

**ORDINANCE NO. 3960**

**AN ORDINANCE TO AMEND THE CITY OF RAPID CITY'S MUNICIPAL NON-AD VALOREM SALES TAX ORDINANCE TO COMPLY WITH THE REQUIREMENTS OF STATE LAW BY AMENDING SECTIONS 3.16.010, 3.16.020, 3.16.030, 3.16.040, 3.16.050, 3.16.060, 3.16.070, 3.16.080, 3.16.090, 3.16.100, AND 3.16.110 OF THE RAPID CITY MUNICIPAL CODE.**

WHEREAS, the City of Rapid City believes that the imposition of municipal non-ad valorem tax, or sales and use tax, (hereafter "sales tax") on food is a decision that should be made by the local governing bodies, not the State Legislature; and

WHEREAS, the State of South Dakota has usurped the decision making authority of local governing bodies by repealing the exemption provision of state law that previously allowed municipalities to refrain from imposing municipal sales tax on food; and

WHEREAS, the City of Rapid City does not currently collect municipal sales tax on food; and

WHEREAS the State of South Dakota now requires the City of Rapid City to either impose municipal sales tax upon food or lose the ability to collect all sales tax; and

WHEREAS, the City of Rapid City has previously enacted a municipal sales tax in accordance with the enabling statutes enacted by the state legislature; and

WHEREAS, the City of Rapid City provides a variety of services to the public that are dependent upon the revenue generated by the municipal sales tax; and

WHEREAS, the City of Rapid City must choose to either impose municipal sales tax on food or make drastic reductions in City services, effectively crippling City government; and

WHEREAS, the City of Rapid City vehemently objects to being mandated by the State to impose municipal sales tax upon food; and

WHEREAS, the City of Rapid City intends to continue to impose a municipal sales tax for the purpose of providing the public services necessary to protect the health, safety and welfare of the community; and

WHEREAS, the City of Rapid City is required to review its existing municipal sales tax ordinance to determine if amendments are necessary to comply with the new requirements imposed upon municipalities by the legislature through the enabling legislation; and

WHEREAS, the City of Rapid City has reviewed its existing municipal sales tax ordinance and determined that certain amendments are necessary to comply with the enabling legislation; and

WHEREAS the City of Rapid City has reviewed the rate of its municipal sales tax; and

WHEREAS the City of Rapid City intends to insure that the rate complies with the intent of SDCL § 10-52-16 that the municipal sales tax be revenue neutral upon implementation of the required amendments; and

WHEREAS, the City of Rapid City intends that these amendments be effective as required by the enabling legislation; and

WHEREAS, the City of Rapid City strongly urges the Legislature of the State of South Dakota to reconsider its policy that forces municipalities to impose municipal sales tax on food.

NOW THEREFORE BE IT ORDAINED by the City of Rapid City that section 3.16.010 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 10-52, there is imposed as a municipal retail occupational sales and service tax upon the privilege of engaging in business a tax of ~~two~~ **one and eighty-four one hundredths percent (1.84%)** 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 § 10-45, and acts amendatory thereto **and SDCL Chapter 10-46, and acts amendatory thereto. Tax will not be applied to items specifically exempt under SDCL § 10-52-2.6, 10-52-11, and 10-52-12. Items exempted from municipal tax include: farm machinery and irrigation equipment, parts or repairs for farm machinery, agricultural animal health products and medicine, transportation service, collection and disposal of solid waste, veterinarian and animal specialty services and air transportation.**

BE IT FURTHER ORDAINED by the City of Rapid City that section 3.16.020 of the Rapid City Municipal Code is hereby amended to read as follows:

**3.16.020 Rapid City economic development and civic improvements fund.**

There is established the Rapid City economic development and civic improvements fund to be used as follows:

**A. The funds included with the Rapid City economic development and civic improvements fund shall be used only for capital improvements, land acquisition, street improvements or economic development.**

**AB.** The council shall adopt, by resolution, a plan for projects or programs to be funded, in whole or in part, from the Rapid City economic development and civic improvements fund. Prior to the adoption of such plan the council shall have conducted one or more public hearings, after giving notice thereof, and shall consider comments and suggestions for projects or programs to be included in the plan. No portion of the Rapid City economic development and civic improvements fund shall be used to fund any project or program which is not included in the plan. The council shall at least annually conduct public hearings, after giving notice thereof, to consider proposed amendments to the plan and may, by resolution, approve amendments to the plan. Every fifth year the council shall conduct public hearings, after giving public notice thereof, and adopt a new plan.

**BC.** The council shall be authorized to issue revenue bonds to be paid from the Rapid City economic development and civic improvements fund to fund projects or programs contained in the plan; however, no bonds shall be issued in an amount greater than can be expected to be repaid with seven years anticipated revenue to the Rapid City economic development and civic improvements fund.

BE IT FURTHER ORDAINED by the City of Rapid City that section 3.16.030 of the Rapid City Municipal Code is hereby amended to read as follows:

**3.16.030 Exemptions. Reserved.**

~~A. There are exempted from the taxes imposed by this chapter gross receipts from selling food as defined in SDCL 10-52-2.15, and acts amendatory thereto.~~

~~B. There are exempted from the taxes imposed by this chapter gross receipts from sales of parts or repairs on machinery or equipment which are clearly identifiable as used primarily for agricultural purposes as taxed pursuant to SDCL 10-45-3, farm machinery or equipment taxed pursuant to SDCL 10-45-3, and agricultural animal health products and medicines.~~

~~C. There are exempted from the taxes imposed by this chapter sales of construction materials to a construction company for use of its business operation outside the city if delivery thereof is made to a truck of the construction company within the city.~~

BE IT FURTHER ORDAINED by the City of Rapid City that section 3.16.040 of the Rapid City Municipal Code is hereby amended to read as follows:

**3.16.040 Imposition of additional tax--Rate.**

From and after the date of implementation provided for, pursuant to SDCL 10-52A, there is imposed an additional tax at the rate of one percent upon the gross receipts of all leases or rentals of hotel, motel, campsites or other lodging accommodations within the municipality for periods of less than ~~thirty~~ **twenty-eight** days; sales of alcoholic beverages as defined in SDCL 35-1-1; establishments where the public is invited to eat, dine or purchase and carry out prepared food for immediate consumption; and ticket sales

or admissions to places of amusement, athletic or cultural events, or any combination thereof.

BE IT FURTHER ORDAINED by the City of Rapid City that section 3.16.050 of the Rapid City Municipal Code is hereby amended to read as follows:

**3.16.050 Excise tax imposed--Rate.**

From and after the date of implementation provided for, pursuant to SDCL 10-52, there is imposed an excise tax on the privilege of use, storage and consumption of items within the jurisdiction of the city 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 section 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 10-46, and acts amendatory thereto.

BE IT FURTHER ORDAINED by the City of Rapid City that section 3.16.060 of the Rapid City Municipal Code is hereby amended to read as follows:

**3.16.060 Use of revenues.**

~~A. Any revenues from taxes levied under this chapter pursuant to Sections 3.16.010 and 3.16.050, in excess of the amount received if the rate of tax in Sections 3.16.010 and 3.16.050 were one percent, will be used only for capital improvements, land acquisition, and debt retirement for the civil center, airport terminal, downtown parking, municipal building, or street improvements, from and after the effective date, and up to and including December 31, 1988.~~

~~B. From and after January 1, 1989, any revenues from taxes levied under this chapter pursuant to Sections 3.16.010 and 3.16.050, in excess of the amount received if the rate of tax in Sections 3.16.010 and 3.16.050 were one percent, shall be used as hereinafter set forth:~~

~~1. From and after the 31st day of March, 1995, one half of the revenues from the second one percent shall be placed into the Rapid City economic development and civic improvements fund and used as set forth in Section 3.16.020(A).~~

~~2. All other revenues in excess of one percent will primarily be used for streets, drainage, parks and permitted facilities therein; however, the revenues under this section may be used for any purpose authorized by law.~~

~~C. Any revenues from taxes levied under Section 3.16.040 may be used only for the purpose of land acquisition, architectural fees, construction costs, payments for the civil center buildings, including the maintenance, staffing, operations, and promotion of the facility and the city.~~

~~D. The common council, by resolution or ordinance, may make a pledge of the revenues to be received in accordance with this section for the purposes stated herein.~~

**Revenue generated by this chapter shall be used as follows:**

**A. One half of the revenue generated by the tax levied by sections 3.16.010 and 3.16.050 shall be deposited in the City's general fund and may be used for any lawful purpose.**

**B. One quarter of the revenue generated by the tax levied by sections 3.16.010 and 3.16.050 shall be deposited in the Rapid City economic development and civic improvements fund and may be used for the lawful purposes as set out in section 3.16.020 of the Rapid City Municipal Code.**

**C. One quarter of the revenue generated by the tax levied by sections 3.16.010 and 3.16.050 shall be used only for streets, drainage, parks and permitted facilities therein, municipal buildings, and other capital improvements in accordance with section 3.16.090 of the Rapid City Municipal Code.**

**D. All of the revenues generated by the tax levied by section 3.16.040 shall only be used for the purposes permitted by SDCL § 10-52A-2.**

BE IT FURTHER ORDAINED by the City of Rapid City that section 3.16.070 of the Rapid City Municipal Code is hereby amended to read as follows:

**3.16.070 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 such additional rules and regulations as the secretary of revenue of the State of South Dakota shall lawfully prescribe.

BE IT FURTHER ORDAINED by the City of Rapid City that section 3.16.080 of the Rapid City Municipal Code is hereby amended to read as follows:

**3.16.080 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 10-45, and acts amendatory thereto, and the South Dakota Use Tax, SDCL 10-46, and acts amendatory thereto, and that this shall be considered a similar tax except for the rate thereof to that tax.

BE IT FURTHER ORDAINED by the City of Rapid City that section 3.16.090 of the Rapid City Municipal Code is hereby amended to read as follows:

**3.16.090 Prerequisite to authorizing use of funds--Capital improvement program.**

Prior to authorizing the expenditure of funds pursuant to subsection ~~(B)-(2)~~ **(C)** of Section 3.16.060 a capital improvements program shall be submitted to the Rapid City planning commission for its review and recommendation and shall be adopted by resolution of the Rapid City common council, **with or without amendments**. The capital **improvements** program shall be heard at least annually ~~at the first regular meeting of the Rapid City planning commission in August of each calendar year.~~ Such capital improvements program may be amended from time to time and at other than the annual meeting dates upon ten days' notice of hearing being published in the official newspaper of the city of intent to amend or consider amendment to the capital improvements plan.

BE IT FURTHER ORDAINED by the City of Rapid City that section 3.16.100 of the Rapid City Municipal Code is hereby amended to read as follows:

**3.16.100 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, ~~except that if any section imposing a tax pursuant to this chapter is declared unconstitutional or invalid, the corresponding repealer shall also be deemed null and void and the tax previously imposed shall remain in full force and effect.~~

BE IT FURTHER ORDAINED by the City of Rapid City that section 3.16.110 of the Rapid City Municipal Code is hereby amended to read as follows:

**3.16.110 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 a ~~misdemeanor~~ **violating this ordinance** and upon conviction, shall be fined not more than ~~one~~ **two** hundred dollars or imprisoned in the city jail for thirty days, or both such 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 10-45-47, and acts amendatory thereto, and SDCL 10-46-39, and acts amendatory thereto. In addition, all such collection remedies authorized by SDCL 10-45, and acts amendatory thereto, and SDCL 10-46, and acts amendatory thereto, are authorized for the collection of these taxes by the department of revenue.

BE IT FURTHER ORDAINED by the City of Rapid City that in accordance with SDCL § 10-52-9 the amendments contained herein shall not be effective until January 1, 2004.

CITY OF RAPID CITY

ATTEST:

\_\_\_\_\_  
Mayor Jim Shaw

\_\_\_\_\_  
Finance Officer

(SEAL)

First Reading:  
Second Reading:  
Published:  
Effective:

Prepared By: CITY ATTORNEY'S OFFICE