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ORDINANCE NO. 78-10

AN ORDINANCE OF THE CITY OF SIOUX FALLS, SD, AMENDING THE REVISED ORDINANCES OF THE CITY BY ADDING ARTICLE XII TO CHAPTER 39, ESTABLISHING THE SIOUX FALLS CONVENTION & VISITORS BUREAU BUSINESS IMPROVEMENT DISTRICT.

WHEREAS, the owners of a majority of the rentable lodging rooms in the proposed business district area petitioned the City Council of Sioux Falls to hold a hearing to create the Sioux Falls Convention & Visitors Bureau Business Improvement District (the “CVB Business Improvement District”) pursuant to SDCL § 9-55-9; and

WHEREAS, the City Council of Sioux Falls approved a resolution of intent to establish the CVB Business Improvement District at its October 12, 2010, meeting; and

WHEREAS, the City Council of Sioux Falls held a public hearing on November 15, 2010, to consider the establishment of the proposed CVB Business Improvement District; and

WHEREAS, the creation of the proposed CVB Business Improvement District will generate money to develop activities and promote events in the district area and will further fund other services necessary and proper to carry out the purposes of SDCL Chapter 9-55; and

WHEREAS, the City Council of Sioux Falls deems it to be in the City’s best interests to promote the City of Sioux Falls and its visitor industry by approving the establishment of the CVB Business Improvement District.

BE IT ORDAINED BY THE CITY OF SIOUX FALLS, SD:

Section 1. That the Revised Ordinances of Sioux Falls, SD, are hereby amended by adding Article XII to read:

**ARTICLE XII. SIOUX FALLS CONVENTION & VISITORS BUREAU
BUSINESS IMPROVEMENT DISTRICT**

Section 2. That the Revised Ordinances of Sioux Falls, SD, are hereby amended by adding a subsection to be numbered 39-183 to read as follows:

Section 39-183. Establishment of district.

HOTEL	ADDRESS	ROOMS
American Budget Lodge—Sioux Falls Inn	1300 W. Russell St.	97
AmericInn Motel & Suites	3508 S. Gateway Blvd.	65
Baymont Inn & Suites	3200 S. Meadow Ave.	77
Best Western Empire Towers	4100 W. Shirley Pl.	60
Best Western Ramkota Hotel	3200 W. Maple St.	228
Brimark Inn	3200 W. Russell St.	107
Center Inn	900 E. 20th St.	59
Cloud 9 Motel	4904 N. Cliff Ave.	56
ClubHouse Hotel & Suites	2320 S. Louise Ave.	100
Comfort Inn South	3216 S. Carolyn Ave.	66
Comfort Suites	3208 S. Carolyn Ave.	60
Country Inn & Suites	200 E. 8th St.	71
Courtyard by Marriott	4300 W. Empire Pl.	102
Days Inn Airport	5001 N. Cliff Ave.	87
Days Inn Empire	3401 S. Gateway Blvd.	79
Econo Lodge	5100 N. Cliff Ave.	80
Fairfield Inn	4501 W. Empire Pl.	63
GuestHouse Inn & Suites	3101 W. Russell St.	43
Hampton Inn	2417 S. Carolyn Ave.	99
Hilton Garden Inn	5300 S. Grand Cir.	103
Holiday Inn City Centre	100 W. 8th St.	299
Holiday Inn Express & Suites	2501 S. Shirley Ave.	116
Homewood Suites by Hilton	3620 W. Avera Dr.	95
Knights Inn	1508 W. Russell St.	84
Microtel Inn & Suites	2901 S. Carolyn Ave.	68
Motel 6	3009 W. Russell St.	87
Nites Inn	1223 W. 12th St.	53
Quality Inn & Suites	5410 N. Granite Ln.	93
Ramada	407 S. Lyons Ave.	66
Ramada Hotel & Suites	1301 W. Russell St.	150
Red Roof Inn	3500 S. Gateway Blvd.	98
Residence Inn by Marriott	4509 W. Empire Pl.	66
Rodeway Inn	4208 W. 41st St.	83
Sheraton Sioux Falls Hotel	1211 N. West Ave.	243
Sleep Inn	1500 N. Kiwanis Ave.	64
Springhill by Marriott	4304 W. Empire Pl.	84
Staybridge Suites	2505 S. Carolyn Ave.	90
Super 8 (N. Cliff)	4808 N. Cliff Ave.	57
Super 8 Motel (10th)	2616 E. 10th St.	56
Super 8 Motel (41st)	4100 W. 41st St.	92
TownePlace Suites by Marriott	4545 W. Homefield Dr.	67
Valley Inn Motel	1000 S. Grange Ave.	63
Value Place Hotel	1109 S. Lyons Ave.	<u>121</u>
		3,997

Pursuant to the provisions of SDCL Chapter 9-55, the CVB Business Improvement District of the city of Sioux Falls is hereby created. A Resolution of Intent (Resolution No. 86-10) to create this district was approved by the city council of Sioux Falls on the 12th day of October, 2010. The public hearing on creation of the district was held in the city council chambers, located at 235 W. 10th St., P.O. Box 7402, Sioux Falls, South Dakota, at 7 p.m. on the 15th day of November, 2010.

Section 3. That the Revised Ordinances of Sioux Falls, SD, are hereby amended by adding a subsection to be numbered 39-184 to read as follows:

Section 39-184. Boundaries of district.

The CVB Business Improvement District will have the following boundaries, excluding any hotel/motel properties with less than 40 rooms:

All commercial transient lodging facilities located within the city limits of Sioux Falls.

For purposes of establishing whether a hotel/motel property has 40 or more rooms, lodging rooms in contiguous properties will be aggregated if they function as part of a single hotel/motel, even if owned by separate entities.

Section 4. That the Revised Ordinances of Sioux Falls, SD, are hereby amended by adding a subsection to be numbered 39-185 to read as follows:

Section 39-185. Purpose of district.

The CVB Business Improvement District is created for the purpose of funding the marketing and promotion of the visitor industry in the city of Sioux Falls and its hotels and motels located within the district through the Sioux Falls Convention & Visitors Bureau.

Section 5. That the Revised Ordinances of Sioux Falls, SD, are hereby amended by adding a subsection to be numbered 39-186 to read as follows:

Section 39-186. Occupational tax imposed.

An occupational tax in the amount of two dollars (\$2.00) per night will be imposed upon transient guests based upon rooms rented by any of the hotels, motels, or lodging establishments within the boundaries of the District. This occupational tax must be fair, equitable, and uniform as to class. No occupational tax may be imposed on any transient guest who has been offered a room by a lodging establishment on a complimentary basis whereby no fee or rent is charged for such room. This tax rate will be subject to establishment and adjustment by the Sioux Falls city council by resolution in accordance with SDCL § 9-55-16.

Section 6. That the Revised Ordinances of Sioux Falls, SD, are hereby amended by adding a subsection to be numbered 39-187 to read as follows:

Section 39-187. Duty to account for complimentary rooms.

Each hotel, motel, or lodging establishment must account for complimentary rooms which are also subject to audit by the city finance director with such records to show the basis for offering such room on a complimentary basis.

Section 7. That the Revised Ordinances of Sioux Falls, SD, are hereby amended by adding a subsection to be numbered 39-188 to read as follows:

Section 39-188. Computation and collection of occupational tax.

The Sioux Falls finance director is authorized and directed to determine and compute the tax in accordance with this ordinance. The occupational tax assessed pursuant to the terms of this ordinance must be remitted by the 20th day of each month to the Sioux Falls finance director, with the remittance to be for the previous calendar month's tax collections. The city finance director or any person or firm contracted by the city finance office will be entitled to audit the books, ledgers, or franchise reports of any hotel, motel, or lodging establishment subject to the terms of this ordinance, including the right to inspect daily reports of such hotels and motels so as to ensure that the occupancy tax assessed by this ordinance is being properly remitted to the city of Sioux Falls. The city finance director will be entitled to seek injunctive relief against any hotel, motel, or lodging establishment which does not remit the proper amount of tax monies when due, which relief may be in the form of an action requiring the offending hotel or motel owner to allow entry upon their property and access to their records, computers, or books so as to verify that the hotel, motel, or lodging establishment is remitting all monies it collects pursuant to this ordinance and the laws of the state of South Dakota. Each hotel, motel, or lodging establishment subject to this ordinance must keep accurate records of amounts collected from transient guests for review by the city finance director or its designee, pursuant to this ordinance.

Section 8. That the Revised Ordinances of Sioux Falls, SD, are hereby amended by adding a subsection to be numbered 39-189 to read as follows:

Section 39-189. Statement required along with occupational tax payment.

Any business governed by this ordinance must sign a sworn statement to be submitted along with the remittance of any tax imposed by this ordinance on or before the 20th day of each month stating as follows:

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 according to my business records.

Signed _____ Dated _____

Title _____

Section 9. That the Revised Ordinances of Sioux Falls, SD, are hereby amended by adding a subsection to be numbered 39-190 to read as follows:

Section 39-190. Penalties for failure to pay occupational tax.

All remittances of occupancy tax collected pursuant to this ordinance will be due and received in the office of the city of Sioux Falls finance office on or before the 20th day of the month following the month for which the occupancy tax remittances are due. 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 (10%) of the total amount due. Failure to pay such tax will also constitute a violation of this ordinance which may be punishable by a fine, not to exceed two hundred dollars (\$200). Each day that the payment is overdue will constitute a separate offense. Any unpaid balance under this ordinance will constitute a lien upon the property owned by the business or user of space being taxed and will become a lien against and will run with the property and may be enforced and collected in the same manner as other unpaid real property taxes and assessments. The Sioux Falls finance director will certify all unpaid amounts or balances to the county treasurer for collection in the same manner as general property taxes are collected. Further, the city of Sioux Falls will have the ability to deny the issuance of any permits or license 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. Nothing within the body of this ordinance may be construed as limiting any other rights which the city of Sioux Falls has, or may pursue in seeking collection of monies received but not paid under the terms of this ordinance. In the event that this tax becomes subject to supervision by the state of South Dakota through the state's Department of Revenue, any rights which the city of Sioux Falls has herein will be deemed cumulative to any powers which inure to the benefit of the state.

Section 10. That the Revised Ordinances of Sioux Falls, SD, are hereby amended by adding a subsection to be numbered 39-191 to read as follows:

Section 39-191. Payment of fees.

In the event of any civil or criminal action being filed seeking collection of any delinquent assessments, the offending hotel, motel, or lodging establishment will be responsible to pay all attorney's fees and costs incurred by the city of Sioux Falls in seeking payment under the terms of this ordinance.

Section 11. That the Revised Ordinances of Sioux Falls, SD, are hereby amended by adding a subsection to be numbered 39-192 to read as follows:

Section 39-192. Costs incurred by city in administering occupational tax.

All costs incurred by the city of Sioux Falls or the city finance office pursuant to this ordinance will be paid from occupancy taxes collected under this ordinance. Such costs may not exceed one percent (1%) of the amount of tax collected.

Section 12. That the Revised Ordinances of Sioux Falls, SD, are hereby amended by adding a subsection to be numbered 39-193 to read as follows:

Section 39-193. Payment of occupational tax proceeds to Convention & Visitors Bureau.

Once the occupational tax has been collected, the city finance office will subtract its administrative costs and forward the remaining balance to the Sioux Falls Convention & Visitors Bureau. The Convention & Visitors Bureau will use the proceeds to market and promote the visitor industry in the city of Sioux Falls and the lodging facilities within the district, all in accordance with the budget approved by the board of directors of the CVB Business Improvement District pursuant to SDCL Chapter 9-55.

Section 13. That the Revised Ordinances of Sioux Falls, SD, are hereby amended by adding a subsection to be numbered 39-194 to read as follows:

Section 39-194. Board of directors.

- A. Official board. The official board of the CVB Business Improvement District will be a board of directors appointed as provided in this section.
- B. Composition, terms, and appointment. The board of directors will consist of nine voting members appointed by the mayor and approved by the city council, and comprised of (1) three members who own or manage a hotel in the city with over 100 or more rooms, (2) two members who own or manage a hotel in the city with 75 to 99 rooms, (3) one member who owns or manages a hotel in the city with 40 to 74 rooms, (4) two members from the CVB advisory council executive committee, and (5) one member from the Sioux Falls business community at-large. No hotel ownership or management group may, either directly or indirectly, hold more than one seat on the board of directors. The mayor, with the approval of the city council, will fill any vacancy for the remainder of the term vacated.
- C. Terms. All members will be appointed to three-year terms, and may not serve more than two consecutive full or partial terms.
- D. Voting registration. A minimum of five members of the board of directors must be registered voters within the city. Up to four members may serve without being registered voters of the city provided they have a vested or representative interest in the district as allowed by Section 2-26 of the revised ordinances.
- E. Non-voting members. The following persons will be non-voting ex-officio members of the board of directors:
 - 1. A member of the Sioux Falls city council, appointed by the mayor; and
 - 2. The executive director of the Sioux Falls Convention & Visitors Bureau (the “CVB”).
- F. Resignations. Resignations of directors must be in writing and will take effect upon receipt of the board of directors.

G. Duties of the board of directors. The board of directors shall have the following duties:

1. The board of directors will review and tentatively approve an annual budget prepared by the CVB executive director for the use of the occupation tax collected by the BID. The budget must be in accordance with the purposes of the BID and the requirements of Chapter 9-55 of the South Dakota codified laws and this ordinance. Before becoming effective, the budget must be presented to and approved by the CVB executive committee and the city council.
2. The board of directors will have such other duties as may be specified in SDCL Chapter 9-55, or as otherwise necessary to carry out the intent of Chapter 9-55 and this ordinance.

Section 14. That the Revised Ordinances of Sioux Falls, SD, are hereby amended by adding a subsection to be numbered 39-195 to read as follows:

Section 39-195. Severability.

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

Date adopted: 11/15/10.

Mike T. Huether
Mayor

ATTEST:
Debra A. Owen
City Clerk