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 Date Adopted: _____
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ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF SIOUX FALLS, SD, AMENDING THE CODE OF ORDINANCES OF THE CITY BY AMENDING CHAPTER 37: TAXATION.

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

Section 1. That Section 37.004 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 37.004 IMPOSITION OF ADDITIONAL TAX.

- (a) From and after January 1, 1996, there is hereby imposed in addition to the taxes, imposed by §§ 37.001, 37.002, and 37.003, an additional 1% tax upon the gross receipts of all leases or rentals of hotel, motel, campsites, or other lodging within the city for periods of less than 28 consecutive days.
- (b) All revenues received under this section shall be used for funding Experience Sioux Falls, a South Dakota nonprofit corporation as the Destination Marketing Organization (DMO) and Convention & Visitors Bureau (CVB) for the city of Sioux Falls.

Section 2. That Section 37.190 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

EXPERIENCE SIOUX FALLS BUSINESS IMPROVEMENT DISTRICT

§ 37.190 ESTABLISHMENT OF DISTRICT.

Pursuant to the provisions of SDCL ch. 9-55, the CVB business improvement district of the city is hereby created. A resolution of intent (Resolution 86-10) to create this district was approved by the city council on October 12, 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 7:00 p.m. on November 15, 2010.

The CVB business improvement district is retitled the Experience Sioux Falls business improvement district and where reference is made to CVB business improvement district in this Chapter it shall be replaced with Experience Sioux Falls business improvement district.

Section 3. That Section 37.191 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 37.191 BOUNDARIES OF DISTRICT.

The Experience Sioux Falls business improvement district will have the following boundaries, excluding any hotel/motel properties with less than 40 rooms:

- (a) All commercial transient lodging facilities located within the city limits; and
- (b) 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 Section 37.192 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 37.192 PURPOSE OF DISTRICT.

The Experience Sioux Falls business improvement district is created for the purpose of funding the marketing and promotion of the visitor industry in the city and its hotels and motels located within the district.

Section 5. That Section 37.193 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 37.193 OCCUPATIONAL TAX IMPOSED.

An occupational tax in the amount of \$2 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 the room. This tax rate will be subject to establishment and adjustment by the city council by resolution in accordance with SDCL 9-55-16.

Section 6. That Section 37.194 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 37.194 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 records to show the basis for offering the room on a complimentary basis.

Section 7. That Section 37.195 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 37.195 COMPUTATION AND COLLECTION OF OCCUPATIONAL TAX.

The finance director is authorized and directed to determine and compute the tax in accordance with this subchapter. The occupational tax assessed pursuant to the terms of this subchapter must be remitted by the 20th day of each month to the finance director, with the remittance to be for the previous calendar month's tax collections. The finance director is authorized to determine, from time to time, the acceptable form and means of submission and payment. As made available by the finance director, electronic submission and payment will be accepted. 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 subchapter, including the right to inspect daily reports of the hotels and motels so as to ensure that the occupancy tax assessed by this subchapter is being properly remitted to the city. 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. Each hotel, motel, or lodging establishment subject to this subchapter must keep accurate records of amounts collected from transient guests for review by the city finance director or its designee, pursuant to this subchapter.

Section 8. That Section 37.196 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 37.196 STATEMENT REQUIRED ALONG WITH OCCUPATIONAL TAX PAYMENT.

Any business governed by this subchapter must sign a sworn statement to be submitted along with the remittance of any tax imposed by this subchapter on or before the 20th day of each month on a form(s) approved by the city finance director, 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 _____

The sworn statement may be signed by electronic signature or other electronic certification, provided electronic submission and payment has been made available by the finance director.

Section 9. That Section 37.197 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 37.197 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 to the city all attorney's fees and costs incurred by the city in seeking payment under the terms of this subchapter.

Section 10. That Section 37.198 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 37.198 COSTS INCURRED BY CITY IN ADMINISTERING OCCUPATIONAL TAX AND COLLECTION OF DELIQUENT ASSESSMENTS.

All costs incurred by the city or the city finance office pursuant to this subchapter will be paid from occupancy taxes collected under this subchapter. The costs may not exceed 1% of the amount of tax collected. All administrative collection fees imposed pursuant to § 37.999 shall be paid to and retained by the city.

Section 11. That Section 37.199 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 37.199 PAYMENT OF OCCUPATIONAL TAX PROCEEDS TO EXPERIENCE SIOUX FALLS.

Once the occupational tax has been collected, the city finance office will subtract its administrative costs and fees and forward the remaining balance to Experience Sioux Falls, a South Dakota nonprofit corporation. Experience Sioux Falls will use the proceeds to market and promote the visitor industry in the city and the lodging facilities within the district, all in accordance with the budget approved by the board of directors of the Experience Sioux Falls business improvement district pursuant to SDCL ch. 9-55.

Section 12. That Section 37.200 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 37.200 BOARD OF DIRECTORS AND OFFICERS.

- (a) Official board. The official board of the formally known CVB business improvement district, the "Convention and Visitors Bureau Board of Directors," shall be renamed to "Experience Sioux Falls Business Improvement District (BID) Board of Directors." The Experience Sioux Falls BID board of directors will be the official board of the Experience Sioux Falls business improvement district, a board of directors appointed as provided in this section.

- (b) Composition, terms, and appointment.
 - (1) The board of directors will consist of nine voting members appointed by the mayor and approved by the city council, and comprised of:
 - A. Three members who own or manage a hotel in the city with over 100 or more rooms;
 - B. Two members who own or manage a hotel in the city with 75 to 99 rooms;
 - C. One member who owns or manages a hotel in the city with 40 to 74 rooms;
 - D. Two members from the Experience Sioux Falls board of directors executive committee; and
 - E. One member from the city business community at-large.
- (c) Officers. At the first regular meeting of the board of directors of each calendar year, the board shall select from its voting members at a minimum a chairperson, vice-chairperson, and secretary.
- (d) No hotel ownership or management group may, either directly or indirectly, hold more than two seats on the board of directors.
- (e) Terms. All members will be appointed to three-year terms, and may not serve more than two consecutive full terms.
- (f) Voting registration. Any voting member may serve without being a registered voter of the city provided they have a vested or representative interest in the district. This exception does not apply to the at-large member referenced in subsection (b)(1)E above. The at-large member shall be a registered voter of the city. Non-voting members may serve without being a registered voter of the city.
- (g) Non-voting members. The following persons will be non-voting ex officio members of the board of directors:
 - (1) A member of the city council, appointed by the mayor;
 - (2) The Experience Sioux Falls CEO; and
 - (3) The immediate past chairperson of the board of directors, if such member has fulfilled two consecutive full terms.
- (h) Resignations. Resignations of directors must be in writing and will take effect upon receipt of the board of directors.
- (i) A member shall be automatically terminated from the board of directors if:
 - (1) A member no longer meets the stated requirements of § 37.200; or

- (2) A member fails to attend two meetings in a calendar year of the board of directors and a vacancy is declared by majority vote of the voting members of the board of directors.
- (j) The mayor, with the approval of the city council, will fill any vacancy for the remainder of the term vacated.
- (k) 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 Experience Sioux Falls CEO 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 SDCL ch. 9-55 and this subchapter. Before becoming effective, the budget must be presented to and approved by the Experience Sioux Falls board of directors or its executive committee and the city council.
 - (2) The board of directors will have those other duties as may be specified in SDCL ch. 9-55, or as otherwise necessary to carry out the intent of ch. 9-55 and this subchapter.

Section 13. That Section 37.201 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 37.201 SEVERABILITY.

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

Section 14. That Section 37.999 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 37.999 PENALTY.

- (a) Generally. Any person violating any provision of this chapter, for which no other penalty is provided, shall be subject to the penalty provisions of § 10.999.
- (b) Retail sales and service tax. Any person failing or refusing to make reports or payments prescribed by §§ 37.001 through 37.007 and the rules and regulations relating to the ascertainment and collection of the tax levied in §§ 37.001 through 37.007 shall be guilty of a violation of a city ordinance and upon conviction shall be punished as provided in § 10.999. In addition, all collection remedies authorized by SDCL ch. 10-45 and acts amendatory thereof are hereby authorized for the collection of these taxes by the department of revenue.
- (c) Use tax. Any person failing or refusing to make reports or payments prescribed by §§ 37.020 through 37.023 and the rules and regulations relating to the ascertainment and collection of the tax levied in §§ 37.020 through 37.023 shall be guilty of a violation of a city ordinance and upon conviction shall be punished as provided in § 10.999. In addition,

all collection remedies authorized by SDCL ch. 10-46, and acts amendatory thereof are hereby authorized for the collection of these excise taxes by the department of revenue.

- (d) Lodging establishment occupation tax. All remittances of occupancy tax collected pursuant to §§ 37.113 through 37.120 will be due and received in the office of the city 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 10% of the total amount due. In the event the delinquent tax and late fee is not paid in full within 60 days of delinquency, a \$200 administrative collection fee shall be imposed on the 61st day of delinquency and each month thereafter the tax and late fee remains unpaid. Failure to pay the tax will also constitute a violation of §§ 37.113 through 37.120 and subject the violator to the penalty provisions of § 10.999. Each month that the payment is overdue will constitute a separate offense. Any unpaid balance under §§ 37.113 through 37.120 and this Section will constitute a lien upon the property owned by the lodging establishment 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 city 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 will have the ability to deny the issuance of any permits or license or any renewals thereof to any lodging establishment or premises that fails to conform to the provisions of §§ 37.113 through 37.120, and this Section including, but not limited to, building permits, malt beverage licenses, and liquor licenses. Nothing within the body of §§ 37.113 through 37.120 may be construed as limiting any other rights which the city has, or may pursue in seeking collection of monies received but not paid under the terms of §§ 37.113 through 37.120. In the event that this tax becomes subject to supervision by the state through the state's Department of Revenue, any rights which the city has herein will be deemed cumulative to any powers which inure to the benefit of the state.
- (e) Occupancy tax. All remittances of occupancy tax collected pursuant to §§ 37.190 through 37.201 will be due and received in the office of the city 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 10% of the total amount due. In the event the delinquent tax and late fee is not paid in full within 60 days of delinquency, a \$200 administrative collection fee shall be imposed on the 61st day of delinquency and each month thereafter the tax and late fee remains unpaid. Failure to pay the tax will also constitute a violation of §§ 37.190 through 37.201 and subject the violator to the penalty provisions of § 10.999. Any unpaid balance under §§ 37.190 through 37.201 and this Section 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 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 will have the ability to deny the issuance of any permits or license or any renewals thereof to any business or premises that fails to conform to the provisions of §§ 37.190 through 37.201, and this Section including, but not limited to, building permits, malt beverage licenses, and liquor licenses. Nothing within the

body of §§ 37.190 through 37.201 may be construed as limiting any other rights which the city has, or may pursue in seeking collection of monies received but not paid under the terms of §§ 37.190 through 37.201. In the event that this tax becomes subject to supervision by the state through the state’s department of revenue, any rights which the city has herein will be deemed cumulative to any powers which inure to the benefit of the state.

Section 15. The effective date of this ordinance shall be October 1, 2022.

Date adopted: _____.

Paul TenHaken, Mayor

ATTEST:

Thomas Greco, City Clerk