CITY OF BIWABIK

ORDINANCE NO. 850

AN ORDINANCE OF THE CITY OF BIWABIK, MINNESOTA, ORDINANCE NO. 850, ADOPTED APRIL 18, 2011, AND ENTITLED "TAX ON LODGING, ADMISSIONS AND RECREATION, AND FOOD & BEVERAGE IN THE GIANTS RIDGE RECREATION AREA."

The City Council of Biwabik does ordain:

Section __.01 Authority.

The imposition of the Taxes levied hereunder is authorized by the provisions of the Laws of Minnesota 2010, Chapter 389, Article 5, Section 7, which became effective on July 1, 2011, following compliance by the City with the requirements of Minnesota Statutes, section 645.021, subdivisions 2 and 3.

Section __.02. Definitions.

The words, terms, and phrases used in this Ordinance shall have the meanings ascribed to them in either: Minnesota Statutes, Chapter 297A; Minnesota Statutes, sections 157.15 and 340A.101, or 469.190; or in Minnesota Rules, parts 8130.4700 and 8130.4705; except where the context clearly indicates otherwise. In addition the following definitions shall apply:

A. "Act" means Laws of Minnesota 2010, Chapter 389, Article 5, Section 7.

B. "Agreement" means that certain agreement between the City of Biwabik and the Minnesota Department of Revenue for collection of the Taxes, including any amendments, modifications, supplements, or restatements of such agreement.

C. "City" means the City of Biwabik, Minnesota.

D. "Commissioner" means the Commissioner of Revenue for the State of Minnesota, acting under authority of an agreement entered into between the City and the State of Minnesota pursuant to the Act, or such other Person designated to administer and collect the Taxes.

E. "Food and Beverage" means food and beverages that are subject to tax under Minnesota Statutes, chapter 297A, and Minnesota Rules, chapter 8130, including Minnesota Rules, Parts 8130.4700 and 8130.4705. "Beverages" includes on-sale intoxicating liquor and fermented malt beverages, as defined or described in Minnesota Statutes, section 340A.101.

F. "Lodging Related Services" means services provided by a hotel, motel, rooming house, tourist court, or resort; that are provided within a guest room, associated with the use of the lodging facility, and billed by the lodging facility to the lodging guest.

G. "Operator" means any Person, whether or not such Person is the owner of the affected facility or property, who:

1. furnishes for consideration lodging to another Person at a hotel, motel, rooming house, tourist court, or resort, for a period less than thirty (30) days, and lodging furnished for periods of 30 days or more if there is no enforceable written agreement that requires the guest to give notice of their intent to terminate;

2. receives or is entitled to receive admission receipts to entertainment and recreational facilities or receipts from the rental of recreational equipment; or

3. receives or is entitled to receive gross receipts from the sale of food or beverages sold by restaurants and places of refreshment.

H. "Person" means the same as that term is defined in Minnesota Statutes, section 297A.61, subdivision 2.

I. "Recreation Area" means the Giants Ridge Recreation Area as defined in Minnesota Statutes section 298.22, subdivision 7, as the same may be amended from time to time.

J. "Restaurant or place of refreshment" means any of the various "food and beverage service establishments" defined in or that are part of a definition in Minnesota Statutes, section 157.15, regardless of whether the customer consumes the food or beverage at the establishment, picks it up for consumption elsewhere, or it is delivered to the customer. Such establishments must be located within that part of the City that is within the Recreation Area.

K. "Tax" or "Taxes" means the particular tax or taxes imposed and to be paid and collected under this Ordinance.

Section __.03. Imposition of Tax

A. On and after the Effective Date of this Ordinance the following Taxes are imposed upon receipts from sales at sites within the City that are within the Recreation Area defined above:

1. A Tax in the amount of two percent (2%) of the gross receipts from the furnishing for consideration of lodging at a hotel, motel, rooming house, tourist court, or resort for a period less than thirty (30) days, and for lodging furnished for periods of 30 days or more if there is no enforceable written agreement that requires the guest to give notice of their intent to terminate. Lodging related services are subject to the local lodging taxes in the same manner as the State sales tax imposed on lodging and related services under Minnesota Statutes, section 297A.61, subdivision 3(g)(2);
2. A Tax in the amount of two percent (2%) on admission receipts to entertainment and recreational facilities and on receipts from the rental of recreational equipment, except any such receipts that are derived from the sale of season tickets or season passes; and
3. A Tax in the amount of one percent (1%) of the gross receipts from food and beverages sold by a restaurant or place of refreshment.

B. The Taxes imposed by Paragraphs A(1), A(2), and A(3) of this section shall be paid to the operator of the facility and the obligation for payment thereof shall be extinguished only by payment to the Commissioner of Revenue acting as agent for and on behalf of the City.

Section __.04. Administration of the Taxes; City's right to examine books and records.

The administration, collection and enforcement of these Taxes shall be governed by Minnesota Statute, sections 469.190 and 297A.99, except that subdivisions 2 and 3 in section 297A.99 shall not apply, and by the Agreement. The City shall have the right to examine the books and records of every operator whose gross receipts are subject to any of the above levied Taxes at any time to substantiate the accuracy of the gross receipts as reported for City taxes on the returns filed by the operator with the Commissioner for sales and use tax under Minnesota Statutes, chapter 297A.

Section __.05. Relation to State Sales and Use Tax.

The Taxes are intended to be collected on lodging and related services, admissions to entertainment and recreational facilities and receipts from the rental of recreational equipment, and on food and beverages sold by a restaurant or place of refreshment that is located within the City, to the extent they also are subject to sales and use tax under Minnesota Statutes, chapter 297A.

Section __.06. Separate Statement; Collection from Purchaser; Advertising No Tax; Uniform Tax Collection Method.

The taxes charged by operators on the gross receipts subject to any of the Taxes imposed under this Ordinance shall be stated and charged separately from the sales price insofar as practical and shall be a debt from the purchaser to the seller recoverable at law as other debts.

In computing the tax to be collected as the result of any transaction, amounts of Tax of less than one half cent may be disregarded and amounts of one half cent or more may be considered an additional cent.

Section __.07. Registration with Commissioner.

Every Person desiring to engage in or who is conducting a business whose gross receipts are subject to the provisions of this Ordinance shall first obtain a sales tax permit from the Commissioner as required under Minnesota Statutes 297A, by registering that business with the Commissioner and receiving a Minnesota Business Identification Number.

Section __.08. Exemption certificate.

A seller of any items or services that are subject to any Tax imposed by this Ordinance that obtains from the purchaser a fully completed Minnesota Revenue certificate of exemption, or otherwise obtains all the relevant information required by Minnesota Statutes, section 297A.72, subdivision 2, either of which indicates either that the property purchased is for resale

or that the sale is otherwise exempt from the application of the sales and use tax imposed by Minnesota Statutes, chapter 297A, is relieved from collecting and remitting the Taxes, to the extent the seller is also relieved of liability for collecting and remitting sales taxes under Minnesota Statutes, section 297A.665.

Section __.09. Presumption of purpose of sales.

For the purpose of the proper administration and enforcement of this Ordinance, it is presumed that all sales subject to this Ordinance for delivery to a site in the City that is within the Recreation Area are for storage, use or other consumption in the City within the Recreation Area until the contrary is established.

Section __.10. Collection of tax at time of sale; file and pay.

A seller of any of the items or services that are subject to any Tax imposed by this Ordinance shall collect the Tax from the purchaser and remit it to the Commissioner at the same time that the sales tax on the item is collected and remitted, in the form and manner prescribed by the Commissioner for sales and use tax under Minnesota Statutes, chapter 297A.

Section __.11. Effective date.

Except as otherwise provided herein, the Taxes authorized by this Ordinance shall apply to all affected sales and transactions made on or after July 1, 2011, and shall be in addition to all other taxes now in effect.

Section __.12. Collection and enforcement; agreement with Commissioner.

A. The Taxes imposed by this Ordinance shall be subject to the same interest, penalties, and other rules that apply to the State of Minnesota's general sales and use tax imposed by Minnesota Statutes, Chapter 297A. The Taxes imposed by this Ordinance may be collected by the Commissioner on behalf of the City in the manner provided in the Agreement.

B. The City Administrator and Mayor are hereby authorized, in the name of the City, to enter into an appropriate agreement or agreements with the Commissioner, that shall be and become the Agreement herein defined, for the purpose of authorizing and facilitating the issuance of permits, filing and auditing of returns, collection of revenues and issuance of refunds of the Taxes and any other administrative matters relating to the administration of the Taxes imposed by this Ordinance.

Section __.13. Data classification and disclosure. Data collected pursuant to this ordinance are subject to the classification and disclosure provisions of Minnesota Statutes, Chapters 270B and Section 13.495.

Section __.14. Tax clearance; issuance of licenses.

A. The City may decline to issue or renew a license for the conduct of a trade or business within the Recreation Area if the Commissioner notifies the City that the applicant owes delinquent Taxes imposed pursuant to this Ordinance, or penalties or interest due on such Taxes. As used in this section, the following terms have these definitions:

   1. "Applicant" means an individual if the license is issued to or in the name of an individual, or the corporation, partnership or other entity if the license is issued to or held in the name of a corporation, partnership, or other entity.

   2. "Delinquent taxes" does not include a tax liability if (i) an administrative or court action which contests the amount or validity of the liability has been filed or served, (ii) the appeal period to contest the tax liability has not expired, or (iii) the applicant has entered into a payment agreement and is current with the payments.

B. A copy of the notice of delinquent taxes given by the Commissioner to the City shall be sent to the applicant taxpayer by the City Administrator or his designee. In the case of renewal of a license, if the applicant requests a hearing in writing within 30 days of receipt of the notice of delinquent taxes hearing, then a contested hearing shall be held under the same procedures as provided in Minnesota Statutes, section 270.72, for the State sales and use tax imposed under Minnesota Statutes, chapter 297A; provided further that if a hearing must be held on the State sales and use tax, the hearings shall be combined.

Passed by the Biwabik City Council this ___ day of _____, 2011.

_____
Jim Weikum, Mayor

Attested:

_____
Jeff Jacobson, City Administrator

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