

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. 4712

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ORDINANCE ENACTING ARTICLE 3-21
OF CHAPTER 3 OF THE FARGO MUNICIPAL CODE
RELATING TO IMPOSITION OF A SALES, USE AND GROSS RECEIPTS TAX
(FLOOD RISK MITIGATION AND REDUCTION IMPROVEMENTS)

WHEREAS, North Dakota state law provides authority to impose a sales, use and gross receipts tax for flood risk mitigation and reduction improvements; and,

WHEREAS, the electorate of the city of Fargo has adopted a home rule charter in accordance with Chapter 40-05.1 of the North Dakota Century Code; and,

WHEREAS, Section 40-05.1-06 of the North Dakota Century Code provides that the City shall have the right to implement home rule powers by ordinance; and,

WHEREAS, Section 40-05.1-05 of the North Dakota Century Code provides that said home rule charter and any ordinances made pursuant thereto shall supersede state laws in conflict therewith and shall be liberally construed for such purposes; and,

WHEREAS, the imposition of a sales, use and gross receipts tax for flood risk mitigation and reduction improvements has been approved by a super-majority (60%) vote of the electorate; and

WHEREAS, the Board of City Commissioners deems it necessary and appropriate to implement revisions to the sales, use and gross receipts tax for flood risk mitigation and reduction improvements ordinance by adoption of this ordinance;

NOW, THEREFORE,

Be It Ordained by the Board of City Commissioners of the City of Fargo:

Section 1. Enactment.

Article 3-21 of Chapter 3 of the Fargo Municipal Code is hereby enacted to read as follows:

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ARTICLE 3-21

IMPOSITION OF A SALES AND USE TAX
(FLOOD RISK MITIGATION AND REDUCTION IMPROVEMENTS)

- 3-2101 Definitions.
- 3-2102 Sales tax imposed.
- 3-2103 Use tax imposed.
- 3-2104 Gross receipts of alcoholic beverages.
- 3-2105 Gross receipts of new farm machinery and new farm irrigation equipment.
- 3-2106 Exemptions.
- 3-2107 Maximum tax imposed.
- 3-2108 Collection and administration.
- 3-2109 Contract with state tax commissioner.
- 3-2110 Dedication of Tax proceeds.
- 3-2111 Term.

3-2101. Definitions.--All terms defined in chapters 40-05.1, 57-39.2, 57-39.4, 57-39.5, 57-39.6 and 57-40.2, North Dakota Century Code (N.D.C.C.), are adopted by reference.

3-2102. Sales tax imposed. – Subject to the provisions of N.D.C.C. §40-05.1-06 and except as otherwise provided in this article or the sales and use tax laws of the State of North Dakota, a tax of one-half of one percent (1/2%) is imposed upon the gross receipts of retailers from all retail sales, including the leasing or renting of tangible personal property, within the corporate limits of the city of Fargo, North Dakota.

3-2103. Use tax imposed.--Subject to the provisions of N.D.C.C. §40-05.1-06 and except as otherwise provided in this article or the sales and use tax laws of the State of North Dakota, an excise tax of one-half of one percent (1/2%) is imposed on the storage, use, or consumption in the city of Fargo of tangible personal property purchased at retail for storage, use, or consumption in this city, at the rate of one-half of one percent (1/2%) of the purchase price of the property. An excise tax is imposed on the storage, use, or consumption within the corporate limits of the city of Fargo, North Dakota of tangible personal property not originally purchased for storage, use, or consumption in this city at the rate of one-half of one percent (1/2%) of the fair market value of the property at the

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1 time it was brought into this city. With respect to the purchase price of tangible personal
2 property used by a contractor or subcontractor to fulfill a contract as defined in
3 §57-40.2-03.3, N.D.C.C., the tax imposed by this section applies only to bids submitted on
4 or after January 1, 2010.

5 3-2104. Gross receipts of alcoholic beverages. Subject to the provisions of
6 N.D.C.C. § 40-05.1-06, and except as otherwise provided in this Ordinance, a gross
7 receipts tax of one-half of one percent (1/2%) is imposed upon all gross receipts from the
8 sale of alcoholic beverages within the city. A person who receives alcoholic beverages
9 for storage, use, or consumption in this state is subject to tax on storage, use, or
10 consumption of those alcoholic beverages at the rate of one-half of one percent (1/2%).

11 3-2105. Gross receipts of new farm machinery and new farm irrigation equipment.
12 Subject to the provisions of N.D.C.C. § 40-05.1-06, and except as otherwise provided in
13 this Ordinance, a gross receipts tax of one-half of one percent (1/2%) is imposed upon all
14 gross receipts from the sale of new farm machinery and new farm irrigation equipment
15 within the city. A person who receives new farm machinery or new farm irrigation
16 equipment for storage, use, or consumption in this state is subject to tax on storage, use,
17 or consumption of that machinery and/or equipment at the rate of one-half of one percent
18 (1/2%).

19 3-2106. Exemptions.--All sales, storage, use, or consumption of tangible personal
20 property which are exempt from imposition and computation of the sales or use tax of the
21 state of North Dakota are specifically exempt from the provisions of this article. In addition
22 to the exemptions provided by state law, this Ordinance provides an exemption from
23 imposition and computation of the city sales or use tax for the playing of any machine for
amusement or entertainment in response to the use of a coin.

3-2107. Maximum tax imposed. Any patron or user paying a tax imposed by this
article in excess of \$12.50 upon any single transaction of one or more items may obtain a
refund of the excess tax payment by filing a request for refund upon the forms provided by
the tax commissioner.

3-2108. Collection and administration.--The tax commissioner and the director of
finance for the city of Fargo shall have the powers enumerated in the provisions of chapters
57-39.2, 57-39.4, 57-39.5 and 57-39.6 N.D.C.C., and chapter 57-40.2, N.D.C.C., relating to
the collection and administration of the state sales, use and gross receipts tax, including all

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1 administrative rules adopted by the tax commissioner. The tax commissioner is authorized
2 to establish rate tables integrating the tax imposed by this chapter with other state, county
and city taxes.

3 3-2109. Contract with state tax commissioner.--The director of finance for the city
4 of Fargo is hereby authorized to contract with the tax commissioner for the administration
5 and collection of taxes imposed by this chapter. The director of finance has all powers
6 granted the commissioner and in the absence of a valid contract with the commissioner or
failure of the commissioner to perform the delegated duties shall perform these duties in
place of the commissioner.

7 3-2110. Dedication of tax proceeds.--In accordance with Article 3T(4) and (5) of
8 the Home Rule Charter of the city of Fargo, the proceeds of a sales, gross receipts and use
9 tax, which is imposed pursuant to the authority granted herein, shall be utilized for such
10 flood risk mitigation and reduction, and related improvements and activities, as the
11 governing body of the city may select. Flood risk mitigation and reduction, and related
12 improvements and activities, shall mean expenditures to reduce or mitigate the risk to the
13 city from flood events, to provide protection from such flood events, including without
14 limitation the providing for retention of water. Such expenditures may be used to acquire
15 property; enter into agreements; make, install, construct or build improvements and engage
16 in projects and activities as are necessary and appropriate for such purposes. The stated goal
shall be to reduce the risk to the city to the level of a 500-year flood event. Interest earnings
on such proceeds may also be utilized for such purposes. Proceeds from such tax may be
used to make direct payment for such purposes or may be pledged to amortize bonds or
other debt instruments which may be sold to finance such costs. Revenues raised and
collected pursuant to authority granted herein, less administrative expenses, shall be
deposited in a separate flood risk mitigation fund to be established, and shall be utilized as
directed by the governing body of the city for the purposes set forth herein.

17 3-2111. Term.--The tax imposed by this article shall be in full force and effect
18 from January 1, 2010 through December 31, 2029.

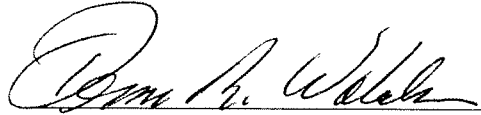
19 Section 2. Effective Date.

20 The effective date of the ordinance shall be amended to read as follows:
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1 This ordinance shall be in full force and effect from and after its passage and
2 approval, but not prior to January 1, 2010.

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4 Dennis R. Walaker, Mayor

(SEAL)

5 Attest:

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7 Steven Sprague, City Auditor

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9 First Reading: 08-10-2009
10 Second Reading: 08-24-2009
11 Final Passage: 08-24-2009

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13 F:\CITY***\Sales Tax Ordinance - Flood Protection
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