



TO: City Council
FROM: Stefanie Stalheim, City Attorney
DATE: May 6, 2024
SUBJECT: Follow-up Information re: Automatic Door Ordinance

I. RECOMMENDED ACTION

Council should review and consider follow-up information provided in this memo and direct staff on how to proceed.

II. DEPARTMENT CONTACT PERSONS

Stefanie Stalheim, City Attorney	857-4755
Nick Schmitz, Assistant City Attorney	857-4755
Harold Stewart, City Manager	857-4750
Brian Billingsley, Comm. and Economic Dev. Director	857-4147
Luke Tillema, Chief Building Official	857-4147

III. DESCRIPTION

A. Background

At the February 20 City Council meeting Alderman Podrygula directed staff to write a draft ordinance similar to [City of Mandan's Ordinance 111.2-9](#) and present it to the City Council for its consideration at the March 4, 2024 City Council meeting.

At the March 4, 2024 meeting, the City Council made several requests to City staff for follow-up information. City Council's requests and City Staff's responses are as follows:

The City Council would like clarification on what city programs this ordinance is applicable to.

As written, this ordinance would apply to façade improvement program participants and participants in other city funding programs that receive city funds for building improvements or new construction.

The Council asked for clarification on whether the ordinance would be applicable to organizations that are receiving funds from the City that are not for building improvements.

As written, this ordinance would not be applicable to organizations that receive funds from the City that are not for building improvements or new construction.

Alderman Burlingame asked staff to advise how this ordinance affects home-based businesses such as home daycares.

We inserted specific language in the ordinance exempting home-based businesses from compliance with this ordinance.

Alderman Podrygula asked us to reach out to Mandan's City Attorney to advise if they have experienced any adversity (litigation/complaints) with their ordinance:

Mandan City Attorney (Amy Oster) Response: No, we haven't received any complaints, threats of litigation, or requests for clarification. I believe this was a citizen-initiated ordinance (more than a decade ago). One thing to note is that its application is somewhat limited — it applies only to buildings receiving the benefit of public funds (of more than \$5,000) and only to buildings in certain use groups, including most retail stores (including restaurants and grocery stores, but not bars), certain service groups (including barber/beauty shops and childcare centers), offices (like banks), and healthcare. It generally only comes up when economic development funds are awarded (like through the Renaissance Zone program or the Storefront Improvement program). I'm not aware of the City imposing the requirement outside of that context (like through services contracts).

The Council asked the Finance Department, Souris Basin Planning Council, Visit Minot, and MACEDC to generate lists of organizations that have received over \$5000 from the City of Minot over the past 5 years.

See attached Finance Department Report, which includes lists from MACEDC and Visit Minot. Staff notes that most of these projects are not building projects, so this proposed ordinance would not be applicable to many of these projects.

No information has been received from Souris Basin Planning Council, but staff would note that these are non-forgivable loans, not grants of money/forgivable loans.

Alderwoman Evans asked for information on whether tenants are required to comply with this ordinance.

No – tenants typically would not be applying for city funds for building improvements. If they did, the City would require the property owner to be the applicant and the property owner would need to comply with this ordinance.

City Manager Stewart asked if this ordinance would apply to tax increment financing (TIF) applications and tax abatements.

The City Attorney's Office did not locate case law, attorney general opinions, or other legal authority explicitly stating that TIF districts and tax abatements are considered public funds. However, we think there is a strong argument to be made that properties that receive the benefit of these financing mechanisms receive the "benefit of public funds" – because by approving a TIF district or tax abatement, the City is choosing to forgo the collection of funds derived from taxation.

Note the term "public funds" is defined in the proposed ordinance as it is defined in N.D.C.C. § 21-04-01(5), which states:

"Public funds" includes **all funds derived from taxation**, fees, penalties, sale of bonds, or from any other source, which belong to and are the property of a public corporation or of the state, and all sinking funds of such public corporation or of the state, and all funds from whatever source derived and for whatever purpose to be expended of which a public corporation or the state have legal custody. **The term includes funds of which any**

board, bureau, commission, or individual, created or authorized by law, is authorized to have control as the legal custodian for any purpose whatsoever whether such funds were derived from general or special taxation or the assessment of persons or corporations for a specific purpose. The term does not include funds of students or student organizations deposited in a student financial institution approved by and under the control of the school board.

B. Proposed Project

The attached ordinance adopts similar language to what is found in the City of Mandan's Ordinance 111.2-9, with updates to modernize existing language and accommodate the City of Minot's existing ordinances.

C. Consultant Selection

No consultant retained.

IV. IMPACT:

A. Strategic Impact:

This ordinance will require buildings and businesses that are established for retail sale of goods and services, or that conduct commercial, governmental, financial, professional, or management functions that are open to the public, that receive public funds from the City, to install at least one automatic door for at least one main entrance to the building. There is a waiver provision in this ordinance that will allow for an exemption if the installation would be technically infeasible or if the installation would create an undue burden on the applicant as defined by federal law ([28 CFR 36.104](#)).

B. Service/Delivery Impact:

This ordinance will require buildings and businesses applying for public funds from the City to ensure they have at least one automatic door for at least one main entrance to their building.

C. Fiscal Impact:

Businesses and buildings applying for public funds will need to consider and comply with this ordinance when submitting their applications.

V. CITY COUNCIL ASPIRATIONS

Dynamic and Prosperous, Resilient and Prepared, Safe and Welcoming, Excellent and Connected

VI. ALTERNATIVES

- A. City Council could offer amendments to the proposed ordinance.
- B. City Council could decline to pass the proposed ordinance.
- C. City Council could table the ordinance.
- D. City Council could direct staff to bring back additional research and information for its consideration.
- E. City Council could also consider not passing an ordinance addressing automatic doors, and instead direct staff to amend the façade improvement guidelines to

require applicants to install at least one automatic door to one main entrance of their building.

VII. TIME CONSTRAINTS

- A. Pending applications for public funds from the City will not need to comply with this ordinance until it is passed on second reading.

VIII. LIST OF ATTACHMENTS

- A. Proposed Ordinance
- B. Finance Department Report
- C. Excerpt from Land Development Ordinance, Table of Uses (Table 2.2)