March 31, 2021
Senate Judiciary Committee
HB 1248
Sen. Diane Larson, Chair

For the record, I am Stephanie Dassinger. I am appearing on behalf of the North Dakota League of Cities. The League of Cities represents the 357 incorporated cities in North Dakota. I am the deputy director and attorney for the League. The League opposes HB 1248 as it is currently written.

The League's opposition to the bill centers around Section 2. As written, HB 1248 clarifies an ambiguity in the code with relation to whether North Dakota Century Code Section 62.1-01-03, relating to whether the reference to ordinance include a city's zoning ordinance. This clarification brought to the League's attention that an additional ambiguity exists about whether generally applicable city codes would apply to the "purchase, sale, ownership, possession, transfer of ownership, registration, or licensure of firearms, dangerous weapons, and ammunition." For example, a question exists about whether zoning code, building code, or health codes related to retail businesses apply to a retail business engaged in the sale of firearms or ammunition. I do not believe the intent of this bill was to exempt these businesses from all regulation.

To clarify this issue, the League requests this committee adopt an amendment inserting the word "solely" after "other ordinance" on page 2, line 22. Under this amendment, a city could still apply general zoning regulations to a retail store selling firearms and ammunition; however, a city could not adopt specific regulations relating to that same business.

Additionally, in the House the language on page 2, lines 26 to 29 was added to the bill. This language would allow someone who brought a lawsuit under this section of code to recover attorney fees. This provision is troublesome as it creates a disincentive for an individual to settle any lawsuit or to resolve issues that come up without litigation. Additionally, under current law, there are some instances where a plaintiff could already recover attorney fees for this type of litigation. As such, the League requests that an amendment be adopted removing the language from the bill.

The League respectfully requests the committee either amend the bill or make a do not pass recommendation on HB 1248.

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1248

Page 2, line 21, remove "1."

Page 2, line 22, after "other ordinance" insert "solely"

Page 2, remove lines 26 through 29.

Renumber accordingly

Sixty-seventh
Legislative Assembly
of North Dakota

FIRST ENGROSSMENT

ENGROSSED HOUSE BILL NO. 1248

Introduced by

Representative B. Koppelman

A BILL for an Act to amend and reenact sections 37-17.1-29 and 62.1-01-03 of the North Dakota Century Code, relating to the possession of a dangerous weapon; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 37-17.1-29 of the North Dakota Century Code is amended and reenacted as follows:

37-17.1-29. Firearms and dangerous weapons in emergencies.

1. Notwithstanding any other law, a person acting on behalf or under the authority of the state or a political subdivision may not do any of the following during a declared emergency:
   a. Prohibit or restrict the otherwise lawful possession, use, carrying, transfer, transportation, storage, or display of a firearm, dangerous weapon, or ammunition;
   b. Seize or confiscate, or authorize the seizure or confiscation of, any otherwise lawfully possessed firearm, dangerous weapon, or ammunition unless the person acting on behalf of or under the authority of the state or political subdivision is defending that person or another from an assault, arresting an individual in actual possession of a firearm, dangerous weapon, or ammunition for a violation of law, or seizing or confiscating the firearm, dangerous weapon, or ammunition as evidence of a crime; or
   c. Require registration of any firearm, dangerous weapon, or ammunition for which registration is not otherwise required by law.
2. Subdivision a of subsection 1 as it relates to transfer of a firearm, dangerous weapon, or ammunition does not apply to the commercial sale of firearms, dangerous weapons,

or ammunition if an authorized authority has ordered an evacuation or general closure of businesses in the affected area.

3. Any individual aggrieved by a violation of this section may commence a civil action against any person who subjects the individual, or causes the individual to be subjected, to an action prohibited by this section.

4. In addition to any other remedy, an individual aggrieved by the seizure or confiscation of a firearm, dangerous weapon, or ammunition in violation of this section may bring an action for the return of the firearm, dangerous weapon, or ammunition, or the value of the firearm, dangerous weapon, or ammunition, if the firearm, dangerous weapon, or ammunition is no longer available, in the district court of the county in which that individual resides, in which the firearm, dangerous weapon, or ammunition is located, or in which the seizure or confiscation occurred.

5. In any action to enforce this section, the court shall award a prevailing plaintiff costs and reasonable attorney's fees.

6. For purposes of this section, "dangerous weapon" and "firearm" have the same meaning as in section 62.1-01-01.

SECTION 2. 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 and dangerous weapons - Civil action.

1. A political subdivision, including home rule cities or counties, may not enact a zoning ordinance or any other ordinance solely relating to the purchase, sale, ownership, possession, transfer of ownership, registration, or licensure of firearms, dangerous weapons, 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. In a successful action brought by a person under this subsection, the court shall order the political subdivision to pay the reasonable attorney's fees and costs of the aggrieved person.~~

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure.