

April 3, 2023

Senate Judiciary Committee  
HB 1340  
Senator Diane Larson, Chairman

Madam Chair and Members of the Committee,

We, the Board of City Commissioners for the city of Fargo, 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 is similar to how other cities in North Dakota and the country utilize their 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.

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,

A handwritten signature in black ink, appearing to read "Timothy J. Mahoney". The signature is fluid and cursive, with a large initial "T" and "M".

Dr. Timothy J. Mahoney  
Mayor