



CITY OF GRAND FORKS

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OFFICE OF CITY ATTORNEY

E-MEMORANDUM

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From: Daniel L. Gaustad (dan@grandforkslaw.com)
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Re: Mural at North Dakota Vision Services/School for the Blind

Date: July 18, 2025

I. INTRODUCTION.

A substantially completed mural was installed along the entire north-facing exterior wall of an accessory building along 6th Avenue North at the direction of the North Dakota Vision Services/School for the Blind (hereinafter “NDVS/SB”). An application for this mural was not submitted to the City, nor was the mural approved by the City, prior to its installation. This fact is not in dispute. Once the work on the mural was brought to the attention of the planning department, a stop work order was issued by the Department of Public Safety and the artist was directed to stop work on the mural. However, some additional work was allowed to be completed, but this authorization was rescinded shortly thereafter.

A review of the applicable ordinances reveals the location of the NDVS/SB mural violates City Ordinance § 18-301(3)(M)(4) because the wall of the accessory building on which the mural was painted directly abuts a public right-of way – being 6th Avenue North.

City Ordinance § 18-0301(3)(M) was amended in July 2023 to permit murals in residential districts, but only if the mural is painted on a school or church building. The amendment further requires the proposed school or church mural, if located in residential districts, to receive a

recommendation from Planning and Zoning, following an evaluation of several specifications (namely size, location, lighting plan, maintenance plan and fines should maintenance not occur), before presentation to the City Council for approval. No other changes to the City Ordinance § 18-0301 relating to the installation of murals were amended.

As currently drafted, there are several requirements for a mural to be installed on a school or church located in a residential district. The most significant for the purposes of this current controversy is that a “mural is not installed on any exterior wall of a building directly abutting a public right-of-way, excluding alleys.” City Ordinance § 18-0301(3)(M)(4). As noted by Ryan Brooks when the amendment was discussed in July 2023, the discussion focused on not permitting murals in residential districts that would face public streets – which is consistent with the referenced ordinance, as amended.

As a result of the oversight by the NDVS/SB to submit an application for the placement of the mural to Planning and Zoning prior to the installation of the mural, the NDVS/SB has made a request for the approval of the nearly completed mural. At the July 9, 2025, Planning and Zoning Commission meeting, after receiving several comments in favor and at least one in opposition to the existence and location of the mural, the commission voted to recommend to the City Council that the mural be removed.

On July 11, 2025, the City Attorney received an unsolicited email from Stephanie Johnson, an Assistant Attorney General with the UND Office of General Counsel, with the message “Hi Dan – I was looking into another issue and came across an AG opinion that may be of interest to you and thought I’d send it your way.” Attached was a 1998 opinion of the North Dakota Attorney General (the “NDAG”) which ultimately concluded “a city’s zoning authority does not control the use of state property.” 1998 N.D. Op. A.G. L-38.

On July 14, 2025, the City Attorney received another email, this time from Matthew S. Menge, an Assistant Attorney General, who serves as general counsel for the NDVS/SB, with attached the same NDAG opinion and noted his availability for a discussion regarding the mural later in the week.

On July 17, 2025, a discussion was held between the City Attorney and Mr. Menge to discuss the application of the 1998 ND AG opinion. Mr. Menge opined that mural promotes the services of the NDVS/SB and is a beneficial addition to the school. However, following the discussion as to the scope of the 1998 ND AG opinion, Mr. Menge stated he would follow up with colleagues and potentially AG Drew Wrigley for clarification as to the some of the points raised by the City.

On July 18, 2025, further discussion was held between the City Attorney and Mr. Menge to discuss the application of the 1998 ND AG opinion. Mr. Menge explained it is the position of the NDVS/SB that the painting of the mural on a building owned by the NDVS/SB is not governed by the City’s zoning regulations.

II. APPLICABLE LAW AND LEGAL ANALYSIS.

According to the NDAG opinion received, “a city’s zoning authority does not control the use of state property.” 1998 N.D. Op. A.G. L-38. The opinion reasoned a city’s “zoning power is dependent upon authority delegated from the state” and a “municipality has no power to zone in

the absence of express or implied statutory or constitutional authority.” City of Fargo, Cass County v. Harwood Township, 256 N.W.2d 694, 697 (N.D. 1977); see also N.D.C.C. § 40-47-01 (authorizing cities to adopt zoning regulations). As a result, a state governmental body or subdivision is, generally, not subject to municipality zoning regulations unless the North Dakota legislature has “clearly manifested a contrary intent,” and therefore, either expressly or impliedly delegated authority to the municipality to regulate the use of specific state-owned property. 1998 N.D. Op. A.G. L-38 (citing City of Bloomfield v. Davis County Community Sch. Dist., 119 N.W.2d 909, 911 (Iowa 1963); City of Santa Fe v. Armijo, 634 P.2d 685, 686 (N.M. 1981)); see also 8 Eugene McQuillin, The Law of Municipal Corporations § 25.15 at 48 (3d ed. 1991) (“Municipal zoning regulations or restrictions usually do not apply to the state or any of its subdivisions or agencies, unless the Legislature has clearly manifested a contrary intent”). This doctrine of “state preemption” of, or immunity from, local zoning regulations applies when enforcement of the zoning regulation would frustrate, or could frustrate, state policy. 1998 N.D. Op. A.G. L-38 (citing 8 McQuillin Mun. Corps. § 25.15 at 49).

The position taken by Mr. Menge, as legal counsel for the NDVS/SB, is that the City’s zoning regulations are not applicable to the painting of the mural on a building owned by the NDVS/SB. Although the City inquired as to how the enforcement of the City’s regulations would frustrate, or could frustrate, state policy, no clear answer was provided. Rather, it was explained the state legislature is the governmental body that creates policy, and when silent, policy is made by the department, here that would be the Department of Public Instruction. While not clear, NDVS/SB may take the position the mural promotes the services of the NDVS/SB since that was the position of the school superintendent at the planning and zoning meeting, purpose of the mural was public awareness, and Mr. Menge during his conference with the City Attorney’s office, the mural promotes the services of the school.

Although Mr. Menge was clear his opinion, as to the inapplicability of the City’s zoning regulations, is limited to this singular issue involving a mural on the NDVS/SB building, this position has broader implications for the City and possibly other municipalities.

III. CONCLUSION.

There are three possible solutions to this current situation as it relates to the state. First, the City can seek to enforce its zoning regulations on the NDVS/SB, through court action or by a request to the NDAG for an opinion as to this situation. Second, the City could agree with the opinion of Mr. Menge that in this singular and limited circumstance the City’s zoning regulation does not control the use of the NDVS/SB building and allow for the mural to be completed and remain. Third, the City can amend the mural ordinance to permit exceptions under specific circumstances that are less stringent than the standard for a variance (see prior memo), and to also address issues involving the state.