

ORDINANCE #O2022-05

AN ORDINANCE CODIFYING AND AMENDING PROVISIONS RELATING TO BUSINESS IMPROVEMENT DISTRICT NUMBER 2 WITHIN THE CITY OF MITCHELL.

WHEREAS, the City of Mitchell first implemented Business Improvement District Number 2 (BID 2) pursuant to Ordinance #2441 in July 2013. Since that time, the provisions and boundaries of BID 2 have been subject to several updates, all duly noticed and heard as required by law, and implemented by Resolution #3330 (expanding boundary for indoor pool), Ordinance #2521 (increasing tax rate from \$1.00 per room/per night to \$1.50), Ordinance #2552 (extending Sports and Events Authority portion of tax), and Ordinance O2019-13 (extending Sports and Events Authority portion of tax); and

WHEREAS, BID 2, as originally adopted and subsequently amended, has remained in full force and effect since its original adoption, but has never been codified; and

WHEREAS, the City desires to codify and re-implement all provisions relating to BID 2 as originally adopted under Ordinance #2441, and as thereafter amended by subsequent resolution and ordinance, in addition to such further amendments contained herein. NOW THEREFORE,

BE IT ORDAINED BY THE CITY OF MITCHELL, SOUTH DAKOTA AS FOLLOWS:

Section 1. Recitals pursuant to SDCL Chapter 9-55.

The Governing Body of the City of Mitchell, SD, hereby incorporates all recitals made in Ordinance #2441, Resolution #3330, Ordinance #2521, Ordinance #2552, and Ordinance O2019-13 by reference as if set out herein in full, except as the same may be modified and/or supplemented as hereafter provided.

1. The Resolution of Intent relating to this ordinance (Resolution #R2022-07) was adopted by the Governing Body on March 7, 2022.
2. The hearing in relation to this matter was held on the 18th day of April, 2022 at 6:00 PM in the chambers of the Mitchell City Council, at City Hall, 612 N Main, Mitchell, SD, following the notice period provided by law. At said hearing, the Governing Body did receive evidence for and against the proposed modification of revenues to be raised and the use and application thereof. No objections to the proposed modifications were made at said hearing or, alternatively, any objections made were less than a majority of the hotels and motels in the BID and were insufficient in number as required by law to terminate the proceedings as referenced herein.
3. BID 2 was originally established and is hereby re-implemented pursuant to SDCL Chapter 9-55.
4. The purposes of BID 2, and the public improvements and facilities relating thereto, shall be as further provided by Section 2 of this ordinance.
5. All boundaries remain as originally adopted by Ordinance #2441, as updated by Resolution #3330 and Ordinance #2521, and are listed in Section 2 of this ordinance.

The tax imposed and based on rooms rented by the lodging establishments (hotels and motels) imposed upon transient guests does not exceed \$2.00 per occupied room per night.

6. As authorized by SDCL 9-55-2, the hotel/motel businesses included in BID 2 are hereby subject to the general business occupation tax of \$2.00 per room per night on occupied rooms rented to transient guests, as further provided by Section 2 of this ordinance. Such tax is hereby deemed fair and equitable.

7. As further stated in Section 2 of this ordinance, the initial rate of the occupation tax to be imposed on the business users of the space in the district is \$2.00 per room per night on occupied rooms rented to transient guests by hotels/motels within the district.

8. Penalties for failure to pay the occupation tax are provided in Section 2 of this ordinance.

Section 2. Codification of Substantive Provisions.

As discussed in the recitals above, the city originally established, and subsequently amended, BID 2 pursuant to Ordinance #2441, Resolution #3330, Ordinance #2521, Ordinance #2552, and Ordinance O2019-13, which have not been codified to date. As such, the City of Mitchell does hereby formally readopt BID 2 and codifies provisions relating to BID 2 as further provided by this section.

The City of Mitchell does hereby ADOPT the further provisions of this section to be codified in the Mitchell City Code as “Chapter 2-7: Business Improvement District Number 2”, with the sections of said chapter to read as follows:

2-7-1: Establishment of District:

The City of Mitchell did pass a resolution of intent (Resolution #3109) relating to Business Improvement District 2 (BID 2) on May 20, 2013. The hearing relating to the creation of BID 2 was held on July 1, 2013 subsequent to passing Ordinance #2441 that day which formally created BID 2. BID 2 was subsequently amended, updated, and/or renewed, following notice and hearing required by law, pursuant to Resolution #3330 (amending boundary for indoor pool), Ordinance #2521 (increasing tax rate from \$1.00 per room/per night to \$1.50), Ordinance #2552 (extending Sports and Events Authority portion of tax), and Ordinance O2019-13 (extending Sports and Events Authority portion of tax). At the time of this codification, it is the intent of the City of Mitchell that BID 2 continue on in existence pursuant SDCL Chapter 9-55 and according to the further provisions of this chapter.

2-7-2: Definitions:

BID or BID 2: Business Improvement District Number 2 previously established by ordinance and now codified in this chapter.

TAX or BID 2 TAX: The tax imposed on the Lodging Establishments of \$2.00 per rented room per night to be imposed, collected, applied, commenced, terminated, or otherwise administered as described in this chapter.

LODGING ESTABLISHMENT: Motel and hotel businesses within the City, which is any building, structure, property or premises kept, used, maintained, advertised or held out to the public to be a place where sleeping accommodations are furnished for a per night rental charge, to transient guests. The terms "Lodging Establishment" and "Motels and Hotels" or the like are synonymous.

TRANSIENT GUEST: Any person who resides in a lodging establishment less than 28 consecutive days.

CITY: The City of Mitchell, South Dakota.

SPORTS & EVENTS AUTHORITY: A committee of the City which seeks to increase use of facilities within the City for sports and other events wherein participants and others will utilize Lodging establishments within the City as well as the promotion and coordination of such sports and events.

REVENUE: The tax paid to and collected by the City pursuant to the BID.

2-7-3: Purposes of the District:

- A. The purpose of BID 2 has been and will continue to be to provide funding towards activities and projects that benefit the City and lodging establishments located within the district by making the City a more attractive location to host sporting competitions, events, and generally encouraging those outside the community to visit and stay in Mitchell. Since its original creation, BID 2 has served a number of stated purposes including the support of designated Sports & Events Authority programs, construction and maintenance of a second sheet of ice at the Mitchell Activities Center, and construction and maintenance of the Indoor Aquatic Center.

- B. In addition to these pre-existing purposes, BID 2 and the revenue therefrom may also be used for:
 - 1. the construction or installation of any useful or necessary public improvement;
 - 2. development of any activities and promotion of the district area;
 - 3. maintenance, repair, and reconstruction of any improvements or facilities authorized by SDCL Chapter 9-55;
 - 4. paying all or any part of the total cost and expenses of any authorized improvement, facility or activity within BID 2; or
 - 5. any other permitted purpose under SDCL 9-55-3, 9-55-14, or any other provision of SDCL Chapter 9-55.

C. In no event will BID 2 or the revenue therefrom be utilized for a purpose which is not authorized by SDCL Chapter 9-55.

2-7-4: District Boundaries:

The boundaries of BID 2 were previously established and adjusted pursuant to Ordinance #2441, Resolution #3330, and Ordinance #2521. At the time of codification, two properties which were formerly lodging establishments are no longer in operation, however such properties are listed here due to being previously included in the district and the intent of this codification is merely to continue the boundaries as previously established by the above ordinances and resolutions without any geographical changes. As such, the boundaries as previously established are as follows:

A. Public places, pathways and rights of way:

1. Spruce Street from South Capital Street to Highway 37,
2. Cabela Drive from Langdon Street to Spruce Street,
3. Highland Way (all),
4. SD Highway 37 (not bypass—I90 business loop) from Spruce Street to Havens Street, including access roads adjunct thereto,
5. Havens Street from South Burr Street to Ohlman Street (i.e. to Highway 37 bypass),
6. SD Highway 37 bypass (Ohlman Street) from Loma Linda to West 8th Avenue,
7. West 8th Avenue from Highway 37 bypass to North Minnesota Street,
8. North Minnesota Street from West 8th Avenue to West 12th Avenue,
9. West and East 12th Avenue from North Minnesota Street to North Main Street,
10. North Main from East 12th Avenue to the point of intersection of the northern lot line of adjacent Lot 1 Aquatic Center 1st Addition (previously known as the northern lot line of Irregular Tract 5, Section 15, T103N, R60W, Davison County, SD),
11. East 12th Street from the intersection with North Main Street to the intersection of North Lawler Street,
12. All intersections of the beginning and termination designations of the above described public places, pathways and rights of way.

B. The following properties all located within the City of Mitchell, Davison County, South Dakota:

Business Name & Address	Legal Description
<i>Americinn</i> 1421 S Burr Street	Lot S-9 replat of Lot S NW 1/4 of Section 27, T103N, R60W
<i>Corn Palace Inn</i> <i>(Formerly Best Western)</i> 1001 S Burr Street	Blocks 11 & 14 Weavers Squares Addition and vacated Ivy Ave & W 25 of vacated Burr St NW 1/4 of Section 27, T103N, R60W
<i>Budget Inn</i> 1518 W Havens Avenue	IT 4B & IT 4E SW 1/4 of Section 21, T103N, R60W, ex. Lot H-1 of IT 4B & ex. Lot 4B1 Subdivision of Previously Platted Lot 4B & ex. Lot 1 of Anthony Motel 1st Addition
<i>Coach Light Motel</i> 1000 W Havens Avenue	Lot 10 Block 2 Blooms Addition & 8B SW 1/4 of Section 21, T103N, R60W
<i>Comfort Inn & Suites</i> 2020 Highland Way	Lot 4A Highland Business Park Addition SE 1/4 of Section 27, T103N, R60W
<i>Days Inn</i> 1506 S Burr Street	Lot 2A Block 3 a subdivision of Lot 2 Block 3 SLB Sub & previously platted Lot TX& S32' of W 125. 23' of 2B Block NE 1/4 of Section 27, T103N, R60W
<i>Hampton Inn</i> 1920 Highland Way	Lot 2A Highland Business Park Addition SE 1/4 of Section 27, T103N, R60W
<i>Holiday Inn Express Hotel & Suites</i> 810 E Spruce Street	E 396' of Lot 3C ex. E 180' thereof Cabelas 1st Addition SE 1/4 of Section 27, T103N, R60W
<i>Kelly Inn & Suites</i> 1010 Cabela Drive	Lot 2B of Cabelas 1st Addition SE 1/4 of Section 27, T103N, R60W
<i>Motel 6</i> 1309 S Ohlman Street	Lot X-2 of Lot X located in Section 29, T103N, R60W
<i>Quality Inn</i> 1221 S Burr Street	Lot S-3 A Subdivision of Lot S, ex. W 258' NW 1/4 of Section 27, T103N, R60W
<i>Rodeway Inn</i> <i>(Formerly Econolodge)</i> 1313 S Ohlman Street	The E 317' of Lot X-1 within Lot X located in the SE 1/4 of NE 1/4 of Section 29, T103N, R60W
<i>Siesta Motel</i> 1210 W Havens Avenue	Lot 7B in SW 1/4 of Section 21, T103N, R60W
<i>Super 8 Motel</i> 1700 S Burr Street	Lot 5 of Amoco Irreg. Tract located in the SE 1/4 of Section 27, T103N, R60W
<i>Thunderbird Lodge</i> 1601 S Burr Street	Lot "CH" located in the NW 1/4 of SE 1/4 of Section 27, T103N, R60W
<i>Former Ramada Inn</i> 1525 W Havens Avenue	Block 4 except the N 151.45' x W 167' and ex. east 175' and ex. H5 & Ex N 50' of W 50' of S 165' of E 55' of Block 4 Sunnyside Addition NW 1/4 of Section 28, T103N, R60W
<i>Former Corn Palace Inn</i>	Lot 3 in Square 1 Weavers Squares

902 S Burr Street	Addition Ex. H3, H4 & H5 & H6 NW ¼ of Section 27, T 103N, R60W
<i>Mitchell Activities Center</i> 1001 N Minnesota Street	Lot A-1-A, a subdivision of previously platted Outlot A-1 in the W 1/2 of the SE 1/4 and the E 1/2 of the SW 1/4 of Section 16, T103N, R60W; and The E 439' of that portion of Lot A1 in the W 1/2 of the SE 1/4 and the E 1/2 of the SW 1/4 of Section 16, T103N, R60W, ex. the North 690' thereof and except Lot A-1-A thereof and except the South 634' thereof
<i>Mitchell Indoor Aquatic Center</i> 1300 N Main Street	Irregular Tract No. 5 in the SW1/4 of Section 15, T103N, R60W (including what is now platted as Lot 1 of Aquatic Center 1st Addition)

2-7-5: Adding Property to District and Dissolution of Lodging Establishment.

Property may be added to BID 2 by resolution pursuant to SDCL Chapter 9-55. This may include property for new or relocating lodging establishments or other public way, property, facilities or improvements. In the event a lodging establishment included in the boundaries of BID 2 discontinues operation, such property may remain in the district however such property will no longer be required to pay the tax or provide accounts relating to the tax unless a lodging establishment subsequently begins or resumes operations on that property.

2-7-6: Occupational Tax.

- A. There is hereby imposed, re-imposed, or continued a tax upon the businesses within BID No. 2, subject to the limitations hereafter stated, of \$2.00 per night per rented room on all lodging establishments with the tax to commence and with the revenue collected to be applied as hereafter provided.
- B. The tax shall be paid and reported to the City on a form or forms provided by the City Finance Office. Such form shall include a the following statement, "I declare, under penalty of perjury, that the above accounting of rooms rented is accurate and the tax payment made herein is accurate to the best of my knowledge, information, and belief and according to my business records." and will also include the signature of the person remitting the form to the City along with that person's printed name, title, and the date.
- C. The BID 2 tax shall remain in effect until terminated pursuant to state law.

2-7-7: Application of Revenue

- A. The revenue produced by the BID 2 tax shall be allocated and expended by the City Council on at least an annual basis exclusively for the purposes authorized under Mitchell City Code Section 2-7-3. Under no circumstances may BID 2 tax revenue be allocated or expended for a purpose which is not authorized by SDCL Chapter 9-55.
- B. The tax, having been previously in place at \$1.50 per night per rented room, shall continue in full force and effect with the new rate of \$2.00 per night per rented room to commence on the first day of the first month following adoption and publication of the ordinance and the expiration of the referral period therefore. The City Finance Officer shall provide a written notice by mail to the physical address of each lodging establishment notifying each of the new rate and the date the new rate takes effect. Such notice shall be mailed at least twenty (20) days in advance of the new rate increase taking effect.
- C. The City Council shall allocate such funds as may be necessary to fund any obligations relating to the second sheet of ice, indoor aquatic center, and Sports & Event Authority programs for any project where the city pledged such revenue towards repayment of a debt. For all other allocations and expenditures, such allocations and expenditures shall be made pursuant to subsection A of this section.
- D. The Tax shall be collected by Lodging Establishment businesses from the paying overnight guests as a separate tax charge. No Tax shall be collected from or paid to the City on any room provided to an overnight guest on complimentary basis and for which no fee is charged. The amount of Tax paid by each individual Lodging Establishment shall be confidential unless disclosure is required for court enforcement proceedings.
- E. In the event that BID 2 is abolished, dissolved, or terminated, the City Council shall dispose of any remaining proceeds pursuant to SDCL Section 9-55-20.

2-7-8: Duty to Account for Complimentary and Lease Rooms.

Each lodging establishment shall account for complimentary or leased rooms which are also subject to audit by the City, with records showing the reason rooms were provided on a complimentary basis or for a period of 28 days or more.

2-7-9: Computation and Collection of Occupation Tax.

The City Finance Officer is authorized to determine and compute the tax in accordance with the filed report. The Tax assessed shall be remitted by the 20th day of each month to the City, based on the previous calendar-month Tax collections. The City Finance Officer or designee shall be authorized to audit the books, ledgers, or franchise reports of any Lodging Establishment subject to the terms of this ordinance, including the right to inspect daily reports so as to ensure that the Tax is properly remitted to the City. The City may seek injunctive relief, against any Lodging Establishment which does not remit the proper amount of tax monies when due. Each Lodging Establishment subject to the Tax shall keep accurate records of amounts collected from the transient guests for review by the City Finance Officer or their designee.

2-7-10: Failure to Pay Occupational Tax.

- A. All remittances of tax collected pursuant to this ordinance shall be due and received in the office of the City Finance Officer on or before the 20th day of the month following the month for which the tax was collected. All amounts that are not received on or before the 20th day of the month will be charged a late fee in the amount of ten percent of the total amount due. Failure to timely remit the tax shall constitute a violation of this ordinance. Any unpaid balance under this article shall constitute a lien upon the property owned by the business or user of space being taxed and shall become a lien against and shall run with the property and may be enforced and collected in the same manner as other unpaid real property taxes and assessments.
- B. The City shall have the ability to deny the issuance of permits or licenses or any renewals thereof to any business or premise that fails to conform to the provisions of this ordinance, including, but not limited to, building permits, malt beverage licenses and liquor licenses. The City shall have the ability to discontinue the provision of any city provided utility service to any business or premise that fails to conform to the provisions of this ordinance.
- C. Nothing within the body hereof shall be construed as limiting any other rights which the City has, or may pursue in seeking collection of tax monies not paid under the terms herein. In the event of any civil or criminal action being filed seeking collection of any delinquent assessments, the offending lodging establishment or property owner shall be responsible for and pay all attorney's fees and costs incurred by the City in seeking payment under the terms of this chapter.

D. In the event this tax becomes subject to supervision by the State through the State's Department of Revenue, any rights which the City has herein shall be deemed cumulative to any powers which inure to the benefit of the State.

2-7-11: Severability.

Should any section, clause or provision of this Resolution be declared invalid, the same shall not affect the validity of the ordinance as a whole or any part thereof, other than the part declared to be invalid.

Section 3.

All ordinances and parts of ordinances in conflict herewith are hereby repealed.

Section 4.

The City Finance Officer shall cause notice of adoption of this ordinance to be published in the official newspaper and twenty (20) days after the completed publication, unless the referendum is invoked, this ordinance shall become effective.

Adopted by majority vote of the Mitchell SD City Council in regular session this ____ day of _____, 2022.

Robert B. Everson, Jr. – Mayor

Attest:

(seal)

Michelle Bathke – City Finance Officer

First Reading: _____

Second Reading: _____

Adoption: _____

Published: _____