

January 25, 2023

House Energy and Natural Resources Committee
HB 1340
Rep. Todd Porter, Chairman

Mr. Chairman and Members of the Committee,

We, the Board of City Commissioners for the city of Fargo, unanimously oppose House Bill 1340 and request the Committee provide a Do Not Pass recommendation.

House Bill 1340 is a second attempt to invalidate zoning regulations which the city of Fargo ("Fargo") has had in place for more than fifteen years which prohibit the sale of firearms and ammunition and the production of ammunition for sale as a home occupation. In 2021, the legislative assembly passed HB 1248 which was the first attempt to invalidate Fargo's home occupation zoning ordinances regarding the sale of firearms and ammunition. Fargo correctly determined that HB 1248 did not void its home use occupation ordinances. However, Fargo did not merely rely on its own interpretation. Rather, Fargo commenced a declaratory judgment action in district court against the State of North Dakota requesting the court determine whether HB 1248 had the effect of voiding Fargo's home occupation zoning ordinances which prohibited the home occupation of selling firearms and ammunition. After extensive briefing and argument on the issues, the court ruled in Fargo's favor and found that Fargo properly utilized its home rule powers to regulate home use occupations and that HB 1248 did not void Fargo's ordinances prohibiting the sale of firearms and ammunition as a home use occupation. Nevertheless, dissatisfied with the court's determination, HB 1340 is a second attempt to invalidate Fargo's zoning regulations.

The North Dakota State Constitution provides the legislative assembly must provide by law for the establishment and exercise of home rule in counties and cities. Article VII, § 6, N.D. Const. The Constitution specifically provides that the purpose of the home rule constitutional requirement is "to provide for the maximum local self-government by all political subdivisions with a minimum of duplication of functions." Article VII, § 1, N.D. Const. In other words, the purpose of home rule charters is to provide for local control. As required by the Constitution, the legislative assembly established North Dakota Century Code chapter 40-05.1 (titled "Home Rule in Cities") to provide a mechanism for a city to frame and adopt a home rule charter.

In 1970, Fargo adopted a Home Rule Charter through a city election. Fargo's Home Rule Charter provides for numerous powers including powers specific to the ability to zone public and private property within its city limits and extraterritorial zoning jurisdiction. Fargo uses its zoning powers to regulate and restrict the location and use of buildings, structures, and land for trade, industry, residence, or other purposes.

Fargo utilizes its zoning powers to place various uses (commercial, industrial, agricultural, residential, etc.) into their own respective zones. The purpose of this zoning is to provide for harmonious and complementary land usage and Fargo attempts to do so by allowing land uses

that will not conflict with each other in given geographic locations. This similar to how almost every other city in North Dakota and the country utilizes its own zoning powers.

Like almost every other city in this country, Fargo has zoning regulations that limit the uses in residential zones to "household living." This is based on the idea that retail sales, restaurants, and other commercial uses are not compatible with residential living. Most people do not want to have a fast-food restaurant and a bar as their two neighbors. However, like Fargo, most cities allow exceptions for "home occupations." These exceptions allow people to work out of their home as long as (a) their occupation does not become the principal use of the home and (b) the activities surrounding the occupation do not disturb the neighbors.

Fargo's Municipal Code 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. However, there are six specific uses which Fargo expressly prohibits because the uses will be a detriment to the character and livability of the surrounding neighborhood. These six prohibited uses are: vehicle and large equipment repair; dispatch centers; mortuaries; animal care, grooming or boarding facilities; adult entertainment centers; and firearms and ammunition sales and production.

Fargo's home occupation use regulations have been part of the Fargo Municipal Code for more than fifteen years. During that time, Fargo has heard from residents who disagree with the prohibition of firearm and ammunitions sales as a home occupation and this matter has been debated and discussed at Fargo's Planning Commission and its City Commission. However, Fargo has continually determined that it wishes to keep its home use regulations, including the prohibition on the six home use occupations. Unhappy with this decision, a handful of residents have requested the legislative assembly take away local control of a local issue from Fargo and pass a state law which is solely aimed at attempting to void Fargo's home occupation use ordinances.

With this background, we want to emphasize that the home occupation uses available to residents of Fargo are a local issue for Fargo, not the legislative assembly. Fargo's home occupation uses solely govern the residents of Fargo – no one else. It is well established that the business of organizing land development in a city should be left to each city. Cities such as Fargo should be allowed to prohibit commercial businesses, restaurants, bars and industrial plants from building and residing in residential neighborhoods. Likewise, cities should be allowed to prohibit adult entertainment centers, mortuaries, dispatch centers, and firearm and ammunition sellers from operating in single family homes, condominiums, and apartments. Fargo does not prohibit the sale of firearms and ammunition in Fargo. In fact, there are likely more firearms and ammunition available in Fargo – in both large retail stores and small businesses – than in any other city in North Dakota. Fargo is merely prohibiting the sale of firearms and ammunition as a home occupation in residential neighborhoods. This is a purely local issue which should be left to the locality to determine – as required by the North Dakota Constitution.

We also want to address the unintended effects of HB 1340. While we assume that HB 1340 is an attempt to void Fargo's ordinances prohibiting the home occupation of firearm and ammunition sales, this bill – as written – will have much larger unintended consequences. In its current form, HB 1340 would arguably prohibit any city from having any zoning ordinance which in any way relates to the sale of firearms and ammunition. As such, cities would not be allowed to zone commercial firearm stores to commercial or any other zoning districts. Instead, ABC Guns, Inc. could decide to build a large box store in any zoning district it desired. In Fargo, this

would mean that ABC Gun could purchase 10 residential lots on Elm Street in a heavily residential neighborhood, tear down the homes, and build its flagship store with a large parking lot. We have a hard time imagining this is the intent of HB 1340.

Additionally, while Fargo, like other cities, allows various home use occupations, it also has various regulations in its zoning ordinances and building code 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. In Fargo, these regulations relate to signage (limit of a single one square foot sign which cannot be illuminated), exterior appearance (no commercial lighting, parking lots, etc.), outdoor activities (i.e., everything must be inside), number of customers per day (4 to 12 depending on type of use), time (customers allowed 7 a.m. to 9 p.m.), and operational impacts (odor, vibration, noise, electrical interference, etc.). These regulations apply to all home use occupations in Fargo. However, HB 1340 will arguably exempt a single home use occupation – the sale of firearms and ammunition – from all of these regulations. This will result in preferential treatment for a single home occupation use. In effect, a person using their residence for the sale of firearm and ammunition will arguably be allowed unlimited customers at any time of the day, unlimited signage and lighting, no restrictions on noise, and no restrictions on the exterior appearance or operational impacts. We find it difficult to believe that this is the intent of HB 1340, but we fully believe that people will make the argument this is the effect of HB 1340.

In sum, the North Dakota Constitution requires the legislative assembly provide home rule powers to cities and counties for the purpose of providing the maximum amount of local self-government. HB 1340 does the exact opposite. It is solely intended to strip away local self-government control and instead have the State of North Dakota determine, in place of the residents of Fargo, the proper home occupations which must be allowed in Fargo to the detriment of the character and livability of the surrounding neighborhood.

For the reasons described above, the Board of City Commissioners of the city of Fargo unanimously **OPPOSES** House Bill 1340 and respectfully urges a **DO NOT PASS** recommendation.

Sincerely,

Dr. Timothy J. Mahoney
Mayor

Arlette Preston
Deputy Mayor

Denise Kolpack
City Commissioner

Dave Piepkorn
City Commissioner

John Strand
City Commissioner