

TITLE 5

COMMERCIAL REGULATION

Chapter 5-1: Alcoholic Beverages

Chapter 5-2: Local Taxation

Chapter 5-1: Alcoholic Beverages

5-1-1: License Required.

No person shall blend, bottle, distill, exchange, keep for sale, manufacture, offer for sale, produce or sell any alcoholic beverage as defined by statute within the City or within one mile of its territorial limits without having a license therefore as required by state statute.

5-1-2: Non-Intoxicating Liquor - Restrictions.

Every licensee authorized to keep for sale, or offer or sell non-intoxicating beer or wine within the City shall keep the premises upon which such business is conducted in such condition that view through the windows of such premises shall be completely unobstructed either by advertising, curtains, window glazing or any other obstruction whatsoever. No non-intoxicating beer or wine shall be served in any booth on such premises wherein all of the occupants are not within view of every other occupant in the room and observable from any and all points within the room. Additionally, such premises shall be adequately lighted at all times with sufficient bright lights so that the occupants of such room may be easily observable from any and all points within the room, and no licensee shall allow any game of chance or skill or athletic contest on said premises or permit any slot machine or other like device in or about the licensed premises.

5-1-3: Sale of Alcoholic Beverages.

Any party intending to operate a business selling alcoholic beverages either off-sale or on-sale shall enter into an annual alcoholic beverages operating agreement with the City in the manner and method provided by law. All alcoholic beverages, including malt beverages, may be purchased by a licensee directly from the distributor, and subsequently delivered by the distributor directly to the licensee provided each licensee maintains a complete and detailed record of all beverages purchased, and submits a copy of all invoices from the distributor which reflects the actual cost, brand, date, quantity and transportation charges, and each such invoice shall reflect the signature of licensee or an authorized representative. The purchase price of all malt beverages shall include a minimum markup percentage of 10% (of actual cost) which shall be paid by the licensee unto the City. All alcoholic beverages may be sold only on those dates and during such time of the day as is permitted by state statute.

5-1-4: Fee for License.

The City shall charge and collect from each licensee such amount or sums as it believes necessary and reasonable under the circumstances and is permitted by state statute. In the event such amount or sum is not timely satisfied in full, then the failure to do so shall be grounds for revocation of a license.

5-1-5: Procedure for Revocation of License.

A licensee shall be given ten days advance notice of a hearing before any license granted earlier is revoked by the council. A majority vote of all the city council is required for the revocation of a license.

5-1-6: Dances and Spiking Permit.

It shall be unlawful for any party to conduct, maintain or operate any dance (other than for religious purposes) within the City of Gary or within one mile of the corporate limits unless a permit has been issued by the Finance Officer. The fee for a dance permit shall be \$25.00, and the permit shall specify the specific hours for which it is valid. The party to whom the permit is issued shall attend and be responsible for the activities and conduct of the individuals attending the dance, and also that no ordinance, regulation or statute is being violated. In the event there is any violation of an ordinance, regulation or statute, specifically including disorderly conduct, then law enforcement officers may vacate the premises immediately. Furthermore, a "spiking permit" to blend or consume alcoholic beverages as provided by state statute may only be issued by the City Council prior to any dance on property which is publicly owned or owned by a nonprofit corporation.

Chapter 5-2: Local Taxation

5-2-1: Sales and Service and Use Tax

Section 1. PURPOSE. The purpose of this ordinance is to provide additional needed revenue for the Municipality of Gary, Deuel County, South Dakota, by imposing a municipal retail sales and use tax pursuant to the powers granted to the municipality by the state of South Dakota, by SDCL 10-52 entitled Uniform Municipal Non-Ad Valorem Tax Law, and acts amendatory thereto.

Section 2. EFFECTIVE DATE AND ENACTMENT OF TAX. From and after the first day of July, 2022 there is hereby imposed as a municipal retail occupational sales and service tax upon the privilege of engaging in business a tax measured by two percent (2%) on the gross receipts of all persons engaged in business within the jurisdiction of the Municipality of Gary, Deuel County, South Dakota, who are subject to the South Dakota Retail Occupational Sales and Service Tax, SDCL 10-45 and acts amendatory thereto.

Section 3. USE TAX. In addition, there is hereby imposed an excise tax on the privilege of use, storage and consumption within the jurisdiction of the municipality of items purchased from and after the first of July, 2022 at the same rate as the municipal sales and service tax upon

all transaction or use, storage and consumption which are subject to the South Dakota Use Tax, SDCL 10-46, and acts amendatory thereto.

Section 4. COLLECTION. Such tax is levied pursuant to the authorization granted by SDCL 10-52 and acts amendatory thereto and shall be collected by the State of South Dakota Department of Revenue in accordance with the same rules and regulations applicable to the State Sales Tax and under such additional rules and regulations as the Secretary of Revenue or the State of South Dakota shall lawfully prescribe.

Section 5. INTERPRETATION. It is declared to be the intention of this ordinance and the taxes levied hereunder that the same shall be interpreted and construed in the same manner as all sections of the South Dakota Retail Occupational Sales and Service Tax, SDCL 10-45 and acts amendatory thereto and the South Dakota Use Tax SDCL 10-46 and acts amendatory hereto, and that this shall be considered a similar tax except for the rate thereof to that tax.

Section 6. PENALTY. Any person failing or refusing to make reports or payments prescribed by this ordinance and the rules and regulations relating to the ascertainment and collection of the tax herein levied shall be guilty of a misdemeanor and upon conviction shall be fined not more than \$2,000 or imprisoned in the municipal jail for thirty (30) days or both such fine and imprisonment. In addition, all such collection remedies authorized by SDCL 10-45, and acts amendatory thereto, and SDCL 10-46 and acts amendatory thereto, are hereby authorized for the collection of these excise taxes by the Department of Revenue.

Section 7. SEPARABILITY. If any provision of the ordinance is declared unconstitutional or the application thereof to any person or circumstances held invalid the constitutionality of the remainder of the ordinance and applicability thereof to other persons or circumstances shall not be affected thereby.

5-2-2: Municipal Gross Receipts Tax

Section 1: PURPOSE. Purpose of this ordinance is to provide additional needed revenue for the municipality of Gary, Deuel County, South Dakota, by imposing a municipal gross receipts tax pursuant to the powers granted to the municipality by the State of South Dakota, by SDCL 10-52A, and acts amendatory thereto.

Section 2: EFFECTIVE DATE AND ENACTMENT OF TAX. From and after the first day of July, 2022, there is hereby imposed a municipal gross receipts tax of One Percent (1%) upon the gross receipts from the sale of leases of rentals of hotel, motel, campsites or other lodging accommodations within the municipality for periods of less than twenty-eight (28) consecutive days, the sale of alcoholic beverages as defined in SDCL 35-1-1, establishments where the public is invited to eat, dine or purchase and carry out prepared food for immediate consumption, and ticket sales or admissions to places of amusement, athletic and cultural event. The tax applies to the gross receipts of all persons engaged in business with the jurisdiction of the Municipality of Gary, Deuel County, South Dakota, who are subject to the South Dakota Retail Occupational Sales and Service Tax, SDCL 10-45 and acts amendatory thereto.

Section 3. COLLECTION. Such tax is levied pursuant to authorization granted by

SDCL10-52A and acts amendatory thereto, and shall be collected by the State of South Dakota Department of Revenue in accordance with the same rules and regulations applicable to the State Sales Tax and under such additional rules and regulations as the Secretary of Revenue of the State of South Dakota shall lawfully prescribe.

Section 4. INTERPRETATION. It is declared to be the intention of this ordinance and the taxes levied hereunder that the same shall be interpreted and construed in the same manner as all sections of the South Dakota Retail Occupational Sales and Service Tax, SDCL 10-45 and acts amendatory thereto, and that this shall be considered a similar tax except for the rate thereof to the tax.

Section 5. USE OF REVENUE. Any revenues received under this ordinance may be used only for the purpose of land acquisition, architectural fees, construction costs, payment for civic center, auditoriums or athletic facility buildings, including the maintenance, staffing and operations of such facilities, and the promotion and advertising of the municipality, its facilities, attractions and activities.

Section 6. PENALTY. Any person failing or refusing to make reports or payments prescribed by this ordinance and the rules and regulations relating to the ascertainment and collection of the tax herein levied shall be guilty of a misdemeanor and upon conviction shall be fined not more than \$2,000 or imprisoned in the municipal jail for thirty (30) days or both such fine and imprisonment. In addition, all such collection remedies authorized by SDCL 10-45, and acts amendatory thereto, are hereby authorized for the collection of these excise taxes by the Department of Revenue.

Section 7. SEPARABILITY. If any provision of this ordinance is declared unconstitutional or the application thereof to any person or circumstances held invalid the constitutionality of the remainder of the ordinance and applicability thereof to other persons or circumstances shall not be affected thereby.