

Erik R. Johnson  
Assistant City Attorney - Fargo

29

January 14, 2025

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

RE: Enacting ordinance for new lodging tax and conference center – Article 3-14 of Fargo Municipal Code

Dear Commissioners,

Enclosed for receipt and filing is a draft ordinance enacting a new Article 3-14 to the Fargo Municipal Code. As you know, in the recent election a majority of City electors voted to approve a home rule charter amendment which authorized the City Commission to impose an additional lodging tax of up to 3% on hotel and motel lodging receipts within the City. The lodging tax proceeds are authorized to be used to finance the construction of a new conference center within the City of Fargo. The enclosed draft ordinance provides, among other things:

- The proceeds from this 3% lodging tax, to be collected by the City Auditor, are to be initially deposited into a conference center capital construction fund and the proceeds, along with earnings from the proceeds, are to be utilized for construction costs of a conference center "...at a location within the city...to be determined by a request for proposal process established by the board of city commissioners of the city, and with ongoing capital projects, maintenance, operation and functionally-related facilities ... all as the board of city commissioners of the city may select." See proposed ordinance at Section 3-1404.
- The tax is to be collected over a period not exceeding twenty-five (25) years. The collection of the tax is only to be commenced once the city commission has identified a specific project, as provided in the new home rule charter provision, at Fargo Home Rule Charter Article 3.V. See proposed ordinance at Section 3-1407.
- The ordinance imposes a 3% lodging tax on the gross receipts of retailers for the leasing or renting of hotel or motel rooms or other accommodations for periods of less than thirty consecutive calendar days within the Fargo corporate limits. See proposed ordinance at Sections 3-1401 and 3-1402.

Customarily, home rule charter provisions are not self-executing; rather, they must be implemented by ordinance. In this particular case, the new lodging tax HRC provision requires the City Commission to authorize or approve a number of things. First, the Commission must establish a request for proposal process to identify the

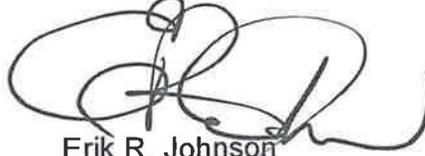
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location for the conference center. Presumably, as part of choosing the winning proposal and agreeing upon the terms of an agreement with the successful proposer, the City Commission will consider and approve the means and methods by which a new conference center will be designed, built, financed, owned, operated and maintained—all matters are authorized by the new HRC amendment. The actual collection of the 3% lodging tax may not be commenced and the precise term over which such collection will occur (not exceeding 25 years) until the City Commission has identified the location for the conference center project. As a result, this ordinance does not contain a commencement date for collection of the tax nor does it identify the end-date for such collection. Those important details will be inserted, by amendment of this ordinance, once the RFP and selection process is completed.

Therefore, please find the enclosed draft ordinance, submitted herewith for receipt and filing. A suggested motion is provided below.

**Suggested Motion:** I move to receive and file An Ordinance Enacting Sections 3-1401 through 3-1409 of Article 3-14 of Chapter 3 of the Fargo Municipal Code Relating to Lodging Tax and Conference Center and to place the ordinance on for first reading at the next regularly-scheduled city commission meeting.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'ERIK R. JOHNSON', written over a faint, illegible printed name.

Erik R. Johnson  
Assistant City Attorney

Enclosure

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE ENACTING ARTICLE 3-14 OF CHAPTER 3  
OF THE FARGO MUNICIPAL CODE RELATING TO CONFERENCE CENTER  
AND CITY LODGING TAX

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.

Article 3-14 of Chapter 3 of the Fargo Municipal Code is hereby enacted as follows:

ARTICLE 3-14 – CONFERENCE CENTER AND CITY LODGING TAX

3-1401. Definition.--

1. "Gross receipts" - shall mean receipts of retailers for the leasing or renting of a hotel or motel room or other accommodations occupied by the same natural person or persons for residential housing, for periods of fewer than thirty consecutive calendar days within the corporate limits of the city of Fargo.

2. "Retailer" - shall mean any person, firm or corporation in the business of leasing or renting hotel, motel or other accommodations for periods of fewer than thirty consecutive calendar days or one month.

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

ORDINANCE NO. \_\_\_\_\_

1 3-1402. Tax on gross receipts.--A tax is hereby imposed upon gross receipts as defined  
2 herein, which tax shall be computed on a monthly basis by each and every hotel, motel or other  
3 accommodations located within the corporate limits of the city of Fargo. Said tax must be in addition  
4 to the state sales tax on rental accommodations provided in chapter 57-39.2 and said tax must be in  
5 addition to the existing city lodging tax imposed pursuant to Fargo municipal code, article 3-13. The  
6 amount of such tax shall be three percent (3%) of the gross receipts to be initially placed in an  
7 improvement construction fund of the city of Fargo in accordance with the home rule charter of the  
8 city of Fargo, Article 3.V.

9 3-1403. Collection of tax.--The tax hereby imposed shall be computed by every retailer and  
10 paid to the city of Fargo. Such computation shall be on a monthly basis and payment for each month  
11 shall be made to the city on or before the 10th day of the following month. The payment shall be  
12 accompanied by a report indicating the amount of gross receipts for the reporting period and shall be  
13 certified by a certified public accountant or by the retailer, or managing officer thereof. The city may  
14 retain up to 3% of the total amount collected for administrative costs.

15 3-1404. Dedication of Tax Proceeds—Conference Center Capital Construction Fund.--There  
16 is hereby created a fund to be known as the conference center capital construction fund, and all taxes  
17 collected pursuant to this ordinance, less costs of administration as hereinabove provided, shall  
18 initially be placed in this fund and said fund, along with interest and other authorized investment  
19 earnings, shall be utilized for costs associated with construction of a conference center, at a location  
20 within the city of Fargo to be determined by a request for proposal process established by the board  
21 of city commissioners of the city, and with ongoing capital projects, maintenance, operation and  
22 functionally-related facilities (the "Projects"), all as the board of city commissioners of the city may  
23 select. Such expenditures may be used to acquire property; enter into agreements; make, install,  
construct or build improvements and engage in projects and activities as are necessary and appropriate  
for such purposes. Interest earnings on such proceeds may be utilized for other such capital  
improvements. Proceeds from such tax may be used to make direct payment for such expenditures  
or improvements or may be pledged to amortize bonds or other debt instruments which may be sold  
to finance such costs.

3-1405. Administration of fund.--The conference center capital construction fund shall be  
administered by the city director of finance unless otherwise established by the board of city  
commissioners by resolution or ordinance.

3-1406. Management, Operations, Maintenance and Budget.—Upon completion of  
construction of the Projects, the city will be responsible for the management, operations and  
maintenance of the Projects unless otherwise established by the board of city commissioners by

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

ORDINANCE NO. \_\_\_\_\_

1 resolution or ordinance. The city may enter into one or more agreements by which some or all of the  
2 tasks associated with such management, operations and maintenance are delegated to a third party.  
3 An operating budget for the conference center and functionally-related facilities shall be established  
4 annually by a person, firm or entity as determined by the board of city commissioners and such  
5 operating budget shall be submitted to the board of city commissioners for its approval.

6 3-1407. Term.—The collection of the tax imposed by this article shall be for a term not to  
7 exceed a period of twenty-five (25) years and the collection of the tax shall only be commenced once  
8 the board of city commissioners has identified a specific project in accordance with the requirements  
9 set forth in Article 3.V of the home rule charter of the city of Fargo. The date of commencement of  
10 the collection of said tax and the period for such collection shall be established either by amendment  
11 of this section or by separate ordinance. Furthermore, as provided by Article 3.V of the home rule  
12 charter of the city of Fargo, if no project is identified, and the collection of the tax is not implemented  
13 by December 31, 2028, authorization of the tax shall expire.

14 3-1408. Failure to comply—Penalty.--If any retailer shall fail to make payment as required  
15 by this article or to file the necessary report within the time provided, or, if upon audit, is found to  
16 owe additional tax, such retailer shall be subject to a penalty of 5% of the amount of tax due, plus  
17 interest of 1% of such tax for each month of delay or a fraction thereof. The board of city  
18 commissioners, if satisfied that the delay was excusable, may waive all or any part of such penalty  
19 and interest. Any penalty and interest paid shall be utilized in the same manner as other receipts  
20 under this chapter.

21 Section 2. Effective Date.

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

23 \_\_\_\_\_  
Timothy J. Mahoney, M.D., Mayor

(SEAL)

Attest:

First Reading:  
Second Reading:  
Final Passage:

\_\_\_\_\_  
Steven Sprague, City Auditor