

**2023 HOUSE ENERGY AND NATURAL RESOURCES**

**HB 1340**

# 2023 HOUSE STANDING COMMITTEE MINUTES

## Energy and Natural Resources Committee Coteau AB Room, State Capitol

HB 1340  
1/26/2023

Relating to home rules in counties and cities and the limitation on authority of a political subdivision regarding firearms
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10:20 AM

Chairman Porter opened the hearing. Members present: Chairman Porter, Vice Chairman D. Anderson, Representatives Conmy, Dockter, Hagert, Heinert, Ista, Kasper, Marschall, Novak, Olson, Roers Jones, and Ruby. Absent: Representatives Bosch

### **Discussion Topics:**

- Political subdivision restrictions
- Local ordinance
- Zoning ordinances

Rep Ben Koppelman, District 16, West Fargo, presented HB 1340, Testimony 21124, 20620

Brian Gosch, National Rifle Association lobbyist, oral testimony

Andrew Kordonowy, Dickinson, testimony 17389

Ben Ereth, Community Development Director, Bismarck ND, Testimony 20903

Stephanie Dassinger Engebretson, ND League of Cities, oral testimony

### **Additional written testimony:**

Donald Kress, ND Planning Association board member, Testimony 16907

Ian McClean, Fargo Board of City Commissioners, Testimony 16918

Peter Vanhal, Fargo, ND, Testimony 16948

Cheryl Biller, volunteer Moms Demand Action ND, Testimony 16997

John Wilson, Fargo, ND, Testimony 17021

Craig Roe, Testimony 21129

10:48 AM Chairman Porter closed the hearing.

*Kathleen Davis, Committee Clerk*

# 2023 HOUSE STANDING COMMITTEE MINUTES

## Energy and Natural Resources Committee Coteau AB Room, State Capitol

HB 1340  
2/2/2023  
**Subcommittee**

Relating to home rules in counties and cities and the limitation on authority of a political subdivision regarding firearms.

8:00 AM Chairman Heinert called the subcommittee meeting to order. Present were Chairman Heinert, Representatives Ista, Roers Jones. Absent: subcommittee member Rep Ruby.

Also present: Rep. Porter

### **Discussion topics:**

- Gun bills

Chairman Heinert stated the 7 gun bills the subcommittee would be working on:

1. HB 1339
2. HB 1340
3. HB 1341
4. HB 1350
5. HB 1404
6. HB 1479
7. HB 1483

Claire Ness from the Attorney General's office will attend with information on a Supreme Court case next Thursday, February 9, 2023 at 8 AM. The subcommittee will also meet next Friday, February 10, 2023 at 8:00 AM.

8:04 AM Chairman Heinert closed the meeting.

*Kathleen Davis, Committee Clerk*

# 2023 HOUSE STANDING COMMITTEE MINUTES

## Energy and Natural Resources Committee Coteau AB Room, State Capitol

HB 1340

2/9/2023

### Subcommittee

Relating to home rules in counties and cities and the limitation on authority of a political subdivision regarding firearms.

8:00 AM

Chairman Heinert called the meeting to order. Present were Chairman Heinert, Representatives Ista, Roers Jones, and Ruby. Also present were Representatives D Anderson and Porter.

#### Discussion Topics:

- Bruen opinion
- Reasoning by analogy
- Person's conduct
- 2<sup>nd</sup> amendment
- Dangerous and unusual weapons
- Proposed amendment 01001

Claire Ness, Chief Deputy Attorney General, ND Attorney General's Office, oral testimony on New York State Rifle & Pistol Association Inc. v. Bruen (Decided on June, 2022)  
Rep Ben Koppelman, District 16, Testimony 21124

8:25 AM Chairman Heinert closed the meeting.

*Kathleen Davis, Committee Clerk*

# 2023 HOUSE STANDING COMMITTEE MINUTES

## Energy and Natural Resources Committee Coteau AB Room, State Capitol

HB 1340  
2/10/2023  
**Subcommittee**

Relating to home rules in counties and cities and the limitation on authority of a political subdivision regarding firearms.
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8:00 AM

Chairman Heinert called the meeting to order. Present were Chairman Heinert, Representatives Ruby, and Ista. Rep Roers Jones was absent.

### **Discussion Topics:**

- Proposed amendment 23.0444.02001
- Home rule chapters
- Weapons chapters
- Constitutional authority
- Study
- Subsection 1 restoration
- Retain local control

Rep B Koppelman, proposed amendment 02001, Testimony 20613  
Stephanie Dassinger Engebretson, Deputy Director, ND League of Cities, was asked to come forward to answer questions

Rep M Ruby moved to recommend the amendment, seconded by Rep Ista. Voice vote, motion carried.

8:45 AM Chairman Heinert closed the meeting.

*Kathleen Davis, Committee Clerk*

# 2023 HOUSE STANDING COMMITTEE MINUTES

## Energy and Natural Resources Committee Coteau AB Room, State Capitol

HB 1340  
2/16/2023

Relating to home rules in counties and cities and the limitation on authority of a political subdivision regarding firearms
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9:58 AM

Chairman Porter opened the meeting. Members present: Chairman Porter, Vice Chairman D. Anderson, Representatives Bosch, Conmy, Dockter, Hagert, Heinert, Ista, Kasper, Marschall, Novak, Olson, Roers Jones, and Ruby.

### Discussion Topics:

- Committee action

Rep Heinert moved to adopt amendment 02001, Testimony 20613, seconded by Rep Ruby. Voice vote. Motion carried.

Rep Heinert moved a Do Pass as Amended, seconded by Rep Ruby.

Representatives	Vote
Representative Todd Porter	Y
Representative Dick Anderson	Y
Representative Glenn Bosch	AB
Representative Liz Conmy	N
Representative Jason Dockter	Y
Representative Jared Hagert	Y
Representative Pat D. Heinert	Y
Representative Zachary Ista	N
Representative Jim Kasper	AB
Representative Andrew Marschall	Y
Representative Anna S. Novak	Y
Representative Jeremy Olson	Y
Representative Shannon Roers Jones	Y
Representative Matthew Ruby	Y

10-2-2 Motion carried. Rep Ruby is carrier.

10:01 AM Chairman Porter closed the meeting.

*Kathleen Davis, Committee Clerk*

AG  
2-16-23  
(1-1)

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1340

Page 1, line 3, replace "rules" with "rule"

Page 1, line 12, remove the overstrike over "regulate"

Page 1, line 12, remove the underscored colon

Page 1, line 13, remove "a. Regulate"

Page 1, line 14, after "agency" insert ". This subsection is subject to the provisions of section 62.1-01-03"

Page 1, remove lines 15 and 16

Page 1, line 19, remove "does not confer any authority to enact a zoning ordinance relating to the"

Page 1, remove line 20

Page 1, line 21, replace "of firearms and ammunition" with "is subject to the provisions of section 62.1-01-03"

Page 2, line 2, remove "does"

Page 2, remove lines 3 and 4

Page 2, line 5, replace "ammunition" with "is subject to the provisions of section 62.1-01-03"

Page 2, line 8, remove "does"

Page 2, remove lines 9 and 10

Page 2, line 11, replace "ammunition" with "is subject to the provisions of section 62.1-01-03"

Page 2, line 25, after "3." insert "This section does not limit the ability of a political subdivision, including home rule cities or counties, to enforce an ordinance or zoning regulation relating to a business operation if the restriction in the ordinance or regulation:

- a. Applies equally to all persons engaging in commerce within the area subject to the ordinance or regulation; and
- b. Is not specifically related to the purchase, sale, ownership, possession, transfer of ownership, registration, or licensure of firearms and ammunition.

4."

Page 3, line 1, replace "4." with "5."

Renumber accordingly

**REPORT OF STANDING COMMITTEE**

**HB 1340: Energy and Natural Resources Committee (Rep. Porter, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (10 YEAS, 2 NAYS, 2 ABSENT AND NOT VOTING). HB 1340 was placed on the Sixth order on the calendar.

Page 1, line 3, replace "rules" with "rule"

Page 1, line 12, remove the overstrike over "regulate"

Page 1, line 12, remove the underscored colon

Page 1, line 13, remove "a. Regulate"

Page 1, line 14, after "agency" insert ". This subsection is subject to the provisions of section 62.1-01-03"

Page 1, remove lines 15 and 16

Page 1, line 19, remove "does not confer any authority to enact a zoning ordinance relating to the"

Page 1, remove line 20

Page 1, line 21, replace "of firearms and ammunition" with "is subject to the provisions of section 62.1-01-03"

Page 2, line 2, remove "does"

Page 2, remove lines 3 and 4

Page 2, line 5, replace "ammunition" with "is subject to the provisions of section 62.1-01-03"

Page 2, line 8, remove "does"

Page 2, remove lines 9 and 10

Page 2, line 11, replace "ammunition" with "is subject to the provisions of section 62.1-01-03"

Page 2, line 25, after "3." insert "This section does not limit the ability of a political subdivision, including home rule cities or counties, to enforce an ordinance or zoning regulation relating to a business operation if the restriction in the ordinance or regulation:

- a. Applies equally to all persons engaging in commerce within the area subject to the ordinance or regulation; and
- b. Is not specifically related to the purchase, sale, ownership, possession, transfer of ownership, registration, or licensure of firearms and ammunition.

4."

Page 3, line 1, replace "4." with "5."

ReNUMBER accordingly



**2023 SENATE JUDICIARY**

**HB 1340**

# 2023 SENATE STANDING COMMITTEE MINUTES

**Judiciary Committee**  
Peace Garden Room, State Capitol

HB 1340  
4/3/2023

A bill relating to home rule in counties and cities and the limitation on authority of a political subdivision regarding firearms.
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10:00 AM Chairman Larson opened the meeting.

Chairman Larson and Senators Myrdal, Luick, Sickler, Estenson, Bruanberger and Paulson are present.

### Discussion Topics:

10:00 AM Representative Koppelman introduced the bill and provided written testimony #27222.

10:19 AM Brian Gosch, Lobbyist, Nation Rifle Association, spoke in favor of the bill.

### Additional written testimony:

Ian McLean #27209

10:22 AM Chairman Larson closed the public hearing.

10:22 AM Senator Myrdal moved to Do Pass the bill. Senator Luick seconded the motion.

10:23 AM Roll call vote was taken.

Senators	Vote
Senator Diane Larson	Y
Senator Bob Paulson	Y
Senator Jonathan Sickler	Y
Senator Ryan Braunberger	N
Senator Judy Estenson	Y
Senator Larry Luick	Y
Senator Janne Myrdal	Y

Motion passed 6-1-0.

Senator Luick will carry the bill.

This bill does not affect workforce development.

10:23 AM Chairman Larson closed the meeting.

*Rick Schuchard, Committee Clerk*

**REPORT OF STANDING COMMITTEE**

**HB 1340, as engrossed: Judiciary Committee (Sen. Larson, Chairman)** recommends **DO PASS** (6 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). Engrossed HB 1340 was placed on the Fourteenth order on the calendar. This bill does not affect workforce development.

**TESTIMONY**

**HB 1340**



**NORTH DAKOTA  
PLANNING ASSOCIATION**  
Serving North Dakota since 1973

**NDPA Board**

*John Van Dyke – President  
Rachel Laqua- Vice President  
Sandy Rohde - Past President  
Daniel Nairn - Treasurer  
Andrea Edwardson - Secretary  
Will Hutchings – At Large  
Donald Kress – At Large*

January 25, 2023

RE: Opposition to HB 1340 regarding home rule in counties and cities and the limitation on authority of a political subdivision regarding firearms.

Chairman Porter and members of the House Energy and Natural Resources Committee:

This statement expresses the opposition of the North Dakota Planning Association to House Bill 1340 relating to home rule in counties and cities and the limitation on authority of a political subdivision regarding firearms.

The bill proposes to amend and re-enact portions of subsections 8 and 10 of section 11-09.1-05, subsections 12 and 14 of section 40-05.1-06, and section 62.1-01-03 of the North Dakota Century Code (NDCC).

The North Dakota Planning Association takes the position that this bill needlessly restricts a city's and county's home rule authority and authority to zone.

HB 1248 from the 2021 legislative session amended Section 62.1-01-03 relating to firearms. This bill was approved and enacted as the current version of that section. It appeared that one target of that bill was a City of Fargo ordinance that prohibited the sale of firearms and ammunition as a home occupation. This ordinance is part of Fargo's regulations regarding land uses in residential zones, which prohibit several types of businesses as home occupations. There was an argument that the amended Section 62.1-01-03 voided this Fargo ordinance. The City of Fargo brought a declaratory judgment action against the State of North Dakota regarding this ordinance on the position that the state has no ordinances relating to the sale of firearms and ammunition, and thus Fargo's ordinance was not more restrictive than state law. Fargo won that lawsuit in North Dakota District Court. The court determined that Section 62.1-01-03 does not apply to or void the City of Fargo's ordinances.

HB 1340 expands the amendments that had been proposed by HB 1248 to include not only Section 62.1-01-03, but also the Century Code chapters that relate to the home rule powers of counties (11-09.1) and cities (40-05.1). The proposed amendments to these sections specifically prohibit home rule counties and cities from enacting a zoning ordinance relating to the purchase, sale, ownership, possession, transfer of ownership, registration, or licensure of firearms and ammunition.

Additionally, a proposed amendment to Section 62.1-01-03 appears to be specifically in reaction to the result of the City of Fargo lawsuit noted above, as this amendment states:

"The absence of a state law restriction relating to the purchase, sale, ownership, possession, transfer of ownership, registration, or licensure of firearms and ammunition may not be construed to allow a political subdivision, including a home rule city or county, to enact an ordinance restricting the purchase, sale, ownership, possession, transfer of ownership, registration, or licensure of firearms and ammunition."

The North Dakota Planning Association opposes HB 1340 as it finds no reason for the legislature to single out restricting a home rule county or city's authority to zone in relation to the purchase, sale, ownership, possession, transfer of ownership, registration, or licensure of firearms and ammunition.

Home rule is enabled by Section 6, Article VII of the North Dakota constitution. One of the points of home rule is to allow political subdivisions to regulate based on local community priorities, including local community priorities related to land use and how various districts within the political subdivision will be zoned. The county or city commission or council is the appropriate venue to address local land use regulation, not the state legislature.

We note that the federal licensing procedure for firearms dealers respects local land use and zoning restrictions. The licensing and activities of firearms dealers are regulated by the federal Bureau of Alcohol, Tobacco, Firearms, and Explosives, commonly referred to as the "ATF." Item 20(a) of Part A of the ATF Application for Federal Firearms License\* requires the applicant for the license to certify that: "The business/activity to be conducted under the Federal Firearms Licenses is not prohibited by local law at the premises shown in item 6. This includes compliances with zoning ordinances (***Please contact your local zoning department PRIOR TO submitting application***)"

[bold, capitals, and italics in the original]

*\*Form 7(5310.12)/7CR(5310.16)*

The North Dakota Planning Association's opposition to HB 1340 is based on how the bill affects a county's or city's home rule power and is not based on opposition to firearms ownership, sales, and related activities.

The North Dakota Planning Association strongly encourages your committee to recommend "Do Not Pass" for HB 1340.

Thank you for your consideration.



Donald Kress  
Board Member at Large, NDPA

**BOARD OF CITY COMMISSIONERS**

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[www.FargoND.gov](http://www.FargoND.gov)

January 25, 2023

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

Mr. Chairman and Members of the Committee,

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

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

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

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

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

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

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

Fargo's Municipal Code provides home occupation regulations which are intended to permit residents to engage in home occupations while ensuring that home occupations will not be a detriment to the character and livability of the surrounding neighborhood. However, there are six specific uses which Fargo expressly prohibits because the uses will be a detriment to the character and livability of the surrounding neighborhood. These six prohibited uses are: vehicle and large equipment repair; dispatch centers; mortuaries; animal care, grooming or boarding facilities; adult entertainment centers; and firearms and ammunition sales and production.

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

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

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



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

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

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

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

Sincerely,

Dr. Timothy J. Mahoney  
Mayor

Arlette Preston  
Deputy Mayor

Denise Kolpack  
City Commissioner

Dave Piepkorn  
City Commissioner

John Strand  
City Commissioner

January 25, 2023

Testimony on North Dakota House Bill 1340

The ability of a political subdivision to circumnavigate the will and intention of the State of North Dakota's legislative bodies must not be allowed. Specifically, the matter of the City of Fargo enacting zoning rules that disallow the legal transfer of firearms by a small business owner possessing an FFL is egregious. A home-based FFL poses no more risk to the general public than a home-based daycare.

Peter Van Hal  
Fargo, North Dakota

**HB 1340**

Energy and Natural Resources, Rep. Todd Porter, chair

From: Cheryl Biller, volunteer Moms Demand Action ND

I write in opposition to this bill. The danger posed from a gun dealership located in someone's home is great. What's to keep a gun seller from being open at all hours? What's to keep an angry ex-husband from having a few beers and deciding its time to teach his ex a lesson – using the new gun he gets stopping by a neighborhood gun dealing happy to open up briefly to make a sale? How welcoming is a city where your neighbor might open a gun and ammo business anytime? Who thinks it is a good idea for a licensed gun dealer to live next door to the local high school, where the rates of suicide among teens have been going up steadily for the last 10 years?

This bill puts ND on an authoritarian path to control of every city and small town through intimidation. It makes North Dakotans less free and more at risk of gun violence. How do you entice workers to move to a state where their neighbor could be a gun dealer?

I urge a **DO NOT PASS** recommendation on this bill.

Good Morning,

In regards to HB 1340 and the debacle here in Fargo, I would like to add my support to this bill.

I and others have wished to have an FFL as a home based (or side business) here in Fargo for quite a while. Yet have been prevented from doing so due to Fargo's ordinance, put in place for reasons unknown, even by a former city commissioner who sat on the commission at the time 20+ years ago.

My primary reason for having one, simple, public safety, by having the ability to legally transfer firearms from one party to another when the parties want the transfer to be done privately. As an example, because of the value or rarity of the firearm. Or, they are turned down at some stores that sell firearms and will not do a private transfer, or charge an extremely high price (\$50+).

The other reason, I do a handful of local gun shows annually. I travel occasionally and stop at gun shows and shops along the way, and, due to federal law, or occasionally state laws, without an FFL, I may not be able to purchase a "good deal", without having to have it shipped home, and having to find an FFL to do a transfer as well.

And without an FFL, even if I buy the firearm. When I go to re-sell it, without an FFL, the firearm is now sold as a "private sale" having no ability myself to run a proper legal NICS transfer. As sometimes a gun show does not have an FFL, or the cost of having an FFL at the show who is willing do a transfer, can be a deal breaker.

And this can lead to a future issue, one I found out the hard way. At a local gun show, I sold a firearm to another individual, a handgun, no red flags, the person I sold it to, gave no indication anything was "fishy". Months later that same handgun was used to commit a crime in Minnesota.

That handgun, via NICS, was traced back to me as the last known owner. After an investigation, the police hit a dead end, as my sale, while legal as a private sale, gave them no further information, as another NICS was not done to transfer it up the line. And I discovered that this is a tactic that criminals exploit, going to gun shows, and looking for "private sellers", in order to traffic firearms to criminals.

And that show was a good example, as there was not an FFL on site that day. As the one who was supposed to be there, was unable to attend due to a personal emergency. Had that handgun undergone a NICS transfer, it never would have been sold. OR if the buyer had been legal, and yet re-selling via trafficking, they would have been possibly caught by the police.

I find Fargo's ordinance to be asinine, as they make legal transfers more difficult, instead of less difficult, which to me makes 0 sense, as those transfers, via NICS, do a good job of preventing people with felonies or other criminal records from obtaining a firearm. That is the primary job of the federal system in operation today, the FFL is just a tool.

And oddly enough, Fargo is the only place in North Dakota, where a home based FFL is not allowed, you would think the largest city in the State, would take the lead in promoting firearm safety.

Notwithstanding, Fargo's law, goes against previous state law, regarding what home based businesses are legal, as well as the 2nd. Amendment of our State, and Federal Constitutions...

Furthermore, with the current make-up of our commission, I fear that they will soon attempt further over-reach of State law(s) if left unchecked and unrestrained. Challenging our State law-makers on other issues, as we have seen in other cities recently.

Thank You for your time.

John Wilson  
1405 3rd. Ave. North  
Fargo ND 58102

**Monroe, Beverley**

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**From:** Andrew Kordonowy <kord@cerberususa.com>  
**Sent:** Thursday, January 26, 2023 8:26 AM  
**To:** NDLA, H NAT; NDLA, H EDU  
**Subject:** HB1340

This is the third time the legislature has addressed this issue. The perception of intent of the 62.1-01-03. Limitation on authority of political subdivision regarding firearms, in my opinion, is to allow the free travel in our state without being at risk of an accidental felony by violating an unknown law. ND is a right to work state. We should not be restricting someone's livelihood and business.

Thank you,

Andrew Kordonowy

23.0444.02001

Sixty-eighth  
Legislative Assembly  
of North Dakota

**HOUSE BILL NO. 1340**

Introduced by

Representatives Koppelman, Cory, Marschall, Mock, Schatz

Senators Clemens, Larsen, Meyer, Paulson, K. Roers, Wobbema

1 A BILL for an Act to amend and reenact subsections 8 and 10 of section 11-09.1-05,  
2 subsections 12 and 14 of section 40-05.1-06, and section 62.1-01-03 of the North Dakota  
3 Century Code, relating to home ~~rules~~rule in counties and cities and the limitation on authority of  
4 a political subdivision regarding firearms.

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

6 **SECTION 1. AMENDMENT.** Subsections 8 and 10 of section 11-09.1-05 of the North  
7 Dakota Century Code are amended and reenacted as follows:

8 8. Provide for the adoption, amendment, repeal, initiative, referral, enforcement, and civil  
9 and criminal penalties for violation of ordinances, resolutions, and regulations to carry  
10 out its governmental and proprietary powers and to provide for public health, safety,  
11 morals, and welfare. ~~However, this~~This subsection does not confer any authority to  
12 regulate:

13 ~~a. Regulate~~ any industry or activity which is regulated by state law or by rules  
14 adopted by a state agency. This subsection is subject to the provisions of section  
15 62.1-01-03.

16 ~~b. Enact a zoning ordinance relating to the purchase, sale, ownership, possession,~~  
17 ~~transfer of ownership, registration, or licensure of firearms and ammunition.~~

18 10. Provide for zoning, planning, and subdivision of public or private property within the  
19 county limits but outside the zoning authority of any city or organized township. This  
20 subsection does not confer any authority to enact a zoning ordinance relating to the  
21 purchase, sale, ownership, possession, transfer of ownership, registration, or licensure  
22 of firearms and ammunition is subject to the provisions of section 62.1-01-03.

23 **SECTION 2. AMENDMENT.** Subsections 12 and 14 of section 40-05.1-06 of the North  
24 Dakota Century Code are amended and reenacted as follows:

- 1       12. To define offenses against private persons and property and the public health, safety,  
2       morals, and welfare, and provide penalties for violations thereof. ~~This subsection does~~  
3       ~~not confer any authority to enact a zoning ordinance relating to the purchase, sale,~~  
4       ~~ownership, possession, transfer of ownership, registration, or licensure of firearms and~~  
5       ~~ammunition~~ is subject to the provisions of section 62.1-01-03.
- 6       14. To provide for zoning, planning, and subdivision of public or private property within the  
7       city limits. To provide for such zoning, planning, and subdivision of public or private  
8       property outside the city limits as may be permitted by state law. ~~This subsection does~~  
9       ~~not confer any authority to enact a zoning ordinance relating to the purchase, sale,~~  
10      ~~ownership, possession, transfer of ownership, registration, or licensure of firearms and~~  
11      ~~ammunition~~ is subject to the provisions of section 62.1-01-03.

12       **SECTION 3. AMENDMENT.** Section 62.1-01-03 of the North Dakota Century Code is  
13      amended and reenacted as follows:

14       **62.1-01-03. Limitation on authority of political subdivision regarding firearms - Civil**  
15      **action.**

- 16       1. A political subdivision, including home rule cities or counties, may not enact a ~~zoning~~  
17      ~~ordinance~~ or any other ordinance relating to the purchase, sale, ownership,  
18      possession, transfer of ownership, registration, or licensure of firearms and  
19      ammunition which is more restrictive than state law. All such existing ordinances are  
20      void.
- 21       2. ~~A political subdivision, including home rule cities or counties, may not enact a zoning~~  
22      ~~ordinance relating to the purchase, sale, ownership, possession, transfer of~~  
23      ~~ownership, registration, or licensure of firearms and ammunition. All such existing~~  
24      ~~ordinances are void.~~
- 25       3. ~~This section does not limit the ability of a political subdivision, including home rule~~  
26      ~~cities or counties, to enforce an ordinance or zoning regulation relating to a business~~  
27      ~~operation if the restriction in the ordinance or regulation:~~
- 28       a. ~~Applies equally to all persons engaging in commerce within the area subject to~~  
29      ~~the ordinance or regulation; and~~
- 30       b. ~~Is not specifically related to the purchase, sale, ownership, possession, transfer~~  
31      ~~of ownership, registration, or licensure of firearms and ammunition.~~



1 | 4. The absence of a state law restriction relating to the purchase, sale, ownership,  
2 | possession, transfer of ownership, registration, or licensure of firearms and  
3 | ammunition may not be construed to allow a political subdivision, including a home  
4 | rule city or county, to enact an ordinance restricting the purchase, sale, ownership,  
5 | possession, transfer of ownership, registration, or licensure of firearms and  
6 | ammunition.

7 | 4.5. A person aggrieved under ~~subsection 1~~this section may bring a civil action against a  
8 | political subdivision for damages as a result of an unlawful ordinance.

This section does not limit the ability of a city or county to enforce ordinances relating to building codes or business operations if:

- (a) the restrictions contained in the ordinance apply equally to all businesses located in the same type of zoned property; and
- (b) if the restrictions contained in the ordinance are not specifically related to the purchase, sale, ownership, possession, transfer of ownership , registration, or licensure of firearms and ammunition.

House Energy and Natural Resources  
Representative Todd Porter, Chair  
Representative Chuck Damschen, Vice-Chair  
January 26, 2023

Chair Porter, Members of the House Energy and Natural Resource Committee:

My name is Ben Ehreth and I am the Community Development Director for the City of Bismarck.

We greatly appreciate the opportunity to provide testimony related to House Bill 1340.

We are opposing House Bill 1340 based on the current language and potential unintended consequences that may result. The proposed language of the bill provides uncertainty related to the extent which zoning regulation may be applied to retail establishments selling firearms and/or ammunition. For instance, it is unclear if this bill would prohibit the ability of communities to regulate the location, dimensional standards (setbacks, height, lot coverage), parking, signage, stormwater, or any other aspect of health, safety, and general welfare that zoning ordinances provide for, in relation to the development of retail establishments, which may sell firearms and/or ammunition.

As an example, would a gun shop or a large-scale retail facility be exempt from any local zoning ordinances because they sell firearms and/or ammunition?

Based on this uncertainty we respectfully request you give HB 1340 a DO NOT PASS recommendation.

Thank you for your consideration of our comments.

Ben Ehreth, Community Development Director  
City of Bismarck  
701-355-1840  
behreth@bismarcknd.gov

## HB 1340

### Rep. Ben Koppelman- Testimony

Mr. Chairman and Members of the Committee,

Thank You for the opportunity to introduce HB1340 to you today.

HB 1340 comes to you as a bill seeking to reiterate, for the third and hopefully final time, **that local political subdivisions are not to restrict the purchase, sale, ownership, possession, transfer of ownership, registration, or licensure of firearms and ammunition, PERIOD.**

In 1983, the state legislature passed a limitation on the authority of political subdivisions to regulate guns and ammunition. 1983 NDCC 62-04-06 stated:

**“No political subdivision, including home rule cities and counties, may enact any ordinance relating to the purchase, sale, ownership, transfer of ownership, registration, and licensing of firearms and ammunition which is more restrictive than state law. All such existing ordinances are null and void.”** (Underline added for emphasis)

This provision has greatly remained since. When this chapter of Century Code was reorganized, this language was relocated to 62.1-01-03.

For many years, this provision existed in state law without local governments running afoul of this provision. At some point in the late 90's or early 2000's, Fargo revised their zoning ordinances. These changes included provisions which restricted the purchase, sale, and transfer of ownership of firearms within residential areas by ordinance, the very thing the law forbids. However, this did not come to everyone's attention until about 2016, when the ATF refused to renew licenses for Federal Firearms Licensed Dealers (FFL's) who use their residence for their base of operations. This was apparently due to the City of Fargo claiming primacy over the state by notifying the ATF that their ordinance did not allow such businesses.

Several FFL's appealed to the city citing the state law prohibiting such ordinances. After much struggle and lack of success in appealing to the City of Fargo, the FFL's started putting political pressure on Fargo to change course. There was much debate during Fargo city commission meetings between the mayor and

commissioners as to what to do about this situation. Some commissioners groused about the fact that the state had preempted their authority to regulate guns, and cited other areas of complaint like the state preemption on a local gas tax as well as local bans on plastic bags. Ultimately it was decided that the city would request an AG's opinion. The AG declined to issue an opinion, and so the city sought out-of-state council to attempt to justify their overreach. They found such council that suggested that a zoning ordinance isn't an ordinance and thus was not restricted under state law. The city then proceeded to use that attorney's opinion to continue to justify the enforcement of their ordinance.

This is when I was asked to get involved. I spoke with the ATF agent in charge and he said it was the ATF's policy to not interpret the supremacy of state law over local ordinance, and that the ATF would need something from the state indicating the supremacy of the state law. So, I requested an AG's opinion, but was also declined. I then attempted to be very diplomatic with the city to try and find a non-legislative solution. I met with the mayor and city attorney several times, both in person and via video conference call to discuss solutions. Although I think the mayor wanted to help, the commission made it clear that they wanted to continue to be able to enact local gun restrictions. Thus, I felt I had no choice but to introduce a legislative fix.

Last session, we passed HB1248 which for clarity added that zoning ordinances were indeed a type of ordinance in which the state restrains local political subdivisions from using to supersede state law with further gun restrictions. State law has, since 1983 allowed local governments to relax state gun restrictions. Following the successful passage of HB1248 by the legislature and being signed by the Governor, the city of Fargo decided to sue the state in district court claiming a violation of constitutionally mandated local control. The AG argued that state law precluded such a city ordinance. Oddly, the court found in favor of the city of Fargo, but not based on their claim. Rather, the judge ruled that because the state chooses to not limit the location of where gun transfers could take place, that no local ordinance of that sort could be deemed to be more restrictive. In my opinion, this was a terrible decision and a dangerous precedent. I urged the AG's office to appeal the decision, but instead they did nothing and the deadline to appeal came and went. Thus, here we are again.

What is at issue, is whether we want local governments creating gun control or whether we want gun regulations to remain a state-controlled issue. Without this bill and in light of the court opinion, I think local political subdivisions could propose all sorts of local gun control, and based on the anti-gun track-record of the Fargo city commission, I think we could expect it.

HB1340 does essentially three things in three places in code. First, it reaffirms that the state does not allow more restrictive gun laws. Second, it separates out zoning ordinances and takes away the qualifier of more restrictive. This means that cities have no business passing ordinances dealing with guns and ammunition, period. Third, it directly nullifies the district court ruling by clearly stating that the absence of a state law relating to guns and ammunition may not be construed to allow an political subdivision to pass an ordinance restricting such things. Each of these items are then placed in the home-rule and zoning chapters of the law in addition to the weapons chapter, just to alleviate further "confusion" that the City of Fargo or other political subdivisions might have in the future.

**Now more than ever, it imperative that we swiftly pass this bill, as written, out of the committee with a strong Do-Pass recommendation. Let's continue the strong tradition of the State of North Dakota standing up against local gun control.** Constitutional Rights should not be restricted by local government. I would be happy to attempt to answer any questions that you may have.

## 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.

# 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.**



## OPINION ON 2023 HOUSE BILLS

CRAIG ROE—ND CWL INSTRUCTOR/ BCI ND, FFL Holder

General opinion on all House bills 2023 regarding firearms rights. As the wording of the US Constitution states, The right to keep and bear arms shall not be infringed, it seems they are still, in many cases, being infringed at the Federal level and here in our own state of ND. The Second Amendment does not give the right to keep and bear arms, it restricts the government from infringing on the rights we naturally have. Any and all restrictions should be unconstitutional.

As pertains to our state of ND and the upcoming specific bills;

HB 1339—I agree that anyone who can legally enter the state and is not disqualified from owning firearms should have the right to bear those arms in the state. To own said firearms means that in most cases they have gone through background checks and that alone should give the right to bear arms anywhere in the US as long as state rules that are in place are followed. I would urge passage of HB 1339

HB 1340 – It seems some cities in ND feel they can restrict citizens on certain gun rights at their discretion. ND Century Code 62.1-01-03 Limitation on authority of political subdivision

**BOARD OF CITY COMMISSIONERS**

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225 4th Street North  
Fargo, ND 58102-4817  
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[www.FargoND.gov](http://www.FargoND.gov)

April 3, 2023

Senate Judiciary Committee  
HB 1340  
Senator Diane Larson, Chairman

Madam Chair and Members of the Committee,

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

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

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

In 1970, Fargo adopted a Home Rule Charter through a city election. Fargo's Home Rule Charter provides for numerous powers including powers specific to the ability to zone public and private property within its city limits and extraterritorial zoning

jurisdiction. Fargo uses its zoning powers to regulate and restrict the location and use of buildings, structures, and land for trade, industry, residence, or other purposes.

Fargo utilizes its zoning powers to place various uses (commercial, industrial, agricultural, residential, etc.) into their own respective zones. The purpose of this zoning is to provide for harmonious and complementary land usage and Fargo attempts to do so by allowing land uses that will not conflict with each other in given geographic locations. This is similar to how other cities in North Dakota and the country utilize their own zoning powers.

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

Fargo's Municipal Code provides home occupation regulations which are intended to permit residents to engage in home occupations while ensuring that home occupations will not be a detriment to the character and livability of the surrounding neighborhood. However, there are six specific uses which Fargo expressly prohibits because the uses will be a detriment to the character and livability of the surrounding neighborhood. These six prohibited uses are: vehicle and large equipment repair; dispatch centers; mortuaries; animal care, grooming or boarding facilities; adult entertainment centers; and firearms and ammunition sales and production.

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

With this background, we want to emphasize that the home occupation uses available to residents of Fargo are a local issue for Fargo, not the legislative assembly. Fargo's home occupation uses solely govern the residents of Fargo – no one else. It is well established that the business of organizing land development in a city should be left to each city. Cities such as Fargo should be allowed to prohibit commercial businesses, restaurants, bars and industrial plants from building and residing in residential neighborhoods. Likewise, cities should be allowed to prohibit adult entertainment centers,

mortuaries, dispatch centers, and firearm and ammunition sellers from operating in single family homes, condominiums, and apartments. Fargo does not prohibit the sale of firearms and ammunition in Fargo. In fact, there are likely more firearms and ammunition available in Fargo – in both large retail stores and small businesses – than in any other city in North Dakota. Fargo is merely prohibiting the sale of firearms and ammunition as a home occupation in residential neighborhoods. This is a purely local issue which should be left to the locality to determine – as required by the North Dakota Constitution.

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

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

Sincerely,

A handwritten signature in black ink, appearing to read "Timothy J. Mahoney", with a stylized flourish at the end.

Dr. Timothy J. Mahoney  
Mayor

## HB 1340

### Rep. Ben Koppelman- Testimony

Madame Chairman and Members of the Committee,

Thank You for the opportunity to introduce HB1340 to you today.

HB 1340 comes to you as a bill seeking to reiterate, for the third and hopefully final time, that **local political subdivisions are not to restrict the purchase, sale, ownership, possession, transfer of ownership, registration, or licensure of firearms and ammunition, PERIOD.**

In 1983, the state legislature passed a limitation on the authority of political subdivisions to regulate guns and ammunition. 1983 NDCC 62-04-06 stated:

**"No political subdivision, including home rule cities and counties, may enact any ordinance relating to the purchase, sale, ownership, transfer of ownership, registration, and licensing of firearms and ammunition which is more restrictive than state law. All such existing ordinances are null and void."** (Underline added for emphasis)

This provision has greatly remained since. When this chapter of Century Code was reorganized, this language was relocated to 62.1-01-03.

For many years, this provision existed in state law without local governments running afoul of this provision. At some point in the late 90's or early 2000's, Fargo revised their zoning ordinances. These changes included provisions which restricted the purchase, sale, and transfer of ownership of firearms within residential areas by ordinance, the very thing the law forbids. However, this did not come to everyone's attention until about 2016, when the ATF refused to renew licenses for Federal Firearms Licensed Dealers (FFL's) who use their residence for their base of operations. This was apparently due to the City of Fargo claiming primacy over the state by notifying the ATF that their ordinance did not allow such businesses.

Several FFL's appealed to the city citing the state law prohibiting such ordinances. After much struggle and lack of success in appealing to the City of Fargo, the FFL's started putting political pressure on Fargo to change course. There was much debate during Fargo city commission meetings between the mayor and

commissioners as to what to do about this situation. Some commissioners groused about the fact that the state had preempted their authority to regulate guns, and cited other areas of complaint like the state preemption on a local gas tax as well as local bans on plastic bags. Ultimately it was decided that the city would request an AG's opinion. The AG declined to issue an opinion, and so the city sought out-of-state council to attempt to justify their overreach. They found such council that suggested that a zoning ordinance isn't an ordinance and thus was not restricted under state law. The city then proceeded to use that attorney's opinion to continue to justify the enforcement of their ordinance.

This is when I was asked to get involved. I spoke with the ATF agent in charge and he said it was the ATF's policy to not interpret the supremacy of state law over local ordinance, and that the ATF would need something from the state indicating the supremacy of the state law. So, I requested an AG's opinion, but was also declined. I then attempted to be very diplomatic with the city to try and find a non-legislative solution. I met with the mayor and city attorney several times, both in person and via video conference call to discuss solutions. Although I think the mayor wanted to help, the commission made it clear that they wanted to continue to be able to enact local gun restrictions. Thus, I felt I had no choice but to introduce a legislative fix.

Last session, we passed HB1248 which for clarity added that zoning ordinances were indeed a type of ordinance in which the state restrains local political subdivisions from using to supersede state law with further gun restrictions. State law has, since 1983 allowed local governments to relax state gun restrictions. Following the successful passage of HB1248 by the legislature and being signed by the Governor, the city of Fargo decided to sue the state in district court claiming a violation of constitutionally mandated local control. The AG argued that state law precluded such a city ordinance. Oddly, the court found in favor of the city of Fargo, but not based on their claim. Rather, the judge ruled that because the state chooses to not limit the location of where gun transfers could take place, that no local ordinance of that sort could be deemed to be more restrictive. In my opinion, this was a terrible decision and a dangerous precedent. I urged the AG's office to appeal the decision, but instead they did nothing and the deadline to appeal came and went. Thus, here we are again.

What is at issue, is whether we want local governments creating gun control or whether we want gun regulations to remain a state-controlled issue. Without this bill and in light of the court opinion, I think local political subdivisions could propose all sorts of local gun control, and based on the anti-gun track-record of the Fargo city commission, I think we could expect it.

HB1340 does essentially three things in three places in code. First, it reaffirms that the state does not allow more restrictive gun laws. Second, it separates out zoning ordinances and takes away the qualifier of more restrictive. This means that cities have no business passing ordinances dealing with guns and ammunition, period. Third, it directly nullifies the district court ruling by clearly stating that the absence of a state law relating to guns and ammunition may not be construed to allow an political subdivision to pass an ordinance restricting such things. Each of these items are then placed in the home-rule and zoning chapters of the law in addition to the weapons chapter, just to alleviate further "confusion" that the City of Fargo or other political subdivisions might have in the future.

In the House, we attached an amendment at the request of the League of Cities to ensure that local political subdivisions could continue to regulate zoning activities as long as they did not interfere in the firearm activities as outlined in this bill and as long as they treated FFL's the same as other businesses.

Madame Chairman and Members of the committee, **now more than ever, it imperative that we swiftly pass this bill, as written, out of the committee with a strong Do-Pass recommendation. Let's continue the strong tradition of the State of North Dakota standing up against local gun control.** Constitutional Rights should not be restricted by local government. I would be happy to attempt to answer any questions that you may have.