

RESOLUTION NO. 3278

RESOLUTION ESTABLISHING RELOCATION ELIGIBILITY CRITERIA

WHEREAS, residences and businesses in the City of Minot suffered substantial real estate damage due to flood water from the Mouse River in 2011.

WHEREAS, The City of Minot adopted a flood control project, the Mouse River Enhanced Flood Projection Plan, on April 12, 2012.

WHEREAS, in anticipation of and in preparation for construction of the Mouse River Enhanced Flood Protection Plan, to minimize the effect of future flooding upon flood-prone properties, and to enhance the City's ability to defend against future flooding, the City of Minot has adopted a program for involuntary acquisition/buyout of real estate on December 2, 2013.

WHEREAS, the acquisition/buyouts will be funded with a mix of federal, state and local funds.

WHEREAS, Chapter 54.01.1 of the North Dakota Century Code requires the establishment of criteria to establish a uniform policy for the fair and equitable treatment of persons displaced.

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

1. The City of Minot, a "state agency" as defined by North Dakota Century Code § 54-01.1-02(10), establishes the following criteria in order to assist in the determination of actual, reasonable expenses necessary to re-establish a displaced farm, nonprofit organization or small business as set forth in North Dakota Century Code § 54-01.1-03(1)(d):
 - (a) **Eligible expenses.** Re-establishment expenses must be reasonable in amount and necessary for re-establishment of the farm, nonprofit organization or small business. They include, but are not limited to, the followings:
 - (1) Repairs or improvements to the replacement real property as required by federal, state or local law, cod or ordinance.
 - (2) Modifications to the replacement property to accommodate the business operation or make replacement structures suitable for conducting the business.
 - (3) Construction and installation costs for exterior signing to advertise the business.
 - (4) Redecoration or replacement of soiled or worn surfaces at the replacement site, such as paint, paneling, or carpeting.
 - (5) Advertisement of replacement location.
 - (6) Estimated increased costs of operation during the first two years at the replacement site for such items as:
 - (i) Lease or rental charges;

- (ii) Personal or real property taxes;
- (iii) Insurance premiums; and
- (iv) Utility charges excluding impact fees.

(b) **Ineligible expenses.** The following is a nonexclusive listing of re-establishment expenditures not considered to be reasonable, necessary or otherwise eligible:

- (1) Purchase of capital assets, such as office furniture, filing cabinets, machinery, or trade fixtures.
- (2) Purchase of manufacturing materials, production supplies, product inventory, or other items used in the normal course of the business operation.
- (3) Interest on money borrowed to make the move or purchase the replacement property.
- (4) Payment to a part-time business in the home which does not contribute materially (as defined in 46 C.F.R. §24.2(a)(7)) to the household income.
- (5) Purchase of any replacement real property.

BE IT FURTHER RESOLVED that the City of Minot hereby establishes the following criteria for a fixed payment as provided by N.D.C.C. §54-01.0-03(3) in lieu of payments authorized by N.D.C.C. §54-01.1-01(1) for eligible persons displaced from a person's place of business, nonprofit organization or farm operation:

(a) **Business.** A fixed payment, except for a payment to a nonprofit organization, shall equal the average annual net earnings of the business, as computed in accordance with paragraph (e) of this section, but not less than \$1,000 nor more than \$20,000. The displaced business is eligible for that payment if it is determined that:

- (1) The business owns or rents personal property which must be moved in connection with the displacement and for which an expense would be incurred in such move and, the business vacates or relocated from its displacement site;
- (2) The business cannot be relocated without a substantial loss of its existing patronage (clientele or net earnings). A business is assumed to meet this test unless the City determines that it will not suffer a substantial loss of its existing patronage;
- (3) The business is not part of a commercial enterprise having more than three other entities which are not being acquired by the City, and which are under the same ownership and engaged in the same or similar business activities.
- (4) The business is not operated at the displacement dwelling solely for the purposes of renting such displacement dwelling to others;
- (5) The business is not operated at the displacement site solely for the purpose of renting the site to others; and
- (6) The business contributed materially to the income of the displaced persons during the two taxable years prior to displacement. (See 49 C.F.R. §24.2(a)(7))


- (b) **Determining the number of businesses.** In determining whether two or more displaced legal entities constitute a single business, which is entitled to only one fixed payment, all pertinent factors should be considered, including the extent to which:
- (1) The same premises and equipment are shared;
 - (2) Substantially identical or interrelated business functions are carried out and business and financial affairs are commingled;
 - (3) The entities are held out to the public, and to those customarily dealing with them, as one business; and
 - (4) The same person or closely related persons own, control, or manage the affairs of the entities.
- (c) **Farm operation.** A fixed payment for a displaced farm operation (as defined at 49 C.F.R. §24.2(a)(12)) may be an amount equal to its average annual net earnings as computed in accordance with paragraph (e) of this section but not more than \$1,000 nor more than \$20,000. In the case of a partial acquisition of land, which was a farm operation before the acquisition, the fixed payment shall be made only if the City determines that:
- (1) The acquisition of part of the land caused the operator to be displaced from the farm operation on the remaining land; or
 - (2) The partial acquisition caused a substantial change in the nature of the farm operation.
- (d) **Nonprofit organization.** A fixed payment for a displaced nonprofit organization may be available of not less than \$1,000 nor more than \$20,000 if the City determines that the nonprofit organization cannot be relocated without a substantial loss of existing patronage (membership or clientele). A nonprofit organization is assumed to meet this test, unless the City determines otherwise. Any payment in excess of \$1,000 must be supported with financial statements for the two 12-month periods prior to the acquisition. The amount used for the payment is the average of two years annual gross revenues less administrative expenses (See Appendix A, §24.305(d) of 49 C.F.R. part 24).
- (e) **Average annual net earnings of a business or farm operation.** The average annual net earnings of a business or farm operation are one-half of its net earnings before federal, state and local income taxes during the two taxable years immediately prior to the taxable year in which it was displaced. If the business or farm operation was not in operation for the full two taxable years prior to the displacement, net earnings shall be based on the actual period of operation at the displacement site during the two taxable years prior to displacement, projected to an annual rate. Average annual net earnings may be based upon a different period of time when the City determines it to be more equitable. Net earnings include any compensation obtained by the business or farm operation by its owner, the owner's spouse, and dependents. The displaced person shall furnish the City proof of net earnings through its income tax returns, certified financial statements, or other reasonable evidence, which the City

determines is satisfactory. (See, generally, Appendix A §24.305(e) of 49 C.F.R. part 24.)

This Resolution shall be in full force and effect after its passage and approval.

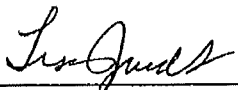
This Resolution adopted by affirmative vote of the majority of the City Council of the City of Minot on the 3rd day of March, 2014.

APPROVED:



Curt Zimbelman, Mayor

Attest:



Lisa Jundt, City Clerk