



Business Improvement District #4 Board Agenda
City Council Chambers, City Hall, 612 N. Main Street
August 15, 2023

- 1. Call to Order**
- 2. Elect Chair & Vice Chair of Board.**
- 3. Consider Recommendation on Ordinance to Establish Business Improvement District #4.**
- 4. Adjourn**

Individuals with disabilities who require special assistance to take part in this meeting may contact one of the following at City Hall (605) 995-8420 at least 24 hours prior to the meeting with requests for assistance: Human Resources Officer or the City Administrator.

ORDINANCE #O2023-

AN ORDINANCE ESTABLISHING BUSINESS IMPROVEMENT DISTRICT NUMBER 4.

WHEREAS, the City of Mitchell has previously implemented two prior Business Improvement Districts relating to hotels, motels, and lodging establishments; and

WHEREAS, the City of Mitchell desires to update and consolidate all provisions relating to hotel, motel, and lodging establishment Business Improvement Districts and provide a fresh starting point for the same; and

WHEREAS, the prior Business Improvement Districts will be terminated by separate action of the City Council prior to the new Business Improvement District Number 4 (BID 4) going into effect.

NOW THEREFORE,

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

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

Pursuant to SDCL 9-55-12, the Governing Body of the City of Mitchell, SD, does hereby make the following statements of facts and findings:

1. The Resolution of intent relating to this ordinance (Resolution #R2023-) was adopted by the Governing Body on July X, 2023.
2. The hearing in relation to this matter was held on the X day of August, 2023 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 4 is hereby established pursuant to SDCL Chapter 9-55, this ordinance, and the prior resolutions of council relating to BID 4.
4. The purposes of BID 4, and the public improvements and facilities relating thereto, shall be as further provided by Section 2 of this ordinance.
5. The boundaries of BID 4 are as further described in Section 2 of this ordinance.
6. As authorized by SDCL 9-55-2, the hotel, motel, and lodging establishments included in BID 4 are hereby subject to the general business occupation tax as further provided by Section 2 of this ordinance. Such tax is hereby deemed fair and equitable.
7. As discussed in further detail 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, and lodging establishments within BID 4.

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

Section 2. Codification of Substantive Provisions.

The City of Mitchell does hereby ADOPT the following provisions to be codified in the Mitchell City Code as “Chapter 2-7: Business Improvement District Number 4”, with the sections of said chapter to read as follows:

2-7-1: Establishment of District:

Pursuant to the provisions of SDCL Chapter 9-55, Business Improvement District Number 4 (BID 4) of the City is hereby created. A resolution designating the boundaries of the business area and appointing members to the BID 4 board was approved by City Council on _____. Upon receiving the recommendation of the BID 4 board, a resolution of intent to create BID 4 was approved by the City Council on _____. The public hearing on creation of BID 4 was held in the City Council Chambers, located at 612 N. Main, Mitchell SD 57301 at _____ on _____.

2-7-2: Boundaries of Business Improvement District Number 4:

- A. The boundaries of BID 4 are as follows: That property within the City boundaries which is zoned and used for hotel, motel, or lodging establishment excluding any hotel, motel, or lodging establishment with less than 28 rooms, unless the hotel or motel elects to be included within the district.
- B. A list of all properties included in BID 4, which list shall identify the name of the hotel, motel, or lodging establishment, the number of sleeping rooms and each property’s address, shall be kept on file in the Finance Office. The initial list shall contain all properties currently included in BID 4. If a property no longer meets the criteria for inclusion in BID 4, the owner or proprietor of the hotel, motel, or lodging establishment shall provide the Finance Officer with a sworn, written statement setting forth the relevant change in property or operation that disqualifies the hotel, motel, or lodging establishment. The Finance Officer shall remove the hotel, motel, or lodging establishment if the statement shows the hotel, motel, or lodging establishment no longer qualifies for inclusion in BID 4.

2-7-3: New Properties within Business Improvement District Number 4:

Pursuant to SDCL 9-55-4, the City Council may add, by resolution, hotel, motel, or lodging establishment properties with 28 or more rooms which

were not in operation or did not meet the occupancy threshold at the time of BID 4's creation.

2-7-4: Purpose of the District:

BID 4 is created for the purpose of funding the enhancement, expansion, marketing and promotion of visitor facilities, events, attractions and activities benefiting the City and its hotels, motels, and lodging establishments located within BID 4 for the purposes set forth in SDCL 9-55-3.

2-7-5: Occupational Tax Imposed:

An occupational tax in the amount of \$2.00 per occupied night shall be imposed upon the above hotels, motels, or lodging establishments based upon rooms rented to transient guests. This occupation tax shall 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 hotel, motel, or lodging establishment on a complimentary basis whereby no fee or rent is charged for such room. Additionally, no occupational tax may be imposed on any transient guest who stays 28 days or more consecutive nights.

2-7-6: Duty to Account for Complimentary and Leased Rooms:

Each hotel, motel, or 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.

2-7-7: Computation and Collection of Occupational Tax:

The City Finance Officer is authorized to determine and compute the tax in accordance with this ordinance. The occupational tax assessed pursuant to this ordinance shall be remitted by the 20th day of each month to the City, based on the previous calendar-month tax collections. Should the 20th day of the month fall on a Saturday, Sunday or a holiday observed by the City, the occupancy tax remittance shall be due on the first business day immediately following the 20th. The City Finance Officer or their designee shall be authorized 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 any occupancy tax is properly remitted to the City. The City may seek injunctive relief against any hotel, motel, or lodging establishment which does not remit the proper amount of tax monies when due. Each hotel, motel, or lodging establishment subject to

this ordinance shall keep accurate records of amounts collected from transient guests for review by the City Finance Officer or their designee.

2-7-8: Certified Report Required along with Occupation Tax Payment:

Any business governed by this ordinance shall certify with the remittance of tax imposed by this ordinance that the accounting of rooms rented is accurate and the tax payment made is accurate according to the business records. Any business governed by this chapter shall sign a sworn statement, to be submitted along with the remittance of any tax imposed by this chapter 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 _____”

2-7-9: Failure to Pay Occupational Tax:

All remittances of occupancy tax collected pursuant to this article shall be due and received in the Office of the City Finance Officer no later than the 20th day following the month for which the occupancy tax remittances are due. All amounts that are not remitted as set forth above will be charged a late fee in the amount of ten percent of the total amount due.

Failure to remit such tax shall constitute a violation of this chapter which may be punishable by a fine of up to \$500.00 and/or imprisonment of up to 30 days. Any unpaid balance under this article shall constitute lien upon the property owned by the business or user of space being taxed and shall become a lien against and shall run with property taxes and assessments.

The City shall have the ability to deny the issuance of permits or licenses or any renewals thereof to any business or premises that fails to conform to provisions of this article, including, but not limited to, building permits, malt beverage licenses, wine licenses and liquor licenses.

Nothing with this provision shall be construed as limiting any other rights which the City has or may pursue in seeking collection of monies not paid under the terms of this chapter. 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.

2-7-10: Payment of Fees:

In the event legal action is required to collect any delinquent assessments, if there is a tax that has not been paid in accordance with this ordinance, the hotel, motel or lodging establishment failing to pay will be responsible for and pay all attorney's fees and costs incurred by the City in collecting the unpaid tax.

2-7-11: Costs Incurred by the City in Administering the Occupational Tax:

All costs incurred by the City of the City Finance Officer pursuant to this article shall be paid from occupancy taxes collected under this article. Administrative costs are not to exceed two percent.

2-7-12: Business Improvement District Number 4 Board:

There is hereby continued, as has been previously established pursuant to SDCL Chapter 9-55, a Business Improvement District Number 4 Board.

A. Composition.

1. The BID 4 Board shall consist of 7 members. The Mayor and a council representative shall constitute 2 members of the BID 4 board and shall not be subject to term limits. In addition to the Mayor and council representative, the BID 4 board shall also consist of 5 additional members, appointed by the Mayor with the approval of the City Council. Persons who are eligible to fill the 5 additional member seats of the BID 4 Board must be property owners, residents, business operators, or users of space within the business area to be improved, and will consist of:
 - a. Three hoteliers from within BID 4; and
 - b. Two other eligible persons who are not hoteliers.

B. Terms. All members of the Board shall be appointed to serve a 3-year term. A member of the Board may serve consecutive terms if so appointed by the Mayor and Council. The terms for the 5 non-city members shall initially be staggered so that 1 member serves a full 3-year term, 2 members serve 2-year initial terms, and 2 members serve 1-year initial terms.

C. Vacancies. The Mayor, with the approval of the City Council, shall fill any vacancy of members for the remainder of the term vacated.

D. Officers. The BID 4 Board shall annually select from its members a chair, vice chair, and secretary.

E. Compensation. All members of the Board shall serve as such without compensation, except for actual expenses, which shall be subject to approval of the City Council.

F. Powers of the board. The primary duty of the BID 4 board is to recommend a budget for the use of BID proceeds to the City Council. The use of BID 4 proceeds is limited to the purposes provided under Section 4 above. The BID 4 board shall be authorized to take such actions necessary to carry out the appropriated expenditures included in the Council's approved budget for BID 4, upon any such further restrictions the Mayor and Council may provide during the budget approval process.

2-7-13: Severability:

Should any section, clause or provision of this ordinance 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.

2-7-14: Reporting:

The BID #4 Board will provide annual reports of their activities to the City Council.

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, unless the referendum is invoked, this ordinance shall become effective January 1, 2024.

Adopted by majority vote of the Mitchell SD City Council in regular session this ____ day of _____, 2023.

Robert B. Everson, Jr. – Mayor

Attest:

(seal)

Michelle Bathke – City Finance Officer

First Reading: _____

Second Reading: _____

Adoption: _____

Published: _____