

RENAISSANCE ZONES IN NORTH DAKOTA: AN INVESTMENT IN CITIES CREATING HIGH-RISING BENEFITS FOR TAXPAYERS

ABSTRACT

The North Dakota Legislature took notice of decay in North Dakota cities in the late 1990s. This decay had slowly taken hold on cities due to factors set in motion decades before. Urban sprawl, accelerated by the development of the interstate highway, was expanding cities outward. New growth sprung up on the outskirts of towns and less investment occurred in the cities' cores. Urban renewal leveled downtown buildings, which changed the neighborhoods and often left only parking lots behind. The North Dakota Legislature created the Renaissance Zone program to combat these issues. The program provides tax benefits for those who invest in designated areas, often where infrastructure such as roads and utilities already exist. It also incentivizes urban development where construction costs can be prohibitively expensive. First, an overview of the historical events leading to decay will demonstrate why the North Dakota Legislature enacted the Renaissance Zone program. Next, an explanation of Renaissance Zones and application requirements will clarify what is needed to receive these tax incentives. Then, a review of how several cities use Renaissance Zones will shed light on the program's success and highlight issues regarding tax collection, targeted growth, and public disfavor. Finally, this note will conclude with a discussion on why the program's success indicates North Dakota should continue the Renaissance Zone program for the foreseeable future, implement certain changes to the inner-city block limitations, and increase the number of participating cities to maximize the program's impact.

- I. INTRODUCTION.....239
- II. RENAISSANCE ZONE BACKGROUND AND BENEFITS239
 - A. HISTORICAL BACKGROUND AND WHY RENAISSANCE WAS NEEDED IN NORTH DAKOTA CITIES240
 - 1. *Suburbanization and Sprawl in Post-World War II America*240
 - 2. *Federal Housing Acts*..... 241
 - 3. *Interstate Highway System* 242
 - 4. *Impacts Specific to North Dakota* 243
 - B. RENAISSANCE ZONE ELIGIBILITY, CREATION, AND BENEFITS244
 - 1. *Eligibility Criteria and Application Process* 245
 - 2. *Role of the ND Department of Commerce Division of Community Services* 247
 - 3. *Tax Exemptions* 248
 - 4. *Income Tax Exemptions* 248
 - 5. *Property Tax Exemptions* 250
 - 6. *Historic Preservation and Renovation Tax Credit* 252
 - 7. *Renaissance Fund Organizations* 252
 - 8. *Rules and Administration-Income Tax Secrecy Exception*255
- III. RENAISSANCE ZONES HAVE INCREASED TAXABLE VALUES AND REVITALIZED MANY PROPERTIES255
- IV. DRAWBACKS OF RENAISSANCE ZONES.....257
 - A. TAKING REVENUE FROM TAXING ENTITIES257
 - B. TARGETED GROWTH258
 - C. PUBLIC DISFAVOR.....259
- V. RECOMMENDATION FOR FUTURE RENAISSANCE ZONES259
 - A. RENAISSANCE ZONE BLOCK LIMIT MODIFICATIONS260
 - B. EXPANSION TO OTHER CITIES.....261
- VI. CONCLUSION261

I. INTRODUCTION

Renaissance Zones provide tax incentives to encourage development and renovation in designated areas. They have had positive and negative impacts on North Dakota communities since their enactment in 1999.¹ The program has greatly increased tax assessed values within zone boundaries, reduced blight, and generated infill projects to maximize land use in urban cores.² The program also reduced tax revenue for collecting entities during tax exempt periods, favored growth and development in particular areas of cities, and created concerns about how taxpayer money is being utilized.³ This note will discuss historical events that contributed to urban decay, attempts to remedy the decay, the details of the North Dakota Century Code's chapter on Renaissance Zones, the benefits and downfalls of the Renaissance Zone program, and conclude by exploring ways to modify the current program to maximize its benefits.

II. RENAISSANCE ZONE BACKGROUND AND BENEFITS

The historical events leading up to urban sprawl in the United States and suburbanization are a complex and multifaceted web of technological, political, economic, and social factors.⁴ The intricate details of these issues are beyond the scope of this note, but a brief understanding of the sprawl and suburbanization of America after World War II, Federal Housing Acts, and the development of the interstate highway system will help clarify how national policies affected North Dakota and why the North Dakota Legislature eventually encouraged reinvestment in city centers. After providing this historical background, each section of the Renaissance Zone statute will be analyzed.

1. Act of Apr. 8, 1999, ch. 369, 1999 N.D. Laws 11.

2. See *infra* pp. 256-57.

3. See *infra* pp. 257-59.

4. KCI Technologies, Inc., *Suburbanization Historic Context and Survey Methodology*, MD. GOV'T B-1 (Nov. 1999), <https://www.sha.maryland.gov/oppn/B-1.pdf>; THE URBAN INSTITUTE PRESS, *URBAN SPRAWL: CAUSES, CONSEQUENCES, & POLICY RESPONSES* 5 (Gregory D. Squires ed., 2002).

A. HISTORICAL BACKGROUND AND WHY RENAISSANCE WAS
NEEDED IN NORTH DAKOTA CITIES

1. *Suburbanization and Sprawl in Post-World War II America*

World War II utilized the service of nearly 16 million men and women.⁵ Nearly all of them shared the need to return to the United States after the conflict.⁶ The timeframe from October 1945 through April 1946 saw the return of over three million soldiers alone.⁷ The need to house those returning service members and their “booming” families was very pressing.⁸ U.S. leaders realized that not having a plan for the returning service members could cause widespread economic instability, leading experts to recommend a “series of education and training programs.”⁹

Congress enacted The Servicemen’s Readjustment Act of 1944 (“GI Bill”) on June 22, 1944.¹⁰ The GI Bill provided a home loan guaranty, which provided funds to help veterans buy homes, and education assistance, which provided for tuition, books, living allowances, and other expenses.¹¹ Veterans taking advantage of the GI Bill’s housing benefits accounted for 4.3 million home loans, worth \$33 billion, and the purchase of 20 percent of all new homes built through 1955.¹² Veterans utilizing the GI Bill’s education benefits contributed to doubling the number of United States college degree-holders between 1940 and 1950.¹³

The GI Bill and other programs created an influx of educated workers and higher paying jobs.¹⁴ The large number of employees with high paying jobs combined with the GI Bill’s homeownership incentives “created a suburban boom unequalled in previous American experience.”¹⁵ “The post-1945 suburbs changed forever the type of community where millions of Americans lived”¹⁶ Housing developments were constructed outside of the central

5. *75 Years of the GI Bill: How Transformative It’s Been*, U.S. DEP’T OF DEF. (Jan. 9, 2019), <https://www.defense.gov/Explore/Features/story/Article/1727086/75-years-of-the-gi-bill-how-transformative-its-been/> [hereinafter *75 Years of the GI Bill*].

6. *Id.*

7. Collin Makamson, ‘Home Alive By ‘45’: Operation Magic Carpet, NAT’L WWII MUSEUM (Oct. 2, 2020), <https://www.nationalww2museum.org/war/articles/operation-magic-carpet-1945>.

8. KCI Technologies, Inc., *supra* note 4, at B-9.

9. *75 Years of the GI Bill*, *supra* note 5.

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

14. KCI Technologies, Inc., *supra* note 4 at, B-9-10.

15. *Id.* at B-10.

16. *Id.*

city, had fewer homes per acre of land, and were generally more affordable.¹⁷ These factors caused housing developments to grow away from the city.¹⁸

2. *Federal Housing Acts*

Congress created many housing and urban development plans starting in the early 1930s.¹⁹ On July 15, 1949, Congress worked to improve the “health and living standards of its people” by enacting the Housing Act of 1949.²⁰ Title I of the Act provided federal loans to clear “slums” and “blighted areas” from communities and redevelop them with private enterprise or public buildings.²¹ Title III of the Act provided for the construction of low-rent public housing, but was not to exceed a total of 810,000 units before 1954 (a six-year timeframe).²² Together, Act I and III’s goal was to eliminate a slum dwelling for every public housing unit built.²³ The Act’s lofty six-year, 810,000 unit goal for public housing fell short and was not achieved for nearly 20 years.²⁴

The 1954 Housing Act modified the “bulldozer approach” of the Housing Act of 1949 and switched to a program that included rehabilitation and conservation of existing structures in addition to clearing land, called “urban renewal.”²⁵ By the early 1970s, the urban renewal projects stemming from Title I of the Housing Act of 1949 and the 1954 Act ultimately failed to stop the spread of blight.²⁶ Downtown businesses closed, and inner-city poverty increased as cities lost population and jobs.²⁷ In addition, the Federal Housing Administration “sponsored whites only” suburbanization by providing an “Underwriting Manual” that discouraged banks from lending in African American or racially mixed neighborhoods, perpetuating racial segregation.²⁸ Later, President Nixon ended the urban renewal program and replaced it with

17. *Id.* at B-11.

18. *Id.*

19. See generally *Major Legislation on Housing and Urban Development Enacted Since 1932*, U.S. DEP’T OF HOUS. & URB. DEV. 1 (2014), https://www.hud.gov/sites/documents/legs_chron_june2014.pdf (listing and describing major housing and urban development legislation enacted since 1932) [hereinafter *Major Legislation*].

20. Housing Act of 1949, Pub. L. No. 171, 63 Stat. 413 (1949).

21. *Id.* at 414.

22. *Id.* at 422, 428.

23. Alexander von Hoffman, *A Study in Contradictions: The Origins and Legacy of the Housing Act of 1949*, 11 HOUS. POL’Y DEBATE 299, 309 (2000).

24. *Id.* at 310.

25. *Id.* at 313.

26. *Id.* at 321.

27. *Id.*

28. RICHARD ROTHSTEIN, *THE COLOR OF LAW* 65, 77 (2017).

the Housing and Community Development Act of 1974, which granted communities and cities the flexibility to use funds on a wider variety of projects.²⁹

Generally, Title I and Title III failed to solve urban problems because it fostered, rather than eradicated, slums and blight.³⁰ Legislatures and policy makers have continually worked to find solutions to slums and blight by adopting new housing and redevelopment programs.³¹

3. *Interstate Highway System*

Prior to his presidency, Dwight Eisenhower journeyed with a military convoy across the U.S. in 1919.³² His military experiences later in World War II acquainted him with Germany's network of "Reichsautobahnen" rural superhighways.³³ President Eisenhower began discussions with the Bureau of Public Roads to create a system of transcontinental highways.³⁴ Congress subsequently passed The Federal-Aid Highway Act of 1944 to create a 40,000 mile "National System of Interstate Highways."³⁵ The 1944 Act lacked a funding program, so Congress passed the Federal-Aid Highway Act of 1956 to add the needed financing mechanism.³⁶

The Interstate Highway System set out to remedy traffic congestion, increase delivery times, lessen fatalities, and enhance connectivity.³⁷ America's dependence on cars and its transportation infrastructure "had a profound and lasting impact on urban environments and travel patterns . . ."³⁸ Workers commuted and retailers left downtown shopping districts for suburban shopping centers.³⁹ Highway routes often were constructed through poor, minority neighborhoods, causing home and business owners to "flee their soon-to-be former community."⁴⁰ Highways were essentially used as a means of "slum clearance that could combat blight."⁴¹

29. von Hoffman, *supra* note 23, at 322.

30. *Id.* at 323.

31. *Id.*; see generally *Major Legislation*, *supra* note 19.

32. Richard F. Weingroff, *Essential to the National Interest*, 69 PUB. RDS. MAG. No. 5 (Mar./Apr. 2006), <https://www.fhwa.dot.gov/publications/publicroads/06mar/07.cfm>.

33. *Id.*

34. *Id.*

35. *Id.*

36. *Id.*

37. David Karas, *Highway to Inequity: The Disparate Impact of the Interstate Highway System on Poor and Minority Communities in American Cities*, 7 NEW VISIONS FOR PUB. AFFS. 9, 10 (Apr. 2015).

38. *Id.* at 15.

39. KCI Technologies, Inc., *supra* note 4, at B-11-12.

40. Karas, *supra* note 37, at 13-14.

41. *Id.* at 14.

4. *Impacts Specific to North Dakota*

North Dakota cities have experienced instances of urban sprawl, which was rooted in poor urban planning after World War II.⁴² For example, West Fargo experienced rapid growth and has begun to run out of land to develop as it has grown up to the edges of Fargo, Horace, and the Sheyenne Diversion, which stops development because of flood prone land on its west side.⁴³ Similarly, Fargo takes up approximately 49 square miles of land, which marks an increase of 31 percent from 2000 to 2015.⁴⁴ This rapid growth has required Fargo city leaders to reconsider its growth patterns in order to keep city expenses under control.⁴⁵

The City of Fargo utilized the Housing Act of 1954 after Congress expanded the prior 1949 Act.⁴⁶ Officials initially identified three blighted areas of Fargo, and the Fourth Street Project eventually received federal approval in 1958.⁴⁷ All necessary land was obtained, and in 1959, buildings were razed.⁴⁸ The area was earmarked for and redeveloped into a unified public center, including “city hall, a library, and public auditorium[.]”⁴⁹ North Dakota’s first urban renewal project appeared to be a model for future projects in the state and across the United States.⁵⁰

However, later urban renewal projects were not as successful because they did not attract redevelopment until decades later. For example, Fargo’s original Kesler mixed-use building was torn down in 1976 and replaced with a parking lot.⁵¹ The parking lot remained for 45 years until a multi-story

42. Bo Evans, *Urban Sprawl Becoming an Issue in ND*, KFYR TV (Feb. 14, 2018, 6:12 PM), <https://www.kfyrtv.com/content/news/Urban-sprawl-becoming-an-issue-in-ND-474108563.html>.

43. See *Rapid Growth Leaves West Fargo with Fewer Options for Future*, FARGO FORUM, (Mar. 7, 2011), <https://www.inforum.com/business/2951496-rapid-growth-leaves-west-fargo-fewer-options-future>.

44. See Tu-Uyen Tran, *How Far South Should Fargo Grow? Costs May Require Limits*, FORUM OF FARGO-MOORHEAD (Oct. 26, 2015), <https://www.inforum.com/news/3868652-how-far-south-should-fargo-grow-costs-may-require-limits>.

45. See generally *id.* (noting “building new infrastructure [and] providing services such as snow plowing, and police and fire protection” are dilemmas Fargo faces when paying for its growth).

46. JOHN R. BORCHERT ET AL., *URBAN RENEWAL: NEEDS AND OPPORTUNITIES IN THE UPPER MIDWEST* 12 (1963).

47. *Id.* at 12, 16.

48. *Id.* at 16.

49. Mike Christenson, *Research Notes: The Photographic Construction of Urban Renewal in Fargo, North Dakota*, 23 *BLDGs. & LANDSCAPES: J. VERNACULAR ARCHITECTURE* F. 116, 124 (2016).

50. *Finding Aid to the Fargo Urban Renewal Agency Fourth Street Project Records*, N.D. STATE UNIV. INST. FOR REG’L STUD. & UNIV. ARCHIVES 2 (2009), <https://library.ndsu.edu/ir/bitstream/handle/10365/187/Mss0022.pdf?sequence=7&isAllowed=y>.

51. *Kesler*, KILBOURNE GROUP, <https://kilbournegroup.com/properties/kesler/> (last visit Apr. 6, 2021).

mixed-use building began construction in October 2020.⁵² Similarly, Fargo’s “Carnegie Library,” funded by Andrew Carnegie, was demolished in 1970 to make way for a parking lot.⁵³ A multi-story mixed-use building and parking ramp called Roberts Commons was constructed in 2016 and finally replaced the parking lot approximately 46 years later.⁵⁴

Finally, North Dakota received funding from the Federal Highway Act of 1956 and began its first construction project between Valley City and Jamestown.⁵⁵ This creation of interstate highways I-29 and I-94 impacted North Dakota by reducing traffic going through towns.⁵⁶ Unlike in larger cities, the building of the highways avoided going through neighborhoods and instead were built on farmland south and west of Fargo.⁵⁷ Meanwhile, Bismarck’s portion of I-94 was built north of town where there was practically no development.⁵⁸ Both cities subsequently experienced massive growth outside of their cores due to West Acres Mall opening at the intersection of I-29 and 13th Avenue South in Fargo, and the I-94 and U.S. Highway 83 intersection’s emergence as a major business corridor in Bismarck.⁵⁹ These developments pulled business from Fargo and Bismarck’s downtown areas, which contributed to their declines.⁶⁰

B. RENAISSANCE ZONE ELIGIBILITY, CREATION, AND BENEFITS

The North Dakota Legislature approved House Bill Number 1492 on April 8th, 1999 “to provide for renaissance zones in cities and to provide tax exemptions and credits for investments in renaissance zones”⁶¹ The act was subsequently codified as “Renaissance Zones” in chapter 40-63 of the North Dakota Century Code.⁶² Chapter 40-63 creates the rules for a city’s

52. *Id.*

53. *Roberts Commons*, KILBOURNE GROUP, <https://kilbournegroup.com/properties/robertscommons/> (last visited Apr. 6, 2021).

54. *Id.*

55. *History: 1941-1960*, N.D. DEP’T OF TRANS., <https://www.dot.nd.gov/public/history.htm#1941-1960> (last visited Apr. 6, 2021).

56. See Tu-Uyen Tran, *I-29, I-94 Completed in North Dakota 40 Years Ago*, BISMARCK TRIB. (July 8, 2017), https://bismarcktribune.com/news/state-and-regional/i-29-i-94-completed-in-north-dakota-40-years-ago/article_f041c098-b263-5433-910f-e2e93b04f901.html.

57. *Id.*

58. Randy Hoffman, *1960-1969: Demands of a Growing City*, BISMARCK CAFE (May 10, 2018), <https://www.bismarckcafe.com/blogs/wiki/bismarck-history-demands-of-a-growing-city-1960-1969>.

59. John Caron, *Fargo History: West Acres*, NDSU ARCHIVES (Nov. 21, 2006), <https://library.ndsu.edu/fargo-history/> (click “Businesses” hyperlink under “Navigation”; then click “West Acres” hyperlink under “Stores”); Hoffman, *supra* note 58.

60. Caron, *supra* note 59; Hoffman, *supra* note 58.

61. Act of Apr. 8, 1999, ch. 369, 1999 N.D. Laws 11.

62. N.D. CENT. CODE ch. 40-63 (2021).

eligibility,⁶³ qualification requirements,⁶⁴ income tax exemptions,⁶⁵ property tax exemptions,⁶⁶ tax credits for historic buildings,⁶⁷ formation of renaissance fund organizations,⁶⁸ income tax secrecy exceptions,⁶⁹ the passthrough of tax exemptions or credits for certain business entities,⁷⁰ and the exclusion of delinquent taxpayers.⁷¹

I. Eligibility Criteria and Application Process

“Any incorporated city” is eligible to apply for an area of the city to be designated as a Renaissance Zone.⁷² The city seeking a Renaissance Zone designation must also meet requirements set forth by North Dakota Century Code section 40-63-03.⁷³

First, the applicant city’s governing body must create a development plan to be included in the application and can create “a local zone authority to implement” the plan.⁷⁴ The development plan must “address[] the criteria in section 40-63-03(1) (discussed below).⁷⁵ The written plan must also include:

- a. A map of the proposed renaissance zone which indicates the geographic boundaries and blocks, a description of the properties and structures on each block, identification of those properties and structures to be targeted for potential zone projects, and a description of the present use and conditions of the targeted properties and structures.
- b. A description of the existing physical assets, in particular natural or historical assets, of the zone and a plan for the incorporation and enhancement of the assets within the proposed development.
- c. An outline of goals and objectives and proposed outcomes, including major milestones or benchmarks, by which to gauge success resulting from the designation of the zone.

63. N.D. CENT. CODE § 40-63-02 (2021).

64. *Id.* § 40-63-03.

65. *Id.* § 40-63-04.

66. *Id.* § 40-63-05.

67. *Id.* § 40-63-06.

68. *Id.* § 40-63-07.

69. *Id.* § 40-63-09.

70. *Id.* § 40-63-10.

71. *Id.* § 40-63-11.

72. *Id.* § 40-63-02.

73. *Id.* § 40-63-03(1).

74. *Id.* §§ 40-63-02, -03(1)(b).

75. *Id.* § 40-63-01(2).

d. A description of the types of projects the city would encourage in the city's targeted properties.

e. A description of the promotion, development, and management strategies to maximize investment in the zone.

f. A plan for the development, promotion, and use of a renaissance fund organization, if one is desired to be established. If a city is not ready to commit to establishing a renaissance fund organization, the city may indicate in the renaissance zone application the city's desire to submit a plan for approval at a later date.

g. Evidence of community support and commitment from residential and business interests. Evidence of community support must include letters of support from the governing bodies of each county and school district that contain property located within the boundaries of the proposed renaissance zone.⁷⁶

Next, the area the city seeks for the Renaissance Zone must be entirely within the city's boundaries, must have a continuous boundary, and all blocks must be contiguous.⁷⁷ One exception is that one section of the Renaissance Zone can have a non-continuous border and non-contiguous blocks if it is less than three square blocks in size.⁷⁸ A city can only be part of one Renaissance Zone.⁷⁹ The proposed zone must be comprised of both residential and commercial property.⁸⁰

The zone's total area cannot exceed thirty-four square blocks.⁸¹ However, if the city's population is greater than five thousand people (according to the most recent federal estimate or decennial census), the Renaissance Zone may add one additional block for each five thousand people, up to a maximum of forty-nine blocks.⁸² Renaissance Zone blocks may be removed from the zone upon satisfactory completion of a project and may be placed on another block that is eligible under North Dakota Century Code chapter 40-63.⁸³

76. *Id.* § 40-63-01(2)(a)-(g).

77. *Id.* § 40-63-03(1)(a), (d).

78. *Id.* § 40-63-03(1)(g).

79. *Id.* § 40-63-03(5).

80. *Id.* § 40-63-03(1)(e).

81. *Id.* § 40-63-03(1)(c).

82. *Id.*

83. *Id.*

Finally, the application must include the Renaissance Zone's proposed duration.⁸⁴ The zone can operate for up to fifteen years, and if approved, the duration may be extended in five-year increments.⁸⁵

2. *Role of the ND Department of Commerce Division of Community Services*

The North Dakota Department of Commerce Division of Community Services ("DCS") is responsible for reviewing applications for Renaissance Zone designation.⁸⁶ The DCS considers the applications against multiple criteria including: the development plan's viability,⁸⁷ the development plan's "incorporation and enhancement of unique natural and historic features[.]"⁸⁸ the creativity and innovation of the development plan in relation to other applications,⁸⁹ how the proposed zone projects will be funded, including public and private commitments and renaissance fund organizations,⁹⁰ how the Renaissance Zone relates to broader community plans,⁹¹ how the regulatory burdens of historic renovation and mixed use developments are eased for developers and investors,⁹² and the use of a local zone authority, as well as promotion, management, and development plans.⁹³ The applicant city must also include "a resolution from the governing body . . . that states if the renaissance zone is granted, persons and property within the renaissance zone are exempt from taxes as provided in sections 40-63-04 through 40-63-07."⁹⁴ The DCS cannot designate a Renaissance Zone within a city without this resolution.⁹⁵

The DCS also approves or rejects the duration of a Renaissance Zone, the geographic boundaries, and the total area of the zone.⁹⁶ It monitors the progression of the "designated renaissance zones against submitted plans in an annual plan review[.]" and annually reports "renaissance zone progress to

84. *Id.* § 40-63-03(1)(f).

85. *Id.*

86. *Id.* § 40-63-03(2)(a).

87. *Id.* § 40-63-03(3)(a).

88. *Id.* § 40-63-03(3)(b).

89. *Id.* § 40-63-03(3)(c).

90. *Id.* § 40-63-03(3)(d).

91. *Id.* § 40-63-03(3)(e).

92. *Id.* § 40-63-03(3)(f).

93. *Id.* § 40-63-03(3)(g).

94. *Id.* § 40-63-03(4).

95. *Id.*

96. *Id.* § 40-63-03(2)(b)-(c).

the governor and [] legislative management”⁹⁷ The DCS even “[p]romote[s] the renaissance zone program.”⁹⁸

The DCS also handles changes in Renaissance Zones.⁹⁹ Cities can apply to expand an approved Renaissance Zone at any time if the zone is less than the maximum size allowed under North Dakota Century Code section 40-63-03(1)(c).¹⁰⁰ The expansion must be approved by the DCS and the new blocks have a duration of up to fifteen years.¹⁰¹ A city can also request the DCS to allow the deletion of a part of an approved Renaissance Zone that is not progressing.¹⁰² The boundaries are then adjusted or “another equal, contiguous area” can be added to the zone.¹⁰³

3. *Tax Exemptions*

The Renaissance Zone program provides benefits for income, property, and historic preservation tax exemptions.¹⁰⁴ It also offers other investment exemptions for renaissance fund organizations.¹⁰⁵ These tax exemptions are available to individuals, corporations, trusts, partnerships, S corporations, limited partnerships, LLCs, or other entities with passthrough taxation.¹⁰⁶ For passthrough entities, the exemption or credit amounts allowed based on the entity’s investments are determined at the passthrough entity level.¹⁰⁷ The exemption or credit amount must be passed through to the partners, shareholders, or members proportionately to their ownership interests.¹⁰⁸ However, the tax benefits of chapter 40-63 are unavailable to taxpayers who are delinquent on any state or local tax liabilities.¹⁰⁹

4. *Income Tax Exemptions*

North Dakota Century Code section 40-63-04 states an individual taxpayer qualifies for an exemption of up to \$10,000 of personal income tax liability if the taxpayer purchases or rehabilitates a single-family residential

97. *Id.* § 40-63-03(2)(e)-(f).

98. *Id.* § 40-63-03(2)(d).

99. *See generally id.* § 40-63-03(7), (9).

100. *Id.* § 40-63-03(7).

101. *Id.*

102. *Id.* § 40-63-03(9).

103. *Id.*

104. *See generally id.* § 40-63-04 to -06.

105. *See generally id.* § 40-63-07.

106. *Id.* § 40-63-01(8) (defining the term “Taxpayer”).

107. *Id.* § 40-63-10.

108. *Id.*

109. *Id.* § 40-63-11.

property as their primary place of residence.¹¹⁰ The \$10,000 personal income tax exemption is available each year for five years starting after the rehabilitation project is completed or on the date of occupancy.¹¹¹ The tax liability is determined by North Dakota Century Code section 57-38-30.3.¹¹² The rehabilitation of a single-family home is defined as “the repair or remodeling of a building or public utility infrastructure at a cost that is equal to or exceeds . . .” twenty percent of the current true and full value.¹¹³

Next, North Dakota Century Code section 40-63-04(2) states a taxpayer who “purchases, leases, rehabilitates, or makes leasehold improvements to residential, public utility infrastructure, or commercial property for any business or investment purpose as a zone project” qualifies for a five taxable year exemption on income, beginning on “the date of purchase, lease, or completion of rehabilitation.”¹¹⁴ It is important to note that rehabilitation for commercial buildings and public utilities is “the repair or remodeling of a building or public utility infrastructure at a cost that is equal to or exceeds *fifty percent* of the true and full value”¹¹⁵

Income must be derived from the business or investment locations.¹¹⁶ However, the total exempted income from the taxpayer’s business and investment interests cannot exceed \$500,000 per taxable year.¹¹⁷ Another exception to the income tax exemption applies when the zone project is an existing building’s physical expansion.¹¹⁸ In that situation, the exempted amount of income is limited by the amount of square footage added.¹¹⁹ It is calculated by taking the square footage added to the building by the expansion and dividing by the total square footage of the building after expansion, and then multiplying by the taxable year’s business income or investment use of the building.¹²⁰

North Dakota Century Code section 40-63-04(3) allows for an individual taxpayer to take up to a \$2,000 income tax exemption “if the cost of a new

110. *Id.* § 40-63-04(1).

111. *Id.*; *North Dakota Renaissance Zone Program Guidelines*, N.D. DEP’T OF COM. DIV. OF CMTY. SERVS. 6 <https://www.communityservices.nd.gov/uploads/27/NDRenaissanceZoneProgramGuidelines.pdf> [hereinafter *NDRZ Program Guidelines*].

112. N.D. CENT. CODE § 40-63-04(1) (2021).

113. *Id.* § 40-63-01(7).

114. *Id.* § 40-63-04(2).

115. *Id.* § 40-63-01(7) (emphasis added to distinguish from the personal portion of the rehabilitation definition).

116. *Id.* § 40-63-04(2)(a).

117. *Id.* § 40-63-04(2), (2)(a).

118. *Id.* § 40-63-04(2)(b).

119. *Id.*

120. *Id.*

business purchase, leasehold improvement, or expansion of an existing business . . . exceeds \$75,000.”¹²¹ For this exemption, the population of the city in which the Renaissance Zone is located cannot be greater than 2,500 people.¹²² This is an alternative to the exemptions outlined in section 40-63-04(2).¹²³ To claim this \$2,000 exemption, the taxpayer must make a timely election on their original tax return.¹²⁴ If the taxpayer fails to make the election on the original return, the taxpayer is eligible for the section 40-63-04(2) exemptions only.¹²⁵ It is an irrevocable election and is “binding for the duration of the exemptions provided in section (2).”¹²⁶

Finally, section 40-63-04(4) of the North Dakota Century Code provides an income tax remedy for property owners who are not participating in a Renaissance Zone, yet are required to make changes to their property.¹²⁷ If a property owner must change utility services or building structure due to another Renaissance Zone project, the non-participating property owner “is entitled to state income tax credits equal to the total amount of the investment necessary to complete the required changes.”¹²⁸ To receive the income tax credit, the local Renaissance Zone Authority must approve the credit, the credit must be claimed in the same taxable year the project was completed in, and the credit cannot be greater than the taxpayer’s tax liability.¹²⁹ Unused credits can “be carried forward up to five taxable years.”¹³⁰

It is important to note that the income tax exemptions of North Dakota Century Code section 40-63-04 “do not eliminate any duty to file a return or to report income” under North Dakota Century Code chapter 57-38.¹³¹

5. *Property Tax Exemptions*

Under North Dakota Century Code section 40-63-05(1), single-family residential property can be granted “a partial or complete exemption from ad valorem taxation” by a municipality.¹³² Ad valorem tax is defined as “[a] tax imposed proportionally on the value of something (esp. real property), rather

121. *Id.* § 40-63-04(3).

122. *Id.*

123. *Id.*

124. *Id.*

125. *Id.*

126. *Id.*

127. *Id.* § 40-63-04(4).

128. *Id.*

129. *Id.*

130. *Id.*

131. *Id.* § 40-63-04(5).

132. *Id.* § 40-63-05(1).

than on its quantity or some other measure.”¹³³ The exemption excludes the land on which the building is situated.¹³⁴ The property must have been a zone project, purchased or rehabilitated as an individual’s primary residence.¹³⁵ The exemption cannot be longer than five taxable years, starting on the date of acquisition or the rehabilitation’s completion.¹³⁶

A similar exemption is available for zone projects on buildings, structures, fixtures, and improvements purchased or rehabilitated for business or investment purposes.¹³⁷ “A municipality may grant a partial or complete exemption from ad valorem taxation” for zone projects for these commercial purposes.¹³⁸ Additionally, zone projects rehabilitating public utility infrastructure can be granted partial or complete exemptions from ad valorem taxation by the state board of equalization.¹³⁹ Like the section 40-63-05(1) exemption, this exemption cannot be longer than five taxable years, starting on the date of acquisition or the rehabilitation’s completion.¹⁴⁰

Property taxes may be exempted from a parcel of property only one time.¹⁴¹ However, if a property is transferred to a qualified user during the five taxable years an exemption is eligible, the property tax exemption can also be transferred.¹⁴² The local zone authority must notify the DCS and provide the taxpayer’s information that applies.¹⁴³

There are reporting requirements when a property is in a Renaissance Zone and Tax Increment Financing (“TIF”) district.¹⁴⁴ When these areas overlap, the city must file an annual report with the Department of Commerce.¹⁴⁵ The city’s report must state the identity of the property, how long they expect the property to be included in the Renaissance Zone and TIF district, identify the property and income tax benefits received, and include the benefit’s expected duration.¹⁴⁶ The Department of Commerce then delivers

133. *Ad valorem tax*, BLACK’S LAW DICTIONARY (11th ed. 2019).

134. N.D. CENT. CODE § 40-63-05(1) (2021).

135. *Id.*

136. *Id.*

137. *Id.* § 40-63-05(2).

138. *Id.*

139. *Id.*

140. *Id.*

141. *Id.* § 40-63-03(6).

142. *Id.*

143. *NDRZ Program Guidelines*, *supra* note 111, at 8.

144. N.D. CENT. CODE § 40-63-03(10) (TIFs are beyond the scope of this note. It will be sufficient to know that they are another tool cities use to encourage development or rehabilitation in slum or blighted areas).

145. *Id.*

146. *Id.*

an annual report to the Legislative Management Interim Committee on Taxation Issues (or any other committee on request) regarding the contents of the city's annual report.¹⁴⁷

6. *Historic Preservation and Renovation Tax Credit*

Investments in the preservation or restoration of historic properties within the Renaissance Zone qualify for “a credit against state tax liability as determined under sections 57-38-30 and 57-38-30.3.”¹⁴⁸ Historic properties are those that are “listed on the National Register of Historic Places, a contributing structure within a National Register Historic District or a certified state or local historic district, or [is] eligible for listing in the National Historic Register of Historic Places.”¹⁴⁹ The tax credit is calculated as twenty-five percent of the amount invested into the property, but it cannot exceed \$250,000.¹⁵⁰ “The credit may be claimed in the year in which the preservation or renovation is completed.”¹⁵¹ Tax credits that exceed tax liability may carry forward five taxable years.¹⁵²

7. *Renaissance Fund Organizations*

In addition to tax benefits on rehabilitation and investment in buildings, the North Dakota Legislature included Renaissance Fund Organizations (“RFOs”) as another way to benefit from Renaissance Zones.¹⁵³ RFOs are created to raise funds “to finance zone projects and other projects located in designated renaissance zones.”¹⁵⁴ The projects funded by RFOs can be worked on by “individuals, partnerships, limited partnerships, limited liability companies, trusts, corporations, nonprofit organizations, and public entities.”¹⁵⁵ The amount of financing an RFO can provide is not limited by chapter 40-63, and can include “equity investments, loans, guarantees, and commitments for financing.”¹⁵⁶

RFOs may be established if a detailed plan for the RFO was included and approved along with the city's development plan in the initial application for the Renaissance Zone.¹⁵⁷ The DCS may also approve an RFO plan at a

147. *Id.*

148. *Id.* § 40-63-06.

149. *NDRZ Program Guidelines*, *supra* note 111, at 4.

150. N.D. CENT. CODE § 40-63-06.

151. *Id.*

152. *Id.*

153. *See generally id.* § 40-63-07.

154. *Id.* § 40-63-07(2).

155. *Id.*

156. *Id.*

157. *Id.* § 40-63-07(1).

later date if a detailed plan is submitted after a designated Renaissance Zone is approved.¹⁵⁸

RFOs are exempted from chapter 57-38 taxes.¹⁵⁹ An RFO that is a passthrough entity for tax purposes can pass the exemption to its shareholders, partners, and owners.¹⁶⁰ An RFO set up as a corporation is required to file “returns and report income to the tax commissioner” under chapter 57-38 as if there were no exemption. If the RFO is an employer, it must still “comply[] with the income tax withholding laws.”¹⁶¹

Investments in RFOs can qualify for “credit[s] against state tax liability as determined under section 57-38-30 or 57-38-30.3.”¹⁶² The credits a taxpayer can receive equal fifty percent of the investment in an RFO during a taxable year, not to exceed \$10,500,000.00.¹⁶³ The taxpayer can carry forward credits that exceed the taxpayer’s liability for five taxable years after the taxable year the investment occurred.¹⁶⁴ It is important to note here that RFO investments that qualify for tax credits under section 40-63-07(5) shall be used to finance Renaissance Zone projects.¹⁶⁵

If an investor redeems an investment in an RFO that qualified for credits within ten years of the purchase, the investment credits “must be disallowed, and any credit previously claimed and allowed with respect to the investment must be paid to the tax commissioner with the appropriate return of the taxpayer covering the period in which the redemption occurred.”¹⁶⁶ The amount collected for payment of credits redeemed within ten years “must be handled in the same manner as if no credit had been allowed.”¹⁶⁷ Put another way, in the same year the redemption occurs, the redeemed credits must be paid back to the state when the taxpayer files their return for that tax year.¹⁶⁸

RFOs may use income from “interest or the temporary investment[s]” in securities, bonds, CDs, or treasury bills, for administration.¹⁶⁹ Also, RFOs may disburse an annual dividend from income derived from “the sale or re-

158. *Id.*

159. *Id.* § 40-63-07(3) (Chapter 57-38 covers Income Taxes).

160. *Id.*

161. *Id.*

162. *Id.* § 40-63-07(4).

163. *Id.* § 40-63-07(4)-(5).

164. *Id.* § 40-63-07(4).

165. *Id.* § 40-63-07(5).

166. *Id.* § 40-63-07(8).

167. *Id.*

168. *Guideline- Renaissance Zone Tax Incentives*, N.D. OFF. OF STATE TAX COMM’R 11 (Jan. 2016), <https://www.nd.gov/tax/data/> (search in search bar for “Renaissance Zone Tax Incentives”; then follow “Renaissance Zone Act Tax Incentives Guideline” hyperlink under “Files”).

169. N.D. CENT. CODE § 40-63-07(7).

financing of zone properties financed wholly or in part by the organization.”¹⁷⁰ The dividends are equal to “income, minus ten percent, derived from all sources and proportional to the investment.”¹⁷¹ If the RFO has a loss that results in the “temporary diminishment of the fund below the original principal amount,” a dividend cannot be paid until the fund’s balance returns to the original principal amount.¹⁷² Here, the original principal amount is defined as “the funds invested in a Renaissance Fund Organization after the designation of the Renaissance Zone and before the sunset of that zone.”¹⁷³

RFOs must have an independent certified public accounting firm audit their financial records annually in accordance with generally accepted auditing standards.¹⁷⁴ “The audit report must include a statement of the percentage of annual investments received . . . which have been invested by the organization in investments permitted under this chapter.”¹⁷⁵ This includes distinguishing the use of organization investments made in and out of Renaissance Zones.¹⁷⁶ Copies of the audit must be provided to the governing body of the city in which the RFO is established, the DCS, and the tax commissioner.¹⁷⁷ The DCS then uses the audit report’s conclusions to make an annual report to the budget section of the legislative management.¹⁷⁸

Finally, RFOs cannot invest in an enterprise if any of the RFO’s officer or employee has an ownership interest greater than forty-nine percent.¹⁷⁹ The RFO also cannot invest in an enterprise if, as a group, the RFO’s officers or employees hold an ownership interest greater than forty-nine percent, no matter if it is direct ownership or in a passthrough entity.¹⁸⁰ However, the officers and employees of an RFO can have active involvement in the enterprise, and the RFO may still invest in it.¹⁸¹

North Dakota has had eight cities establish RFOs.¹⁸² These cities include Fargo, Grand Forks, West Fargo, Jamestown, Hazen, Mayville, Hope, and

170. *Id.* § 40-63-07(6).

171. *Id.*

172. *Id.*

173. *NDRZ Program Guidelines*, *supra* note 111, at 5.

174. N.D. CENT. CODE § 40-63-07(9).

175. *Id.*

176. *Id.*

177. *Id.*

178. *Id.*

179. *Id.* § 40-63-07(10).

180. *Id.*

181. *Id.*

182. N.D. DEP’T OF COM. TESTIMONY: RENAISSANCE FUND ORG. AUDITS BEFORE THE S. BUDGET SECTION, at 1 (Sept. 17, 2020) (testimony of Rikki Roehrich, Program Manager, N.D. Dep’t of Com.).

Casselton.¹⁸³ However, as of September 2020 only four of the RFOs were active.¹⁸⁴ Together they claimed a total of \$9,963,866 in credits, of which \$9,127,500 came from Fargo.¹⁸⁵

8. *Rules and Administration-Income Tax Secrecy Exception*

The tax commissioner has the same powers as provided in North Dakota Century Code section 57-38-56 for the purposes of administering income tax exemptions or credits for Renaissance Zones.¹⁸⁶ Section 57-38-56 generally states that the tax commissioner “shall enforce the assessment, levy, and collection of taxes[,]” examine records required to be reported on, and “prescribe all rules . . . necessary and advisable for [chapter 57-38’s] detailed and efficient administration”¹⁸⁷

It is important to note that section 57-38-57 of the North Dakota Century Code states that “[t]he secrecy of returns must be guarded,” aside from certain instances.¹⁸⁸ One such instance occurs in North Dakota Century Code section 40-63-09, which states, “[t]he secrecy provisions of section 57-38-57 do not apply to exemptions or credits received by taxpayers under sections 40-63-04, 40-63-06, and 40-63-07”¹⁸⁹ However, the secrecy provision is disregarded only when a local zone authority makes an inquiry to the tax commissioner about exemptions or credits claimed under the Renaissance Zone’s sections in that local authority’s zone, “or to the extent necessary for the tax commissioner to administer the tax exemptions or credits.”¹⁹⁰

Enacting and maintaining a Renaissance Zone program can be complex. However, the benefits realized by cities across North Dakota counteract any administrative burdens that may be incurred.

III. RENAISSANCE ZONES HAVE INCREASED TAXABLE VALUES AND REVITALIZED MANY PROPERTIES

Since its inception in 1999, cities have reaped the benefits of the Renaissance Zone program. Fifty-nine North Dakota cities approved over 1,800 projects and completed over 1,400 of them.¹⁹¹ The cities of Fargo and Bismarck

183. *Id.*

184. *Id.* at 3.

185. *Id.*

186. N.D. CENT. CODE § 40-63-09 (2021).

187. N.D. CENT. CODE § 57-38-56 (2021).

188. *See id.* § 57-38-57.

189. N.D. CENT. CODE § 40-63-09.

190. *Id.*

191. *North Dakota Renaissance Zone Program Facts*, N.D. DEP’T OF COM., https://www.communityservices.nd.gov/uploads/27/renzonefactsheet_201229_web.pdf (last visited Apr. 6, 2021) [hereinafter *NDRZ Program Facts*].

have created updated development plans that paint a clear picture of the monumental improvements that have taken place thanks in part to Renaissance Zone incentives.

Fargo has produced the most substantial Renaissance Zone numbers. The city has approved 242 Renaissance Zone projects since 1999.¹⁹² These projects have included “new construction, rehabilitation, tenant leases and residential purchases (condominiums).”¹⁹³ Impressively, Fargo’s downtown core has increased its tax-assessed value from \$197,375,000 in 1999 to approximately \$546,331,600 in 2019.¹⁹⁴

Fargo’s Renaissance Zone has played a part in the creation and renovation of many notable buildings. Recently, Renaissance Zone projects have been started or completed to revitalize the downtown, including the construction of two neighboring mixed-use buildings named Roberts Commons and Dillard,¹⁹⁵ the renovation of the historic Black Building,¹⁹⁶ and construction of the Block 9 mixed use tower, which is the tallest building in Fargo.¹⁹⁷

Bismarck approved 131 projects between 2004 and 2020.¹⁹⁸ Between 2005 and 2020, downtown property tax assessed values increased by about 6.7 percent per year.¹⁹⁹ The tax-assessed value of Renaissance Zone properties in 2020 was \$239,700,800, which was an increase from \$90,633,500 in 2005.²⁰⁰

Bismarck’s Renaissance Zone has also provided incentives for construction and renovation notable buildings in its downtown. Two new construction projects were approved for Renaissance Zone incentives, including an unnamed mixed-use building at 630 East Main Avenue and the First Street Lofts

192. *Fargo Renaissance Zone Development Plan*, CITY OF FARGO 7 (2019), https://download.fargond.gov/0/2019_fargo_rz_plan.pdf.

193. *Id.*

194. *Id.*

195. *Roberts Garage: Feature People, Accommodate Cars*, KILBOURNE GROUP (June 22, 2016), <https://kilbournegroup.com/news/feature-people-accommodate-cars-roberts-garage-digs/>; Mike Allmendinger, *Kilbourne Group: There’s Something New in Downtown Fargo This Winter and You’re Invited*, FARGO MONTHLY (Nov. 2018), <https://www.fargomonthly.com/kilbourne-group-november-2018/>.

196. Allmendinger, *supra* note 195.

197. *The Project*, BLOCK 9, <https://block9fargo.com/the-project/> (last visited Apr. 6, 2021); Grace Lyden, *Here’s How Block 9’s \$15.5 Million in Tax Incentives Will Work*, INFORUM (May 27, 2016), <https://www.inforum.com/news/4042725-heres-how-block-9s-155-million-tax-incentives-will-work>.

198. City of Bismarck’s Renaissance Zone Authority, *City of Bismarck Renaissance Zone Development Plan*, CITY OF BISMARCK 13 (Dec. 10, 2020), <https://www.bismarcknd.gov/documentcenter/view/31954/2019-rz-development-plan?bidid=>.

199. *Id.*

200. *City of Bismarck Renaissance Zone Program: Return on Investment Evaluation*, BISMARCK CMTY. DEV. DEP’T PLAN. DIV. 5 (Dec. 10, 2020), https://www.bismarcknd.gov/documentcenter/view/31798/appendix-e—rz-program-evaluation_092016.

lifestyle apartment building.²⁰¹ The renovation of the historic Patterson Place affordable housing building was also approved for Renaissance Zone incentives.²⁰²

Many small cities in North Dakota have also successfully utilized the Renaissance Zone program. For example, Hankinson has participated in the program since 2003 and has approved forty-three projects.²⁰³ Likewise, Wahpeton has approved fifty-five projects since starting their program in 2003.²⁰⁴ Finally, Hazen has had twenty-six projects approved since beginning their program in 2003.²⁰⁵

IV. DRAWBACKS OF RENAISSANCE ZONES

Renaissance Zones receive criticism for several reasons. The State of North Dakota, schools, cities, and others miss out on collecting tax revenue from property and income taxes. The zones also encourage redevelopment in specific areas, potentially leaving other areas that need revitalization without assistance. Finally, people tend to view tax breaks unfavorably when they appear to unfairly benefit someone else.

A. TAKING REVENUE FROM TAXING ENTITIES

Real property taxes are used to fund many different entities, including counties, cities, townships, school districts, and any other taxing districts as determined by the county.²⁰⁶ Revenue collected from income taxes are deposited in the State General Fund, which is essentially North Dakota's "general ledger account" for day to day expenses and activities.²⁰⁷ Therefore, a taxpayer who claims a Renaissance Zone tax exemption for either income or property taxes is depriving funds from the State of North Dakota or local entities like schools. These entities must find other ways to raise funds, such

201. Daniel Nairn, *Community Development Department Staff Report*, BISMARCK CMTY. DEV. DEP'T PLAN. DIV. (June 25, 2019), <https://www.bismarcknd.gov/agendacenter/viewfile/item/4360?fileid=9802>; THE CITY OF BISMARCK'S CITY COMMISSION, MEETING MINUTES OF FEBRUARY 12, 2019, https://www.bismarcknd.gov/agendacenter/viewfile/minutes/_02122019-509.

202. Jessica Holdman, *Patterson Place Approved for Renaissance Aid*, BISMARCK TRIB., (Dec. 19, 2018), https://bismarcktribune.com/business/local/patterson-place-approved-for-renaisance-aid/article_438dbd96-2ad7-5d43-aa7d-9d6915a611b8.html.

203. *NDRZ Program Facts*, *supra* note 191.

204. *Id.*

205. *Id.*

206. *For Individuals-Property Tax*, N.D. TAX, <https://www.nd.gov/tax/user/individuals/forms—publications/property-tax> (last visited Dec. 20, 2020).

207. OFF. OF STATE TAX COMM'R, 54TH BIENNIAL REPORT, at 17, (N.D. 2019) <https://www.nd.gov/tax/data/upfiles/media/54th-biennial-report.pdf>; *North Dakota Government Funds*, OFFICE OF STATE TREASURER, <https://www.treasurer.nd.gov/north-dakota-government-funds> (last visited Dec. 20, 2020).

as raising taxes imposed on properties without exemptions, or raising income tax rates.²⁰⁸ Further, state and local government entities can face additional expenses for compliance with the Renaissance Zone laws.²⁰⁹ Finally, the economic benefits a state seeks to achieve may still happen even without the incentive.²¹⁰ A Fargo city commissioner has made a point to ask businesses who seek incentives if they would still develop in Fargo without the incentives to weed out those who need incentives to build from those who merely want incentives.²¹¹

B. TARGETED GROWTH

This note has discussed several situations in which economic policy decisions with positive intentions had adverse effects on city development. First, the GI Bill created a large number of highly educated people who moved from urban areas into suburban areas, “erod[ing] the region-wide advantage of the central business district.”²¹² Next, Federal Housing Acts that were intended to improve housing failed to meet affordable housing goals, and cleared areas of slum land but did not always replace demolished buildings.²¹³ Finally, the construction of the interstate highway system encouraged urban sprawl and leveled neighborhoods in large cities.²¹⁴ Like these policies, Renaissance Zones could cause negative impacts on a community’s development. Renaissance Zones are meant to encourage businesses and residents to move into the central area of a city.²¹⁵ However, a city can only have one zone that is limited to a maximum of forty-nine blocks.²¹⁶ This clearly aids people and businesses within the designated zone and prevents those outside of the boundary from utilizing its benefits. Areas of the city that are unable to participate in the Renaissance Zone are disadvantaged through no fault of their own, even though they may have ample properties that could benefit

208. Mark Robyn, *The Problem with Targeted Tax Incentives*, TAX FOUND. (July 20, 2011), <https://taxfoundation.org/problem-targeted-tax-incentives/>.

209. *Id.*

210. *Id.*

211. Barry Amundson, *This Is Why Fargo City Commission’s ‘Captain No’ Votes Against All Business Tax Breaks*, INFORUM (Sept. 13, 2020), <https://www.inforum.com/news/government-and-politics/6645163-This-is-why-Fargo-City-Commissions-Captain-No-votes-against-all-business-tax-breaks>.

212. KCI Technologies, Inc., *supra* note 4, at B-9-10, 12.

213. von Hoffman, *supra* note 23, at 310, 321.

214. Karas, *supra* note 37, at 13-14; KCI Technologies, Inc., *supra* note 4, at B-11-12.

215. *NDRZ Program Guidelines*, *supra* note 111, at 1.

216. N.D. CENT. CODE § 40-63-03(1)(c), (5) (2021).

from its incentives to revitalize. The Renaissance Zone program, through local governments, can “choose” winners and losers by selecting the borders of the zone to benefit those within.²¹⁷

C. PUBLIC DISFAVOR

Americans objected to the payment of taxes even before the founding of the United States.²¹⁸ Despite this, the main incentives that drive the Renaissance Zone program are income and property tax exemptions.²¹⁹ Because these exemptions allow the taxpayer to not pay taxes during the time period allowed by the Renaissance Zone, other taxpayers may be forced to make up the loss of tax revenue.²²⁰ Taxpayers could grow to dislike the Renaissance Zone’s tax incentives because they feel they are shouldering the tax burden of the taxpayer who is realizing the zone’s benefits. They may wish that their tax dollars were put to a different use, such as funding educational programs, road maintenance, or public assistance programs.

V. RECOMMENDATION FOR FUTURE RENAISSANCE ZONES

Renaissance Zones have a bright future. The Kilbourne Group, a developer in downtown Fargo, has \$200,000,000 worth of projects under construction as of the end of 2020.²²¹ All of these projects could potentially qualify for Renaissance Zone incentives and continue the revitalization of downtown Fargo. The North Dakota Legislature could make some modifications to the existing law to expand current Renaissance Zone programs and maximize its impact.

217. See Tony Gehrig, Letter to the Editor, *Letter to the Editor from Tony Gehrig*, HIGH PLAINS READER (Jan. 24, 2016), <https://hpr1.com/index.php/opinion/letters-to-the-editor/letter-to-the-editor-from-tony-gehrig/>.

218. *On This Day: “No Taxation Without Representation!”*, NAT’L CONST. CTR. (Oct. 7, 2020), <https://constitutioncenter.org/blog/250-years-ago-today-no-taxation-without-representation>.

219. See N.D. CENT. CODE § 40-63-04, -05.

220. Mark Robyn, *The Problem with Targeted Tax Incentives*, TAX FOUND. (July 20, 2011), <https://taxfoundation.org/problem-targeted-tax-incentives/>.

221. Brady Drake, *Big Things on the Horizon: What’s in Store for Downtown in 2021*, FARGO INC! (Dec. 2020), <https://www.fargoinc.com/big-things-on-the-horizon-whats-in-store-for-downtown-in-2021/amp/>.

A. RENAISSANCE ZONE BLOCK LIMIT MODIFICATIONS

Renaissance Zone guidelines allow for one zone per city.²²² The zone's blocks must have a continuous boundary and all blocks must be contiguous, but there may be a three-square block exception to the contiguous blocks rule.²²³ Larger North Dakota cities could benefit from having multiple Renaissance Zones, or from having the ability to divide the Renaissance Zones more than North Dakota Century Code section 40-63-03(1)(g) currently allows.

Most residential neighborhoods in Fargo, as well as major commercial areas such as University Drive, Thirteenth Avenue South, Thirty Second Avenue South, and Main Avenue do not fall within the designated Fargo Renaissance Zone.²²⁴ Similarly, most residential neighborhoods in Bismarck, as well as major commercial areas along US Highway 83, State Street, and Century Avenue do not fall within Bismarck's Renaissance Zone.²²⁵ If the existing Renaissance Zone statute was modified, properties in a variety of areas across a city could benefit from incentivized rehabilitation or new construction.

The modification of Renaissance Zones could take several forms. First, expansion of a Renaissance Zone beyond the maximum of forty-nine blocks could be achieved by changing the requirement of five thousand people per additional block to a lower amount such as two thousand five hundred people. This change would allow cities with populations above five thousand to add additional blocks more quickly because of the lower population threshold to add a new block to the zone.

Second, if the Legislature wants to cover a wider area but does not want to expand beyond a maximum of forty-nine blocks, it could drop the continuous boundary and contiguous block requirements. This would allow Renaissance Zones to cover multiple areas of a city but not take up a larger number of available city blocks.

The Legislature would have to be careful with both modifications. Expanding Renaissance Zones too much or to other tax-producing areas of the city could noticeably reduce tax revenues if many projects are approved for income or property tax exemptions at once. The Legislature would also need to be wary of cities with a small footprint because the zone could take up a

222. N.D. CENT. CODE § 40-63-03(5).

223. *Id.* § 40-63-03(1)(d), (g).

224. *Current Renaissance Zone Boundary Map*, CITY OF FARGO, <https://fargond.gov/work/grants-exemptions/renaissance-zone/zone-boundary-map> (last visited Apr. 9, 2021).

225. *Renaissance Zone Program*, CITY OF BISMARCK CAP. CITY OF N.D., <https://www.bismarcknd.gov/1056/renaissance-zone-program> (last visited Apr. 9, 2021).

large area of the city, thereby exempting most of the city's tax base if too many projects are approved at once.

B. EXPANSION TO OTHER CITIES

Currently, the Renaissance Zone program appears to be underutilized across North Dakota. Any incorporated city is eligible to apply for a Renaissance Zone designation by the DCS.²²⁶ North Dakota had three hundred fifty-seven incorporated cities as of the 2010 decennial census.²²⁷ Only fifty-nine cities participated in the Renaissance Zone program as of 2020.²²⁸

Hannaford is the smallest incorporated North Dakota city with a Renaissance Zone, supporting a population of 118 as of the 2019 estimate.²²⁹ This places Hannaford as the 210th largest city in the state.²³⁰ This means there are over one hundred and fifty cities larger than Hannaford that have not enacted a Renaissance Zone program. These cities are missing out on an opportunity to revitalize their cores and offer incentives to help their citizens. The DCS bills the program as a community development tool for any size city,²³¹ so city governments should take all necessary steps to determine if the Renaissance Zone program is right for their city. The DCS could also increase its marketing to promote the Renaissance Zone program more.

VI. CONCLUSION

The North Dakota Legislature took note of many economic, political, technological, and social factors impacting North Dakota cities. In response, it took steps to revitalize deteriorating conditions in its city centers by creating Renaissance Zones. Large cities such as Fargo and Bismarck have seen tremendous growth thanks in part to the Renaissance Zone program, and with more outreach, smaller cities can too. The Legislature should modify Renaissance Zones by increasing the maximum allowable blocks, by lowering population requirements, or by removing the continuous boundary requirement.

226. N.D. CENT. CODE § 40-63-02 (2021).

227. *Facts About North Dakota Cities*, N.D. LEAGUE OF CITIES, <https://www.ndlc.org/documentcenter/view/1418/facts-about-north-dakota-cities?bidid=> (last visited Apr. 9, 2021).

228. *NDRZ Program Facts*, *supra* note 191.

229. *City and Town Population Totals: 2010-2019*, U.S. CENSUS BUREAU (May 7, 2020), <https://www.census.gov/data/tables/time-series/demo/popest/2010s-total-cities-and-towns.html#tables> (scroll down the page and click "North Dakota" hyperlink from the list of states).

230. *Id.*

231. *NDRZ Program Facts*, *supra* note 191.

These changes could allow larger areas of cities to benefit from tax exemptions that encourage infill and urban growth. With some modifications and increased awareness, Renaissance Zones can continue benefitting cities for years to come.

*Bennett Lystad**

* 2022 J.D. Candidate at the University of North Dakota School of Law. I would like to give a special thank you to my wife, Alexa, my sons, Oliver and Jonathan, and my parents for their constant love and support throughout law school. You inspire me to be a better husband, father, and son. Also, thank you to the Editors of the NORTH DAKOTA LAW REVIEW for your assistance and support during the writing of this Note.