

**TITLE 62.1
WEAPONS**

**CHAPTER 62.1-01
DEFINITIONS - GENERAL PROVISIONS**

62.1-01-01. General definitions.

As used in this title, unless the context otherwise requires:

1. "Dangerous weapon" includes any switchblade or gravity knife, machete, scimitar, stiletto, sword, dagger, or knife with a blade of five inches [12.7 centimeters] or more; any throwing star, nunchaku, or other martial arts weapon; any billy, blackjack, sap, bludgeon, cudgel, metal knuckles, or sand club; any slungshot; any bow and arrow, crossbow, or spear; any weapon that will expel, or is readily capable of expelling, a projectile by the action of a spring, compressed air, or compressed gas, including any such weapon, loaded or unloaded, commonly referred to as a BB gun, air rifle, or CO2 gun; and any projector of a bomb or any object containing or capable of producing and emitting any noxious liquid, gas, or substance. "Dangerous weapon" does not include a spray or aerosol containing CS, also known as ortho-chlorobenzamalonitrile; CN, also known as alpha-chloroacetophenone; or other irritating agent intended for use in the defense of an individual, nor does the term include a device that uses voltage for the defense of an individual, unless the device uses a projectile and voltage or the device uses a projectile and may be used to apply multiple applications of voltage during a single incident, then the term includes the device for an individual who is prohibited from possessing a firearm under this title.
2. "Direct supervision of an adult" means that an adult is present in such close proximity so as to be capable of observing and directing the actions of the individual supervised.
3. "Firearm" or "weapon" means any device that expels or is readily capable of expelling a projectile by the action of an explosive and includes any such device, loaded or unloaded, commonly referred to as a pistol, revolver, rifle, gun, machine gun, shotgun, bazooka, or cannon.
4. "Gaming site" means any room or premises licensed by the attorney general or by a city or county governing body to conduct legal gaming operations.
5. "Government building" means a building which is owned, possessed, or used by or leased to the state of North Dakota, or any of its political subdivisions.
6. "Handgun" means any firearm that is not designed to be fired from the shoulder, which has a barrel less than sixteen inches [40.64 centimeters] long, and which is capable of firing, by the energy of an explosive in a fixed metallic cartridge, an exposed projectile through a rifled bore. The term includes all firearms that are designed to be readily modified between rifle and pistol forms, if in compliance with the National Firearms Act [26 U.S.C. 5801-5872].
7. "Law enforcement officer" means:
 - a. A public servant authorized by law or by a government agency or branch to enforce the law and to conduct or engage in investigations or prosecutions for violations of law; or
 - b. A retired public servant in good standing who:
 - (1) Was authorized by law or by a government agency or branch for at least ten years to enforce the law and to conduct or engage in investigations or prosecutions for violations of law or who was separated from service due to a service-related physical disability;
 - (2) Maintains the same level of firearms proficiency as is required by the peace officers standards and training board for law enforcement officers, maintains the standards for qualifications in firearms training for active law enforcement officers as determined by the former agency of the individual in the state in which the individual resides, or maintains the standards used by a certified firearms instructor qualified to conduct a firearms qualification test for active duty officers in the state in which the individual resides;



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PREDETERMINER

- used to refer to the whole quantity or extent of a particular group or thing.
 "all the people I met" · "she left all her money to him" · "10% of all cars sold" · "he slept all day" · "carry all of the blame" · "four bedrooms, all with balconies" · "the men are all bearded"
synonyms: each of · each one of the · every one of the · every single one of the · every · each and every · every single · the whole of the · every bit of the · the complete · the entire · the totality of the · in its entirety · complete · entire · total · full · utter · perfect · all-out · greatest (possible) · maximum · everyone · everybody · each/every person · the (whole) lot · each one · each thing · the sum · the total · the whole lot · everything · every part · the whole amount · the total amount · the entirety · the sum total · the aggregate
antonyms: no · none of the · little · none · nobody · nothing
 - any whatever.
"he denied all knowledge" · "assured beyond all doubt"
 - used to emphasize the greatest possible amount of a quality.
"they were in all probability completely unaware" · "with all due respect"
 - informal*
dominated by a particular feature or characteristic.
"an eleven-year-old string bean, all elbows and knees"
 - the only thing (used for emphasis).
"all I want is to be left alone"
 - (used to refer to surroundings or a situation in general) everything.
"all was well" · "it was all very strange"
synonyms: each one · each thing · the sum · the total · the whole lot
antonyms: none
 - US dialect*
consumed; finished; gone.
"the cake is all"

ADVERB

all (adverb)

- used for emphasis.
 - completely.
"dressed all in black" · "she's been all around the world" · "all by himself"
synonyms: completely · fully · entirely · totally · wholly · absolutely · utterly · outright · thoroughly · altogether · quite · in every respect · in all respects · without reservation · without exception
antonyms: partly · not at all
 - consisting entirely of.
"all leather varsity jacket"
- (in games) used after a number to indicate an equal score.
"after extra time it was still two all"

NOUN

all (noun) · alls (plural noun)

- the whole of one's energy or interest.
"giving their all for what they believed"

ORIGIN

Old English *all*, *eall*, of Germanic origin; related to Dutch *al* and German *all*.

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Related searches

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Koppelman, Ben

From: Kramer, Samantha E.
Sent: Wednesday, February 10, 2021 12:39 PM
To: Koppelman, Ben
Subject: Ordinances

- Subsection 1 of Section [40-05-01](#) provides the authority for cities to enact ordinances.
- Section [40-05.1-06](#) provides the power to home rule cities to enact ordinances.

Samantha E. Kramer

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Koppelman, Ben

From: Kramer, Samantha E.
Sent: Monday, September 21, 2020 3:51 PM
To: Koppelman, Ben
Subject: Power to enact an ordinance

Hi Representative Koppelman,

This email is a follow-up to our phone conversation relating to the authority of city to enact an ordinance with a penalty.

The following provisions are the same sections we discussed on the phone with the addition of the reference to Section 12.1-01-05 and the Minot example.

North Dakota Century Code Section [40-05-01](#) sets forth the powers of all municipalities, Subsection 1 specifically authorizes a city "to enact or adopt all such ordinances....not repugnant to the constitution and laws of this state, as may be proper and necessary to carry into effect the powers granted to such municipality or as the general welfare of the municipality may require..." The same subsection further provides, "[t]he adoption of any such code or codes heretofore by any municipality is hereby validated. Fines, penalties, and forfeitures for the violation thereof may be provided within the limits specified in this chapter notwithstanding that such offense may be punishable also as a public offense under the laws of this state."

Section [40-05-06](#) provides "any ordinance....may not exceed one thousand five hundred dollars, and the imprisonment may not exceed thirty days for one offense."

Section [12.1-01-05](#) provides: "Except as provided in section 40-05-06, an offense defined in this title or elsewhere by law may not be superseded by any city or county ordinance, or city or county home rule charter, or by an ordinance adopted pursuant to such a charter, and all such offense definitions shall have full force and effect within the territorial limits and other jurisdiction of home rule cities or counties. **This section does not preclude any city or county from enacting any ordinance containing penal language when otherwise authorized to do so by law.**"(emphasis added)

The most frequent examples of cities creating ordinances carrying a penalty that I can think of are leash laws and restrictions on types of pets. For example, the city of Minot regulates the possession of pit bulls under section [7-34](#) and carries a penalty of a fine of up to \$1,500 and a term of maximum imprisonment.

Please let me know if I can provide additional information.

Samantha

Samantha E. Kramer

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Fargo Special Atty. Finding

II. The current prohibition of home-based sales likely does not violate North Dakota's statutory limitation on a city's authority regarding firearms.

It is unlikely that the current prohibition of home-based sales violates Section 62.1-01-03 of the North Dakota Century Code. That section limits the authority of a political subdivision regarding firearms as follows:

A political subdivision, including home rule cities or counties, may not enact any 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.

N.D. Cent. Code § 62.1-01-03. We found no North Dakota statutory provision addressing locations for the sale of firearms. In addition to the preemption section quoted above, state law provides that municipalities are allowed to enact zoning ordinances for the purpose of promoting health, safety, morals, or the general welfare of the community. See N.D. Cent. Code § 40-47-01; see also N.D. Cent. Code § 40-05.1-06(11). And municipalities may regulate and restrict the location and use of building, structures, and land for trade, industry, residence, or other purposes. N.D. Cent. Code § 40-47-01.

The question is whether a **zoning** regulation that restricts the commercial sale of firearms to certain areas is preempted by Section 62.1-01-03. Because North Dakota's preemption statute does not mention zoning, it is likely that the statute does not prohibit local zoning regulations that affect the locations where firearms may be sold. Courts in several other states with preemption statutes similar to North Dakota's (i.e., that do not mention zoning⁴) have concluded that local governments are allowed to exercise their right to regulate land use through zoning controls, including zoning laws that regulate where the commercial sale of firearms can take place:

- **Kentucky's** preemption statute does not mention whether zoning laws are preempted. See Ky. Rev. Stat. § 65.870(1) ("No existing or future city . . . may occupy any part of the field of regulation of the manufacture, sale, purchase, taxation, transfer, ownership, possession, carrying, storage, or transportation of firearms, ammunition, components of firearms, components of ammunition, firearms accessories, or combination thereof."). The Court of Appeals of Kentucky has held that the preemption statute did not prohibit zoning ordinances that restrict locations where gun shops can operate because zoning ordinances

⁴ By contrast, some states' preemption statutes explicitly **include** zoning regulations. See *Georgiacarry.org v. Coweta Cty.*, 655 S.E.2d 346, 347 (Ga. Ct. App. 2007). And other states' preemption statutes explicitly **exclude** zoning regulations. Compare Minn. § 471.633 (preempting city authority to regulate firearms), with Minn. Stat. § 471.635 (notwithstanding preemption, city may regulate location where firearms are sold).

Introduction

The federal Gun Control Act (GCA) requires that persons who are engaged in the business of dealing in firearms be licensed by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). Federal firearms licensees (FFL) are critical partners in promoting public safety because—among other things—they help keep firearms out of the hands of prohibited persons by running background checks on potential firearms purchasers, ensure that crime guns can be traced back to their first retail purchaser by keeping records of transactions, and facilitate safe storage of firearms by providing child safety locks with every transferred handgun and having secure gun storage or safety locks available any place where they sell firearms. A person who willfully engages in the business of dealing in firearms without the required license is subject to criminal prosecution, and can be sentenced to up to five years in prison, fined up to \$250,000, or both.

Determining whether your firearm-related activities require a license is a fact-specific inquiry that involves application of factors set by federal statute. This guidance is intended to help you determine whether you need to be licensed under federal law.

Note that some states have more stringent laws with respect to when a state-issued license is required for selling a firearm. Please consult the laws of the state to ensure compliance.

In addition, this guidance focuses on the question whether your firearm-related activities require you to obtain a license. There are other laws and regulations that govern the transfer of firearms—both between unlicensed individuals and from licensed dealers (e.g., unlicensed sellers may only lawfully sell to persons within their own state, and it is unlawful for either licensed or unlicensed sellers to sell firearms to persons they know or have reasonable cause to believe cannot lawfully possess them). **All persons who transfer firearms, regardless of whether they are engaged in the business of dealing in firearms, must ensure that any transfers are in compliance with federal, state and local laws.**

Questions & Answers On Getting A Federal Firearms License

Q

How do I become licensed?

A

The license application (called the ATF Form 7) is straightforward and can be found here: <https://www.atf.gov/firearms/apply-license>. In addition to the application itself, an applicant for a federal firearms license must also provide to ATF a photograph, fingerprints, and the license application fee, currently set at \$200 for the initial three-year period, and \$90 for each three-year renewal.

Q

What standards does ATF use to determine whether to give me a license?

A

ATF will approve an application for a federal firearms license if the applicant:

- Is 21 years of age or older;
- Is not prohibited from shipping, transporting, receiving or possessing firearms or ammunition;
- Has not willfully violated the GCA or its regulations;
- Has not willfully failed to disclose material information or willfully made false statements concerning material facts in connection with his application;
- Has a premises for conducting business; and
- The applicant certifies that:
 - the business to be conducted under the license is not prohibited by State or local law in the place where the licensed premises is located;
 - within 30 days after the application is approved the business will comply with the requirements of State and local law applicable to the conduct of the business;
 - the business will not be conducted under the license until the requirements of State and local law applicable to the business have been met;
 - the applicant has sent or delivered a form to the chief law enforcement officer where the premises is located notifying the officer that the applicant intends to apply for a license; and
 - secure gun storage or safety devices will be available at any place in which firearms are sold under the license to persons who are not licensees.

Q

What obligations will I have once I become licensed?

A

Licensed firearms dealers are subject to certain requirements under federal law, including running background checks on any non-licensed person prior to transferring a firearm (subject to narrow exceptions), keeping firearms transaction records so that crime guns can be traced to their first retail purchaser, and ensuring safety locks are provided with every handgun, and available in any location where firearms are sold.

NORTH DAKOTA HOUSE OF REPRESENTATIVES



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Representative Ben Koppelman

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COMMITTEES:
Finance and Taxation
Government and Veterans Affairs

December 30, 2020

Honorable Wayne Stenehjem
Attorney General
State Capitol
Bismarck, ND 58505

Dear Mr. Stenehjem:

Mr. Andrew Curtis, a resident of Fargo, North Dakota, attempted to obtain a federal firearm license from the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) in order to process Internet firearm sale transactions from his residence in Fargo. According to a April 18, 2016, letter from Erik R. Johnson, City Attorney, City of Fargo, to Jim Gilmour, Director of Planning and Development, City of Fargo, the ATF expressed concern that a license to sell firearms out of Mr. Curtis' residence would be a violation of Fargo Municipal Code Ordinance § 20-0403(C)(5)(e), which provides "[t]he sale of firearms and/or ammunition, and the production of ammunition for sale or resale are prohibited as home occupations." North Dakota Century Code Section 62.1-01-03 prohibits a political subdivision from enacting any 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."

In a February 5, 2010, opinion, you indicated "[m]unicipal authorities, under a general grant of power, cannot adopt ordinances which infringe the spirit of a state law or are repugnant to the general policy of the state.... The preemption doctrine is based upon the proposition that a [political subdivision], as an agent of the state, cannot act contrary to the state." N.D.A.G. 2010-L-01.

I am respectfully requesting an Attorney General opinion as to whether Fargo Municipal Code § 20-0403(C)(5)(e) violates North Dakota Century Code Section 62.1-01-03.

Sincerely,

Representative Ben Koppelman
District 16

BK/HF
Enc.



Office of the City Attorney

City Attorney
Erik R. Johnson

Assistant City Attorney
Nancy J. Morris

April 18, 2016

Jim Gilmour
Director of Planning and Development
City Hall
200 Third Street North
Fargo, ND 58102

RE: Appeal to Andrew Curtis to Board of Adjustment-Home Occupations

Dear Mr. Gilmour:

This opinion concerns Andrew Curtis' appeal to the Board of Adjustment of the City of Fargo, North Dakota, to hear and decide an appeal of a decision made by an administrative official of the City of Fargo.

Factual and Procedural Background

Andrew Curtis is a Fargo resident residing at 3420 Birdie Street North in the City of Fargo. Mr. Curtis is attempting to obtain a federal firearm license from the Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF") in order to process internet firearm sale transactions from his residence in the City of Fargo. Mr. Curtis has described the contemplated business operating in the following manner: a buyer would order the firearm online and the firearm would be shipped to the Mr. Curtis's residence. The buyer would then proceed to Mr. Curtis's residence where the buyer would complete necessary paperwork and a background check for the firearm transaction. Once all of the paperwork and other federal requirements were satisfied, Mr. Curtis would provide the buyer with the firearm at his residence. In short, Mr. Curtis wishes to sell firearms out of his residence in the City of Fargo.

The ATF raised concerns to Mr. Curtis about the City of Fargo's zoning ordinances prohibiting the home occupation of selling firearms. Thereafter, Mr. Curtis requested



permission from a City of Fargo administrative official to operate his contemplated business as a home occupation (i.e., from his residence). The administrative official informed Mr. Curtis that Mr. Curtis cannot operate an internet firearm sales business from his residence as Fargo Municipal Code Ordinance § 20-0403(C)(5)(e) prohibits the sale of firearms and/or ammunition as a home occupation.

On March 9, 2016, Mr. Curtis filed an Appeal of an Administrative Decision which appealed the administrative official's decision that he could not operate an internet firearm sales business out of his residence in the City of Fargo. Mr. Curtis argues in his Appeal that North Dakota Century Code provision 62.1-01-03 prohibits the City of Fargo from enacting a zoning ordinance such as Fargo Municipal Code section 20-0403(C)(5)(e). For the reasons set forth below, it is my opinion that the City of Fargo had the authority to enact Fargo Municipal Code § 20-0403(C)(5)(e) and that the Board of Adjustment should affirm the administrative official's decision to not allow Mr. Curtis to operate his contemplated business at his residence in the City of Fargo.

Opinion

Municipalities, such as the City of Fargo, are allowed under North Dakota law to enact zoning ordinances for the purpose of promoting health, safety, morals, or the general welfare of the community. See N.D.C.C. § 40-47-01; see also N.D.C.C. § 40-05.1-06(11)(providing that cities such as Fargo have the power to provide for zoning, planning, and subdivision of public or private property within city limits). Municipalities may regulate and restrict the location and use of buildings, structures, and land for trade, industry, residence, or other purposes. N.D.C.C. § 40-47-01. All zoning ordinances must be designed to promote the health and general welfare of the community. N.D.C.C. § 40-47-03(3). All zoning ordinances must also be reasonable. Mertz v. City of Elgin, Grand County, 2011 ND 148, ¶ 7, 800 N.W.2d 710. A zoning ordinance will be invalidated if it bears no reasonable relationship to a legitimate government purpose, that is arbitrary, or that deprives a property owner of all or substantially all reasonable uses of land. Id. Unless shown to be unreasonable or arbitrary, an ordinance is presumed to be valid. Id.

Fargo Municipal Code section 20-0403(C) provides use regulations for areas zoned as residential. Specifically, the section provides home occupation regulations which are intended to permit residents to engage in home occupations, while ensuring that home occupations will not be a detriment to the character and livability of the surrounding neighborhood. There are specific home occupation uses which are prohibited under section 20-0403(C)(5). Namely, as it relates to this matter, section 20-0403(C)(5)(e) provides:

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.

Effectively, section 20-0403(C)(5)(e) prohibits Mr. Curtis from operating his contemplated business selling firearms from his residence in the City of Fargo. While Mr. Curtis appears to acknowledge that section 20-0403 prohibits his intended use of his residence to sell firearms, he believes that section 20-0403 is invalid pursuant to North Dakota Century Code provision 62.1-01-03. That provision provides:

A political subdivision, including home rule cities or counties, may not enact any 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.

Mr. Curtis's argument is that Fargo Municipal Code section 20-0403(C)(5)(e) which prohibits the sale of firearms as a home occupation is an ordinance relating to the purchase and sale of firearms which is more restrictive than state law and therefore the ordinance is void.

Mr. Curtis does not point to any state statute that would permit him to sell firearms as a home occupation out of his residence. Instead, as laid out above, the North Dakota legislature has expressly provided authority to municipalities, such as the City of Fargo, to enact zoning ordinances which restrict the use of home residences. Fargo Municipal Code section 20-0403(C)(5)(e) promotes the health, safety, and general welfare of the community by not allowing residents to have the home occupation of selling firearms. The City of Fargo, in enacting the ordinance, did not act arbitrarily and the ordinance bears a reasonable relationship to a legitimate government interest (the health, safety, and general welfare of the community). Further, the ordinance does not deprive Mr. Curtis of all or substantially all reasonable uses of his land, as Mr. Curtis may use the land as his residence.

This opinion is supported by other jurisdictions who have considered similar situations with nearly identical state statutes. For instance, in a Kentucky case, a firearms dealer argued that a city zoning ordinance which prevented him from obtaining licenses to establish gun shops at certain locations within commercial districts was preempted by a state statute providing that no city could occupy any part of the field of regulations of the transfer of firearms. See Peter Garrett Gunsmith, Inc. v. City of Dayton, 98 S.W.3d 517, 518-19 (Ky. Ct. App. 2002). The court found that the city zoning ordinance was valid because zoning ordinances which regulation the locations where gun shop businesses may operate, do not occupy any part of the field of regulation of the transfer, ownership, possession, carrying or

Jim Gilmour
Page 4 of 4

transportation of firearms. Id. at 520. Instead, zoning ordinances represent regulations in the field of land use which is a field of regulation that cities have authority to control. Id.

Likewise, in a case in Michigan federal court, a firearms dealer sought review of an ATF decision denying his application for a federal firearms license upon the ground that dealing firearms from a dealer's home would have been prohibited by the city's zoning laws. Morgan v. U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms & Explosives, 473 F.Supp.2d 756 (E.D. Mich. Feb. 9, 2007). The firearms dealer argued that a Michigan statute which provided that a local unit of government shall not impose, enact, or enforce any ordinance or regulation pertaining to, or regulate in any other manner the ownership, registration, purchase, sale, transfer, transportation, or possession of pistols or other firearms except as provided by federal or state law prohibited the city from passing zoning ordinances which had the effect of not allowing him to sell firearms from his residence. Id. at 768. The Court disagreed with the firearms dealer and found that the city had the power, despite the Michigan state law, to pass zoning ordinances which had the effect of prohibiting the firearm dealer from selling firearms from his residence. Id. at 768-69.

In sum, the North Dakota Century Code provides that municipalities, such as the City of Fargo, have the power to enact zoning ordinances for the purpose of promoting health, safety, morals, or the general welfare of the community. Further, there is no North Dakota law which permits a person to operate a firearm selling business from his residence or to have firearm sales as a home occupation. It is my opinion that Fargo Municipal Code section 20-0403(C)(5)(e) is valid and not prohibited by state law.

Sincerely,



Erik R. Johnson

ERJ/lmw



STATE OF NORTH DAKOTA
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Wayne Stenehjem
ATTORNEY GENERAL

January 5, 2021

Rep. Ben Koppelman
District 16
2223 10th Court West
West Fargo ND 58078

Dear Representative Koppelman:

I am responding on behalf of the Attorney General to your December 31, 2020, request for an opinion. You indicate that a resident of the city of Fargo has attempted to obtain a federal firearm license from the ATF in order to process internet firearm sales from his residence in Fargo. The city of Fargo issued a decision in 2016 to Mr. Curtis that selling firearms out of his residence would violate the city's zoning ordinance. You ask this office to determine whether the city's municipal code violates state law.

Although a legislator may request an opinion from this office, there are several situations that are unsuited for an opinion. These include when the question presented calls for interpreting a local ordinance, and when the matter should be, or already has been, addressed by the political subdivision's legal advisor.

We are aware that this issue has been before the City of Fargo for several months, and that local city residents have protested both the existing zoning ordinance and, conversely, making any changes to the existing ordinance. A city attorney has a statutory duty to advise city officials on legal matters. The Fargo City Attorney conducted extensive legal research on the issue before the city commission and has provided a comprehensive legal analysis of the pros and cons of the existing ordinance and of proposed changes. We had an opportunity to review this legal research and analysis, and did not disagree with it.

Ultimately, however, it is up to the governing body to make a decision, not this office. State law already provides a method by which residents who disagree with a city's zoning decision or who may be affected by a city's zoning ordinance can challenge it, administratively or through the civil court process. As it appears that Mr. Curtis has been pursuing this issue against the city of Fargo for several years, he may wish now to consult an attorney in private practice who can advise him on his civil options.

In view of the foregoing, we must respectfully decline to issue an opinion on whether the Fargo Municipal Code Ordinance § 20-0403(C)(5)(e) violates state law.

Sincerely,

Troy Seibel
Chief Deputy

