

Commissioner _____ moved for the approval of the following RESOLUTION:

RESOLUTION

[MORATORIUM PERTAINING TO THE RETAIL SALE OF ALCOHOLIC BEVERAGES]

WHEREAS, The Mayor has declared a state of emergency as a result of the COVID-19 pandemic, by order and proclamation of March 16, 2020; and

WHEREAS, The Governor of the State of North Dakota, declared, by executive order of March 19, 2020, that, “[e]ffective at 12:00 p.m., Friday, March 20, all restaurants, bars, breweries, cafes and similar on-site dining establishments are closed to on-sale/on-site patrons; take-out, delivery, curbside, drive-through or off-sale services may continue; this requirement will continue through Monday, April 6, 2020; and

WHEREAS, The City’s “state of emergency” ordinance authorizes the Mayor and City Commission to, among other things, “. . . [p]rohibit or limit the movement of persons or hours of operation of businesses, by curfew or otherwise, within the designated disaster or emergency area, and the occupancy of premises therein” and to “. . . [l]imit or prohibit the sale, dispensing or transportation of alcoholic beverages . . .” [F.M.C. Section 10-0318]; and

WHEREAS, North Dakota cities are authorized to enact or adopt all such ordinances, resolutions, and regulations, 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 [cities] . . . as the general welfare of the municipality may require . . .” including the power “[t]o regulate the use and . . . sale of alcoholic beverages . . .” [N.D.C.C. §40-05-01 subd. 1 and 29]; and

WHEREAS, It is hereby found and declared that the health, safety and welfare of the City and its occupants will be benefited by providing appropriate means for the delivery of meals, including beverages, to individuals and families that fosters appropriate social distancing for the curbing of the COVID-19 pandemic;

NOW, THEREFORE, BE IT HEREBY RESOLVED:

1. MORATORIUM ESTABLISHED. A moratorium is hereby established as to the enforcement within the jurisdictional limits of the City of Fargo of Article 25-15 of the Fargo Municipal Code, as follows:
 - a) **On-sales.** As to licensed restaurants within the City of Fargo that are also licensed for on-sale serving of alcoholic beverages, the sale of sealed cans or bottles of alcoholic beverages to customers taking delivery of prepared food or meals from the restaurant on a “take-out”, “curbside delivery”, “drive-through” or employees of said restaurant or by other lawful means of delivery shall be deemed to be “on-sale” service or sale of such beverages. Delivery of meals only—without any accompanied sale of alcoholic beverages—may be delivered by agents or 3rd party meal-delivery-services.

- i) For purposes of this moratorium, the definition of the term "on-sale", as set forth in Section 25-1501 (16) of the Fargo Municipal Code, limiting the “. . . sale of alcoholic beverages for consumption only on the licensed premises . . .” shall be enforced such that sealed cans or bottles of alcoholic beverages along with such food or meals sold by the restaurant and served or delivered by means of such “take-out”, “curbside delivery”, “drive-through” or other such lawful means are hereby deemed to have been consumed on the licensed premises so long as said beverages are accompanied by food purchased from the restaurant.
2. **Mayor Authorized to Implement by Further Order or Orders.** The Mayor of the City is hereby authorized to promulgate and issue one or more executive orders as may be necessary to implement and clarify the terms of this moratorium, under the authority of F.M.C. §10-0318 and hereof, which executive orders may be further ratified or amended by the Board of City Commissioners as may be necessary or appropriate.
3. **Effect of Moratorium – Limitation of Enforcement.** This moratorium as to the enforcement of certain regulations or ordinances of the City shall be serve to instruct, order and limit the police officers and prosecutors of the City or any other law enforcement officers or agents to refrain from enforcing City Ordinances contrary to the terms hereof and to refrain from charging or citing persons, firms or other entities accordingly and, furthermore, said instruction, order and limitation in enforcement shall survive the termination of this moratorium, whether such termination occurs by lapse of time or by affirmative act.
4. **Effective Date and Term.** This moratorium shall take effect immediately upon the adoption hereof [the “Effective Date”] and shall extend until 11:59 p.m. on the 20th day of April, 2020, unless it is otherwise terminated or extended by resolution or motion of the Board of City Commissioners of the City of Fargo.

Said motion was seconded by Commissioner _____ and, upon call of the roll Commissioners _____ voted “aye”, Commissioners _____ voted “nay” and with Commissioners _____ being absent the Resolution was declared as approved and enacted.
Resolution approved the ____ day of March, 2020.

Dr. Timothy J. Mahoney, M.D., Mayor

Attest:

Steven Sprague, City Auditor