appeared to have a guilty plea in August of 2020, which was later dismissed by Scottsdale City Court Attorney (2/2/2021). Disclosed in the application.

Credit History- Tyler A. Brandt's credit report was reviewed. There are no prior bankruptcies, past due accounts or debts turned over to collections.

Fargo Police Department

Schatz, Warren Kenneth – Owner

Criminal History- A search of Fargo Police Department criminal records, North Dakota public records (publicsearch.ndcourts.gov) and Minnesota public records (https://chs.state.mn.us/) showed no criminal activity.

Credit History- Warren K. Schatz's credit report was reviewed. There are no prior bankruptcies, past due accounts or debts turned over to collections.

Cary, Timothy Randel – Owner/ Manager

Criminal History- A search of Fargo Police Department criminal records, North Dakota public records (publicsearch.ndcourts.gov), Minnesota public records (https://chs.state.mn.us/) showed no criminal activity.

Credit History- Timothy R. Cary's credit report was reviewed. There are no prior bankruptcies, past due accounts or debts turned over to collections.

Investigation Notes

This application is for a "FA-Entertainment" alcoholic beverage license (authorizes the licensee to sell "on-sale" only, in a place of amusement or in a recreational establishment. Requires non-alcoholic sales to exceed alcohol sales) for Fargo TC Entertainment LLC dba KingPinz to be located at 3485 Jacks Way, Fargo.

According to the application, KingPinz is a family oriented entertainment center with arcade and bowling that will serve food and beverage.

Fargo Police Department

Four of the owners of KingPinz previously applied for a liquor license through the City of Fargo for another business, Suite Shots, which is in the same area as KingPinz.

The investigation into the criminal and credit history of the applicants did not find any current issues related to criminal activity or any current problems with their credit.

Business Location

KingPinz is located at 3485 Jacks Way, Fargo, ND. Jacks Way is not on many maps yet; it is in the area of 52nd Avenue South and 34th St. Other businesses in the area with an alcoholic beverage license include: Cash Wise Liquors and Frank's Lounge.

Conclusion

This background investigation is being forwarded for your review and recommendation to the City of Fargo Liquor Control Board.

Carlos W. Martin

Received 5/6/2021
Dc Andrew Gat
Ref: Chief Zibolski
+ approve

THE CITY OF Fargo FAR MORE

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41g

MEMORANDUM

TO: Board of City Commissioners

FROM: Steven Sprague, City Auditor

SUBJECT: Liquor License Application – Jay's Smokin' BBQ

DATE: June 15, 2021

The following application for a liquor license transfer was received by the Auditor's office and reviewed by the Liquor Control Board:

License Class:	GH Beer & Wine, food sales must exceed alcohol, no bar
Business Name:	Jay's Smokin' BBQ
Location:	1322 Main Ave
Applicants:	Jacey Henrichs, Rochelle Henrichs

Being no significant concerns, the Liquor Control Board voted to approve the issuance of a Class GH alcoholic beverage license to Jay's Smokin' BBQ LLC d/b/a Jay's Smokin' BBQ. The complete application is available for review in the Auditor's Office.

Recommended Motion:
Move to approve the issuance of a Class GH alcoholic beverage license to Jay's Smokin' BBQ LLC d/b/a Jay's Smokin' BBQ.

Fargo Police Department

To: Chief David Zibolski

From: Sergeant Carlos Nestler

Date: May 4, 2021

RE: Liquor License Application (Jay's Smokin' BBQ, LLC)

Application for a Class "GH" Alcoholic Beverage License for Jay's Smokin' BBQ, LLC dba Jay's Smokin' BBQ to be located at 1322 Main Ave, Fargo

In accordance with Section 25-1505 of the Fargo Municipal Code, I have conducted an investigation into the character, reputation and fitness of the applicant(s) listed on the supplied application.

During this investigation I examined the applicants' credit reports and public records criminal background.

The following information was discovered through this investigation:

Henrichs, Jacey Al – Owner/ Manager

Criminal History- A search of Fargo Police Department criminal records, North Dakota public records (publicsearch.ndcourts.gov), Minnesota public records (https://chs.state.mn.us/) showed no criminal activity.

Credit History- Jacey A. Henrichs' credit report was reviewed. There are no prior bankruptcies, past due accounts or debts turned over to collections.

Fargo Police Department

Henrichs, Rochelle D. - Manager

Criminal History- A search of Fargo Police Department criminal records, North Dakota public records (publicsearch.ndcourts.gov), Minnesota public records (https://chs.state.mn.us/) showed no criminal activity.

Investigation Notes

This application is for a "GH" alcoholic beverage license (authorizes the licensee to sell wine, sparkling wine and beer "on-sale" only, served at table or booth, with no bar allowed and requires 50% food sales) for Jay's Smokin' BBQ, LLC dba Jay's Smokin' BBQ to be located at 1322 Main Avenue, Fargo.

I spoke to Jacey and Rochelle by phone. I confirmed they both initialed page 4, items 1 through 9. I also confirmed both Jacey and Rochelle will be managers of the restaurant; Jacey will manage the kitchen and Rochelle will manage the dining room area.

I noticed the punctuation of the business name was different on the Notice of Hearing sheet. The proper spelling/punctuation of the restaurant's name is; *Jay's Smokin' BBQ.*

The investigation into the criminal and credit history of the applicant(s) did not find any current issues related to criminal activity or any problems with their credit.

Business Location

Jay's Smokin' BBQ is located at 1322 Main Avenue in Fargo, ND. Other businesses in the area with an alcoholic beverage license include: Tailgators Sports Cafe, Royal Liquors, Mexican Village and Front Street Taproom.

Conclusion

This background investigation is being forwarded for your review and recommendation to the City of Fargo Liquor Control Board.

Received 5/6/2021
DC Anderson JDA
Ref: Chief Zibolski
+ approve

5-04-2021

THE CITY OF Fargo FAR MORE

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41h

MEMORANDUM

TO: Board of City Commissioners

FROM: Steven Sprague, City Auditor

SUBJECT: Liquor License Application – Fryn' Pan

DATE: June 15, 2021

The following application for a liquor license transfer was received by the Auditor's office and reviewed by the Liquor Control Board:

License Class:	GH Beer & Wine, food sales must exceed alcohol, no bar
Business Name:	Fryn' Pan
Location:	310 Main Ave
Applicants:	Stanley Mitzel, Mark Oren, Justin Bovee, Patrick Jones

Being no significant concerns, the Liquor Control Board voted to approve the issuance of a Class GH alcoholic beverage license to K & K Management LLC d/b/a Fryn' Pan. The complete application is available for review in the Auditor's Office.

Recommended Motion:
Move to approve the issuance of a Class GH alcoholic beverage license to K & K Management LLC d/b/a Fryn' Pan.

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Fargo Police Department

To: Chief David Zibolski

From: Sergeant Carlos Nestler

Date: June 1, 2021

RE: Liquor License Application (Fryn' Pan Family Restaurant)

Application for a Class "GH" Alcoholic Beverage License for K & K Management LLC dba Fryn' Pan Family Restaurant to be located at 310 Main Avenue, Fargo

In accordance with Section 25-1505 of the Fargo Municipal Code, I have conducted an investigation into the character, reputation and fitness of the applicant(s) listed on the supplied application.

During this investigation I examined the applicants' credit reports and public records criminal background.

The following information was discovered through this investigation:

Mitzel, Stanley Allen - Owner

Criminal History- A search of Fargo Police Department criminal records, North Dakota public records (publicsearch.ndcourts.gov), Minnesota public records (https://chs.state.mn.us/) showed no criminal activity. I could not find a free South Dakota public records search.

Credit History- Stanley A. Mitzel's credit report was reviewed. There are no prior bankruptcies, past due accounts or debts turned over to collections.

Received 6/1/2021
DC Anderson
Ref: Chief Zibolski
+ approve

Fargo Police Department

Oren, Mark Wayne - Owner

Criminal History- A search of Fargo Police Department criminal records, North Dakota public records (publicsearch.ndcourts.gov), Minnesota public records (https://chs.state.mn.us/) showed no criminal activity. I could not find a free South Dakota public records search.

Credit History- Mark W. Oren credit report was reviewed. There are no prior bankruptcies, past due accounts or debts turned over to collections.

Bovee, Justin Joe - Owner

Criminal History- A search of Fargo Police Department criminal records, North Dakota public records (publicsearch.ndcourts.gov), Minnesota public records (https://chs.state.mn.us/) showed no criminal activity. I could not find a free South Dakota public records search.

Credit History- Justin J. Bovee's credit report was reviewed. There are no prior bankruptcies, past due accounts or debts turned over to collections. There were 29 times in the past six years where he was 30 days delinquent on payments. His accounts have all been current the past 2 years.

Fargo Police Department

Jones, Patrick A. – Owner/Manager

Criminal History- A search of Fargo Police Department criminal records, North Dakota public records (publicsearch.ndcourts.gov), Minnesota public records (https://chs.state.mn.us/) showed no criminal activity.

Investigation Notes

This application is for a "GH" alcoholic beverage license (authorizes the licensee to sell beer, wine and sparkling wine "on-sale" only, served at table or booth, no bar. Requires 50% food sales) for K & K Management LLC dba Fryn' Pan Family Restaurant to be located at 310 Main Avenue, Fargo.

I spoke to Patrick A. Jones by phone. Patrick has been employed by the Fryn' Pan since 1984. He is currently the general manager and he is listed as the manager on the application. He told me he will continue to manage the restaurant. He does not have any ownership of the restaurant.

I noticed one of the owners, Stan Mitzel, did not initial one space on page 4 and the other two owners did not initial the form at all. I emailed the form to Mr. Mitzel so they could complete the form. I have included the completed form with this packet.

The investigation into the criminal and credit history of the applicants did not find any current issues related to criminal activity or any current problems with their credit.

Business Location

Fryn' Pan Family Restaurant is located at 310 Main Avenue in Fargo. Other businesses in the area with an alcoholic beverage license include: Rhombus Guys, Front Street Taproom and Mexican Village Restaurant.

Conclusion

This background investigation is being forwarded for your review and recommendation to the City of Fargo Liquor Control Board.

C. Martinez

Fargo Police Department

Schatz, Warren Kenneth – Owner

Criminal History- A search of Fargo Police Department criminal records, North Dakota public records (publicsearch.ndcourts.gov) and Minnesota public records (https://chs.state.mn.us/) showed no criminal activity.

Credit History- Warren K. Schatz's credit report was reviewed. There are no prior bankruptcies, past due accounts or debts turned over to collections.

Cary, Timothy Randel – Owner/ Manager

Criminal History- A search of Fargo Police Department criminal records, North Dakota public records (publicsearch.ndcourts.gov), Minnesota public records (https://chs.state.mn.us/) showed no criminal activity.

Credit History- Timothy R. Cary's credit report was reviewed. There are no prior bankruptcies, past due accounts or debts turned over to collections.

Investigation Notes

This application is for a "FA-Entertainment" alcoholic beverage license (authorizes the licensee to sell "on-sale" only, in a place of amusement or in a recreational establishment. Requires non-alcoholic sales to exceed alcohol sales) for Fargo TC Entertainment LLC dba KingPinz to be located at 3485 Jacks Way, Fargo.

According to the application, KingPinz is a family oriented entertainment center with arcade and bowling that will serve food and beverage.

Fargo Police Department

Four of the owners of KingPinz previously applied for a liquor license through the City of Fargo for another business, Suite Shots, which is in the same area as KingPinz.

The investigation into the criminal and credit history of the applicants did not find any current issues related to criminal activity or any current problems with their credit.

Business Location

KingPinz is located at 3485 Jacks Way, Fargo, ND. Jacks Way is not on many maps yet; it is in the area of 52nd Avenue South and 34th St. Other businesses in the area with an alcoholic beverage license include: Cash Wise Liquors and Frank's Lounge.

Conclusion

This background investigation is being forwarded for your review and recommendation to the City of Fargo Liquor Control Board.

Carlos W. Martin

Received 5/6/2021
Dc Andrew Gat
Ref: Chief Zibolski
+ approve

THE CITY OF Fargo FAR MORE

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41i

MEMORANDUM

TO: Board of City Commissioners

FROM: Steven Sprague, City Auditor

SUBJECT: Liquor License Application – Soiree Victorian Tea Room

DATE: June 15, 2021

The following application for a liquor license transfer was received by the Auditor's office and reviewed by the Liquor Control Board:

License Class:	GH Beer & Wine, food sales must exceed alcohol, no bar
Business Name:	Soiree Victorian Tea Room
Location:	3 8th Street South
Applicants:	Natalia Heikes

Being no significant concerns, the Liquor Control Board voted to approve the issuance of a Class GH alcoholic beverage license to Soiree's Sweets d/b/a Soiree Victorian Tea Room. The complete application is available for review in the Auditor's Office.

Recommended Motion:

Move to approve the issuance of a Class GH alcoholic beverage license to Soiree's Sweets d/b/a Soiree Victorian Tea Room.

Fargo Police Department

To: Chief David Zibolski

From: Sergeant Carlos Nestler

Date: June 1, 2021

RE: Liquor License Application (Soiree Victorian Tea Room)

Application for a Class "GH" Alcoholic Beverage License for
Soiree's Sweets dba Soiree Victorian Tea Room
To be located at 3 8th Street South, Fargo

In accordance with Section 25-1505 of the Fargo Municipal Code, I have conducted an investigation into the character, reputation and fitness of the applicant(s) listed on the supplied application.

During this investigation I examined the applicants' credit reports and public records criminal background.

The following information was discovered through this investigation:

Heikes, Natalia S. – Owner/Manager

Criminal History- A search of Fargo Police Department criminal records, North Dakota public records (publicsearch.ndcourts.gov) and Minnesota public records (https://chs.state.mn.us/) showed a reckless driving conviction in 2012 in Cass County, ND.

Credit History- Natalia S. Heikes' credit report was reviewed. There are no prior bankruptcies or debts turned over to collections. In 2019, 2020 and 2021 Natalia has been:

- 30 days past due 24 times and
- 60 days past due 10 times.

The delinquent payments have been on bank credit cards and department store cards.

Received 6/1/2021
DC Anderson
Rec: Chief Zibolski
+ approve

Fargo Police Department

Investigation Notes

This application is for a "GH" alcoholic beverage license (authorizes the licensee to sell beer, wine and sparkling wine "on-sale" only, served at table or booth, no bar. Requires 50% food sales) for Soiree's Sweets dba Soiree Victorian Tea Room to be located at 3 8th Street S., Fargo.

The investigation into the criminal and credit history of the applicants did not find any current issues related to criminal activity, however, there were current issues with credit accounts being past due numerous times in the last 2 ½ years.

I spoke to Natalia by phone. I asked her about her difficulty paying her accounts on time over the past 2 ½ years. Natalia told me she has been sick since about 2018, but she is now feeling much better. She said her illness and covid had a negative effect on her business which made it difficult to pay her bills. She said she is back on track now and able to pay her bills. Natalia and her husband have been working on restoring their credit.

Business Location

Soiree Victorian Tea Room is located at 3 8th Street S., Fargo. Other businesses in the area with an alcoholic beverage license include: Rhombus Guys, Front Street Taproom, Duffy's Tavern and Mexican Village Restaurant.

Conclusion

This background investigation is being forwarded for your review and recommendation to the City of Fargo Liquor Control Board.

41j

City of Fargo Staff Report			
Title:	Craigs Oak Grove 2nd Addition	**Date:** **Update:**	5/26/2021 6/24/2021
Location:	515 Oak Street N	**Staff Contact:**	Aaron Nelson
Legal Description:	Lot 1, Block 1, Craigs Oak Grove Second Addition		
Owner(s)/Applicant:	The Oaks, LLC/Jesse Craig	**Engineer:**	N/A
Entitlements Requested:	**Zoning Change** (from MR-2, Multi-Dwelling Residential, to DMU, Downtown Mixed-Use, with a C-O, Conditional Overlay)		
Status:	City Commission Public Hearing: June 28, 2021		

Existing	Proposed
Land Use: Vacant	**Land Use:** Household Living (Multi-Dwelling Housing)
Zoning: MR-2, Multi-Dwelling Residential	**Zoning:** DMU, Downtown Mixed-Use, with a C-O, Conditional Overlay
Uses Allowed: MR-2 allows detached houses, attached houses, duplexes, multi-dwelling structures, daycare centers up to 12 children, group living, parks and open space, religious institutions, safety services, schools, and basic utilities	**Uses Allowed:** DMU with proposed C-O allows detached houses, attached houses, duplexes, multi-dwelling structures.
Maximum Density Allowed: MR-2 allows a maximum of 20 dwelling units per acre	**Maximum Density Allowed:** Proposed C-O would allow a maximum of 35 dwelling units per acre.

Proposal:

The applicant, Jesse Craig, is seeking approval of a zoning map amendment to rezone the subject property from MR-2 (Multi-Dwelling Residential) to DMU (Downtown Mixed-Use) with C-O (Conditional Overlay). The applicant is requesting this rezone to construct a three-story multi-dwelling residential building on the subject property. The proposed building would include 21 dwelling units (9 one-bedroom units and 12 two bedroom units) and 31 indoor parking spaces.

This project was reviewed by the City's Planning and Development, Engineering, Public Works, and Fire Departments ("staff"), whose comments are included in this report.

Surrounding Land Uses and Zoning Districts:

- North: Across 6th Ave N are single-family, duplex, and multi-dwelling homes zoned MR-2, Multi-Dwelling Residential and LC, Limited Commercial;
- East: the site of a proposed multi-dwelling structure zoned DMU, Downtown Mixed-Use;
- South: the site of a proposed multi-dwelling structure zoned DMU, Downtown Mixed-Use;
- West: are single-dwelling and multi-dwelling homes zoned MR-2, Multi-Dwelling Residential and GC, General Commercial

Area Plans:

The subject property is located within the study area of the Core Neighborhoods Master Plan. The plan identifies the area south of 6th Ave N as a multi-family land use buffer between the mixed-use area to the south and the single-family structures to the north. More generally, the plan identifies several outcomes for the Horace Mann neighborhood to strive for, including increased number of students residing in the Roosevelt/Horace Mann attendance zone; housing opportunities for people of a range of incomes, ages, and household types; and increased percentage of properties in excellent or good condition.

Schools and Parks:

Schools: The subject property is located within the Fargo School District, specifically the Roosevelt/Horace Mann Elementary, Ben Franklin Middle and Fargo North High school attendance areas.

Neighborhood: The subject property is located in the Horace Mann neighborhood.

Parks: The subject property is located west of Wildflower Grove Park, which provides public amenities such as picnic tables and recreational trails.

Pedestrian / Bicycle: There is an existing off road bike facility to the east of the subject property on 6th Ave N which connects to the metro area trail system.

Staff Analysis:

Background

The applicant had originally applied for a Planned Unit Development (PUD) to accommodate the proposed development. However, the applicant withdrew that application in favor of this proposed zone change to DMU with C-O, based on staff's concern with the PUD. The intent of the C-O district is to place limitations on the intensity of development that would otherwise be allowed within the DMU zoning district. These limitations have been tailored to the applicant's specific development proposal—a three-story, 21-unit residential building with indoor parking.

Conditional Overlay:

The proposed C-O district would establish the following standards, in addition to the standards of the DMU district:

Uses: *Household Living* shall be the only permitted use category. All other primary uses are prohibited.

Residential Density: The maximum residential density allowed shall be 35 dwelling units per acre.

Setbacks:

- The minimum front setback shall be 10 feet.
- The minimum street-side setback shall be 10 feet.
- The minimum rear setback shall be 5 feet.
- The minimum interior-side setback shall be 5 feet.

Building Coverage: The maximum building coverage shall be 83% of the lot area.

Height: The maximum building height shall be 45 feet.

Parking: The minimum off-street parking requirements for residential use categories shall be 1.45 parking spaces per unit.

Landscaping:

- Street Trees are required pursuant to Subsection 20-0705.B of the Land Development Code.
- Open Space Landscaping is required pursuant to Subsection 20-0705.C of the Land Development Code. For purposes of determining the number of plant units required, the following shall apply:
    - At least two (2) plant units shall be provided for each 1,000 square feet of lot area or fraction thereof, and eight (8) square feet per plant unit shall be provided.

Additional Standards:

- Bicycle parking facilities, such as a bike rack or bike lockers, shall be provided on site.
- An on-site system of pedestrian walkways shall be provided between building entrances and public sidewalks located along the perimeter of the block.

- At least one primary building entry shall face a public street.
- All exterior walls (excluding openings for such things as doors, windows, or equipment) shall be primarily constructed and/or finished with brick and/or stone, except that:
  - The following materials may be used for purposes of providing accent: glass, ceramic, stucco, precast panels, exterior insulation finish systems (e.g. dryvit), steel siding with a ceramic hybrid paint finish, fiber cement siding, insulated metal panels, wood-based materials, asphalt, and decorated concrete block. When these materials are used, the materials must be of commercial grade and may not exceed 10% of the total exterior wall area.
  - The use of architectural metal panels and wood panels for enclosure of mechanical equipment shall be permitted.
- Building elevation walls facing a public street must have projections and/or recesses having a depth of at least one foot and extending for a minimum of 20% of the length of such walls.
- Dumpsters and refuse containers shall be contained completely within the building and concealed from view from the exterior, except during times of collection.
- The building design shall include integrated design features to avoid monotony, to create visual interest, and to enhance the pedestrian scale, all of which is to be designed to create compatibility with the surrounding neighborhood. Examples of features that can be included are:
  - Canopies
  - Cornices
  - Eaves
  - Arched entries, balconies, or breezeway entrances
  - Stone or brick accent walls
  - Decorative stone or brick banding
  - Verandas, porches, balconies or decks
  - Projected walls
  - Variation of roof lines
  - Decorative caps or chimneys

Neighborhood Open House Meeting:
About six residents attended a neighborhood open house that was held on Monday, April 26 to provide an opportunity for interested residents and property owners in the area to learn more about the proposed development and to provide feedback. While a few residents expressed some apprehension with the proposed density in relation to the applicant's previous plans for townhomes at this location, feedback was largely positive in relation to the design of the building and the applicant's desire to construct a building reminiscent of a traditional "brownstone" that would fit the historic character of the neighborhood. One letter of opposition has been received by staff and is attached to this staff report. While this open house was held in response to the applicant's previous application for PUD (which has since been withdrawn), the applicant's stated development intent remains unchanged and therefore these comments are still relevant to the currently proposed rezone.

Zoning
Section 20-906. F (1-4) of the LDC stipulates the following criteria be met before a zone change can be approved:

1. **Is the requested zoning change justified by a change in conditions since the previous zoning classification was established or by an error in the zoning map?**
   Staff is unaware of any error in the zoning map as it relates to this property. Staff suggests that the requested zoning change is justified by change in conditions since the previous zoning classification was established. The previously existing lots within the subject property have been consolidated under a single ownership entity, which intends to redevelop the property as a single development. The owner has requested a rezone to DMU in order to develop an urban apartment building with reduced setbacks and increased density, within walking distance to the downtown core and adjacent to the existing DMU zoning district on the remainder of the block. The proposed C-O would establish additional development limits on

the property and help to transition between the MR-2 zoning district located to the north and west and the DMU zoning district located to the south and east. In addition, in 2012 the City adopted the Go2030 Comprehensive Plan. The promotion of infill development is the number-two ranked initiative of the Go2030 plan. This initiative seeks to promote infill and density within areas that are already developed and are protected by a flood resiliency strategy. Infill development uses infrastructure more efficiently and occurs where infrastructure is already in place, not requiring the funding and construction of new infrastructure. **(Criteria Satisfied)**

2. **Are the City and other agencies able to provide the necessary public services, facilities, and programs to serve the development allowed by the new zoning classifications at the time the property is developed?**
   The development is served with city services (water, sewer, streets, police/fire protection, etc.). The City Engineer and other applicable review agencies have reviewed this proposal. No deficiencies to provide the necessary public services, facilities and programs to this development have been identified. Additionally, the City Forrester has provided comments to the applicant regarding the protection of mature street trees along 6th Avenue N and Oak Street N, which must be accounted for as development plans are developed. **(Criteria Satisfied)**

3. **Will the approval of the zoning change adversely affect the condition or value of the property in the vicinity?**
   Staff has no evidence that would suggest this proposal would adversely affect the condition or value of the property in the vicinity. Written notice of the proposal was sent to all property owners within 300 feet of the subject property. To date, staff has received one written comment and has received feedback from attendees to a neighborhood open house, which have been summarized above. While some residents are opposed to the applicant's proposed project, staff finds that the change in zoning is relatively minor compared to the current zoning of MR-2, and does not substantially change the type of development that can take place on the subject property under the current zoning. Additionally, the applicant is proposing to make a substantial investment in new housing within the vicinity, replacing housing units in need of repair with newly constructed housing units. Ultimately, staff has no evidence to suggest the zoning change would result in adverse effects on condition or value of property in the vicinity. **(Criteria Satisfied)**

4. **Is the proposed amendment consistent with the purpose of this LDC, the Growth Plan, and other adopted policies of the City?**
   The purpose of the LDC is to implement Fargo's Comprehensive Plan in a way that will protect the general health, safety, and welfare of the citizens. Staff believes this proposal is in keeping with adopted plans and the existing zoning of adjacent properties. Specifically, the Fargo Go2030 Comprehensive Plan supports infill and density within areas that are already developed, serviced with utilities, and protected by a flood resiliency strategy. The promotion of infill development is the number two ranked priority of Go2030. Additionally, the subject property is within walking distance of the downtown core, which provides an opportunity for residents to live in close proximity to shopping and work. Staff finds that the proposal is consistent with the purposes of the LDC, the Growth Plan, and other adopted policies of the City. **(Criteria Satisfied)**

Staff Recommendation:

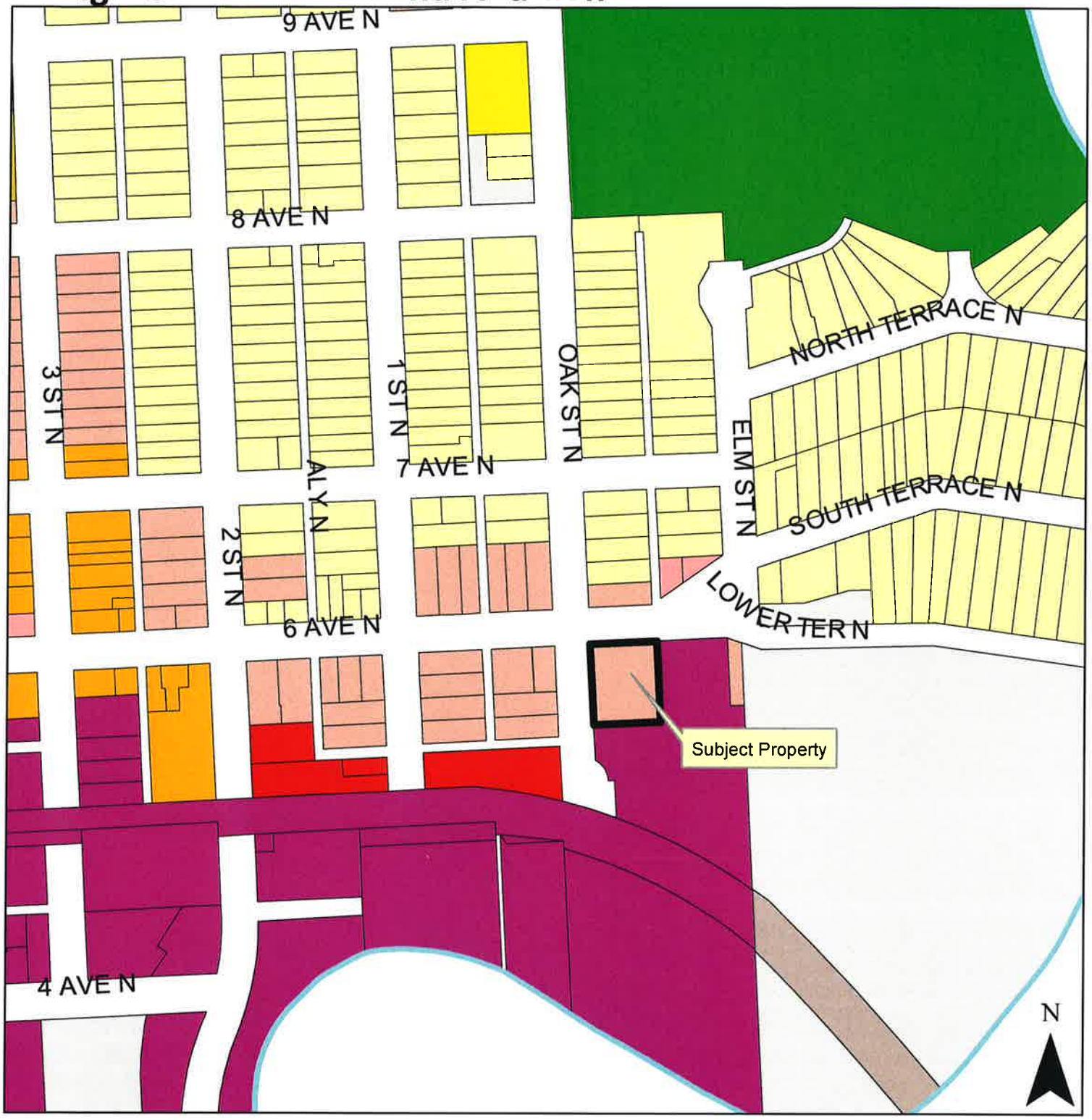
Suggested Motion: "To accept the findings and recommendations of the Planning Commission and staff and hereby waive the requirement to receive the Ordinance one week prior to the first reading and place the rezoning Ordinance on for first reading and move to approve the proposed zoning map amendment from MR-2, Multi-Dwelling Residential, to DMU, Downtown Mixed-Use, with C-O, Conditional Overlay, as presented, as the proposal satisfactorily complies with the Go2030 Fargo Comprehensive Plan, Section 20-0906(F) (1-4) of the LDC, and all other applicable requirements of the LDC."

Planning Commission Recommendation: June 3, 2021
On June 3, 2021, with a vote of 7-1, the Planning Commission recommended approval to the City Commission of the proposed zoning map amendment from MR-2, Multi-Dwelling Residential, to DMU, Downtown Mixed-Use, with C-O, Conditional Overlay, as presented, as the proposal satisfactorily complies with the Go2030 Fargo Comprehensive Plan, Section 20-0906(F) (1-4) of the LDC, and all other applicable requirements of the LDC.
Attachments:
1. Zoning Map **2.** Location Map **3.** Proposed Development Site Plan & Renderings **4.** Public Comments

Zone Change (MR-2 to DMU with a C-O, Conditional Overlay)

Craig's Oak Grove Second Addition

515 Oak St N



THE CITY OF Fargo FAR MORE

Legend

AG, LC, MHP, SR-2, DMU, LI, NC, SR-3, GC, MR-1, NO, SR-4, GL, MR-2, P/I, SR-5, GO, MR-3, UMU, City Limits

300 Feet

Fargo Planning Commission
June 3, 2021

Zone Change (MR-2 to DMU with a C-O, Conditional Overlay)

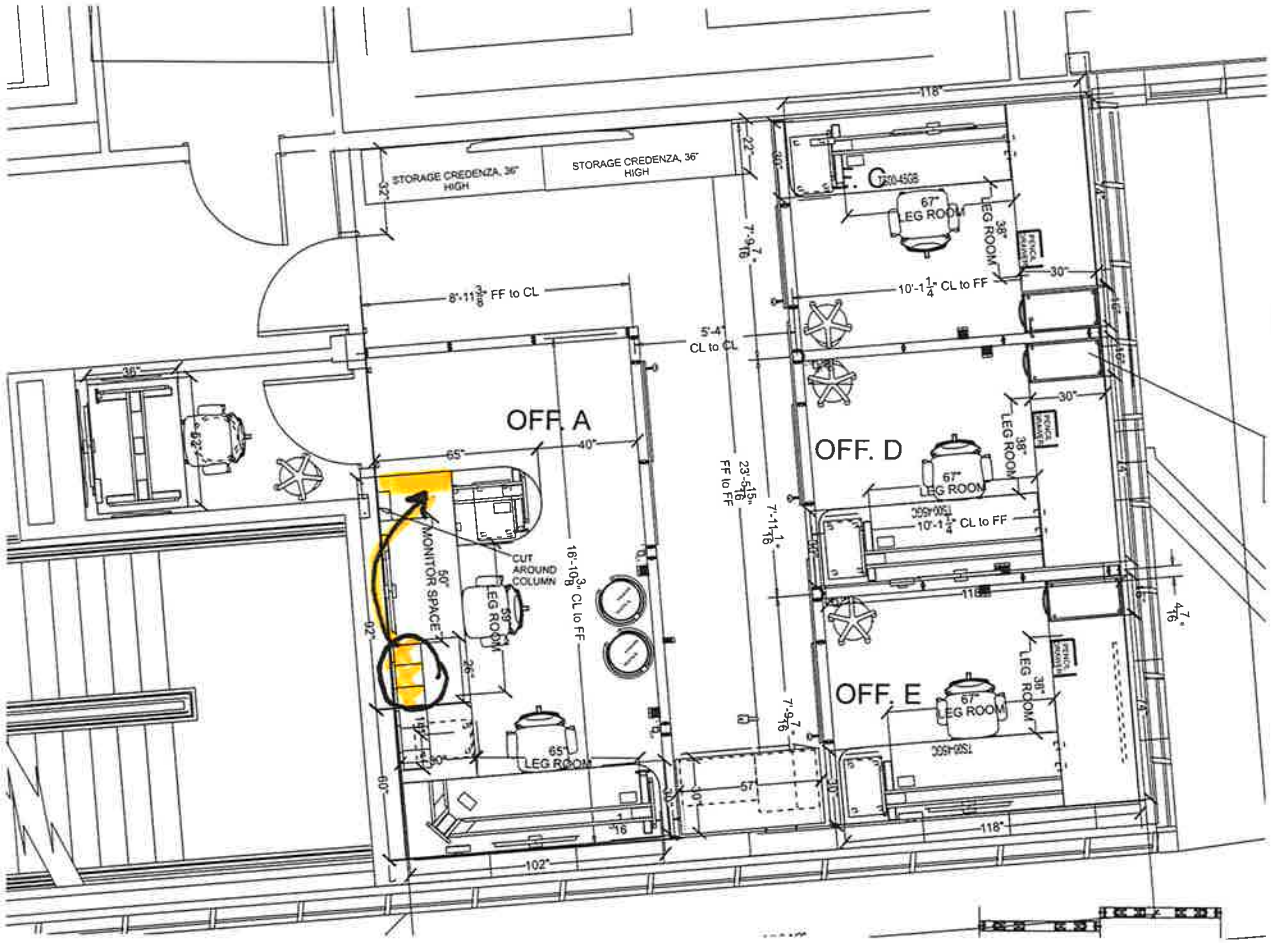
Craig's Oak Grove Second Addition

515 Oak St N

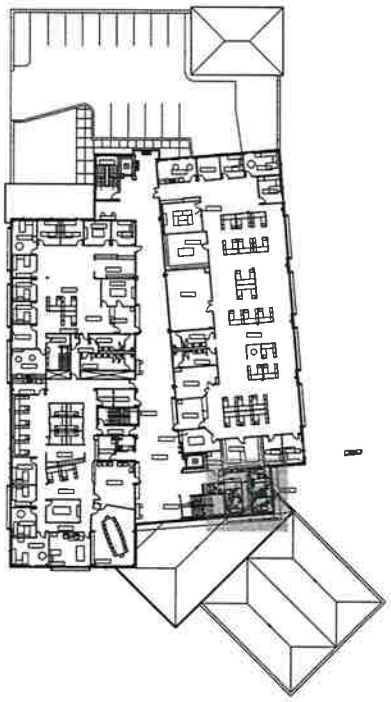
THE CITY OF Fargo FAR MORE

300 Feet

Fargo Planning Commission
June 3, 2021



E319 OFFICES
1/4" = 1'



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☐ APPROVED ☐ APPROVED, AS NOTED ☐ REVISE, RESUBMIT

SIGNATURE: DATE:

SALES REP:	DESIGNER
RICK	STACY

DRAWING TITLE: FURNITURE PLAN

PROJECT #:	SHEET
5511	1/6

DATE:
6/22/2021

FILE PATH: N:\CITY OF FARGO\CITY OF FARGO - 5511\DRAWINGS\5511 - CITY OF FARGO - 2828 13TH AVE S - FARGO, ND.DWG

REVISIONS: NO. | DESCRIPTION | BY | DATE
1 | 1 COLLAT PLAN | SMS | 6-22-2021

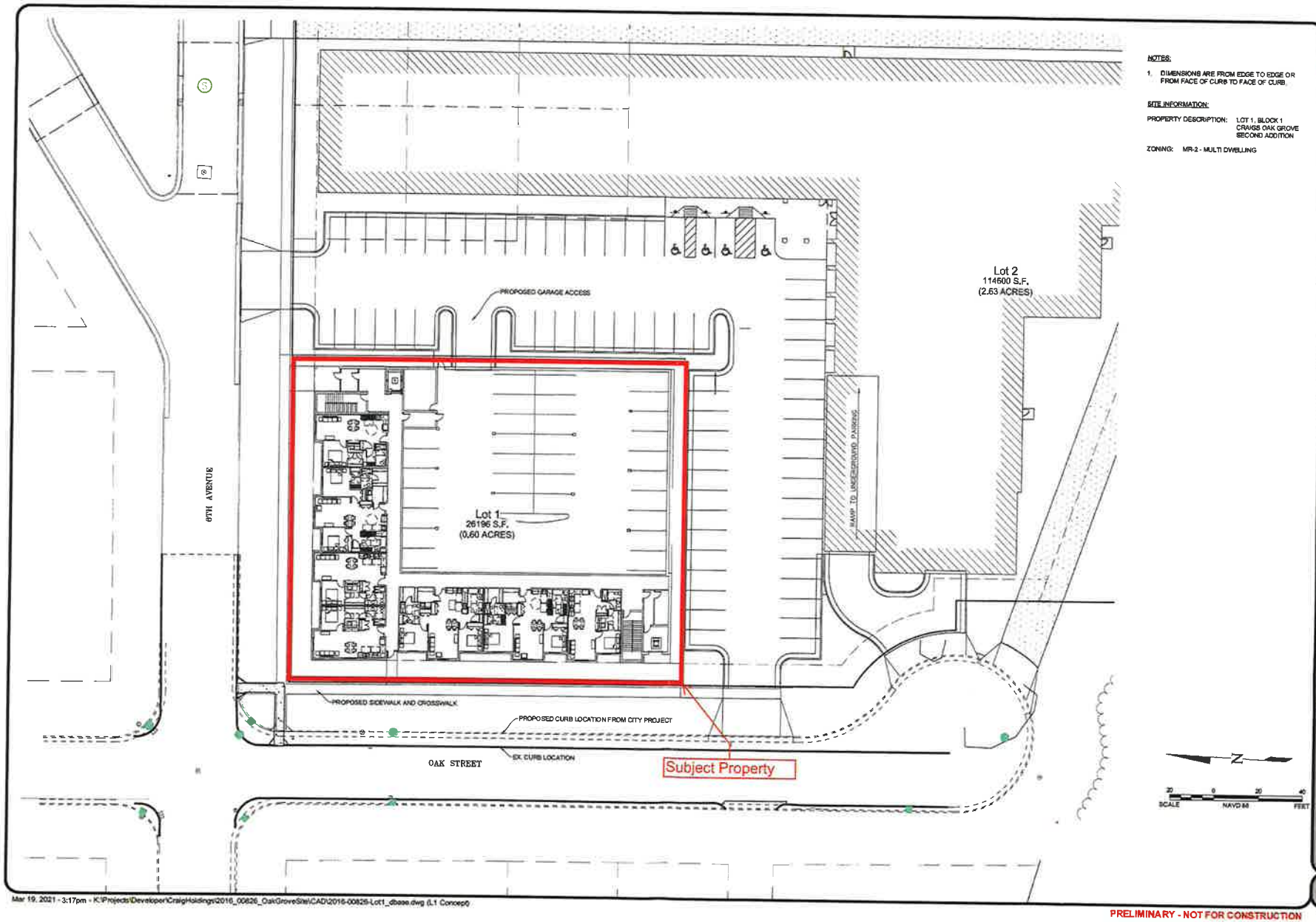
PROJECT:
CITY OF FARGO
E3109 - 5 OFFICES

LOCATION:
FARGO, ND

CHRISTIANSON'S BUSINESS FURNITURE
2828 13TH AVE S | FARGO, ND 58103

"Providing efficient and ergonomic work environments with a commitment to quality, value and customer service"

christiansons



NOTES:

1. DIMENSIONS ARE FROM EDGE TO EDGE OR FROM FACE OF CURB TO FACE OF CURB.

SITE INFORMATION:

PROPERTY DESCRIPTION: LOT 1, BLOCK 1 CRAIGS OAK GROVE SECOND ADDITION

ZONING: MR-2 - MULTI DWELLING

KLJ

NO.	DATE	REVISION

DRAFTED SK
REVIEWED SK
PROJECT NUMBER 2016-00826.1
ISSUE DATE 3/19/2021

OAK STREET LOT 1

CRAIG DEVELOPMENT
FARGO, NORTH DAKOTA

PRELIMINARY SITE LAYOUT

SHEET 1

Mar 19, 2021 - 3:17pm - K:\Projects\Developer\CraigHoldings\2016_00826_OakGroveSite\CAD\2016-00826-Lot1_dbase.dwg (L1 Concept)

PRELIMINARY - NOT FOR CONSTRUCTION

© KLJ 2021

DRAFT

DRAFT

Northwest building corner (view looking southeast)

East side of building (view looking west-southwest)

West side of building (view looking east)

Aaron Nelson

From: Pearson, Carol [redacted]
Sent: Saturday, April 24, 2021 3:48 PM
To: Aaron Nelson
Subject: Jesse Craig PUD

Follow Up Flag: Follow up
Flag Status: Flagged

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

Hi Aaron!
Thank you for sharing this update.
I am writing to go on record as being strongly opposed to this PUD request by Jesse Craig. This is not at all what Craig proposed for this section of the lots he bought and demolished. Taken in addition to the proposed 5 story apartments further south and east, I feel that this adds density that is inappropriate in the middle of our single family historic neighborhood. The townhomes he initially proposed would be a much better fit.
I am strongly opposed to this application.
i will be unable to attend the meeting on the 26th of April, so I take this method to register my voice about this PUD application.
Carol Pearson

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

41j2

AN ORDINANCE REZONING CERTAIN PARCELS OF LAND
LYING IN CRAIGS OAK GROVE SECOND ADDITION
TO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA

WHEREAS, the Fargo Planning Commission and the Board of City Commissioners of the City of Fargo have held hearings pursuant to published notice to consider the rezoning of certain parcels of land lying in Craigs Oak Grove Second Addition to the City of Fargo, Cass County, North Dakota; and,

WHEREAS, the Fargo Planning Commission recommended approval of the rezoning request on June 3, 2021; and,

WHEREAS, the rezoning changes were approved by the City Commission on June 28, 2021,

NOW, THEREFORE,

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

Section 1. The following described property:

Lot One (1), Block One (1) of Craigs Oak Grove Second Addition to the City of Fargo, Cass County, North Dakota;

is hereby rezoned from "MR-2", Multi-Dwelling Residential, District to "DMU", Downtown Mixed-Use, District with a "C-O", Conditional Overlay, District as follows:

A. Allowed Use. Household living shall be the only permitted use category. All other primary uses are prohibited.

B. Residential Density. The maximum residential density allowed shall be thirty-five (35) dwelling units per acre.

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

C. Setbacks.

1. The minimum front setback shall be ten (10) feet.
2. The minimum side-street setback shall be ten (10) feet.
3. The minimum rear setback shall be five (5) feet.
4. The minimum interior-side setback shall be five (5) feet.

D. Building Coverage. The maximum building coverage shall be 83% of the lot area.

E. Height. The maximum building height shall be forty-five (45) feet.

F. Parking. The minimum off-street parking requirements for residential use categories shall be 1.45 parking spaces per unit.

G. Landscaping.

1. Street trees are required pursuant to Subsection 20-0705.B. of the Land Development Code.

2. Open space landscaping is required pursuant to Subsection 20-0705.B. of the Land Development Code. For purposes of determining the number of plant units required, the following shall apply:

a. At least two (2) plant units shall be provided for each 1,000 square feet of lot area or fraction thereof, and eight (8) square feet per plant unit shall be provided.

H. Additional Standards.

1. Bicycle parking facilities, such as a bike rack or bike lockers, shall be provided on site.

2. An on-site system of pedestrian walkways shall be provided between building entrances and public sidewalks located along the perimeter of the block.

3. All exterior walls (excluding openings for such things as doors, windows, or

equipment) shall be primarily constructed and/or finished with brick and/or stone, except that:

a. The following materials may be used for purposes of providing accent: glass, ceramic, stucco, precast panels, exterior insulation finish systems (e.g. dryvit), steel siding with a ceramic hybrid paint finish, fiber cement siding, insulated metal panels, wood-based materials, asphalt, and decorated concrete block. When these materials are used, the materials must be of commercial grade and may not exceed 10% of the total exterior wall area.

b. The use of architectural metal panels and wood panels for enclosure of mechanical equipment shall be permitted.

4. Building elevation walls facing a public street must have projections and/or recesses having a depth of at least one (1) foot and extending for a minimum of 20% of the length of such walls.

5. Dumpsters and refuse containers shall be contained completely within the building and concealed from view from the exterior, except during times of collection.

6. The building design shall include integrated design features to avoid monotony, to create visual interest, and to enhance the pedestrian scale, all of which is to be designed to create compatibility with the surrounding neighborhood. Examples of features that can be included are:

a. Canopies;
b. Cornices;
c. Arched entries, balconies, or breezeway entrances;
d. Eaves;
e. Stone or brick accent walls;
f. Decorative stone or brick banding;
g. Verandas, porches, balconies or decks;

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FARGO, NORTH DAKOTA

ORDINANCE NO. _____

h. Projected walls;
i. Variation of roof lines; and
j. Decorative caps or chimneys.

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

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

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

(SEAL)

Attest:

_____
Steven Sprague, City Auditor

First Reading:
Second Reading:
Final Passage:

CITY COMMISSION ACTION
6/14/21 Refer to city attorney office
42

City of Fargo Staff Report			
Title:	Text Amendment	**Date:** **Update:** **Update:**	4-28-2020 6-11-2020 6-9-2021
Location:	N/A	**Staff Contact:**	Aaron Nelson
Owner(s)/Applicant:	City of Fargo/Zoning Administrator/Peter McDonald	**Engineer:**	N/A
Entitlements Requested:	Text Amendment (amend Section 20-0402(T)(3) and repeal Section 20-0403(C)(5)(e) of the Fargo Municipal Code (Land Development Code) relating to the prohibition of firearm and ammunition sales as a non-farm commercial use or as a home occupation)		
Status:	City Commission Public Hearing: June 14, 2021		

Proposed Text Amendment

******NOTE: This staff report and proposed text amendment to the Land Development Code (LDC) was originally presented to the Board of City Commissioners on June 15, 2020, at which time the Commission voted to table discussion on the proposal until additional neighborhood input could be gathered and a more comprehensive review of prohibited home occupations could be completed. Since then, however, the North Dakota Legislature approved House Bill No.1248, which restricts municipalities from enacting a zoning ordinance relating to the purchase, sale, ownership, possession, transfer of ownership, registration, or licensure of firearms and ammunition that is more restrictive than state law, and which voids all such existing ordinances. This bill was signed into law and will take effect August 1, 2021.***

Due to this legislative action and the resulting change in circumstances, the Planning Department has worked in conjunction with the City Attorney to bring this proposal back to the Board of City Commissioners for consideration. In essence, the proposed LDC text amendment is now a housekeeping edit, intended to remove defunct language that would conflict with State law.

A previous version of this staff report and the attachments were originally presented to the Board of City Commissioners on June 15, 2020. This staff report has been updated and edited to reflect the change in conditions regarding State law.***

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

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

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

> ***5. Prohibited Uses***
>
> ***a. Vehicle and Large Equipment Repair***
>
> *Any type of repair or assembly of vehicles or equipment with internal combustion engines (such as autos, motorcycles, scooters, snowmobiles, outboard marine engines, lawn mowers, chain saws, and other small engines) or of large appliances (such as washing machines, dryers, and refrigerators) or any other work related to automobiles and their parts is prohibited.*
>
> ***b. Dispatch Centers***
>
> *Dispatch centers, where employees come to the site to be dispatched to other locations, are not allowed as home occupations.*

c. ***Mortuaries***

Mortuaries are not allowed as home occupations.

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

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

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

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

~~*f.*~~ *e.* ***Adult Entertainment Center Uses***

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

Background

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

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

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

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

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

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

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

The proposed text amendment was first heard at the May 5, 2020 Planning Commission meeting, at which there was much discussion, including comments from the public both in favor of, and in opposition to, the proposed amendment. Ultimately, the Planning Commission voted 5-3 to recommend denial of the proposed text amendment.

The proposed text amendment was then heard by the City Commission on June 15, 2020. Similar to the Planning Commission meeting, there was plenty of discussion regarding the proposed amendment. A second public hearing was held and comments were heard both in favor of, and in opposition to, to the proposal. After additional dialog, the City Commission voted 3-2 to table the discussion until additional neighborhood input could be gathered and a more comprehensive review of all of the prohibited home occupations could be completed.

In 2021, the 67th Legislative Assembly of North Dakota enacted House Bill No. 1248—An act to amend and reenact section 62.1-01-03 of the North Dakota Century Code, relating to the authority of a political subdivision regarding firearms. This amendment restricts municipalities from enacting a zoning ordinance relating to the purchase, sale, ownership, possession, transfer of ownership, registration, or licensure of firearms and ammunition that is more restrictive than state law, and voids all such existing ordinances. This bill was signed into law and will take effect August 1, 2021. A copy of this amended statute is attached.

Due to this legislative action and the resulting change in circumstances, the Planning Department has worked in conjunction with the City Attorney to bring this proposal back to the Board of City Commissioners for consideration. In essence, the LDC's prohibition on firearm and ammunition sales will be void and unenforceable starting on August 1, 2021. As such, the proposed LDC text amendment can be considered a housekeeping edit, intended to remove defunct language that would conflict with State law from the LDC.

History of the Existing Ordinances:

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

1) Vehicle and large equipment repair;
2) Dispatch centers;
3) Mortuaries; and
4) Animal care or boarding facilities.

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

In the years following the adoption of the LDC, there were many text amendments made as the new code was implemented and problem areas were ironed out. One such problem area was related to the large number of applications for home occupations that the City was receiving and processing via Conditional Use Permit (CUP). At the time, a CUP was required if a home occupation were to have any customers coming to the home. Consequently, in 2000-2001, there was an effort to modify the home occupation regulations of the LDC to allow more types of home occupations by right, without requiring a CUP and the associated public hearing process. This effort culminated primarily in the adoption of Ordinance No. 4180. Specifically, this ordinance allowed home occupations a limited number of customer visits, by right, and also added two new uses to the list of prohibited home occupations:

1) Firearms and Ammunition Sales; and

2) Adult Entertainment Center Uses.

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

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

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

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

Staff Analysis:

During the initial review of the proposed LDC text amendment in 2020, feedback was sought from multiple City departments as well as the Bureau of Alcohol, Tabaco, Firearms, & Explosives (ATF). The Building Inspections and Fire departments both noted existing code provisions regarding the storage of explosive material, such as gunpowder. The Police Department noted they have had no issues with FFL dealers in the past, and no concerns regarding the proposed text amendment. Lastly, a representative with the ATF noted the following:

- The Gun Control Act of 1968 is administered by the ATF, including regulation of federal firearm licenses (FFL) for firearm and ammunition sales.
- Under federal law, any person who engages in the business of dealing in firearms must be licensed.
- In some limited cases, an FFL is not required for an individual to sell a firearm. For example, an individual who occasionally sells a firearm from their personal collection. (Similar to how individuals might occasionally sell a personal used car, but are not considered to be used car dealers.)
- FFL is required even if only dealing in firearms over the internet or at temporary locations such as gun shows.
- FFL applicants are required to supply photos and fingerprints, undergo an on-site inspection of the business premises, interview, complete an acknowledgement of federal firearm regulations with the ATF, and undergo a background check through the Federal Bureau of Investigation's (FBI) National Instant Criminal Background Check System (NICS).
- FFLs can be denied by the ATF for non-compliance with state or local laws. (Although confirming zoning compliance with the local zoning authority may be a relatively newer practice.)
- FFLs must be renewed with the ATF every three years.
- There are approximately seven home based FFL's currently in Fargo—one of which dates back to 1976.
- Firearms dealers (and all owners of firearms) are encouraged to securely store their firearms since theft from home invasion is one of the ways in which firearms are illegally obtained.

Approval Criteria

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

1. **The amendment must be consistent with the purpose of this Land Development Code;**
   Section 20-0104 of the LDC stipulates that the purpose and intent of the Land Development Code is to

implement Fargo's Comprehensive Plan and related policies in a manner that protects the health, safety, and general welfare of the citizens of Fargo. The ability to establish zoning regulations to protect health, safety, and general welfare is granted to the City by the State of North Dakota. The proposed amendment is consistent with the intent and purpose of the LDC because it seeks to align the LDC with State statutes regarding the sale of firearms and ammunition. **(Criteria Satisfied)**

2. **The amendment must not adversely affect the public health, safety, or general welfare;**
   Staff finds that the amendment does not adversely affect the public health, safety, or general welfare. The proposed amendment is intended to align the LDC with State statues regarding the sale of firearms and ammunition. Staff has no evidence to suggest the proposed amendment would adversely affect the public health, safety, or general welfare. **(Criteria Satisfied)**

3. **The amendment is necessary because of changed or changing social values, new planning concepts or other social or economic conditions in the areas affected.**
   Staff finds that the proposed amendment is necessary because of social values and conditions relating to State law. As described above, the proposed amendment seeks to align the LDC with State statutes regarding the sale of firearms and ammunition. **(Criteria Satisfied)**

Staff Recommendation:

Suggested Motion "To accept the findings and recommendations of staff and hereby move to receive and file and approve the proposed text amendment to Section 20-0402(T)(3) and Section 20-0403(C)(5)(e) of the Fargo Municipal Code (Land Development Code) relating to the prohibition of firearm and ammunition sales as a non-farm commercial use or as a home occupation, as the proposal meets the approval criteria of §20-0904.E(1-3) of the Land Development Code, and to place the ordinance on for first reading at the next regularly-scheduled City Commission meeting."

City Commission Action: June 15, 2020

On June 15, 2020, by a vote of 3-2, the City Commission tabled discussion until such time it has been properly vetted by the Core Neighborhood Plan Committee, and directed appropriate staff to study all restricted uses of commercial uses in homes to include vehicles and larger equipment, dispatch centers, mortuaries, animal care grooming and boarding facilities, adult entertainment centers and firearms and ammunition uses of production.

Planning Commission Recommendation: May 5, 2020

On May 5, 2020, by a vote of 5-3 with 2 Commissioners absent, the Planning Commission recommended denial to the City Commission of the proposed text amendment to Section 20-0402(T)(3) and Section 20-0403(C)(5)(e) of the Fargo Municipal Code (Land Development Code) relating to the prohibition of firearm and ammunition sales as a non-farm commercial use or as a home occupation.

Attachments:

1. Ordinance No. 4180 & Staff Cover Memo from 2001 relating to Home Occupations
2. Ordinance No. 4613 & Staff Report from 2007 relating to Non-farm Commercial Uses
3. House Bill No. 1248
4. Public Comments

MEMORANDUM

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

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

Sidewalk Marketing Area

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

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

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

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

Traffic Impact Studies

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

1) allowing the City Engineer to waive the requirement for a traffic impact study if it is determined that it is not needed or has already been analyzed as part of a larger corridor study, and

2) allowing the City Engineer to identify other conditions which warrant a traffic impact study even if a development does not fall specifically into one of the more predictable categories of development that warrants a study.

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

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

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

Home Occupations

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

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

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

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

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

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. 4180

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

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

Section 1. Amendment.

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

§20-0403 Accessory Uses

* * *

§20-0403.C. – Home Occupations

* * *

2. Minor Home Occupations

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

* * *

5. Prohibited Uses

* * *

d. Animal Care, Grooming, or Boarding Facilities

* * *

e. Firearms and Ammunition Sales ~~and Servicing of Firearms~~

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

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. 4180

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

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

Section 3. Effective Date.

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

Bruce W. Furness, Mayor

(SEAL)

Attest:

Steven Sprague, City Auditor

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

121-ord\ldc amendments\ldc - LDC amendments 20-0403(c) 6-29-01

Attachment 2

Item No.	**Date:** June 26, 2007
Title: A Text Amendment via the Conditional Use Permit process to allow non-farm commercial within the Ag zone district	**Report Author:** Jim Hinderaker
Applicable Regulation: This application relates to Chapter 20 of the Municipal Code (Land Development Code) Adding Section 20-0402.S (1-4) and 20-1203.D.10 (a-d)	
Petitioner/Applicant: City of Fargo Planning Department	**Engineer:** N/A
Reason For Request: Allow opportunities for review of proposed non-farm commercial uses within the Ag zone district	
Status: City Commission: July 2, 2007	

Existing	Proposed
Land Use: N/A	**Land Use:** N/A
Zoning: N/A	**Zoning:** N/A
Uses Allowed: N/A	**Uses Allowed:** N/A
Maximum Density Allowed: N/A	**Maximum Density Allowed:** N/A

Proposed Text Amendment: Adding Section 20-0402.S and 20-1203.D.10 (a-b)

- **Section 20-0402.S Non-farm Commercial Uses**

  In acting upon Conditional Use Permit requests for Non-farm commercial uses within the Agricultural zoning district, the Planning Commission shall consider the following factors:

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

  2. To ensure that adequate facilities and services are available, written comment from facility and service providers (including, but not necessarily limited to, sewage and waste disposal, domestic water, flood protection, gas, electricity, police and fire protection, and roads, as applicable) addressing the adequacy of service shall be provided.

  3. The written notice requirements of 20-0901 shall be extended to landowners within one (1) mile of the subject property.

  4. **Prohibited Use**

     Dispatch Centers – Dispatch centers, where employees come to the site to be dispatched to other location, are not allowed.

     Firearms and Ammunition Sales – The sale of firearms and /or ammunition, and the production

of ammunition for sale or resale are prohibited.

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

- **20-1203 Use Categories**

D. Commercial Use Categories

10. Non-farm commercial

a. Characteristics

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

b. Accessory Uses

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

c. Examples

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

d. Exceptions

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

Staff Analysis:

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

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

Responsibility of City Includes	Responsibility of City Does Not Include	Responsibility of Township and/or County
• Land Use Planning • Zoning of Land • Subdivision • On-site Wastewater treatment (septic systems or holding tanks) • Zoning Enforcement • Building Permits • Building Inspection	• Road Maintenance • Flood Protection • City Fire Protection • City Police Protection • City Water Provision • Drainage of land or ditches	• Road and Ditch Maintenance – County maintains County highways, Townships maintain local/township roads. • Fire Protection • Police Protection • Cass Rural Water Users (CRWU)

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

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

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

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

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

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

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

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

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

1. Written comment from facility and service providers, addressing the adequacy of facilities and service shall be provided.

2. The written notice requirements of 20-0901 shall be extended to landowners within one (1) mile of the subject property.

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

City Commission Decision: July 2, 2007

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. 4613

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

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

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

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

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

NOW, THEREFORE,

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

Section 1. Amendment.

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

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

Section 2. Amendment.

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

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. 4613

§20-0402 Use Standards

. . .

T. Non-farm Commercial Uses

1. A Non-farm Commercial Use shall not be allowed unless it has been reviewed and approved in accordance with the Conditional Use Review procedures of Sec. 20-0909. In acting upon Conditional Use Permit requests for such use, the Planning Commission shall consider the following factors:

   a. The factors identified in Section 20-0909 (Conditional Use Permits).

   b. Whether adequate facilities and services including, but not limited to, sewage and waste disposal, domestic water, building construction and inspection, flood protection, gas, electricity, police and fire protection, and roads, as may be applicable are adequate under the circumstances. As part of the application for the Conditional Use Permit, the Zoning Administrator may require the applicant to obtain written comment from such facility and service providers as may be applicable.

2. The City Planner shall provide written notice of the Planning Commission public hearing in accordance with Section 20-0901-F except that the written notice shall be mailed to property owners within one (1) mile of the subject property. Notice of the Planning Commission's public hearing shall be published in accordance with Section 20-0901-F.

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

4. Unless otherwise expressly stated, Conditional Use Permits for Non-farm Commercial uses granted pursuant to Section 20-0909 shall automatically terminate upon sale or transfer of the property.

Section 3. Amendment.

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. 4613

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

§20-1203 Use Categories

* * *

D. Commercial Use Categories

* * *

10. Non-farm Commercial

a. Characteristics

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

b. Accessory Uses

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

c. Examples

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

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. 4613

d. Exceptions

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

Section 4. Effective Date.

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

Section 5. Penalty.

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

Dennis R. Walaker, Mayor

(SEAL)
Attest:

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

Steven Sprague, City Auditor

Table 20-0401

Use Category	Definition (Excerpt; See Sec. 20-01203)	Specific Use Type	Zoning Districts																		
			AG	SR0	SR1	SR2	SR3	SR4	MR1	MR2	MR3	MHP	NO	NC	GO	LC	DMU	GC	LI	GI	PI
Residential																					
Household Living	residential occupancy of a dwelling unit by a "household"	House, Detached	P	P	P	P	P	P	P	P	P	P	P	P	C	C	P/C [E]	C	–	–	–
		House, Attached	–	-	–	–	P	P	P	P	P	P	P	P	C	C	P/C [E]	C	–	–	–
		Duplex	–	-	–	–	P	P	P	P	P	P	P	P	C	C	P/C [E]	C	–	–	–
		Multi-Dwelling Structure	–	-	–	–	–	–	P	P	P	P	P	P	C	C	P/C [E]	C	–	–	–
		Mobile Home Park	–	-	–	–	–	–	–	–	–	P	–	–	–	–	–	–	–	–	–
Group Living	residential occupancy of a structure by a group of people who do not meet the definition of "Household Living"		C	C	C	C	C	C	P	P	P	P	C	C	C	C	C/C [E]	C	–	–	–
Bed and Breakfast	a facility of residential character that provides sleeping accommodations and breakfast		C	C	C	C	C	C	C	C	C										
Institutional																					
College	colleges and institutions of higher learning		C	C	C	C	C	C	C	C	C	C	C	C	P	P	P	P	P	–	P/C [G]
Community Service	public, nonprofit, or charitable uses, generally providing a local service to the community		C/C [C]	C/C [C]	C/C [C]	C/C [C]	C/C [C]	C/C [C]	P/C [C]	P/C [C]	P/C [C]	P/C [C]	P/C [C]	P/C [C]	P	P	P/C [C]	P	P	–	P/C [G]
Day Care	care, protection and supervision for children or adults on a regular basis away from their primary residence for less than 24 hours per day	1–7 children or adults [1]	P/C [D]	P/C [D]	P/C [D]	P/C [D]	P/C [D]	P/C [D]	P/C [D]	P/C [D]	P [D]	P [D]	P [D]	P [D]	P [D]	P [D]	P [D]	P [D]	P [D]	–	P/C [G]
		8–12 children or adults [1]	P/C [D]	P/C [D]	P/C [D]	P/C [D]	P/C [D]	P/C [D]	P/C [D]	P/C [D]	P/C [D]	P [D]	P [D]	P [D]	P [D]	P [D]	P [D]	P [D]	P [D]	–	P/C [G]
		13+ children or adults	–	-	–	–	–	–	C [D]	C [D]	C [D]	C [D]	C [D]	C [D]	P [D]	P [D]	P [D]	P [D]	P [D]	–	P/C [G]

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

P = Use Permitted By-Right ■ **P/C** = Use Permitted By-Right But Subject to Use-Specific Standards of Sec. 20-0402
C = Conditional Use, Subject to Procedures of Sec. 20-0909 ■ Some uses also Subject to **Site Plan Review** (See Sec. 20-0910) or to a Traffic Impact Study as required by Sec. 20-0701L.

Use Category	Definition (Excerpt; See Sec. 20-01203)	Specific Use Type	Zoning Districts																		
			AG	SR0	SR1	SR2	SR3	SR4	MR1	MR2	MR3	MHP	NO	NC	GO	LC	DMU	GC	LI	GI	PI
Detention Facilities	facilities for the detention or incarceration of people		C	-	–	–	–	–	C	C	C	–	–	–	C	C	C	P	P	P	P/C [G]
Health Care Facility	medical or surgical care to patients, with overnight care		C	C	C	C	C	C	C	C	C	C	–	–	P	P	P	P	P	P	P/C [G]
Parks and Open Areas	natural areas consisting mostly of vegetative landscaping or outdoor recreation, community gardens, etc.,		P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	–	P/C [G]
Religious Institution	meeting area for religious activities	≤ 500 seating capacity	–	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	–	P/C [G]
		501+ seating capacity	–	P/C [H]	P/C [H]	P/C [H]	P/C [H]	P/C [H]	P	P	P	P	P	P	P	P	P	P	P	–	P/C [G]
Safety Services	public safety and emergency response services		P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P/C [G]
Schools	schools at the primary, elementary, middle, junior high, or high school level		–	P/C [I]	P/C [I]	P/C [I]	P/C [I]	P/C [I]	P/C [I]	P/C [I]	P/C [I]	–	–	–	C	C	C	C	C	–	P/C [G]
Utilities, Basic	infrastructure services that need to be located in or near the area where the service is provided		P [K]	P [K]	P [K]	P [K]	P [K]	P [K]	P [K]	P [K]	P [K]	P [K]	P [K]	P [K]	P [K]	P [K]	P [K]	P [K]	P [K]	P [K]	P/C [K] [G]
Commercial																					
Adult Entertainment Center	an adult bookstore, adult cinema or adult entertainment facility		–	-	–	–	–	–	–	–	–	–	–	–	–	–	–	P/C [A]	P/C [A]	P/C [A]	–
Office	activities conducted in an office setting and generally focusing on business, government, professional, medical, or financial services		C	-	–	–	–	–	–	–	–	–	P	P	P	P	P	P	P	–	P/C [G]
Off-Premise Advertising Signs	billboard		C	-	–	–	–	–	–	–	–	–	–	–	P/C [B]	P/C [B]	P/C [B]	P/C [B]	P [B]	P	–

P = Use Permitted By-Right ■ P/C = Use Permitted By-Right But Subject to Use-Specific Standards of Sec. 20-0402
= Conditional Use, Subject to Procedures of Sec. 20-0909 ■ Some uses also Subject to **Site Plan Review** (See Sec. 20-0910) or to a Traffic Impact Study as required by Sec. 20-0701L.

Use Category	Definition (Excerpt; See Sec. 20-01203)	Specific Use Type	Zoning Districts																		
			AG	SR0	SR1	SR2	SR3	SR4	MR1	MR2	MR3	MHP	NO	NC	GO	LC	DMU	GC	LI	GI	PI
Parking, Commercial	parking that is not accessory to a specific use…fees may or may not be charged		C	-	–	–	–	–	–	–	–	–	–	–	P	P	P	P	P	P	P/C [G]
Recreation and Entertainment, Outdoor	large, generally commercial uses that provide continuous recreation or entertainment- oriented activities		C	-	–	–	–	–	–	–	–	–	–	–	–	C	C	P	P	–	P/C [G]
Retail Sales and Service	firms involved in the sale, lease or rental of new or used products to the general public...they may also provide personal services or entertainment, or provide product repair or services for consumer and business goods		C	–	–	–	–	–	–	–	–	–	–	P	–	P	P	P	P	–	–
Self-Service Storage	uses providing separate storage areas for individual or business uses		C	-	–	–	–	–	–	–	–	–	–	–	–	P/C [J]	–	P	P	–	–
Vehicle Repair	service to passenger vehicles, light and medium trucks and other consumer motor vehicles ...generally, the customer does not wait at the site while the service or repair is being performed		C	-	–	–	–	–	–	–	–	–	–	–	–	P/C [L]	P/C [L]	P	P	–	–
Vehicle Service, Limited	direct services to motor vehicles where the driver or passengers generally wait in the car or nearby while the service is performed		C	-	–	–	–	–	–	–	–	–	–	–	–	P	P/C [M]	P	P	–	–
Non-farm Commercial	Commercial Uses defined in Section 20-1203D occurring in AG, Agricultural Districts		C	-	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–

▫ = Use Permitted By-Right ■ **P/C** = Use Permitted By-Right But Subject to Use-Specific Standards of Sec. 20-0402
= Conditional Use, Subject to Procedures of Sec. 20-0909 ■ Some uses also Subject to **Site Plan Review** (See Sec. 20-0910) or to a Traffic Impact Study as required by Sec. 20-0701L.

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

P = Use Permitted By-Right ■ **P/C** = Use Permitted By-Right But Subject to Use-Specific Standards of Sec. 20-0402
C = Conditional Use, Subject to Procedures of Sec. 20-0909 ■ Some uses also Subject to **Site Plan Review** (See Sec. 20-0910) or to a Traffic Impact Study as required by Sec. 20-0701L.

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

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

P = Use Permitted By-Right ■ **P/C** = Use Permitted By-Right But Subject to Use-Specific Standards of Sec. 20-0402
C = Conditional Use, Subject to Procedures of Sec. 20-0909 ■ Some uses also Subject to **Site Plan Review** (See Sec. 20-0910) or to a Traffic Impact Study as required by Sec. 20-0701L.

HB 1248

Sixty-seventh Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 5, 2021

HOUSE BILL NO. 1248
(Representative B. Koppelman)

AN ACT to amend and reenact section 62.1-01-03 of the North Dakota Century Code, relating to the authority of a political subdivision regarding firearms.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 62.1-01-03 of the North Dakota Century Code is amended and reenacted as follows:

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

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

2. A person aggrieved under subsection 1 may bring a civil action against a political subdivision for damages as a result of an unlawful ordinance.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-seventh Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1248.

House Vote:	Yeas 81	Nays 11	Absent 2
Senate Vote:	Yeas 26	Nays 20	Absent 1

Chief Clerk of the House

Received by the Governor at 3:55 P.M. on April 20, 2021.

Approved at 7:58 P.M. on April 21, 2021.

Governor

Filed in this office this 22nd day of April, 2021,

at 9:23 o'clock A. M.

Secretary of State

Attachment 4

Aaron Nelson

Subject: RE: contact information - comments

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

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

Hi Maegin, Here are my comments/concerns:
First, I don't want to take anybody's guns away and I am not anti-hunting. I just don't think we need to make it more convenient for someone to buy weapons. There are enough options already, obviously, given the number of gun-related deaths (including suicide) in our country. Also, I am concerned that having a weapons stockpile in a home in a neighborhood could be a "green light" for burglary or accidents. I feel there is no need to change this ordinance but there could be very negative outcomes if this is allowed.
My questions are:
Who would be regulating these sales? Would this be allowed in any home, apartment, or other dwelling? Any neighborhood? Next to a school? How many weapons would they be able to have - is there a limit? Would this include assault weapons? Who would be regulating this and monitoring compliance? Who is going to buy these weapons and how will they know if the person is legitimate?
So I would like to encourage the Commission to keep the regulation as is.
Thank you for this opportunity to express my concerns on this very important matter.
Debra Pullen
3200 11th St. S. Fargo

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

Fargo Neighborhood Coalition/DNA Position Statement

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

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

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

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

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

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

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

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

- Inspection are not required in Fargo for accessory occupations in the home, and thus the Fargo Fire Department would not inspect an FFL-accessory occupation residence, but it does inspect commercial retail. It also appears that it would not be legal to place added burdens on an FFL as a home-based seller. Thus It leaves no heightened protection for the neighborhood when a firearms and ammunition dealer is present.
- Fargo does not require notice to neighbors of the existence of an accessory occupation in the home and if enacted, there is no legal path for neighbors to complain if they believe their safety or well-being is jeopardized by a firearms or ammunition dealer.
- The Federal Firearms License (FFL) has multiple types and complexities with the three types of dealers: 01 Other Weapons; 02 Pawn Brokers; and 09 Destructive Devices such as grenades and poisonous gas. The city has not considered the implications of 02 Pawn Broker licenses or the 09 Destructive Devices licenses should they be awarded by the ATF.
- Safety concerns for customers leaving the premise with firearms and ammunition; and in case of a pawn broker license or for any license, for customers coming into the neighborhood since they do not require back ground checks, licensing, permitting or registration unless it is for hand guns, rifles and shotguns.
- Genuine concerns about property values when/if it becomes known that firearms and/or ammunition is sold from a home in the neighborhood.
- Difficulty in obtaining a needed inspection since an individual's home has more protection and required legal support to qualify for an inspection by the City (inspections, fire, or police).

- **The Federal Firearm Licenses and Counts in ND** (https://www.atf.gov/firearms/docs/report/2019-firearms-commerce-report/download)
  - Although "09" Destructive devices "and the sale of short barreled rifles and shotguns require extra oversight under the National Firearms Act, the counts of those weapons in ND as provided by the ATF, suggest that more investigation is needed prior to any consideration for a firearms and ammunitions dealer set up as accessory occupation in a home. (https://www.atf.gov/firearms/docs/report/2019-firearms-commerce-report/download and image in attachment).
- **Trends:** Nationally an increase in the theft of firearms from FFL holders was a 200% increase since 2013. The reported lost or theft of guns to the ATF/FBI are relatively small yet, but the trend is concerning. (https://www.atf.gov/firearms/federal-firearms-licensee-ffl-burglary-and-robbery-statistics-calendar-years-2013-2017
  - In North Dakota the AFT reported firearm losses were: 2017 - 81; 2018 - one; and 2019 - 35. (https://www.atf.gov/file/142186/download)
  - Nationally between 2008-2018 there was a 400% increase in the number of application forms by the ATF for dealer licenses. This trend is added concern for an increase in those seeking in home accessory occupation status. (https://www.atf.gov/firearms/docs/report/2019-firearms-commerce-report/download)
  - Per a national cite that assists individuals in obtaining a RRL, and that is approved by the NRA and the Better Business Bureau regarding in-home licensing, " This allows individuals to have firearms shipped directly to their home and gives you the opportunity to purchase weapons from manufacturers and supplies and wholesale prices. This can result in savings of 30% or greater, which for an avid weapons collector can be thousands of dollars within a few years." "Many are drawn to an FFL as a way to circumnavigate some of the restrictions surrounding the purchase of a personal firearm." https://www.ffl123.com/obtaining-home-based-ffl/

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

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

References

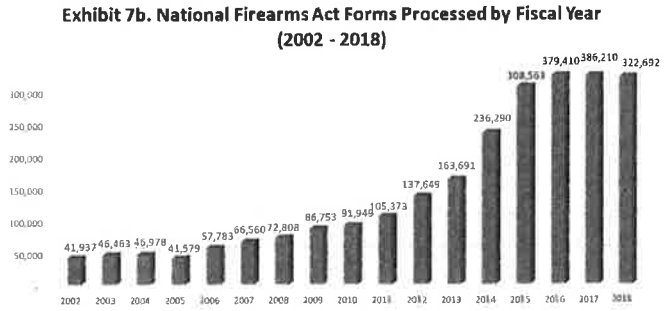
ND Firearm Laws: https://www.nraila.org/gun-laws/state-gun-laws/north-dakota/

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

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

Number of Forms ATF for Firearms

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



ATF RRL Categories:
https://www.atf.gov/resource-center/types-federal-firearms-licenses-ffls

Dealers:

01 – Dealer in firearms other than destructive devices.

02 – Pawnbroker in firearms other than destructive devices.

09 – Dealer in destructive devices.

Manufacturers:

06 – Manufacturer of Ammunition for Firearms Other Than Ammunition for Destructive Devices or Armor Piercing Ammunition.

07 – Manufacturer of firearms other than destructive devices.

10 – Manufacturer of destructive devices, ammunition for destructive devices or armor piercing ammunition.

Importer:

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

11 – Importer of destructive devices, ammunition for destructive devices or armor piercing ammunition

Other: 03 – Collector of curios and relics.

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

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

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

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

Exhibit 8 National Firearms Act, Registration by State

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

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

Obtaining a Home-Based FFL: https://www.ffl123.com/obtaining-home-based-ffl/

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

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

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

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

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

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

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

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

42-2

ORDINANCE NO. _____

AN ORDINANCE AMENDING SECTION 20-0402 AND 20-0403
OF ARTICLE 20-04 OF CHAPTER 20 OF
THE FARGO MUNICIPAL CODE (LAND DEVELOPMENT CODE)
RELATING TO FIREARM AND AMMUNITION SALES

WHEREAS, the electorate of the City of Fargo has adopted a home rule charter in accordance with Chapter 40-50.1 of the North Dakota Century Code; and

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

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

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

NOW, THEREFORE,

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

Section 1. Amendment.

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

§20-0402 Use Standards

* * *

T. Non-farm Commercial Uses

* * *

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

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

Section 2. Amendment.

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

§20-0403 Accessory Uses

* * *

C. Home Occupations

* * *

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

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

e. ~~f.~~ Adult Entertainment Center Uses

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

Section 3. Effective Date.

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

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

(Seal)

Attest:

_____
Steven Sprague, City Auditor

First Reading:
Second Reading:
Final Reading:

THE CITY OF Fargo FAR MORE

43

Office of the City Attorney

City Attorney
Erik R. Johnson

Assistant City Attorney
Nancy J. Morris

June 24th, 2021

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

RE: An Ordinance Enacting Article 13-17 Relating to Boulevard Gardens

Dear Commissioners,

Enclosed for your approval is an ordinance enacting Article 13-17 relating to boulevard gardens. As you may recall, an interim policy allowing boulevard gardening was approved by the Board of City Commissioners last year. Kim Lipetzky, Fargo Cass Public Health Nutritionist, reported findings of the program to the Board at its December 14th, 2020 meeting. As a result of that meeting, the Board directed the City Attorney's Office to work with Fargo Cass Public Health and impacted city departments to draft an ordinance to allow plantings and turf grass on boulevards.

The enclosed ordinance has been vetted and approved by the city's Engineering, Planning & Development, and Public Works Streets & Forestry departments. As such, I am remitting to you for your approval, an ordinance enacting Article 13-17 of the Fargo Municipal Code.

Suggested Motion: I move to receive and file an ordinance enacting Article 13-17 of Chapter 13 of the Fargo Municipal Code relating to boulevard gardens and to place the ordinance on for first reading at the next regularly-scheduled city commission meeting.

Please feel free to contact me or Kim Lipetzky if you have any questions or concerns.

Sincerely,

Alissa R. Farol
Assistant City Attorney

Enc.
cc: Kim Lipetzky, Nutritionist, Fargo Cass Public Health

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

AN ORDINANCE ENACTING ARTICLE 13-17 OF CHAPTER 13
OF THE FARGO MUNICIPAL CODE RELATING TO
BOULEVARD GARDENS

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 appropriate to implement such authority by the adoption of this ordinance;

NOW, THEREFORE,

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

Section 1. Enactment.

Article 13-17 of the Fargo Municipal Code is hereby enacted as follows:

ARTICLE 13-17 – BOULEVARD GARDENS

Section 13-1701. Definitions.

As used in this ordinance, unless the context otherwise indicates, the following definitions apply:

1. "Boulevard" means the public right-of-way lying between the property line and sidewalk, and between the sidewalk and the roadway, or where no sidewalk exists, between the property line and the roadway.

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FARGO, NORTH DAKOTA

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2. "Drip line" shall mean an imaginary vertical line that extends from the outermost branches of a tree's canopy to the ground.

3. "Noxious weeds" means any species of plant or vegetation recognized by the North Dakota State Weed Board as a noxious weed.

4. "Public Health Department" means Fargo Cass Public Health or any representative thereof.

Section 13-1702. Plantings permitted.

A. A property owner in the city shall be permitted to plant, care for and maintain gardens on the boulevards adjacent to their property, subject to the restrictions set forth below.

1. No garden shall be planted on the boulevard without written documentation that the property owner has contacted "North Dakota One-Call" for utility locations forty-eight (48) hours before digging, and has planned plantings which will not interfere with said utilities.

2. Plantings shall not exceed thirty-six (36) inches in height. Plantings within thirty (30) feet of an intersection, five (5) feet from a driveway or alley, and the three (3) foot radius around fire hydrants shall not exceed twenty-four (24) inches. Height shall be measured from the sidewalk to the top of the plant or from the top of the curb to the top of the plant. A raised planting bed is included in such measurement.

3. Plantings shall be maintained with no encroachment or overhang onto the adjacent sidewalk, curb, or street. The edge must be within one (1) foot of the outermost planting.

4. Any proposed planting or site disturbance with the dripline of an existing street tree(s) must be approved by the City Forester.

5. Plantings may include flowers, vegetables, native or turf grasses, and other plants, but in no event shall any noxious weed be planted or maintained.

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6. Plantings with thorns, spines, or sharp ridged parts, as well as shrubs (evergreen or deciduous) or other woody plants are not allowed.

7. Shredded hardwood mulch shall be used around plants to prevent soil erosion and must not exceed the height of the adjacent curb.

8. River rock or similar aggregate material shall not be used. Boulders and structures such as retaining walls, fences and steps are prohibited.

9. Boulevard gardens shall only be permitted in areas of residential use in the city.

B. The current property owner shall be solely responsible for the maintenance of the boulevard garden. Maintenance at a minimum shall include:

1. Removal of noxious weeds or invasive plants;

2. Removal of accumulated sediment;

3. Removal of trash, leaves, grass clippings, or other debris; and

4. Repairing areas of bare soil or erosion.

C. A permit shall not be required for a boulevard garden.

Section 13-1703. Raised planting beds prohibited without permit.

A. No property owner shall erect or maintain a raised planting bed on the boulevard unless granted a permit by the public health department. If the raised planting bed is four (4) inches or less, a permit shall not be required. The public health department may impose reasonable conditions upon issuance of the permit and the performance of the property owner thereunder to protect the health, safety, and welfare or when necessary to protect the boulevard and its current use. The public health department shall issue said permit for a period not to exceed one year, subject to annual renewal thereof. The initial permit shall automatically expire at the end of the initial calendar year and, thereafter, renewals of said permit shall extend for calendar-year periods.

OFFICE OF THE CITY ATTORNEY
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ORDINANCE NO. _____

A permit for a raised planting bed may be revoked or suspended by the public health department upon a finding that the permit was issued under false pretenses or for any violation of this article following written notice or, upon request for renewal, the renewal permit may be refused by the public health department. The permittee may appeal the revocation, suspension or refusal of renewal of the permit by timely request for a hearing before the public health department. The request for hearing must be either postmarked or received by the public health department within seven (7) days of the notice. The public health department shall hold a hearing on the permittee's request for hearing and shall render a decision on the matter after said hearing. The decision of the public health department may be further appealed to the board of city commissioners by filing a timely notice of appeal of the decision of the public health department with the city auditor. The notice of appeal must be either postmarked or received in the city auditor's office within seven (7) days of the date of the decision of the public health department.

B. In addition to obtaining said permit and subject to the restrictions set forth in Section 13-0702, a property owner may erect and maintain a raised planting bed on the boulevard provided the owner complies with the additional restrictions set forth below.

1. Insurance required. The property owner must maintain general liability insurance at all times during the term of the raised planting bed permit. Proof of insurance must be provided to the public health department with a Certificate of Liability Insurance describing the limits of coverage and naming the City of Fargo as an additional insured party. If the raised bed is four (4) inches or less, proof of insurance shall not be required.

2. Size and height. A raised planting bed shall not be larger than four (4) feet wide by eight (8) feet long, or a total area of thirty-two (32) square feet. The raised planting bed shall not be higher than twelve (12) inches.

3. Setbacks. A raised planting bed shall be located at a minimum of two (2) feet from the edge of the sidewalk, two (2) feet from the edge of the alleyway or driveway, two (2) feet from the neighboring adjacent boulevard, and three (3) feet from the curb of the street.

4. Material. Permanent material, such as concrete, shall not be used.

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ORDINANCE NO. _____

Section 13-1704. Public works and utilities.

Notwithstanding the foregoing, all such boulevards remain public property and subject to the right of the city and private utility companies to perform necessary work, to plant, trim and otherwise maintain trees, to access utilities and store excess snow. In the event the city interferes with boulevard plantings in the course of such work, it shall be responsible only to restore the boulevard to the original grassy state. In no event shall the city or private utility company be liable for any damage to, disruption of or removal of plantings, either direct or indirect, as a result of the city or private utility company, their employees, agents or contractors performing any installation, maintenance or repairs. Further, the city shall have the right to remove or restrict any plantings that are deemed to interfere with the safety of pedestrians and motorists without notice.

Section 13-1705. Regulation, inspection and enforcement.

In order to provide for the public health and safety, the public health department shall have authority to enforce the provisions stated herein concerning the use and maintenance of boulevard gardens within the jurisdiction of such department. For any property deemed to be in violation, the public health department shall give notice of the alleged violation to the property owner to remove or abate the nuisance within a time specified by the public health department not exceeding thirty (30) days. The public health department may additionally determine whether a planting otherwise in compliance with this article nonetheless poses a nuisance of hazard, in the opinion of the public health department, and may take action to abate such nuisance or hazard. If the property owner fails to comply with the notice to remove or abate or if the property owner cannot be found, the public health department may remove or destroy the nuisance, which shall charge the expense against the parcel of land on which the work is done.

Section 13-1706. Private restrictions and covenants on property.

Notwithstanding the issuance of a permit by the public health department, private restrictions or covenants on the use of property shall remain enforceable and take precedence over a permit. Private restrictions include, but are not limited to, deed restrictions, condominium master deed restrictions, neighborhood association by-laws, covenant declarations and deed restrictions. A permit issued to a property owner whose premises is subject to private restrictions or covenants that prohibit boulevard gardens or

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

raised planting beds is void. The interpretation and enforcement of the private restriction is the sole responsibility of the private parties involved.

Section 2. Penalty.

A person who willfully violates this ordinance is guilty of an infraction. Every person, firm or corporation violating an ordinance which is punishable as an infraction shall be punished by a fine not to exceed $1,000; the court to have power to suspend said sentence and to revoke the suspension thereof.

Section 3. Effective Date.

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

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

Attest:

First Reading: _____
Second Reading: _____
Final Passage: _____
Publication: _____

_____
Steven Sprague, City Auditor

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

44

ORDINANCE NO. _____

AN ORDINANCE AMENDING SECTION 1-0305 OF ARTICLE 1-03 OF CHAPTER 1 OF THE FARGO MUNICIPAL CODE RELATING TO CLASSIFICATION OF ORDINANCE VIOLATIONS

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 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 appropriate to implement such authority by the adoption of this ordinance;

NOW, THEREFORE,

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

Section 1. Amendment.

1-0305. Classification of ordinance violations.

A. Violations of the following ordinances are Class B misdemeanors, subject to punishment as provided in this article:

Section 1-0306(D) (failure to appear or post bond on a non-criminal, non-traffic offense), section 8-0305(A)(2) (fictitious registration), section 8-0305(A)(3) (lending registration plates), section 8-0308 (reproducing operator's or driver's license or permit), section 8-0309 (driving under suspension), section 8-0310 (driving under the influence), section 8-0314 (reckless driving), section 8-0320 (driving without liability insurance - $150.00 minimum

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FARGO, NORTH DAKOTA

ORDINANCE NO. _____

fine), section 8-0803 (accidents involving damage to vehicle), section 8-0804 (duty to give information and render aid), section 8-0805 (duty upon striking fixture or other property), section 8-0809 (false reports), ~~section 10-0101 (minor using alcohol),~~ 10-0104 (curfew), section 10-0201 (indecent exposure), section 10-0301 (disorderly conduct), section 10-0317 (resisting police officer), section 10-0319 (incendiary devices), section 10-0320 (registration in schools), section 10-0321 (criminal mischief), section 10-0322 (harassment), section 10-0323 (simple assault), section 10-0324 (aiding and abetting), section 10-0601 (shoplifting), section 10-0602 (theft), section 10-0702 (order to disperse), section 10-0703 (tenant/owner cooperation required), section 10-1202(2) (≥½ oz. marijuana) and 10-1202(3) (under 21 in possession of marijuana), section 12-0117(C) and 12-0117(G) (potentially dangerous and dangerous dogs), section 13-0511 (removal of wastes), section 13-0513 (fee/permit for hauling waste), section 13-0529 (misuse of compost sites), article 13-13 (drug lab cleanup), chapter 17 (sewers and sewerage), article 18-09 (excavation code), section 25-1509(A) (selling alcoholic beverage to minor), section 25-1513(C) (minor misrepresenting age), and section 25-1513(D) (delivery of alcoholic beverage to minor), article 25-33 (tattoos, body art and body piercing), article 25-36 (tanning facilities).

* * * *

Section 2. Penalty.

A person who violates section 10-0101 is guilty of an infraction. Every person, firm, or corporation violating an ordinance which is punishable as an infraction shall be punished by a fine not to exceed $1,000; the court to have power to suspend said sentence and to revoke the suspension thereof.

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

Section 3. Effective Date.

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

_____
Timothy J. Mahoney, Mayor

Attest:

_____
Steven Sprague, City Auditor

First Reading:
Second Reading:
Final Passage:

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

45 abc

ORDINANCE NO. _____

AN ORDINANCE ENACTING SECTION 10-0322.1 OF
ARTICLE 10-03 OF CHAPTER 10 OF
THE FARGO MUNICIPAL CODE RELATING TO
PUBLIC SAFETY, MORALS AND WELFARE

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

NOW, THEREFORE,

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

Section 1. Enactment.

Section 10-0322.1 of Article 10-03 of Chapter 10 of the Fargo Municipal Code is hereby enacted to read as follows:

10-0322.1. Harassment-Hate Crime

A. A person is guilty of an offense if, with intent to frighten or harass another, he:

1. Makes a telephone call anonymously or in offensively coarse language;
2. Makes repeated telephone calls or other electronic communication, whether or not a conversation ensues, with no purpose of legitimate communication; or
3. Communicates a falsehood in writing or by electronic communication and causes mental anguish.

B. Any offense defined herein and committed by use of electronic communication may be deemed to have been committed at either the place at which the electronic

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FARGO, NORTH DAKOTA

ORDINANCE NO. _____

communication was made, or at the place where the electronic communication was received.

C. Any offense defined herein is deemed communicated in writing if it is transmitted electronically, by electronic mail, facsimile, or other similar means. Electronic communication means transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photo-electronic, or photo-optical system.

D. Commits an offense in violation of subdivision A (1), (2), or (3) in whole or in part because of the actual or perceived race, color, religion, gender, disability, sexual orientation, gender identity, national origin, or ancestry of the victim.

Section 2. Penalty.

A person who willfully violates this ordinance is guilty of a Class B misdemeanor. Every person, firm or corporation violating an ordinance which is punishable as a Class B misdemeanor shall be punished by a fine not to exceed $1,500.00, or by imprisonment not to exceed 30 days, or by both such fine and imprisonment, in the discretion of the court; the court to have power to suspend said sentence and to revoke the suspension thereof.

Section 3. Effective Date.

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

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

(SEAL)

Attest:

_____
Steven Sprague, City Auditor

First Reading:
Second Reading:
Final Passage:
Publication:

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

AN ORDINANCE ENACTING SECTION 10-0323.1 OF
ARTICLE 10-03 OF CHAPTER 10 OF
THE FARGO MUNICIPAL CODE RELATING TO
PUBLIC SAFETY, MORALS AND WELFARE

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

NOW, THEREFORE,

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

Section 1. Enactment.

Section 10-0323.1 of Article 10-03 of Chapter 10 of the Fargo Municipal Code is hereby enacted to read as follows:

10-0323.1. Simple Assault-Hate Crime

A person is guilty of an offense if he:

A. Willfully causes bodily injury to another human being; or

B. Negligently causes bodily injury to another human being by means of a firearm, destructive device, or other weapon, the use of which against a human being is likely to cause death or serious bodily injury.

C. Causes bodily injury to another in whole or in part because of the victim's actual or perceived race, color, religion, gender, disability, sexual orientation, gender identity, national origin, or ancestry.

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

Section 2. Penalty.

A person who willfully violates this ordinance is guilty of a Class B misdemeanor. Every person, firm or corporation violating an ordinance which is punishable as a Class B misdemeanor shall be punished by a fine not to exceed $1,500.00, or by imprisonment not to exceed 30 days, or by both such fine and imprisonment, in the discretion of the court; the court to have power to suspend said sentence and to revoke the suspension thereof.

Section 3. Effective Date.

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

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

(SEAL)

Attest:

_____
Steven Sprague, City Auditor

First Reading:
Second Reading:
Final Passage:
Publication:

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

AN ORDINANCE AMENDING SECTION 1-0305 OF
ARTICLE 1-03 OF CHAPTER 1 OF
THE FARGO MUNICIPAL CODE RELATING TO
ORDINANCES - VIOLATION

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

NOW, THEREFORE,

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

Section 1. Amendment.

Section 1-0305 of Article 1-03 of Chapter 1 of the Fargo Municipal Code is hereby amended to read as follows:

1-0305. Classification of ordinance violations.

A. Violations of the following ordinances are Class B misdemeanors, subject to punishment as provided in this article:

1. Section 1-0306(D) (failure to appear or post bond on a non-criminal, non-traffic offense), section 8-0305(A)(2) (fictitious registration), section 8-0305(A)(3) (lending registration plates), section 8-0308 (reproducing operator's or driver's license or permit), section 8-0309 (driving under suspension), section 8-0310 (driving under the influence), section 8-0314 (reckless driving), section 8-0320 (driving without liability insurance - $150.00 minimum fine), section 8-0803 (accidents involving damage to vehicle), section 8-0804 (duty to give information and render aid), section 8-0805 (duty upon striking fixture or other property),

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

section 8-0809 (false reports), section 10-0101 (minor using alcohol), 10-0104 (curfew), section 10-0201 (indecent exposure), section 10-0301 (disorderly conduct), section 10-0317 (resisting police officer), section 10-0319 (incendiary devices), section 10-0320 (registration in schools), section 10-0321 (criminal mischief), section 10-0321.1 (criminal mischief-hate crime), section 10-0322 (harassment), section 10-0322.1 (harassment-hate crime), section 10-0323 (simple assault), section 10-0323.1 (simple assault-hate crime), section 10-0324 (aiding and abetting), section 10-0601 (shoplifting), section 10-0602 (theft), section 10-0702 (order to disperse), section 10-0703 (tenant/owner cooperation required), section 10-1202(2) (≥½ oz. marijuana) and 10-1202(3) (under 21 in possession of marijuana), section 12-0117(C) and 12-0117(G) (potentially dangerous and dangerous dogs), section 13-0511 (removal of wastes), section 13-0513 (fee/permit for hauling waste), section 13-0529 (misuse of compost sites), article 13-13 (drug lab cleanup), chapter 17 (sewers and sewerage), article 18-09 (excavation code), section 25-1509(A) (selling alcoholic beverage to minor), section 25-1513(C) (minor misrepresenting age), and section 25-1513(D) (delivery of alcoholic beverage to minor), article 25-33 (tattoos, body art and body piercing), article 25-36 (tanning facilities).

***

Section 2. Effective Date.

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

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

(SEAL)

Attest:

_____
Steven Sprague, City Auditor

First Reading:
Second Reading:
Final Passage:
Publication:

THE CITY OF Fargo FAR MORE

RECEIVED AND FILED BY THE BOARD OF CITY COMMISSIONERS 1-21
1st Reading 6-14-21

Office of the City Attorney

City Attorney
Erik R. Johnson

Assistant City Attorney
Nancy J. Morris

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

Mayor and Commissioners,

Pursuant to your direction, the City attorney's office, working in conjunction with Commissioner Preston, prepared three ordinances pertaining to hate crimes:

10-0321.1- Criminal Mischief- Hate Crime
10-0322.1- Harassment- Hate Crime
10-0323.1- Simple Assault- Hate Crime

The new proposed ordinances simply add the same or similar language proposed in the state legislation proposed- specifically that the illegal conduct occurred "because of" the victim's perceived or actual protected characteristic. In other words, the person committing the crime did so "in whole or in part because of the victim's actual or perceived race, color, religion, gender, disability, sexual orientation, gender identity, national origin or ancestry."

The motive for committing the crime is not generally an element of an offense. If the hate crime is charged, the reason the crime is committed becomes an element of the offense and the prosecutor must prove all elements of the offense beyond a reasonable doubt in order to secure a conviction. The element is not that the victim is a member of a protected class, but rather that the perpetrator's reason for committing the underlying crime was because the victim is, or is perceived to be, a member of a protected class.

The highest offense a municipality may charge is a Class B misdemeanor, which carries a maximum penalty of a fine of $1,500 and 30 days in jail. These additional crimes carry the same punishment as the underlying crimes of simple assault, harassment and criminal mischief.

Suggestion Motion: I move to receive and file the following Ordinances An Ordinance enacting sections 10-0321.1 Criminal Mischief-Hate Crime, 10-0322.1 Harassment-Hate Crime, and 10-0323.1 Simple Assault-Hate Crime, all of Article 10-03 of Chapter 10 of the Fargo Municipal Code Relating to Public Safety, Morals and Welfare, and to place the ordinances on for first reading at the next regularly scheduled commission meeting.

Please feel free to contact me if you have any questions, comments or concerns.

Sincerely,

Nancy J. Morris

NJM/lmw

Enclosures

cc: Commissioner Arlette Preston
Chief Dave Zibolski
City Prosecutor Will Wischer

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

AN ORDINANCE ENACTING SECTION 10-0321.1 OF
ARTICLE 10-03 OF CHAPTER 10 OF
THE FARGO MUNICIPAL CODE RELATING TO
PUBLIC SAFETY, MORALS AND WELFARE

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

NOW, THEREFORE,

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

Section 1. Enactment.

Section 10-0321.1 of Article 10-03 of Chapter 10 of the Fargo Municipal Code is hereby enacted to read as follows:

10-0321.1. Criminal mischief-Hate Crime

A person is guilty of criminal mischief if he commits any of the following acts:

A. Willfully tampers with tangible property of another so as to endanger person or property.

B. Willfully damages tangible property of another. The court may, in addition to assessing any penalty for violation of this ordinance as permitted by law, order reimbursement or restitution by the offender to the person whose property has been damaged or destroyed.

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

C. Commits an offense in violation of subdivision A or B in whole or in part because of the actual or perceived race, color, religion, gender, disability, sexual orientation, gender identity, national origin, or ancestry of the victim.

Section 2. Penalty.

A person who willfully violates this ordinance is guilty of a Class B misdemeanor. Every person, firm or corporation violating an ordinance which is punishable as a Class B misdemeanor shall be punished by a fine not to exceed $1,500.00, or by imprisonment not to exceed 30 days, or by both such fine and imprisonment, in the discretion of the court; the court to have power to suspend said sentence and to revoke the suspension thereof.

Section 3. Effective Date.

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

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

(SEAL)

Attest:

_____
Steven Sprague, City Auditor

First Reading:
Second Reading:
Final Passage:
Publication:

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

AN ORDINANCE AMENDING SECTION 1-0305 OF ARTICLE 1-03 OF CHAPTER 1 OF THE FARGO MUNICIPAL CODE RELATING TO CLASSIFICATION OF ORDINANCE VIOLATIONS

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 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 appropriate to implement such authority by the adoption of this ordinance;

NOW, THEREFORE,

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

Section 1. Amendment.

1-0305. Classification of ordinance violations.

A. Violations of the following ordinances are Class B misdemeanors, subject to punishment as provided in this article:

Section 1-0306(D) (failure to appear or post bond on a non-criminal, non-traffic offense), section 8-0305(A)(2) (fictitious registration), section 8-0305(A)(3) (lending registration plates), section 8-0308 (reproducing operator's or driver's license or permit), section 8-0309 (driving under suspension), section 8-0310 (driving under the influence), section 8-0314 (reckless driving), section 8-0320 (driving without liability insurance - $150.00 minimum

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

fine), section 8-0803 (accidents involving damage to vehicle), section 8-0804 (duty to give information and render aid), section 8-0805 (duty upon striking fixture or other property), section 8-0809 (false reports), ~~section 10-0101 (minor using alcohol),~~ 10-0104 (curfew), section 10-0201 (indecent exposure), section 10-0301 (disorderly conduct), section 10-0317 (resisting police officer), section 10-0319 (incendiary devices), section 10-0320 (registration in schools), section 10-0321 (criminal mischief), section 10-0322 (harassment), section 10-0323 (simple assault), section 10-0324 (aiding and abetting), section 10-0601 (shoplifting), section 10-0602 (theft), section 10-0702 (order to disperse), section 10-0703 (tenant/owner cooperation required), section 10-1202(2) (≥½ oz. marijuana) and 10-1202(3) (under 21 in possession of marijuana), section 12-0117(C) and 12-0117(G) (potentially dangerous and dangerous dogs), section 13-0511 (removal of wastes), section 13-0513 (fee/permit for hauling waste), section 13-0529 (misuse of compost sites), article 13-13 (drug lab cleanup), chapter 17 (sewers and sewerage), article 18-09 (excavation code), section 25-1509(A) (selling alcoholic beverage to minor), section 25-1513(C) (minor misrepresenting age), and section 25-1513(D) (delivery of alcoholic beverage to minor), article 25-33 (tattoos, body art and body piercing), article 25-36 (tanning facilities).

* * * *

Section 2. Penalty.

A person who violates section 10-0101 is guilty of an infraction. Every person, firm, or corporation violating an ordinance which is punishable as an infraction shall be punished by a fine not to exceed $1,000; the court to have power to suspend said sentence and to revoke the suspension thereof.

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

Section 3. Effective Date.

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

_____
Timothy J. Mahoney, Mayor

Attest:

_____
Steven Sprague, City Auditor

First Reading:
Second Reading:
Final Passage:

THE CITY OF Fargo FAR MORE

CITY OF FARGO POLICE DEPARTMENT

46

Chief David B. Zibolski

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

June 24, 2021

City of Fargo Commission
225 4th St. N
Fargo, ND 58102

RE: City of Fargo Wildlife Management Program

As directed at the June 1, 2021 Commission meeting, a public hearing regarding the proposed elimination of the wildlife management program was held on June 24, 2021, from 4pm-6pm. Interim Captain Christopher Helmick conducted the hearing and a summary of the findings are in the attached memorandum.

Based on the information obtained, I request the Commission approve the following motion:

The police department create a study group including the Fargo Parks District and North Dakota Game and Fish Department to further discuss the issues and recommend potential programattic options and oversight.

An update will provided to the Commission at the September 7, 2021 meeting.

Respectfully,

David B. Zibolski
Chief of Police

Fargo Police Department

Memo

To: Chief David Zibolski

From: Interim Captain Chris Helmick

Date: June 23, 2021

RE: Summary of Public Input Concerning Wildlife Management Program

---

This is a summary of the public input that was gathered at the direction of the Fargo City Commission regarding the Fargo Wildlife Management Program. A notice for a public hearing was sent out on Friday, June 18th, 2021, and the actual hearing took place on Tuesday, June 22. Attendees who wished to speak at the hearing were asked to pre-register, and 13 people did so. 18 people showed up on the day of the meeting along with 5 media representatives.

I started the hearing with a short presentation about the Fargo Police Department's concerns about the program. The presentation focused on public safety but also touched on the use of police resources and the oversight of hunting zones that were outside city limits. I then opened up the floor to those who registered to speak. 10 of the 13 registrants appeared, and each were allowed 2 ½ minutes to make comments. The attendees were asked to consider two questions:

- Considering public safety, are you in favor of the Wildlife Management Program?
- If the program continues, do you have input or ideas about who should manage it?

9 attendees spoke in favor of continuing the program in some form. 1 attendee spoke in opposition to the program.

Additionally, I received 27 emails between June 1 and June 22 that provided additional input about the WMP. 23 of those emails were in support of the program, and 4 were opposed.

Those who spoke or wrote in support of the program brought up a variety of points, but these recurring themes were raised:

- Urban hunting helps keep the deer population under control and prevent disease within the herd.
- Controlling the deer population helps prevent property damage.
- The current rules make the program safe.
- The public is generally in favor of the program, especially those that live in the affected areas.
- Sharpshooters would be more dangerous or would cost the city more money.
- Other communities (some larger than Fargo) have similar programs that have a high safety factor.

Those who spoke against the program focused on these issues:

- 1 felt that bow hunting was inhumane.
- 1 felt that lost arrows presented a risk to the public and shared a personal experience about finding an arrow.
- 1 was not comfortable being in the public areas of the hunting zones during the season.
- 1 felt that liability was too high, that public safety was at risk and the program was not effective.

There was some input for improving the Wildlife Management Program, and those recommendations are as follows:

- Give more tags to hunters who have a track record of harvesting deer.
- Give a buck tag to hunters who are able to harvest a doe first.
- Remove high-traffic zones from the program.
- Have volunteers or a local hunting club take over the program.
- Have the Fargo Park District or ND Game and Fish take over the program.
- Create a workgroup made up of stakeholders in the program.
- Allow baiting to increase harvest rates.
- Add more zones to the program.
- Have a longer registration period and allow more hunters.
- Partner with an archery club to improve proficiency of hunters.
- Use lighted nocks on arrows to improve recovery of missed shots.

All of the emails that were received about this issue have been included for reference.

RECEIVED
FARGO POLICE DEPARTMENT
JUN 24 2021
DAVID B ZIBOLSKI
CHIEF OF POLICE
REF: Chief's file

Electronic copy: Commission

WILDLIFE MANAGEMENT PROGRAM

FARGO POLICE DEPARTMENT

INTERIM CAPTAIN CHRIS HELMICK

THE CITY OF Fargo FAR MORE

[06.22.2021]

OVERVIEW:

Program started in 2006

Fargo Population growth:

- 2005: 98,000
- 2020: 125,000

No major program changes except addition of turkeys in 2013.

Number of hunters each year: 45

Stats since inception:

Total deer harvested: 352
Total turkey harvested: 9
Total deer hit but not recovered: 45
Total archery shot misses: 144 (unknown if recovered)

THE CITY OF Fargo FAR MORE

FARGO POLICE CONCERNS

Primary: Public Safety

- Growing population.
- Increased usage of recreational trails.
- Increased chances of accident.
- Lost arrows found by residents.
- Can't wait for accident to occur before taking action.

Secondary: Police resources for management of program

- 40-80 hours each year ($2200-$4450) – training, administrative time.
- Increasing calls for service, investigative case load.

Policing zones outside of city limits.

- No jurisdiction for criminal offenses.
- Administrative authority only.

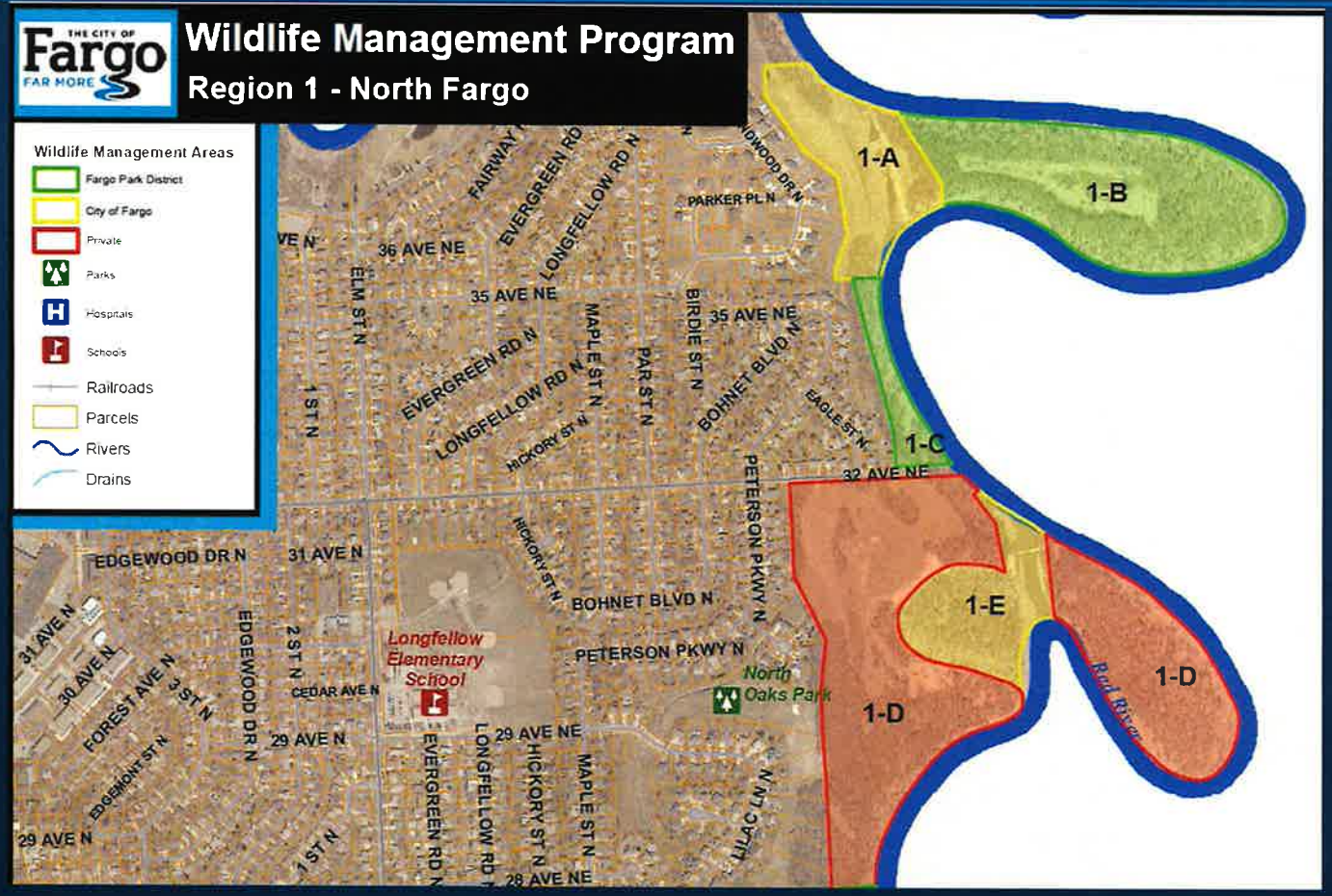
THE CITY OF Fargo FAR MORE

COMPLAINTS AND CONCERNS

Season	Complaints/Concerns	Resolution
2006-2007	None	N/A
2007-2008	Fargo Park District received a complaint that a harvested deer died in an open area of the park.	Program manager determined there was no violation of city ordinance or state law.
2008-2009	None	N/A
2009-2010	None	N/A
2010-2011	None	N/A
2011-2012	None	N/A
2012-2013	None	N/A
2013-2014	A 16 year-old citizen was walking in Holm Park and found a hunting arrow. The arrow stuck to mud on the bottom of his shoe. There was no injury or penetration of the arrow into his shoe or body. The arrow had a hunting permit number written on it, but not the hunter's last name. The hunter was identified by the permit number and stated they could not find their arrow after shooting at a deer.	A police report was completed and forwarded to the City Prosecutor. The City Prosecutor declined to prosecute because the hunter had written their permit number on the arrow and there was no criminal intent.
2014-2015	None	N/A
2015-2016	None	N/A
2016-2017	A citizen called in requesting more signs be placed to notify the public that bow hunting was taking place.	Some signs were in place since 2006, however police added more signs prior to the 2017-2018 season.
2017-2018	A citizen reported seeing someone in a ground blind on Fargo Park District land east of Grandwood Drive North. Participants must hunt from tree stands. They did not see the individual with an archery device so it could not be proven they were hunting.	The person was not located or identified. Police put trail cameras out to attempt to identify the person if they returned to the blind. They did not return.
2018-2019	One report of illegal baiting of wildlife. Unknown if a participant had placed the corn for hunting purposes or if it was a non-participant for purposes of viewing wildlife.	Police investigated and determined the volume of bait present did not violate city ordinance (one-half cubic foot or more of bait).
2019-2020	None	N/A
2020-2021	None	N/A

THE CITY OF Fargo FAR MORE

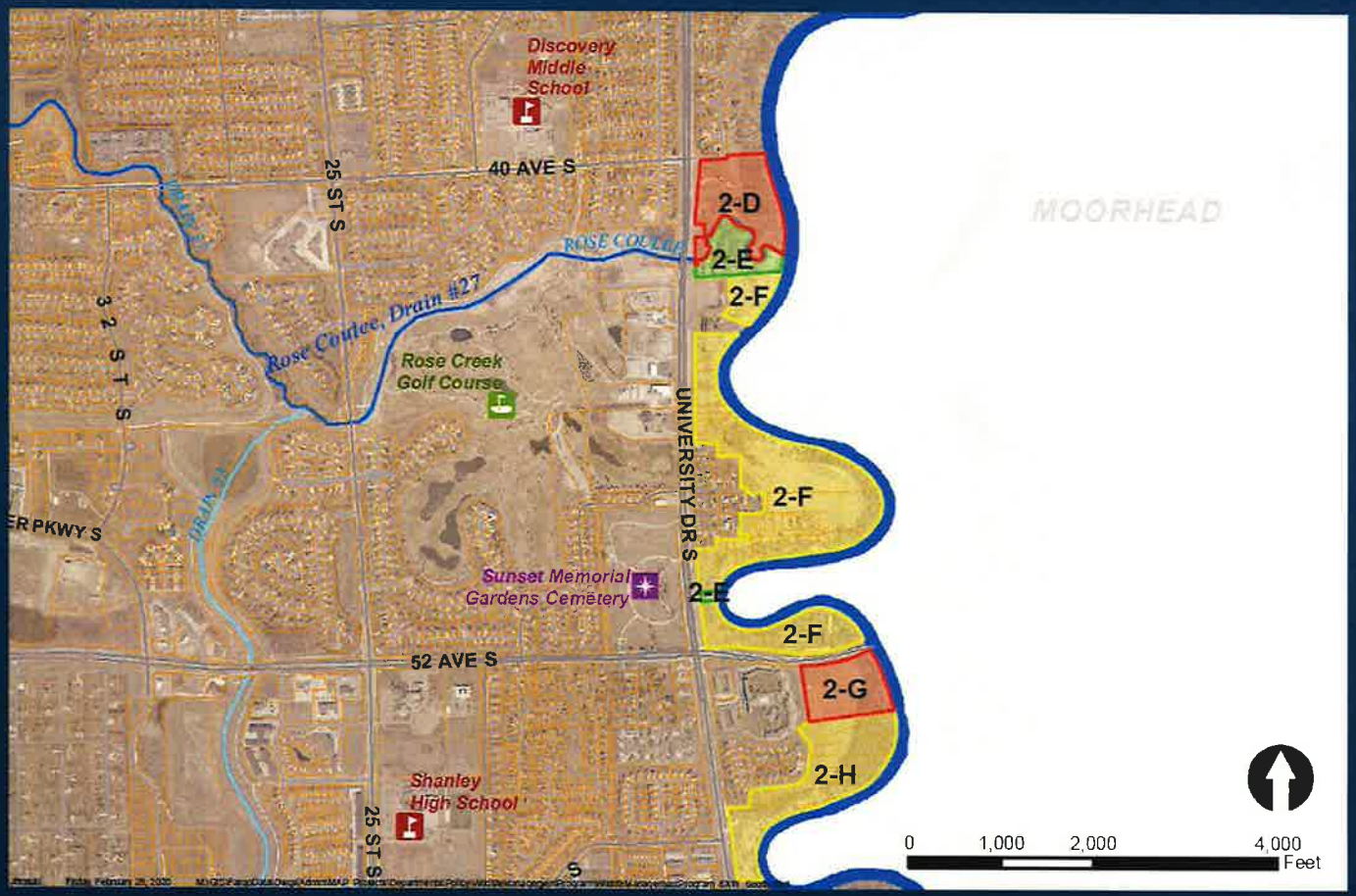
REGION 1 – NORTH FARGO



REGION 1 – NORTH FARGO

REGION 2 – SOUTH FARGO

REGION 2 – SOUTH FARGO



THE CITY OF Fargo FAR MORE

REGION 3 – FARGO EXTRATERRATORIAL AREAS

REGION 3 – FARGO EXTRATERRATORIAL AREAS

THE CITY OF Fargo FAR MORE

QUESTIONS FOR ATTENDEES

- Considering public safety, do you still support the WMP?
- If the program continues, do you have input or ideas about who should manage it?

THE CITY OF Fargo FAR MORE

GROUND RULES – PUBLIC COMMENT

Opportunity for comment.

Please use the podiums once name is called.

Please state your name for the record before comments.

No response to questions or rebuttals at this time.

Please stay within 2 ½ minute time limit.

Additional comments can be sent via email until Midnight tonight: **chelmick@fargond.gov**

Issue will be presented to City Commission on **Monday, June 28 at 5:00pm**.

THE CITY OF Fargo FAR MORE

THANK YOU

THE CITY OF Fargo FAR MORE

[06.22.2021]

THE CITY OF Fargo FAR MORE

(47)

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

MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

FROM: NICOLE CRUTCHFIELD, PLANNING DIRECTOR

DATE: JUNE 23, 2021

RE: 2021 SOCIAL SERVICE FUND RECOMMENDATION

Since at least 1987, the City Commission has budgeted up to approximately $300,000 annually to support non-profit and community development work related to social service needs in Fargo as part of the Mayor's Social Service funds. Up until 2020, the Planning Department solicited grant proposals for Social Service funds in combination with its HUD Community Development Block Grant/HOME programs. However, for the 2020 funding cycle, the City paused its Social Services grant program to focus on housing and distribution of the HUD CDBG/HOME funds.

Meanwhile, during the pandemic, our office worked closely with the FM Area Foundation to align COVID relief funds in order to avoid duplicity. In coordination with the FM Area Foundation, staff discovered that FM Area Foundation is able to be a regranting agency on behalf of the City's Social Service funds. Based on this willingness, it is staff's recommendation to allocate $100,000 of already budgeted Social Service Funds to the FM Area Foundation as part of a pilot test, to disburse to non-profits as part of the 2021 annual grant cycle. By coordinating with FM Area Foundation, it simplifies the application and granting process for non-profits and it removes the City of Fargo staff from administrating funds.

Staff seeks this initial $100,000 allocation as a pilot to take advantage of an opportunity to contribute funds to FM Area Foundation's current open grant period. By acting at the June 28 meeting, there is an opportunity to distribute funds into the community within the next few weeks, faster than we normally would be able to. These funds will be working in collaboration with other funds from other sources as part of a pool being administered by the FM Area Foundation. By collaborating with FM Area Foundation we save dozens of staff hours while still supporting the same community organizations that historically have been funded by the City's Social Service funds. Through review of the FM Area Foundation's process, the organization provides support, oversight and monitoring of grant funds to meet high accountability standards.

Staff is excited about this opportunity, as FM Area Foundation is a renowned, trusted local grantor with existing relationships with all the same organizations from which the City regularly receives funding requests. Their eight-person grants committee and one staff person is underway reviewing all the applications from this year's grant cycle, to be announced within the next month. The grant round is focused on community non-profit organizations reducing the impacts of poverty. Attached is further information about the criteria used by the grant committee (Exhibit A) as well as a summary of the City's Social Service grants in 2019 (Exhibit B). Staff recommends to defer to their expertise on how to best disburse funds in conjunction with their private funding pool.

Recommended Action: Recommend approval of the $100,000 allocation to FM Area Foundation to re-grant to organizations.

EQUAL HOUSING OPPORTUNITY

Exhibit A

Eligibility

FM Area Foundation
Connecting people and purpose

One application will be accepted per calendar year. Nonprofits must choose one focus area to apply to once they begin the application: Arts, Culture & Creativity; Basic Human Needs; Community Building; Education; Women & Children.

Applicants must be an IRS-approved tax exempt nonprofit under section 501(a) of the Internal Revenue code as described in IRC 501(c)(3), or a church, or a tax-exempt school or other government entity located in Cass County, North Dakota, or Clay County, Minnesota. Fiscal sponsorships are accepted with the completion and submission of your fiscal sponsorship agreement form. Every effort will be made to maintain a reasonable balance in awarding grants to various areas of need.

In reviewing applications, the Foundation will consider the following criteria:

1. The extent to which the organization addresses a community need, demonstrates broad-based community support, and provides benefits to the community-at-large.
2. The extent to which the organization creatively pivoted their fundraising, programming and organizational capacity in 2020 in response to the COVID-19 pandemic.
3. The extent to which the proposal maximizes community resources through cooperation and collaboration with other organizations in the community and the elimination of redundant services programs or projects.
4. The extent to which the proposal and organization prioritizes engaging and serving underrespresented populations.
5. The capacity of the applicant's organization and the staff to achieve organizational success.
6. Grant requests ranging from $500 to $15,000 will be considered.
7. You must select if you are applying for General Operating Support or Existing Program/Project Support.
8. Each year, the needs far outweigh our ability to fund. We strive to support a wide variety of organizations in our community.

Please Note:

- Event sponsorships are no longer managed through the grant round. For event sponsorship requests, please contact Lexi Oestreich.
- If you are applying on behalf of a university/college, please contact Lexi Oestreich for information on applying.
- Nonprofits must have an office located in Cass County, N.D., or Clay County, Minn., to be eligible to apply.

Exhibit B

2019 APPLICATIONS - SOCIAL SERVICE FUNDS AND RECOMMENDATIONS- FUNDED

Organization & Type of Request	Project Description	Request Info: Amount of Request	Request Info: Last year's Award	Request Info: 2019 Recomm (Subcommittee)	Goals Addressed: Housing & Homelessness	Goals Addressed: Poverty Reduction	Goals Addressed: Neighborhoods	Goals Addressed: Administration/ Operations
FUNDED PROGRAMS								
Afro American Development Association	Support self-sufficiency training, transportation, financial management, and job retention	$10,000	$5,000	$5,000		x		
Churches United for the Homeless	Provide overflow sheltering	$30,000	$0	$20,000	x			
Cultural Diversity Resources	Provide job development, housing and self-sufficiency assistance, diversity training, interpreter services, community development with education and services to empower youth and families.	$15,000	$10,000	$5,000	x	x		x
Emergency Food Pantry	Support distribution of food baskets to those in need in our community to assistant over 6,400 households.	$10,000	$7,500	$10,000				x
Fargo-Moorhead Coalition for Homeless Persons	Provide Landlord Risk Mitigation Fund and the Coordinated Assessment, Referral, and Evaluation System (CARES), and grow new and existing research initiatives.	$25,000	$25,000	$25,000	x			
Fraser	Support Transition Age Youth and their families through Stepping Stones Resource Center (SSRC) and the Extended Hours offered during winter months.	$50,000	$0	$25,000	x	x		
Handi-Wheels	Provide a part-time dispatcher	$20,000	$5,000	$5,000				x
Immigrant Development Center	Contribute to IDC's sustainability and capacity building as it grows and serves more immigrants, refugees, and new Americans in the FM area.	$25,000	$5,000	$5,000				x
Jeremiah Program	Provide support for single-mother families in Fargo, including safe, affordable housing; quality, early childhood and career-track college education; life skills and empowerment training; and a supportive community.	$10,000	$0	$10,000	x	x		
New American Consortium	Support programs and activities and deliver basic services to area refugees and immigrants.	$10,000	$5,000	$5,000	x	x		
Presentation Partners in Housing	Provide a full continuum of support services to mitigate homelessness, including rental financial assistance and Housing Navigation services through intensive case management.	$25,000	$5,000	$25,000	x	x	x	
Somali Community Development of ND	To maintain peace and conflict resolution within the New Americans and the Police.	$20,414	$5,000	$5,000				x
South Sudan Lutheran Church	Provide stipend for two organizers	$20,600	$0	$5,000		x		
Valley Senior Services	Provide Meals on Wheels Service	$20,000	$20,000	$20,000		x		
	Total by Line	**$291,014**	**$92,500**	**$170,000**				

2019 APPLICATIONS - SOCIAL SERVICE FUNDS AND RECOMMENDATIONS - NOT FUNDED

Organization & Type of Request	Project Description	Request Info: Amount of Request	Request Info: Last year's Award	Request Info: 2019 Recomm (Subcommittee)	Goals Addressed: Housing & Homelessness	Goals Addressed: Poverty Reduction	Goals Addressed: Neighborhoods	Goals Addressed: Administration/ Operations
NON-FUNDED PROGRAMS								
African Intiative Program and Development	Open a Pride of Africa Store in the International Market	$20,000	$0	$0		x		
Boys & Girls Club of the Red River Valley	Provide Scholarship Program for those parents/guardians in need of financial assistance.	$15,000	$5,000	$0		x	x	
Centre, Inc.	Support emergency shelter, food, and service referrals for women experiencing homelessness in Fargo area.	$213,500	$0	$0	x			
CHARISM	Support educational, character and social skill programs for youth; connecting individuals with language classes; life skill workshop; and access to basic needs and resources.	$25,000	$10,000	$0		x		x
Chisom Housing Group	Provide a Resident Service Coordinator.	$25,000	$0	$0	x	x		
Community Uplift Program	Onboard a healthcare practitioner within our clinic and fund clinic operations and our Transgender Cultural Training services.	$5,000	$0	$0				x
Creative Plains Foundation	Support Art Club, an outreach program to inspire students' creativity and challenge their understanding of art.	$15,000	$0	$0				x
Dakota Boys and Girls Ranch Foundation	Renovate seven bathrooms for a program serving youth transitioning out of residential treatment to independent living.	$59,000	$0	$0	x			
Family HealthCare Center	Provide emergent and other dental healthcare treatments, including access to denture care, to residents of Fargo who are homeless, uninsured, under-insured, or publicly insured.	$25,000	$10,000	$0		x		
Global Youth United	Provide programs for low income youth, mostly New Americans, to participate in competitive activities.	$15,000	$1,000	$0		x		
Golden Ridge Community Center Organization Startup	Fund an Executive Director and Custodian, supplies, and equipment to establish a new stand-alone non-profit that will serve the diverse neighborhood.	$50,000	$0	$0			x	
Great Plains Food Bank	Expand freezer capacity at our Fargo distribution.warehouse.	$100,000	$0	$0		x		
High Plains Fair Housing	Support programs to stop housing discrimination and enforce the federal fair housing act in Fargo.	$10,000	$0	$0				x
Immigrant Development Center	Develop a microlending program to support immigrants and refugees who start businessess.	$25,000		$0	x	x		
Lake Agassiz Habitat for Humanity	Provide more equipment necessary to build multiple homes at one time and serve more families.	$25,000	$0	$0	x	x	x	
Northern Plains Botanic Garden Society	Provide an Edible Forest consisting of fruit - bearing trees, shrubs and pollinator-loving perennial plants.	$22,375	$0	$0			x	
PATH	Support PATH's IL Program for youth "aging out" of foster care to assist them in attaining housing and overall wellbeing and personal success.	$15,000	$0	$0	x			x
Southeastern North Dakota Community Action	Support households experiencing homelessness with costs of moving into housing; provide deposits, rental assistance, and utility fee payment assistance.	$10,000	$0	$0	x			
Tudeako Group Org	Fund equipment and transportation.	$5,480	$0	$0				x
United Way of Cass Clay	Coordinate to enhance MAT bus access in industrial areas and for new Americans and low-income individuals; provide driver education training services; and use ride-share to improve access to employment.	$15,000	$10,000	$0		x		
	Total by Line	$695,355	$36,000	$0				

2019 APPLICATIONS - SOCIAL SERVICE FUNDS AND RECOMMENDATIONS _ FUTURE DISCUSSIONS

Organization & Type of Request	Project Description	Request Info			Goals Addressed			
		Amount of Request	Last year's Award	2019 Recomm (Subcommittee)	Housing & Homelessness	Poverty Reduction	Neighborhoods	Administration/Operations
SUSTAINING OR OTHER METHODS (GRADUATED) PROGRAMS								
Firstlink	Support operating costs to maintain 24-hour service to support those in need, and to help keep them independent in the community.	$10,000	$5,000	$0		x		
Rape and Abuse Crisis Center	Provide crisis and ongoing services for victims of domestic/dating violence, elder abuse, sexual assault, human trafficking/sexual exploitation, and child sexual abuse at no cost to the victim.	$50,000	$15,000	$0	x	x		x
Red River Human Services Foundation	Support educational and social activities for people with intellectual disabilities.	$15,000	$7,500	$0		x		
YWCA Cass Clay-YWCA Emergency Shelter	Assist with the operations of the emergency shelter and supportive services for women and children facing homelessness in our community.	$20,382	$15,000	$0	x	x		x
	Total by Line	**$95,382**	**$42,500**	**$0**				

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

49a

MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

FROM: MAYOR TIMOTHY J. MAHONEY

DATE: JUNE 28, 2021

SUBJECT: NATIVE AMERICAN COMMISSION APPOINTMENTS

The terms of Whitney Fear, Sonya Donahue and Sharon White Bear on the Native American Commission expire on June 30, 2021.

Ms. Fear, Ms. Donahue and Ms. White Bear all are willing to continue their service on that Board and I am recommending their reappointments for three-year terms.

Your favorable consideration of this recommendation will be greatly appreciated.

RECOMMENDED MOTION: To approve the reappointment of Whitney Fear, Sonya Donahue and Sharon White Bear to the Native American Commission for three-year terms ending June 30, 2024.

mmappts21nac

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

49b

MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

FROM: MAYOR TIMOTHY J. MAHONEY

DATE: JUNE 28, 2021

SUBJECT: APPOINTMENTS TO THE BOARD OF ADJUSTMENT

The terms of Deborah Wendel Daub and Michael Love on the Board of Adjustment expire on June 30, 2021.

Both Ms. Wendel Daub and Mr. Love have agreed to continue serving on the Board and I am recommending their reappointments for three-year terms.

Your favorable consideration of this recommendation is greatly appreciated.

RECOMMENDED MOTION: To approve the reappointments of Deborah Wendel Daub and Michael Love to the Board of Adjustment for a three-year terms ending June 30, 2024.

mmappt21boardjust

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

49c

MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

FROM: MAYOR TIMOTHY J. MAHONEY

DATE: JUNE 28, 2021

SUBJECT: BOARD OF APPEALS APPOINTMENTS

The terms of Brian Berg as a regular member and Clay Dietrich as an alternate member on the Board of Appeals expires on June 30, 2021.

Mr. Berg and Mr. Dietrich are willing to continue their service on the Board and I am recommending that they be reappointed for five-year term ending June 30, 2026.

Your favorable consideration of these recommendations will be greatly appreciated.

RECOMMENDED MOTION: Approve the reappointments of Brian Berg as a regular member and Clay Dietrich as an alternate member to the Board of Appeals for five-year terms ending June 30, 2026.

mmappt21boappeals

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

49d

MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

FROM: MAYOR TIMOTHY J. MAHONEY

DATE: JUNE 28, 2021

SUBJECT: ARTS AND CULTURE COMMISSION APPOINTMENTS

The terms of Jon Offutt, Joe Williams and Denise Kolpack on the Arts and Culture Commission expired on June 1, 2021.

Mr. Offutt, Mr. Williams and Ms. Kolpack are willing to continue their service on that Board and I am recommending that they be reappointed for three-year terms ending June 1, 2024.

Your favorable consideration of this recommendation will be greatly appreciated.

RECOMMENDED MOTION: To approve the reappointment of Jon Offutt, Joe Williams and Denise Kolpack to the Arts and Culture Commission for three-year terms ending June 1, 2024.

mmappt21acc

THE CITY OF Fargo FAR MORE

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MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

FROM: MAYOR TIMOTHY J. MAHONEY

DATE: JUNE 28, 2021

SUBJECT: APPOINTMENTS TO THE HUMAN RELATIONS COMMISSION

The terms of Cheryl Schaefle, Matuor Alier and Hamida Dakane on the Human Relations Commission expire on July 1, 2021.

Ms. Schaefle, Mr. Alier and Ms. Dakane are all willing to continue their service, therefore, I am recommending their reappointments for three-year terms.

Your favorable consideration of this recommendation will be greatly appreciated.

RECOMMENDED MOTION: To approve the reappointment of Cheryl Schaefle, Matuor Alier and Hamida Dakane to the Human Relations Commission for three-year terms ending July 1, 2024.

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