

**ORDINANCE NO. 6046**

**AN ORDINANCE SEPARATING THE CITY'S VISION AND CAPITAL IMPROVEMENT ACCOUNTS INTO SEPARATE FUNDS BY AMENDING CHAPTER 3.16 OF THE RAPID CITY MUNICIPAL CODE.**

WHEREAS, the City of Rapid City has adopted ordinances regulating the collection and use of a Retail Occupational Use and Services tax (Sales Tax) as authorized by state statute; and

WHEREAS, in November of 2014 the City Council approved an ordinance amendment which combined the City's Capital Improvement and Vision Funds into a single fund with separate accounts; and

WHEREAS, the ordinance which combined the funds was prompted by the anticipated bonding for a proposed expansion of the Rushmore Plaza Civic Center; and

WHEREAS, the bonding for the proposed expansion project was defeated in a referendum election in March of 2015; and

WHEREAS, the Common Council of the City of Rapid City finds that it is in the City's best interests to undo its previous action combining the two funds by amending Chapter 3.16 of the Rapid City Municipal Code.

NOW THEREFORE, BE IT ORDAINED, By the City of Rapid City that Chapter 3.16 of the Rapid City Municipal Code is hereby amended to read as follows:

**3.16.010 Imposed rate.**

From and after the date of implementation provided for pursuant to SDCL Chapter 10-52, there is imposed, as a municipal retail occupational sales and service tax upon the privilege of engaging in business, a tax of 2% on the gross receipts of all persons engaged in business within the jurisdiction of the city, who are subject to the South Dakota Retail Occupational Sales and Service Tax, SDCL Chapter 10-45, and acts amendatory thereto, and SDCL Chapter 10-46, and acts amendatory thereto.

**~~3.16.020 (Reserved); Excise tax imposed—Rate.~~**

From and after the date of implementation provided for, pursuant to SDCL Chapter 10-52, there is imposed an excise tax on the privilege of use, storage and consumption of items of tangible personal property or services purchased within the jurisdiction of the city, at the same rate as the municipal sales and service tax as established in § 3.16.010 of the Rapid City Municipal Code upon all transactions or use, storage and consumption which are subject to the South Dakota Use Tax Act, SDCL Chapter 10-46, and acts amendatory thereto.

Comment [j1]: Previously §3.16.050

**~~3.16.030 (Reserved)—Use of revenues.~~**

A. Eight percent of the revenue generated by the tax levied by §§ 3.16.010 and 3.16.020 shall be deposited in the city's Utility Support Fund, and shall be used for the construction, operation and maintenance of the city's utility facilities and streets.

B. Forty-six percent of the revenue generated by the tax levied by §§ 3.16.010 and 3.16.020 shall be deposited in the city's General Fund, and may be used for any lawful purpose.

C. Twenty-three percent of the revenue generated by the tax levied by §§ 3.16.010 and 3.16.020 shall be deposited in the Rapid City Capital Improvements Fund (CIP Fund), and may be used for any lawful purpose as set out in § 3.16.060 of the Rapid City Municipal Code.

D. Twenty-three percent of the revenue generated by the tax levied by §§ 3.16.010 and 3.16.020 shall be deposited in the Rapid City Economic Development and Civic Improvements Fund (the Vision Fund), and may be used for any lawful purpose as set out in § 3.16.070 of the Rapid City Municipal Code.

**Comment [j2]:** Previously §3.16.060. This section was amended to split the revenue between the CIP and Vision Fund in the same manner as it was split prior to adoption of Ordinance #6018.

**~~3.16.040 (Reserved).~~**

**~~3.16.050 Excise tax imposed Rate.~~**

~~From and after the date of implementation provided for, pursuant to SDCL Chapter 10-52, there is imposed an excise tax on the privilege of use, storage and consumption of items of tangible personal property or services purchased within the jurisdiction of the city, at the same rate as the municipal sales and service tax as established in § 3.16.010 of the Rapid City Municipal Code upon all transactions or use, storage and consumption which are subject to the South Dakota Use Tax Act, SDCL Chapter 10-46, and acts amendatory thereto.~~

**~~3.16.060 Use of revenues.~~**

~~A. Eight percent of the revenue generated by the tax levied by §§ 3.16.010 and 3.16.050 shall be deposited in the city's Utility Support Fund, and shall be used for the construction, operation and maintenance of the city's utility facilities and streets.~~

~~B. Forty six percent of the revenue generated by the tax levied by §§ 3.16.010 and 3.16.050 shall be deposited in the city's General Fund, and may be used for any lawful purpose.~~

~~C. Forty six percent of the revenue generated by the tax levied by §§ 3.16.010 and 3.16.050 shall be deposited in the Rapid City Capital Improvements & Vision Fund, and may be used for the lawful purposes as set out in § 3.16.090 of the Rapid City Municipal Code.~~

**~~3.16.0740 Levy authority Collection.~~**

These taxes are levied pursuant to authorization granted by SDCL Chapter 10-52 and SDCL Chapter 10-52A and acts amendatory thereto, and shall be collected by the South Dakota Department of Revenue in accordance with the rules and regulations applicable to the state sales tax and under the additional rules and regulations as the secretary of revenue of the state of South Dakota shall lawfully prescribe.

### **3.16.0850 Interpretation.**

It is declared to be the intention of this chapter and the taxes levied hereunder that the same shall be interpreted and construed in the same manner as all sections of the South Dakota Retail Occupational Sales and Service Act, SDCL Chapter 10-45, and acts amendatory thereto, and the South Dakota Use Tax, SDCL Chapter 10-46, and acts amendatory thereto, and that this shall be considered a similar tax except for the rate thereof to that tax.

### **3.16.0960 Rapid City Capital Improvements & ~~Vision Fund.~~**

The revenue generated by § 3.16.0630 (C) shall be placed into Rapid City's Capital Improvements & Vision Fund (the "Fund"). ~~There shall be 2 separate accounts within the Fund, the Capital Improvements Account to finance capital improvement projects and the Vision Account to finance buildings, facilities, infrastructure or other capital projects with an emphasis on community enhancement. The revenue generated by § 3.16.060C shall generally be allocated evenly between the 2 accounts, provided that in any given month, such allocation need not be even, but to the extent that it is not, the account which is overfunded shall be entitled to reimbursement from the other account over such time period as the Council shall determine. The monies in the Capital Improvements Account shall be used for the purposes identified in division A. of this section. The monies in the Vision Account can be used for the purposes identified in division B. of this section. In order for the city to facilitate the financing of projects in the Fund and obtain more favorable rates for financing such projects, the city can pledge the use of the entire revenue generated by the Fund as security for any project financed through the use of the Fund under such terms and conditions that the City Council agrees to.~~

~~A. *Capital Improvements Account.* The funds in the Capital Improvements Fund Account shall be used to finance streets, municipal buildings, information technology infrastructure and other capital projects or purchases. The City Council shall approve a 5-year plan for financing projects and purchases out of this fund account. The City Council shall be authorized to issue revenue bonds to be paid from the fund in order to finance the projects contained in the plan. In order to facilitate the creation of the 5-year plan there will be a Capital Improvements Committee to review proposed expenditures and make recommendations to the City Council.~~

#### *A. Capital Improvements Committee.*

1. The Committee membership shall consist of the Parks and Recreation Director; Finance Officer; Public Works Director; Community Planning and Development Services Director; Chairperson of the Planning Commission; and Vice-Chairperson of the Planning Commission and 1 Alderman from each ward of the city. If 1 of the Alderman is unable to attend the meeting, the other Alderman from that ward may attend and vote in that Alderman's place. The Chairperson of the Capital improvements Committee and all members thereof shall be voting members and shall have 1 vote. Six members present shall constitute a quorum of the Committee.

2. The Chairperson of the Committee shall be appointed by the Mayor from among city department directors with that department providing the administrative support to the Committee.

3. The Capital Improvements Committee shall meet on the third Friday of each month or an alternate date as may be established by the Chairperson. Additional meetings may be called at the request of any member of the Committee.

*B. Procedure for approval of capital improvements projects.*

1. By May 1<sup>st</sup> of each year, Streets and Drainage, Government Buildings, and the Parks and Recreation Subcommittees shall submit a 5-year plan for proposed capital improvement projects. For needs requested in the next budgeting cycle, the Capital Improvements Committee requests that the following information be provided: estimated costs; documentation of how those costs were identified; justification for the requested capital improvement; and the timetable for completion.

2. The Capital Improvements Committee shall consider all requests for capital improvements, develop recommendations for the annual capital budget and the 5-year Capital Improvements Plan and present this to the Mayor for inclusion in the budget.

3. The finalized capital improvements plan, as recommended by the Capital Improvements Committee, shall be presented to the Planning Commission prior to adoption by the Common Council.

4. No project may be undertaken until such time as the Common Council has approved the capital improvements plan or an amendment to the plan addressing that project.

5. The Common Council shall approve the request to advertise for bids and the bid shall be awarded by the Common Council in accordance with all appropriate bid procedures.

6. In the case of the expenditure of funds from the Capital Improvement Plan Contingency, the Capital Improvements Committee shall approve the contingency expenditure. The Common Council shall approve the contingency expenditure and authorize staff to advertise for bids or enter into negotiations to select a design consultant. The Common Council shall award the bid.

7. The Capital Improvements Committee has the authority to reprioritize projects within a budgeted line item (Streets and Drainage, Parks and Recreation, Government Buildings) with Council approval.

*C. Reporting procedures.*

1. The City's Finance Office shall provide a monthly financial report at each meeting of the Capital Improvements Committee.

2. The Chairperson of the Capital Improvements Committee shall provide an update to the Legal and Finance Committee monthly.

**3.16.070 Rapid City Economic Development and Civic Improvements Fund (the Vision Fund).**

**B. Vision Account.** The revenue generated by § 3.16.030(D) shall be placed into Rapid City's Economic Development and Civic Improvements Fund (the Vision Fund) to finance economic development projects or programs, buildings, facilities, infrastructure or other capital projects with an emphasis on community enhancement. The City Council shall by resolution adopt a plan for projects or programs to be funded, in whole or in part, from the Vision Fund. No portion of the Vision Fund shall be used to fund any project or program not included in the plan. All projects included in the plan shall be located within the city limits of Rapid City or benefit the city as a whole. The City Council may use the Vision Fund to finance economic development projects or programs, buildings, facilities, infrastructure or other capital projects, but may not use the Vision Fund to finance ongoing maintenance and operational expenses of the various city departments, or of any buildings and/or facilities included in the plan. The Vision Fund may be used to fund the operational expenses of economic development projects or programs. The City Council shall be authorized to issue revenue bonds to be paid from the Fund in order to finance the projects contained in the plan. ~~The Vision Fund may be used to fund the operational expenses of economic development projects or programs.~~

**Comment [j3]:** Added back in a specific reference to economic development programs and projects. There was never any intent to exclude such projects but the lack of a specific reference to economic development was used as a basis to attack the revised ordinance.

*A. Procedure for approval of Vision Fund projects.*

1. The City Council shall adopt a 5-year plan for projects to be funded in whole or in part from the Vision Fund. Projects to be included in the plan shall be identified through the process outlined in § 3.16.070 ~~B-1-b~~(A)(2) of this section. At least annually, the City Council shall review the 5-year plan at a public hearing after providing notice thereof. The City Council may add, remove, alter the scope of, reprioritize projects, or otherwise amend the plan as it deems appropriate. If a private entity, or organization is approved for funding in future years of the plan, such funding shall be subject to this provision until such time as an agreement securing the funds is entered into pursuant to § 3.16.0970 ~~B-3-e~~(C)(3). In the event that revenues allocable to the Fund have been pledged to secure bonds which are expected to remain outstanding during an upcoming 5-year period, such projects are required to remain in the plan.

2. No later than December 31, 2016, the City Council will consider and approve a plan containing projects to be funded through December 31, 2021. The process for determining which projects to include in the plan are as follows:

a. The Mayor will direct that city staff identify and bring forward projects consistent with the criteria established in § 3.16.0970 (B)-2. The Mayor and the city Department Directors will prioritize those projects based on factors such as need and cost. The prioritized list of projects shall be presented to the City Council at the same time as the list of projects recommended by the citizen committee.

b. At least 6 months prior to December 31, 2016, or December 31<sup>st</sup> of the year any subsequent 5-year plan is ending, the Mayor shall appoint a citizen committee consisting

of a chair person and 8 additional members. The Mayor's appointments are subject to confirmation by the City Council. The committee members shall all be citizens of Rapid City. The purpose of this committee will be to accept and take comments on potential Vision Fund projects other than those projects identified by the Mayor and city staff pursuant to § 3.16.0790 ~~B.1.b.i. (A)(2)(a)~~. Upon formation of the committee, the city shall publicly solicit invitations to make proposals for projects to be considered in the next 5-year plan. No sooner than 30 days from the solicitation of proposals, the committee shall hold a public hearing to take comment on and discuss the proposals. The committee may hold additional public hearings if it deems such additional hearings necessary. The city shall advertise all hearings, but publication of such notice in the official newspaper of the city shall not be necessary. Based on its work, the committee shall prioritize the proposed projects based on the criteria established in § 3.16.0790 (B)-2. and make recommendations to the City Council regarding which projects if any should be funded. The recommendations of the committee shall be presented to the City Council at its second meeting in September. The recommendations of this committee shall be presented to the City Council at the same time as the recommendations in § ~~3.16.090B.1.b.i~~ 3.16.070(A)(2)(a).

c. The process identified in this section shall be the process for the adoption of all subsequent 5-year plans for the Vision Fund.

d. It is anticipated that beginning with the plan starting no later than 2017 the majority of money allocable to the Vision Fund will be expended or pledged to replace or refurbish the Rushmore Plaza Civic Center. If the replacement or refurbishment of the Rushmore Plaza Civic Center is approved, and the Vision Fund is the primary source of the money used to finance the project, the City Council may adopt a 5-year plan without appointing the citizen committee. The adoption of the resolution authorizing the bonds shall fulfill all the requirements to constitute approval of a plan for the period between the expiration of the current 5-year plan and December 31, 2021. The funding for any bonds on the Civic Center will continue in all subsequent 5-year plans as long as the bonds remain outstanding. The exception to the requirement for a citizen committee shall expire at the end of the initial plan in which the Civic Center is funded and shall be reinstated in conjunction with the subsequent 5-year plan commencing in 2022. For the 5-year plan commencing in 2022 a citizen committee will be formed to consider and make recommendations to the City Council on non-city government projects to be funded with any revenue above what is necessary to make the bond payments on the Civic Center project.

*B. Criteria for the selection of projects.*

The 5-year plan for the Vision Fund adopted by the City Council, along with the project recommendations made by staff and/or the citizen committee, shall be based on the goals and action items identified in the city's Comprehensive Plan and other guiding documents. The 5-year plan shall be developed in conjunction with the long term plans for the city's other funds and long term budget goals. The purpose of the plan will be to identify those projects and programs that will provide the greatest return on investment in terms of meeting the demand for

public infrastructure, facilities and services by systematically managing the selection, scheduling and financing of eligible projects. When the City Council prepares the plan it should assess the needs of the city and establish priorities for the use of the Vision Fund. The City Council is expected to take into consideration all of the funds and projects being undertaken by the city to ensure that the money in the Vision Fund is spent in a way that accomplishes the city's long term goals and priorities.

*C. Additional criteria for Vision Fund projects.*

1. If the proposed project is for a permanent building or structure the applicant proposing the project shall include a scope of work and a clear written statement describing the proposed project in order for the City Council to evaluate the request. This statement should be accompanied with the applicant's best estimate of probable project design and construction costs along with a timeline showing when probable expenditures will be made. A schedule of various phases of study, planning, design and construction necessary to accomplish the complete project shall be prepared and made available to the City Council.

2. Any application to fund a permanent structure, building, or facility, shall include an estimate of the project's ongoing operation and maintenance costs. Unless otherwise agreed to by the city, the entity proposing said project or program will incur all costs associated with the operations and/or administration of said project or program.

3. If a private organization, or entity is approved for funding, they will enter into a contract with the city which will outline the project scope and expectations of the city with relation to payments from the Fund prior to being eligible to receive any monies from the Vision Fund. The contract will include a timeframe by which the project will be completed or by which certain benchmarks will be reached. The contract will include a provision which allows the city to terminate the agreement and reallocate any funds committed to the project if the timeframes or benchmarks are not met. For any projects funded in the 5-year plan approved in 2010, they shall have 5 years from the year their project is scheduled to be funded to complete the project. The 5 years will be deemed to have expired on December 31<sup>st</sup> of the fifth year.

**3.16.1080 Severability of provisions—Revival of repealed provisions.**

If any provision of this chapter is declared unconstitutional or the application thereof to any person or circumstance is held invalid, the constitutionality of the remainder of the section and the remainder of this chapter and the applicability thereof to other persons or circumstances shall not be affected thereby.

**3.16.1090 Violation—Penalty.**

A. Any person failing or refusing to make reports or payments prescribed by this chapter and the rules and regulations relating to the ascertainment and collection of the tax herein levied shall be guilty of violating this chapter and upon conviction, shall be fined not more than \$200 or imprisoned in the city jail for 30 days, or both the fine and imprisonment.

B. There is imposed by the city on any person subject to tax under this chapter who fails to file a required report or pay the tax, charges equivalent to those provided for in SDCL § 10-59-6, and acts amendatory thereto, and SDCL § 10-46-39, and acts amendatory thereto. In addition, all such collection remedies authorized by SDCL Chapter 10-45, and acts amendatory thereto, and SDCL Chapter 10-46, and acts amendatory thereto, are authorized for the collection of these taxes by the Department of Revenue.

CITY OF RAPID CITY

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Mayor

ATTEST:

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Finance Officer

(SEAL)

First Reading:

Second Reading:

Published:

Effective: