

2021 HOUSE POLITICAL SUBDIVISIONS

HB 1248

2021 HOUSE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Room JW327B, State Capitol

HB 1248
2/11/2021

Relating to alcohol event permits and prohibitions for individuals under twenty-one years of age, and to provide a penalty

Chairman Dockter: (3:33). Opened the hearing.

Representatives	
Representative Jason Dockter	P
Representative Brandy Pyle	P
Representative Mary Adams	P
Representative Claire Cory	P
Representative Sebastian Ertelt	P
Representative Clayton Fegley	P
Representative Patrick Hatlestad	P
Representative Mary Johnson	P
Representative Lawrence R. Klemin	P
Representative Donald Longmuir	P
Representative Dave Nehring	P
Representative Marvin E. Nelson	P
Representative Luke Simons	P
Representative Nathan Toman	P

Discussion Topics:

- Definition of dangerous weapons
- Authority of cities

Rep. B. Koppleman: Introduced the bill. Testimony #6454.

Andrew Kordonowy: In favor, testimony #6433.

Edward Krystosek: In favor, testimony #6284.

Tony Gehrig: In favor, testimony #6301.

Erik Johnson, City Attorney for Fargo: In opposition, testimony #6292.

Additional written testimony:

#'s 5904, 6161, 6259, 6117, 6324, 6350, 6429.

Chairman Dockter:(4:44). Closed the hearing

Carmen Hickle, Committee Clerk

**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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Dictionary

Dictionary

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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*.

Translate all to Choose language ▾

Related searches

wear with all
 where with all
 wear with all phrase
 where with all meaning
 define at all
 wherewithal
 all means all
 all words definition

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

Senior Counsel
Legislative Council
600 East Boulevard Ave
Bismarck, ND 58505
(701)328-2916
sekramer@nd.gov

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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Legislative Council
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sekramer@nd.gov

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).

FFL (ATF Regs.)

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



STATE CAPITOL
600 EAST BOULEVARD
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Representative Ben Koppelman

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2223 10th Court West
West Fargo, ND 58078-8529

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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
OFFICE OF ATTORNEY GENERAL

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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

HB 1248

62.1-01-03. Limitation on authority of political subdivision regarding firearms. 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.

North Dakota Constitution ARTICLE I - Section 7. Every citizen of this state shall be free to obtain employment wherever possible, and any person, corporation, or agent thereof, maliciously interfering or hindering in any way, any citizen from obtaining or enjoying employment already obtained, from any other corporation or person, shall be deemed guilty of a misdemeanor.

I have twice had to go in front of public officials to get them to remove restrictions on firearms for the lands they oversee. With all the cities and political subdivisions violating the NDCC 62.1-01-03 I feel the law needs strengthening and clarification to keep the public entities from violations of the citizens of North Dakotas rights. We have had cities restricting the ability for individuals to obtain the FFL licensing for employment, violating not only NDCC but also the right to work expressed in the ND Constitution.

Andrew Kordonowy

From: Edward Krystosek
5548 47th Ave S
Fargo, ND 58104

To: Political Subdivision Committee
North Dakota House of Representatives

I am in full support of HB 1248. The city of Fargo is attempting to circumvent state law with a highly dubious approach, by using a land development code, section 20-0403 c 5 e, to prohibit federally licensed dealers from operating out of their homes. Fargo Land Development code currently prohibits me, an Federally Licensed Dealer from operating from my home and requires me to procure a location in a commercial zone which costs me additional expenses to operate a part time business.

https://library.municode.com/nd/fargo/codes/code_of_ordinances?nodeId=CH20LADECO_ART20-04USRE_S20-0403ACUS

ND Century Code 62.1-01-03. Limitation on authority of political subdivision regarding firearms. Clearly states;

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.

The disturbing part of this situation is that if Fargo is allowed to ignore state law in this regard, what other laws will they choose to ignore? The Fargo City Commission believes they do not have to follow state law, if they use a Land Development Code to prohibit the activity of Firearms Sales as a home-based business. I ask that you send this bill to the floor and when this bill passes, hold the city of Fargo to the letter of the law as you would any citizen of this state.

Respectfully,

Edward Krystosek

Fargo, ND

All,

My name is Tony Gehrig, I am writing in support of HB1248, specifically the section regarding cities using Land Development Codes to deny residents the ability to sell or transfer firearms and ammo out of their homes. In addition to this letter I would also enjoy the opportunity to speak with you virtually during your committee hearing.

Although I am a Fargo City Commissioner, I do not represent the other commissioners today.

Currently, Fargo uses our LDC to prohibit the sale or transfer of firearms and ammunition out of private homes. I believe this is directly in conflict with state law.

I could argue that home based sales are safer statistically than store fronts, per the ATF. I could point out that home based sales are how 70% of firearms are transferred in North Dakota. I could also point out that there have been no good reasons given why this prohibition was placed in the LDC in the early 2000's. Instead I would ask that the committee look at the plain language of state law and compare it to what Fargo has done within our city limits regarding firearm transfers and sales.

I would appreciate just a few minutes of your time to explain why I feel this is important.

Thank you.

Tony Gehrig

701 367 8013

Office of the City Attorney

City Attorney
Erik R. Johnson

Assistant City Attorney
Nancy J. Morris

Testimony of Erik Johnson
Fargo City Attorney

February 11, 2021
House Political Subdivision Committee
HB 1248
Rep. Jason Dockter, Chair

Mr. Chairman and Members of the Committee,

My name is Erik Johnson and I am appearing on behalf of the City of Fargo as its City Attorney. House Bill 1248 consists of two sections that are both related to regulations by cities of firearms and dangerous weapons but they apply in two totally different situations and, therefore, my comments are really divided into those separate parts.

EXECUTIVE SUMMARY. The City of Fargo is opposed to this bill because by allowing rioters to be lawfully able to carry, possess and use “dangerous weapons”, which will most likely cause harm to other citizens or potentially be used against law enforcement. Also, Fargo is opposed to this bill—a bill that would unreasonably restrict a city’s ability to maintain the integrity of residentially-zoned neighborhoods and to require that retail gun sales occur in commercial or industrially-zoned areas. More specifically, this bill targets the City of Fargo but, in so doing, it throws the baby out with the bath water--this bill would do harm to the zoning regulatory authority of every city, township and county in the state.

SECTION 1 – AMENDMENT TO ADD “DANGEROUS WEAPONS”. Cities are already precluded from prohibiting persons from carrying, possessing, using, et cetera (we’ll say “carrying”) firearms during any declared state of emergency under N.D.C.C. §37-17.1-29. This bill would also preclude cities from “carrying” “dangerous weapons” during a declared state of emergency. The rather extensive, but not exclusive, list of items included in the statutory definition of “dangerous weapon”, attached to this testimony, is found at N.D.C.C. §62.1-01-01

Sub. 1. The items on the list most alarming to me include the machete, sword, martial arts weapons; bludgeon, bow and arrow or crossbow, or “any projector of a bomb or any object containing or capable of producing and emitting any noxious liquid, gas, or substance”.

Emergency situations are already chaotic enough without continuing to further minimize law enforcements ability to limit dangerous weapons, which will most likely cause harm to other citizens or potentially be used against law enforcement. An emergency would be declared in a riot/mob situation, not during a peaceful protest, therefore there is no necessity for persons to be so armed for self-protection purposes, as once an emergency is declared they must disperse. Law enforcement must have the ability to prohibit and enforce dangerous weapon possession in these instances and, therefore, this amendment should not be enacted.

SECTION 2. AMENDMENT TO PROHIBIT CITY ZONING RE FIREARMS ETC. The second part of this bill is a response to a situation in my city, in particular, to Fargo's home occupation zoning regulations. The sale of firearms and ammunition and the production of ammunition for sale or resale are very much permitted in the city of Fargo in Commercial and Industrial zoning districts. What Fargo's zoning law does—what this bill is intended to remedy--is the restricting of sale, et cetera, of firearms and ammunition out of one's house, apartment or condominium.

Fargo’s home occupation zoning ordinances allow people living in houses, apartment units and condominium units to work and to make money out of their home. The general notion is that if your neighbors can't really detect any commercial activity being undertaken then why not allow someone to use their home as part of their job--their occupation. Fargo’s home occupation zoning regulation says that as long as you're home occupation consumes less than one-fourth of the floor space of your home and so long as you do not have employees coming to the site and you have four or fewer customer visits per day and 12 or fewer per week, then your “home occupation” is permissible. You don't need any special permit from City Hall you can just do it. Now, if your home occupation will require employees coming to

your home or you have too much customer traffic (i.e. ≥ 5 /day or 13/week) then you may need to “give notice” to your neighbors, have a public hearing at the planning commission and get approval for a “major home occupation”. **There are; however, a few “home occupations” that are outright prohibited in Fargo’s zoning law. They are car or truck repair shops, dispatch centers, animal care grooming or boarding facilities, adult entertainment activities, mortuaries, and—last but not least-- the sale of firearms and/or ammunition and the production of ammunition for sale or resale. F.M.C. §20-0403.C.5.e.**

One thing that really important to bear in mind, here, is that NO CITY in North Dakota is required to allow any “home occupations”. In other words, any city could simply provide that all commercial (retail, office, etc.) and industrial uses must occur in commercial and industrially-zoned areas, period. Then there were be no “home occupations” and, therefore, there would be no list of prohibited home occupations. If that were the case, we might not be talking here today. Instead, what Fargo and presumably most cities have done is to create reasonable regulations that are designed to protect the quality of “residential living”—a place where people enjoy living, free of unnecessary commercial traffic, a safe area for children to play, a quiet area that is free of industrial noise or smells, while still allowing people to “work from home” with reasonable limitations. The proponents of this bill do not think that Fargo’s home occupation law is reasonable and lawful and they want something done about it. They have asked the City Commission to “do something about it” and the City Commission has taken action on this. The City Commission has asked the Planning Department to include this very issue on the list of things to be considered in a project already underway by the Planning Department, with the assistance of professional consulting firms, of reviewing and “overhauling” its 25-year-old zoning law. During the public meetings in Fargo over the past year, or so, some city leaders have urged that Fargo’s prohibiting of firearm sales as a home occupation be repealed and others, including members of the public, members of our planning commission

and members of our city commission, said they want the prohibition retained for a number of reasons. Some simply don't want the sale of firearms and or ammunition in their neighborhood. Some say they are not worried about their next-door neighbor, himself or herself, but they worry about the strangers—customers—that come and go from their neighbor's home--they don't know the backgrounds of those customers. For whatever reason, there have been a significant number of people that would like this law that has been on the books for 20 years, to simply remain in place.

So, that is a bit of the background in Fargo, itself. Now, I would like to present a couple arguments. One thing should be very clear in all of this--Fargo permits firearms and ammunition sale, resale and manufacture, period. There are commercial and industrially zoned areas throughout the city where those activities may, and do, occur. There are several retail gun shops, repair shops, et cetera, in Fargo. That is not in issue, here. House Bill 1248 is designed to restrict how cities such as Fargo regulate commercial activities in residential neighborhoods and in apartments and condominiums. **We oppose this bill on two grounds:**

First, it is well established in state law that the business of organizing land development in a city should be left to each city. Our state statutes already contain a well-developed set of laws and procedures for each county, township and city that allow them to create zoning districts and to lay out and plat development. Cities should be able to prohibit commercial car and truck repair in your neighborhood and to prohibit the boarding of pets (think "barking dogs"!) in your neighborhood. Cities should be able to prohibit adult entertainment centers, mortuaries, and dispatch centers from being operated out of single family homes or apartments. And, YES, cities should be able to prohibit retail gun sales in your neighborhood. That is the province of counties, townships and cities and it should remain so.

My second argument is in direct response to those who say that this prohibition--this preemption—is necessary because of the guaranty provided by the Second Amendment--the right to bear arms. Let me say two important things about this argument:

A.) **Second Amendment Not Violated.** The argument that Fargo's home occupation restriction on gun sales, etc., violates the second amendment has been vetted through the courts already. The decisions of the courts reads like a common sense argument—it is rather simple, really. In reviewing a particular city's zoning regulations, the courts have said that so long as there are zoning districts within a city that permit commercial firearm sales activities, it is not a Second Amendment violation for a city to prohibit firearm sales activity in residential zoning districts. That is exactly what the city of Fargo has done. Fargo's zoning law passes Constitutional muster—it is not a violation of the Second Amendment. See generally: *District of Columbia v. Heller*, 554 U.S. 570 (2008); *McDonald v. City of Chicago*, 561 U.S. 742 (2010); *United States v. Bena*, 664 F.3d 1180, 1183 (8th Cir. 2011); *United States v. Seay*, 620 F.3d 919, 925 (8th Cir. 2020); *United States v. Fincher*, 538 F.3d 868, 873-74 (8th Cir. 2008); *Teixeira v. County of Alameda*, 873 F.3d 670, 678-80, 690 (9th Cir. 2017); see also *Illinois Ass'n of Firearms Retailers v. City of Chicago*, 961 F. Supp. 2d 928 (N.D. Ill. 2014).

B.) **Dangerous Unintended(?) Over-reach.** This bill creates an over-reach of state pre-emption of zoning authority--which includes building setbacks and building inspections regulations--that would have dangerous unintended consequences. As it is written, any activity pertaining to, or the construction or use of any building or structure for purposes of, the sale or manufacture of firearms, ammunition or other dangerous weapons could be done by any person or firm without any oversight, regulation or inspection. Buildings being used for firearm purposes, could not be required to provide adequate escape doors or windows as necessary for personal safety or be required to supply sprinkler systems for the fire suppression. Property owners would have no assurance as to what buildings--what uses--will pop up in their neighborhood. Taken to the extreme, neighboring property owners could be given no assurance that a big box retail firearm store might not be constructed right next door—because counties, townships, cities and other political subdivisions would be prohibited from enacting ANY ORDINANCE—ZONING OR OTHERWISE—that would regulate it.

While we believe that the above-described consequences of this bill were not intended by the bill's proponents, they are quite real and quite dangerous to property rights and property values not just in Fargo but in every city, township and county throughout the state.

CONCLUSION. For the reasons as described, the City of Fargo OPPOSES House Bill 1248 and respectfully urges a **DO NOT PASS** recommendation.

["Dangerous Weapons" definition next page]

DEFINITIONS -- NDCC

N.D.C.C. §62.1-01-01. 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.

* * *

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.

* * * *

Notes to Decisions -- "Dangerous Weapon."

The word "includes" in the definition of "dangerous weapon" is not a word of limitation but of enlargement and the term "dangerous weapon" includes weapons other than those specifically named in subsection 1 of this section. *State v. Vermilya*, 423 N.W.2d 153, 1988 N.D. LEXIS 100 (N.D. 1988).

To the North Dakota State Legislature:

Since We The People of North Dakota can no longer depend on the federal government, especially under Joe Biden, to act in a legal and fair manner it behooves the North Dakota government to act on its own to protect the constitutional rights of its citizens. As many of us know the 2020 presidential election was stolen by state governors and state attorney generals, county election officials, foreign nations, the main stream media, many US politicians, and several federal courts including the SCOTUS, by refusing to even hear evidence. Their goal is plain, to strip US citizens of as many constitutional rights as they can get away with in the hopes of bringing their "New World Order" into being. Joe Biden has already begun the process of, once again, bringing this country to its knees with unlimited illegal alien migration into the US from any country with ZERO vetting while giving them undeserved public funding, sending American jobs overseas once again after President Trump largely brought them back, and by abruptly cancelling our energy independence, and more!

If we as a state cannot let go of federal money as a tradeoff for unconstitutional rules and regulations we will cease to exist as a nation, which Joe Biden and company will usher in as soon as they can. The only reason this country hasn't experienced war here on our soil is because our citizens are armed, it needs to stay that way especially during emergencies. We must restrict governmental overreach in regards to firearms by voting YES on 1248.

Thank you, Dwayne McDevitt

1248

I strongly support this amendment, especially section 2 amendment lines 17 thru 24.

The City of Fargo has refused to sign off on my application for a Federal Firearms License (FFL) for over 2 years citing that they can create zoning laws more restrictive than state laws. I am asking for the ability to be able to run background checks when I sell guns to protect my community and my self. They are preventing me from performing this action which is legal in the state of North Dakota.

This is not the first time the City of Fargo has stepped outside of their bounds. They have now infringed upon our Second Amendment rights and the passing of this amendment will bring them back into compliance.

Peter McDonald

February 10, 2021

The Honorable Jason Dockter
Chair, ND Political Subdivisions Committee
600 East Boulevard Avenue
Bismarck, ND 58505

Submitted electronically only:

Re: Testimony in Support of HB 1248

Dear Chairman Dockter, House Political Subdivisions Committee members, and HB 1248 Sponsor

I write individually in support of HB1248. I am an attorney in private practice in Fargo. I am a resident of Legislative District 45. I primarily practice in State and Federal courts in North Dakota, I am also admitted to practice in Minnesota state courts and the United States Court of Appeals for the Armed Forces. For the past 20 years, my primary practice has been criminal defense. I retired from the North Dakota Army National Guard after serving twenty four years, the last eight of which were with the Judge Advocate General Corps. Prior to law school, I served as a Bismarck Police officer for more than five years.

House Bill 1248 will unequivocally require political subdivisions to honor and protect the state and federal constitutional rights of its citizens. I understand this bill is largely the product of the City of Fargo's unwillingness to apply existing law, which precludes cities from enacting any ordinance regulating firearms which is more stringent than state law. Through a tortured interpretation of existing statute, Fargo argues the term "any ordinance" means "except Fargo zoning ordinance." Adoption of this bill will avoid the expense and inconvenience of a legal challenge necessitated by that misinterpretation.

More importantly, the bill will hold cities accountable to the rights of its citizens. Currently, under the claimed authority of a city zoning ordinance, Fargo refuses to allow federally-licensed firearm dealers from conducting firearm sales out of their homes. But North Dakota law has long-provided strong constitutional and statutory protections against this type of interference with employment. Article 1, Section 7 of the North Dakota Constitution declares that every citizen "shall be free to obtain employment wherever possible," and those who interfere or hinder such employment are guilty of an offense. Section 34-01-06, N.D.C.C., codifies this constitutional principle.

The United States Supreme Court has declared the Second Amendment right to bear arms is a fundamental individual right. But while the overwhelming majority of North Dakota cities recognize and honor the fundamental rights of citizens, Fargo does not. Under N.D.Const. Art. 1 § 22, "All laws of a general nature shall have a uniform operation." Those who have met the rigorous licensing and inspection standards to maintain a federal firearms license should not be prohibited from practicing their trade from their home just because they live in Fargo.

The Honorable Jason Dockter

February 10, 2021

Page 2

Additionally, this bill fixes a substantial void of constitutional magnitude. Currently, statute prohibits political subdivisions from enacting regulations contrary to state law with respect to “firearms.” This bill would prohibit a city from superseding state law not only regarding firearms, but also “dangerous weapons.” Dangerous weapons are broadly defined by N.D.C.C. § 62.1-01-01, and include marital arts weapons, hunting knives if the blade is five inches or longer, pellet guns, air guns, BB guns, and many more. Under present law, in emergencies, cities cannot prohibit possession of firearms, but they can prohibit possession of hunting knives, martial arts weapons, BB guns, or others. Even with existing law, the City of Fargo—through a mayoral “emergency declaration” recently attempted to do what the current law prohibits—stripping citizens of their Second Amendment rights. This proposal will expand protection to avoid similar future efforts resulting from the current statutory void.

Of course, the Second Amendment to the United States Constitution protects the fundamental individual right to “keep and bear Arms.” That right includes not only firearms, but also certain arms currently defined as dangerous weapons. In an emergency, under current law, the right to possess a firearm remains protected. In that same emergency, a martial artist who wishes to possess a tonfa—a 15 inch baton similar to those used by police—is not protected. With the modifications proposed by this bill, the Legislature unequivocally and equally would provide all North Dakota citizens the protections bestowed upon them by the Second Amendment to the United States Constitution, regardless of whether the citizen chooses to possess a firearm or hunting knife for protection.

CONCLUSION

I write in support of HB1248. Matters of statewide concern, including the constitutional right to bear arms, should have uniform statewide application. Passionate, well-meaning people have complicated existing law by misinterpreting it. These proposed revisions will negate their misunderstanding, and in the process will clarify protection of the right to bear arms. Further, it will recognize and honor the constitutional and statutory right to seek and maintain employment—a sacrosanct individual right in our State Constitution. I extend my personal appreciation to the bill sponsor, Rep. Koppelman, for his efforts, and I encourage this Committee to recommend passage.

Respectfully submitted,

/s/ Mark A. Friese

Mark A. Friese

Cc: Sen. Ronald Sorvaag, rsorvaag@nd.gov
Rep. Mary Johnson, marycjohnson@nd.gov
Rep. Tom Kading, tkading@nd.gov

To the House Political Subdivision Committee,

I am in support of Bill 1248 because I believe that the city of Fargo has overstepped its authority. I would like to be able to acquire a Federal Firearms License so I may do background checks before I sell a firearm and their ordinance does not allow this. I believe Fargo's zoning ordinance already goes against 62.1-01-03 of the North Dakota Century Code. The Fargo city attorney has stated that it does not say zoning ordinance specifically so they can have an ordinance against the sale and purchase of firearms.

Sincerely,
Adam Matson
North Fargo resident

HB 1248

House Political Subdivisions

Chairman Docktor and Committee Members

I am in support of HB 1248. This bill will keep other towns and cities in North Dakota from abusing their authority and not infringing upon our 2ND Amendment Rights

Thank You

Gordon Greenstein

US Navy (Veteran)

US Army (Retired)

Testimony in Opposition to House Bill 1248
February 11, 2021
House Political Subdivisions Committee
Bill Wocken on behalf of the North Dakota League of Cities

Good Afternoon Mr. Chairman and members of the House Political Subdivisions Committee. For the record, my name is Bill Wocken and I am testifying in opposition to House Bill 1248 on behalf of the North Dakota League of Cities.

The League of Cities is concerned with the effects of Section 2 of the bill so I will limit my testimony to those provisions of House Bill 1248. This section prohibits political subdivisions from enacting zoning that affects the purchase, registration transfer of firearms, dangerous weapons or ammunition. It is the pre-emption of local government zoning that is the cause for our concern with this bill.

The purpose of zoning is to provide for harmonious and complimentary land usage. It attempts to accomplish this by allowing land uses that will not conflict with each other to locate in given geographic areas. For example, single family residential uses are the most restrictive use in a city. Activities that generate excessive noise, smoke or dust, large amounts of traffic, flashing signs and truck traffic are typically banned from residential areas. Some of the higher traffic uses may be allowed in multiple family zones since the number of units in these zones already produces larger traffic volumes.

The prohibition against the use of zoning to restrict activity associated with firearms or dangerous weapons would allow a gun shop and perhaps gun repair and maybe even a firearms range in a single family neighborhood. That is likely not the intention of the sponsor but once in statute the language can be interpreted by all and unanticipated consequences often arise.

Mr. Chairman and committee members, for these reasons the North Dakota League of Cities asks for a Do Not Pass recommendation on House Bill 1248.

255 N. 4th St.
PO Box 5200
Grand Forks, ND 58206-5200



City of Grand Forks
(701) 746-4636

TESTIMONY ON HOUSE BILL 1248

House Political Subdivisions Committee

February 11, 2021

Daniel L. Gaustad, City Attorney, City of Grand Forks, ND

Chairman Dockter and members of the House Political Subdivisions Committee, my name is Daniel L. Gaustad and I am the City Attorney for the City of Grand Forks. I want to thank you for the opportunity to provide testimony and express the City of Grand Forks' opposition for HB 1248.

I question the need for the inclusion of dangerous weapons in N.D.C.C. § 37-17.1-29. Certainly, the right of the people to keep and bear arms are at the core of our society as evidenced by the existence of language in both the U.S. and North Dakota Constitutions to prevent the infringement of such right. However, despite the good intentions of this amendment, the unintended consequence of such an amendment is a concern for the City of Grand Forks.

The amendment will unintentionally expose law enforcement officer to increased risks and unknown concerns in response to declared emergencies, including violent protests and riots that develop out of lawful protests and/or marches. While N.D.C.C. § 62.1-02-05 makes it an infraction for an individual to knowingly possesses a firearm or dangerous weapon at a public gathering, a public gathering is only defined as "an athletic or sporting event, a school, a church or other place of worship, and a publicly owned or operated building." As a defined term, the definition of public gathering necessarily excludes other gatherings such a protests or marches.

As a result of the unintended consequence of this amendment, during a declared emergency, either as a result of a natural disaster or political unrest, individuals may openly carry dangerous weapons at protests and marches with the state, cities and other political subdivisions, like the City of Grand Forks, being unable to restrict the gathering of such individuals with dangerous weapons until some other law is broken.

Accordingly, the City of Grand Forks respectfully asks for a DO NOT PASS for HB 1248.

2021 HOUSE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Room JW327B, State Capitol

HB 1248
2/18/2021

Relating to the possession of a dangerous weapon; and to declare an emergency

Chairman Dockter: (10:15). Opened for committee work.

Representatives	
Representative Jason Dockter	P
Representative Brandy Pyle	P
Representative Mary Adams	P
Representative Claire Cory	P
Representative Sebastian Ertelt	P
Representative Clayton Fegley	P
Representative Patrick Hatlestad	P
Representative Mary Johnson	P
Representative Lawrence R. Klemin	P
Representative Donald Longmuir	P
Representative Dave Nehring	P
Representative Marvin E. Nelson	A
Representative Luke Simons	P
Representative Nathan Toman	P

Discussion Topics:

- Civil action

Rep. Johnson: Made a motion for proposed amendment 21.0139.02001. Testimony #6912.

Rep. Nehring: Second the motion.

Representatives	Vote
Representative Jason Dockter	Y
Representative Brandy Pyle	N
Representative Mary Adams	N
Representative Claire Cory	Y
Representative Sebastian Ertelt	Y
Representative Clayton Fegley	N
Representative Patrick Hatlestad	N
Representative Mary Johnson	Y
Representative Lawrence R. Klemin	N
Representative Donald Longmuir	N
Representative Dave Nehring	Y
Representative Marvin E. Nelson	A

Representative Luke Simons	Y
Representative Nathan Toman	Y

Roll call vote on amendment. 7-6-1carried

Rep. Johnson: Made a do pass as amended motion.

Rep. Ertelt: Second the motion.


Representatives	Vote
Representative Jason Dockter	Y
Representative Brandy Pyle	Y
Representative Mary Adams	A
Representative Claire Cory	Y
Representative Sebastian Ertelt	Y
Representative Clayton Fegley	Y
Representative Patrick Hatlestad	Y
Representative Mary Johnson	Y
Representative Lawrence R. Klemin	N
Representative Donald Longmuir	N
Representative Dave Nehring	Y
Representative Marvin E. Nelson	A
Representative Luke Simons	Y
Representative Nathan Toman	Y

10-3-1 carried.

Rep. Johnson: Will carry the bill.

Chairman Dockter: (10:22). Closed committee work.

Carmen Hickle, Committee Clerk



Handwritten signature and date: 2/18/21

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1248

Page 2, line 20, after "**weapons**" insert "**- Civil action**"

Page 2, after line 20 insert:

"1."

Page 2, after line 24, insert:

"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."

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1248: Political Subdivisions Committee (Rep. Dockter, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (10 YEAS, 3 NAYS, 1 ABSENT AND NOT VOTING). HB 1248 was placed on the Sixth order on the calendar.

Page 2, line 20, after "**weapons**" insert "**- Civil action**"

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"1."

Page 2, after line 24, insert:

"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."

Renumber accordingly

21.0139.02001
Title.

Prepared by the Legislative Council staff for
Representative B. Koppelman
February 11, 2021

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1248

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Renumber accordingly

2021 SENATE JUDICIARY

HB 1248

2021 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Peace Garden Room, State Capitol

HB 1248
3/31/2021

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.

Hearing called to order all Senators Present: **Myrdal, Luick, Dwyer, Bakke, Fors, Larson.**
[10:00]

Discussion Topics:

- Statutory definitions of weapons
- State explosive ordinances

Rep. Ben Koppleman, R-West Fargo, provided oral testimony in favor [10:00]

Andrew Kordonoy, Dickinson, ND provided testimony in Favor #11078 [10:34]

Stephanie Dassinger, Police Chiefs Association, provided testimony in opposition #11181 and #11183 [10:39]

David Zibolski, Fargo Chief of Police, provided testimony in opposition #11106 [10:45]

Scott Edinger, Jamestown Chief of Police oral testimony in opposition [11:05]

Dave Dreovich, Chief of Bismarck Police, provided oral testimony in opposition [11:08]

Donelle Preske, Sheriffs Association, oral testimony in opposition [11:10]

Terry Effertz, North Dakota Peace Officers Association, oral testimony in opposition [11:13]

Erik Johnson, City of Fargo, provided testimony in opposition #11061 [11:14]

Additional written testimony:

Daniel Gausted, Grand Forks City Attorney, provided testimony in Favor #11064

Hearing Adjourned [11:40]

Jamal Omar, Committee Clerk

March 30, 2021

RE: Testimony IN FAVOR of HB 1248

Dear Committee Members,

As a resident and business owner of this state I am writing this testimony in support of House Bill 1248. It is stated in NDCC 62.1-01-03. Limitation on authority of political subdivision regarding firearms. "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." Even though this is clearly stated, I personally have had to go before two political subdivisions to have them remove signage prohibiting weapons on public land.

The addition of a penalty seems necessary as there are government entities currently that are in violation of the current law but are willfully staying in violation because there is nothing stopping them from doing such. This lack of adherence to state law by municipalities and political subdivisions is inhibiting a person's right to work by preventing them from obtaining a Federal Firearms License. These zoning, or other regulations, against firearms are maliciously interfering or hindering a citizen from obtaining or enjoying employment already obtained. A clear violation of Article 1 Section 7 of the North Dakota State Constitution. Therefore, I encourage you to vote DO PASS on HB 1248.

Sincerely,

-Kord

Andrew Kordonowy

Cerberus Security LLC

Dickinson, ND

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

Introduced by

Representative B. Koppelman

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

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

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

7 **37-17.1-29. Firearms and dangerous weapons in emergencies.**

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

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

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

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

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

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

17 **SECTION 2. AMENDMENT.** Section 62.1-01-03 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **62.1-01-03. Limitation on authority of political subdivision regarding firearms and**
20 **dangerous weapons - Civil action.**

21 ~~1.~~ A political subdivision, including home rule cities or counties, may not enact a zoning
22 ordinance or any other ordinance solely relating to the purchase, sale, ownership,
23 possession, transfer of ownership, registration, or licensure of firearms, dangerous
24 weapons, and ammunition which is more restrictive than state law. All such existing
25 ordinances are void.

26 ~~2. A person aggrieved under subsection 1 may bring a civil action against a political~~
27 ~~subdivision for damages as a result of an unlawful ordinance. In a successful action~~
28 ~~brought by a person under this subsection, the court shall order the political~~
29 ~~subdivision to pay the reasonable attorney's fees and costs of the aggrieved person.~~

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

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 Chiefs of Police Association of North Dakota. I am also the deputy director and attorney for the North Dakota League of Cities.

The Chiefs of Police appear today in opposition to HB 1248 because the Chiefs of Police believe the bill will negatively impact the safety of citizens and law enforcement officers.

HB 1248 adds the term “dangerous weapon” to two different sections of the Century Code. Section 1 amends North Dakota Century Code section 37-17.1-29 which precludes a political subdivision from regulating a “dangerous weapon” during an emergency. Section 2 amends section 62.1-01-03 of the North Dakota Century Code which precludes cities from regulating dangerous weapons under any situation. The two sections must be considered together and to fully address the Chiefs concerns, both sections must be amended.

“Dangerous weapon” is defined as 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.

I am told that this list of weapons are things that individuals carry to cause harm to others, not to protect themselves from harm. As such, the Chiefs request that the term “dangerous weapon” be removed from the bill.

The Chiefs respectfully request this committee adopt an amendment removing all references to dangerous weapon from HB 1248.

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1248

Page 1, line 2, replace “possession of a dangerous weapon” with “firearms”

Page 1, line 7, remove “and dangerous weapon”

Page 1, line 12, remove “, dangerous weapon,”

Page 1, line 15, remove “, dangerous weapon,”

Page 1, line 18, remove “, dangerous weapon,”

Page 1, line 19, remove “, dangerous weapon,”

Page 1, line 21, remove “, dangerous weapon,”

Page 1, line 23, remove “, dangerous weapon,”

Page 1, line 24, remove “, dangerous weapon,”

Page 2, line 7, remove “, dangerous weapon,”

Page 2, line 8, remove “, dangerous weapon,”

Page 2, line 9, remove “, dangerous weapon,”

Page 2, line 9, remove “, dangerous weapon,”

Page 2, line 11, remove “, dangerous weapon,”

Page 2, line 15, remove ““dangerous weapon” and”

Page 2, line 15, replace “have” with “has”

Page 2, line 19, remove “and”

Page 2, line 20, remove “dangerous weapons”

Page 2, line 23, remove “, dangerous”

Page 2, line 24, remove “weapons,”

Re-number accordingly

Sixty-seventh
Legislative Assembly
of North Dakota

Introduced by

Representative B. Koppelman

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

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

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

7 **37-17.1-29. Firearms ~~and dangerous weapons~~ in emergencies.**

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

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

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

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

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

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

17 **SECTION 2. AMENDMENT.** Section 62.1-01-03 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **62.1-01-03. Limitation on authority of political subdivision regarding firearms and**
20 **dangerous weapons - Civil action.**

21 1. A political subdivision, including home rule cities or counties, may not enact a zoning
22 ordinance or any other ordinance relating to the purchase, sale, ownership,
23 possession, transfer of ownership, registration, or licensure of firearms, ~~dangerous~~
24 ~~weapons,~~ and ammunition which is more restrictive than state law. All such existing
25 ordinances are void.

26 2. A person aggrieved under subsection 1 may bring a civil action against a political
27 subdivision for damages as a result of an unlawful ordinance. In a successful action
28 brought by a person under this subsection, the court shall order the political
29 subdivision to pay the reasonable attorney's fees and costs of the aggrieved person.

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



CITY OF FARGO POLICE DEPARTMENT



Chief David B. Zibolski

105 25th Street North, Fargo, North Dakota 58102
Office: 701-241-1400 Fax: 701-297-7789
www.fargopolice.com

March 31, 2021
North Dakota Senate Judiciary Committee
Senator Diane Larson, Chair
RE: HB 1248

Dear Senator Larson and Members of the Committee,

My name is David Zibolski and I am the City of Fargo Chief of Police. I appear before you today in strong opposition to HB1248, Section 1.

The inclusion of "dangerous weapon" to the existing language describing what a state or political subdivision may not prohibit during a declared emergency is unnecessary and dangerous for our officers and community members. The City of Fargo Police Department is committed to safeguarding all persons and property while ensuring the Constitutional Right of peaceful protest. As we have all learned from the events of 2020 nationally and most notably in Fargo on May 30, 2020, some individuals are committed not to peaceful protest, but to riotous criminal behavior with an utter disregard for the safety of others. They often use peaceful protesters as camouflage for their true intentions. There is no need to further arm these individuals by allowing them to carry a variety of dangerous weapons—to include swords, nunchaku, daggers, crossbows, and other items that are intended only to cause injury to others. The ability for law enforcement to identify persons armed with dangerous weapons and mitigate that risk is critical to ensuring public safety.

Truly peaceful protesters have no need of these items and by prohibiting law enforcement from taking action against those who are so armed during such an emergency event, you are creating an extremely dangerous situation for law enforcement, protesters individually and as groups, as well as the general public. I urge you to give this bill a "do not pass" vote.

Thank you for the opportunity to testify before you today. Please feel free to contact me if I can be of any assistance in the future.

Sincerely,

David B. Zibolski
Chief of Police
City of Fargo
701-241-1401
dzibolski@fargond.gov

Office of the City Attorney

City Attorney
Erik R. Johnson

Assistant City Attorney
Nancy J. Morris

Testimony of Erik Johnson
Fargo City Attorney

HOUSE BILL 1248

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

Madam Chair and Members of the Committee,

My name is Erik Johnson and I am appearing on behalf of the City of Fargo as its City Attorney to testify about House Bill 1248 – in particular, Section Two of the bill. Fargo’s Police Chief Zibolski will be testifying about Section One of the bill.

I would like to make one thing very clear in all of this. The City of Fargo allows the sale, resale, transfer and manufacture of firearms and ammunition, period. There are many retail stores and shops in Fargo that sell guns, repair guns, sell ammunition, and the like. There are commercial and industrially-zoned areas throughout the city where those activities lawfully occur. That is not in issue, here. What is in issue, with Section Two of House Bill 1248, is to prohibit cities from having zoning ordinances that regulate the retail sale of guns and ammunition in residential neighborhoods—in houses, apartments and condominiums. **We oppose this bill on three grounds:**

First, so long as firearm sales may be lawfully conducted in commercial or industrial areas of a city, a city is not in violation of the 2nd Amendment right-to-bear-arms protections when it confines retail firearm sales to commercially-zoned (or industrially-zoned) areas. Thus, Fargo’s home occupation zoning ordinance does not violate the 2nd Amendment when it

prohibits retail gun sales in residentially-zoned areas. This is well-established law and has already been vetted through the courts.¹

Second, Section Two of House Bill 1248 is targeted at only one city in this state. That city is Fargo. I dare say every city in America has zoning regulations that limit uses in residential zones to “household living”. That is common sense. The idea, of course, is that retail sales, office uses and other commercial uses are not compatible with residential living. Most cities allow exceptions for “home occupations”. This allows people to work out of their homes so long as (a) the occupation doesn’t become the principal use of the home and (b) the activities surrounding the occupation don’t disturb the neighbors. No city is required to allow home occupations—it is not a property right. Fargo’s zoning regulations allow limited home occupations but Fargo lists six occupations that are prohibited from being operated out of one’s home, one of which is “firearm or ammunition sales”. The other five are “adult entertainment” (e.g. adult bookstore), automobile and small engine repair shops, mortuaries, animal care and animal boarding, and dispatch centers. Allow me to emphasize a point. Fargo’s prohibiting these six occupations as “home occupations” does not prohibit people from making a living in those occupations, only from their making a living out of their house, apartment or condominium. Fargo simply prohibits them as home occupations because the City Commission

¹ The decisions of the courts reads like a common sense argument—it is rather simple, really. In reviewing a particular city’s zoning regulations, the courts have said that so long as there are zoning districts within a city that permit commercial firearm sales activities, it is not a Second Amendment violation for a city to prohibit firearm sales activity in residential zoning districts. That is exactly what the city of Fargo has done. Fargo’s zoning law passes Constitutional muster—it is not a violation of the Second Amendment. See generally: *District of Columbia v. Heller*, 554 U.S. 570 (2008); *McDonald v. City of Chicago*, 561 U.S. 742 (2010); *United States v. Bena*, 664 F.3d 1180, 1183 (8th Cir. 2011); *United States v. Seay*, 620 F.3d 919, 925 (8th Cir. 2020); *United States v. Fincher*, 538 F.3d 868, 873-74 (8th Cir. 2008); *Teixeira v. County of Alameda*, 873 F.3d 670, 678-80, 690 (9th Cir. 2017); see also *Illinois Ass’n of Firearms Retailers v. City of Chicago*, 961 F. Supp. 2d 928 (N.D. Ill. 2014).

that approved the zoning regulations determined that such occupations are not compatible with residential living.

Third, it is well established in state law that the business of organizing land development in a city should be left to each city. Our state statutes already contain a well-developed set of laws and procedures for each county, township and city that allow them to create zoning districts and to lay out and plat development. Cities should be able to prohibit commercial car and truck repair in your neighborhood and to prohibit the boarding of pets (think "barking dogs") in your neighborhood. Cities should be able to prohibit adult entertainment centers, mortuaries, and dispatch centers from being operated out of single family homes or apartments. And, YES, cities should be able to prohibit retail gun sales in your neighborhood. That is the province of counties, townships and cities and it should remain so.

City of Fargo is considering change in its home occupation ordinance. The proponents of this bill do not think that Fargo's home occupation law is reasonable and lawful and they want something done about it. They have asked the City Commission to "do something about it" and the City Commission has taken action on this. During the public meetings in Fargo over the past year, or so, some city leaders have urged that Fargo's prohibiting of firearm sales as a home occupation be repealed and others, including members of the public, members of our planning commission and members of our city commission, said they want the prohibition retained for a number of reasons. Some simply don't want the sale of firearms and or ammunition in their neighborhood. Some say they are not worried about their next-door neighbor, himself or herself, but they worry about the strangers—customers—that come and go from their neighbor's home--they don't know the backgrounds of those customers. For whatever reason, there have been a significant number of people that would like this law that has been on the books for 20 years, to simply remain in place. The City Commission has asked the Planning Department to include this very issue on the list of things to be considered in a

project already underway by the Planning Department, with the assistance of professional consulting firms, of reviewing and “over-hauling” its 25-year-old zoning law.

CONCLUSION. House Bill 1248 is directed at the home occupation zoning regulations of the City of Fargo but Fargo’s zoning law is not a 2nd Amendment violation, it is a reasonable limitation intended to protect the integrity of residential neighborhoods, and such zoning regulations must be left in the hands of cities (and counties and townships as applicable). For the reasons as described, the City of Fargo **OPPOSES** House Bill 1248 and respectfully urges a **DO NOT PASS** recommendation.

255 N. 4th St.
PO Box 5200
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City of Grand Forks
(701) 746-4636

TESTIMONY ON HOUSE BILL 1248

Senate Judiciary Committee

March 30, 2021

Daniel L. Gaustad, City Attorney, City of Grand Forks, ND

Chairman Larson and members of the Senate Judiciary Committee, my name is Daniel L. Gaustad and I am the City Attorney for the City of Grand Forks. I want to thank you for the opportunity to provide testimony and express the City of Grand Forks' opposition for HB 1248.

I question the need for the inclusion of dangerous weapons in N.D.C.C. § 37-17.1-29. Certainly, the right of the people to keep and bear arms are at the core of our society as evidenced by the existence of language in both the U.S. and North Dakota Constitutions to prevent the infringement of such right. However, despite the good intentions of this amendment, the unintended consequence of such an amendment is a concern for the City of Grand Forks.

The amendment will unintentionally expose law enforcement officer to increased risks and unknown concerns in response to declared emergencies, including violent protests and riots that develop out of lawful protests and/or marches. While N.D.C.C. § 62.1-02-05 makes it an infraction for an individual to knowingly possesses a firearm or dangerous weapon at a public gathering, a public gathering is only defined as "an athletic or sporting event, a school, a church or other place of worship, and a publicly owned or operated building." As a defined term, the definition of public gathering necessarily excludes other gatherings such a protests or marches.

As a result of the unintended consequence of this amendment, during a declared emergency, either as a result of a natural disaster or political unrest, individuals may openly carry dangerous weapons at protests and marches with the state, cities and other political subdivisions, like the City of Grand Forks, being unable to restrict the gathering of such individuals with dangerous weapons until some other law is broken.

Accordingly, the City of Grand Forks respectfully asks for a DO NOT PASS for HB 1248.

2021 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Peace Garden Room, State Capitol

HB 1248
4/1/2021
Subcommittee

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.

Hearing called to order Senators Present: **Myrdal, Luick, and Fors [2:45]**

Discussion Topics:

- Ordinance restricting firearms
- Zoning regulatory policy

Rep. Ben Koppleman, R-West Fargo, testified in favor [2:45]

Stephanie Dassinger, ND League of Cities, gave neutral testimony [2:50]

Hearing Adjourned [2:58]

Jamal Omar, Committee Clerk

2021 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Peace Garden Room, State Capitol

HB 1248
4/5/2021

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.

Hearing called to order all Senators Present: **Myrdal, Luick, Dwyer, Bakke, Fors, Heitkamp, Larson. [3:55]**

Discussion Topics:

- Stand your ground statute
- National self-defense standards

Senator Myrdal Moved Amendment
21.0139.03003 [3:56]

Senator Luick Seconded the Motion
Vote Passed 7-0-0

Vote to Amend HB 1248	Vote
Senator Diane Larson	Y
Senator Michael Dwyer	Y
Senator JoNell A. Bakke	Y
Senator Robert O. Fors	Y
Senator Jason G. Heitkamp	Y
Senator Larry Luick	Y
Senator Janne Myrdal	Y

Senator Luick Moved a DO NOT PASS AS
AMENDED [4:09]

Senator Bakke Seconded the Motion
Vote Passed 6-1-0

Senator Dwyer Carried the Bill

DO NOT PASS AS AMENDED Vote on HB 1248	Vote
Senator Diane Larson	Y
Senator Michael Dwyer	Y
Senator JoNell A. Bakke	Y
Senator Robert O. Fors	Y
Senator Jason G. Heitkamp	Y
Senator Larry Luick	Y
Senator Janne Myrdal	N

Hearing Adjourned [4:14]

Jamal Omar, Committee Clerk

April 5, 2021

2/15
1 of 1

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1248

Page 1, line 1, replace "sections 37-17.1-29 and" with "section"

Page 1, line 2, replace "possession of a dangerous weapon" with "authority of a political subdivision regarding firearms"

Page 1, remove lines 5 through 24

Page 2, remove lines 1 through 16

Page 2, line 19, remove "and "

Page 2, line 20, remove "dangerous weapons"

Page 2, line 23, remove ", dangerous"

Page 2, line 24, remove "weapons."

Page 2, line 27, remove "In a successful action"

Page 2, remove lines 28 and 29

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1248, as engrossed: Judiciary Committee (Sen. Larson, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (6 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). Engrossed HB 1248 was placed on the Sixth order on the calendar.

Page 1, line 1, replace "sections 37-17.1-29 and" with "section"

Page 1, line 2, replace "possession of a dangerous weapon" with "authority of a political subdivision regarding firearms"

Page 1, remove lines 5 through 24

Page 2, remove lines 1 through 16

Page 2, line 19, remove "**and** "

Page 2, line 20, remove "**dangerous weapons**"

Page 2, line 23, remove ". dangerous"

Page 2, line 24, remove "weapons."

Page 2, line 27, remove "In a successful action"

Page 2, remove lines 28 and 29

Renumber accordingly