

ORDINANCE NO. 413

AN ORDINANCE TO ESTABLISH AND REGULATE A CITY SALES, USE, AND GROSS RECEIPTS TAX UNDER THE HOME RULE CHARTER OF THE CITY OF BEULAH, MERCER COUNTY, NORTH DAKOTA.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BEULAH, MERCER COUNTY, NORTH DAKOTA, AS FOLLOWS:

SALES, USE, AND GROSS RECEIPTS TAX

Section 1: Definitions.

All terms defined in chapters 40-05.1, 57-39.2, 57-39.4, 57-39.5, 57-39.6, and 57-40.2 of the North Dakota Century Code (N.D.C.C.), including all future amendments thereto, are adopted by reference. All references to the N.D.C.C. include amendments adopted by the North Dakota Legislative Assembly.

Section 2: Collection and Administration.

Where not in conflict with the provisions of this Ordinance, the provisions of N.D.C.C. chapters 40-05.1, 57-39.2, 57-39.4, 57-39.5, 57-39.6, and 57-40.2, and all administrative rules adopted by the Tax Commissioner, pertaining to the collection and administration of the retail sales, use, and gross receipts tax, including provisions for liability, refund, penalty, interest or credit, govern the administration by the North Dakota Office of State Tax Commissioner (hereinafter "Tax Commissioner") of the taxes imposed by this Ordinance.

Section 3: Sales Tax Imposed

Subject to the provisions of N.D.C.C. § 40-05.1-06, and except as otherwise provided by this Ordinance, or the sales and use tax laws of the State of North Dakota, a tax of two percent (2%) is imposed upon the gross receipts of retailers from all sales at retail, including the leasing or renting of tangible personal property, within the corporate limits of the of the city of Beulah, North Dakota.

Section 4: Use Tax Imposed.

Subject to the provisions of N.D.C.C. § 40-05.1-06, and except as otherwise provided in this Ordinance, or the sales and use tax laws of the State of North Dakota, an excise tax is imposed upon the storage, use, or consumption within the corporate limits of the city of Beulah, North Dakota of tangible personal property purchased at retail for storage, use, or consumption in this city, at the rate of two percent (2%) of the purchase

price of the property. An excise tax is imposed on the storage, use, or consumption within the corporate limits of the city of Beulah, North Dakota of tangible personal property not originally purchased for storage, use, or consumption in this city at the rate of two percent (2%) of the fair market value of the property at the time it was brought into this city.

With respect to the purchase price of tangible personal property used by a contractor or subcontractor to fulfill a contract as defined in N.D.C.C. § 57-40.2-03.3, the tax imposed by this section applies only to bids submitted on or after the effective date of this Ordinance.

Section 5: Gross Receipts of Alcoholic Beverages.

Subject to the provisions of N.D.C.C. § 40-05.1-06, and except as otherwise provided in this Ordinance, a gross receipts tax of two percent (2%) is imposed upon all gross receipts from the sale of alcoholic beverages within the city. A person who receives alcoholic beverages for storage, use, or consumption in this city is subject to tax on storage, use, or consumption of those alcoholic beverages at the rate of two percent (2%).

Section 6: Gross Receipts of New Farm Machinery and New Farm Irrigation Equipment.

Subject to the provisions of N.D.C.C. § 40-05.1-06, and except as otherwise provided in this Ordinance, a gross receipts tax of two percent (2%) is imposed upon all gross receipts from the sale of new farm machinery and new farm irrigation equipment within the city. A person who receives new farm machinery or new farm irrigation equipment for storage, use, or consumption in this city is subject to tax on storage, use, or consumption of that machinery and/or equipment at the rate of two percent (2%).

Section 7: Exemptions.

In addition to the exemptions provided by state law, this Ordinance provides exemptions from imposition and computation of the city sales or use tax for sales of the following:

1. All sales, storage, use or consumption of tangible personal property which are exempt from imposition and computation of the sales or use tax of the State of North Dakota are specifically exempt from the provisions of this Ordinance.

Section 8: Maximum Tax Imposed.

Any patron or user paying a tax imposed by this Ordinance in excess of Twenty Five Dollars (\$25.00) upon any single transaction of one or more items may obtain a credit or refund of the excess tax at the time of purchase directly from the vendor or request a

refund of the excess tax payment by filing a request for refund upon the forms provided by the Tax Commissioner.

Section 9: Contract with Tax Commissioner.

The Beulah City Auditor is authorized to contract with the Tax Commissioner for the administration and collection of taxes imposed by this Ordinance. The Beulah City Auditor has all powers granted the Tax Commissioner and in the absence of a valid contract with the Tax Commissioner or failure of the Tax Commissioner to perform the delegated duties, shall perform these duties in the place of the Tax Commissioner.

Section 10: Dedication of Tax Proceeds.

There shall hereby be created a City Sales and Use Tax Fund, which shall consist of three accounts, namely:

1. Sales and Use Tax - Municipal Swimming Pool Account;
2. Sales and Use Tax - Capital Improvements Account; and
3. Sales and Use Tax- Recreation Center Account.

All revenues raised and collected under this Ordinance, less administrative expenses, shall be placed in the City Sales and Use Tax Fund, and shall be dedicated exclusively as follows:

1. One-fourth (1/4) of the two percent (2%) City sales and use tax proceeds shall be placed in the Sales and Use Tax - Municipal Swimming Pool Account, and shall be dedicated to the purchase, construction, operation, and maintenance of the municipal swimming pool.
2. One-fourth (1/4) of the two percent (2%) City sales and use tax proceeds shall be placed in the Sales and Use Tax - Capital Improvements Account and shall be used for the purchase, construction, operation, and maintenance of Beulah area capital improvements including, but not limited to, street systems, water systems, sewer systems, public safety improvements, municipal swimming pool, or other projects important for the betterment of the City of Beulah.
3. One-half (1/2) of the two percent (2%) City sales and use tax proceeds shall be placed in the Sales and Use Tax-Recreation Center Account, and shall be dedicated to the payment of the original construction indebtedness resulting for the construction of the Beulah recreation center.

Disbursements from either the Sales and Use Tax - Municipal Swimming Pool Account, the Sales and Use Tax - Capital Improvements Account, or the Sales and Use Tax- Recreation Center Account must first be approved by the Beulah City Council.

Section 11: Compensation.

City sales, use, and gross receipts tax permit holders are allowed to retain a portion of tax collected under this ordinance to help recover administrative expenses. This compensation shall equal three percent (3%) of the city tax due; however, the deduction is limited to One Hundred Fifty Dollars (\$150.00) per quarter. A tax return must be filed and paid in full by the scheduled due date or the compensation will be disallowed and the tax obligation will be subject to penalty and interest.

Section 12: Effective Date.

This Ordinance shall take effect after its passage, approval, and publication.

Section 13: Termination Date.

The one percent (1%) sales and use tax imposed by this Ordinance for the recreation center shall terminate upon the full payment of the original construction indebtedness.

The one percent (1%) sales and use tax imposed by this Ordinance for the purchase, construction, operation, and maintenance of the municipal swimming pool and purchase, construction, operation, and maintenance of Beulah are capital improvements shall terminate on September 30, 2020, unless prior to that date a majority of the qualified electors of the City of Beulah vote to extend said one percent (1%) sales and use tax for the purpose of capital improvements and the municipal swimming pool indefinitely or to a certain time.

Section 14: Savings Clause.

Should any section, paragraph, sentence, clause, or phrase of this Ordinance be declared unconstitutional or invalid for any reason, the remainder of this Ordinance shall not be affected thereby.

DATED this 2nd day of September, 2014.



DARRELL BJERKE
Mayor

ATTEST:



HEATHER FEREBEE

City Auditor

Introduction and First Reading: August 18, 2014
Second Reading: September 2, 2014
Publication Date: Not required.
Effective Date: September 2, 2014

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SEC. OF STATE
CITY OF BEULAH, MERCER COUNTY, NORTH DAKOTA
HOME RULE CHARTER

ARTICLE 1 – INCORPORATION

The inhabitants of the City of Beulah, within the corporate limits as now established or as hereafter established in the manner provided by law, shall continue to be a municipal body politic and corporate in perpetuity, under the name of “City of Beulah.”

ARTICLE 2 – GOVERNING BODY TO EXERCISE POWERS

Subject to the limitations imposed by the Constitution of the United States of America, the Constitution of the State of North Dakota, state law, and this Charter, all powers of the City shall be vested in the elected governing body. The elected governing body shall enact local legislation, adopt budgets, determine policies, and prescribe the functions of government to be performed under this Charter by the City. All powers of the City shall be exercised in the manner prescribed by this Charter, or if the manner be not prescribed, then in such manner as may be prescribed by ordinance.

ARTICLE 3 – POWERS OF THE CITY

The City shall have all powers granted to municipal corporations by the constitution and laws of this state and by this Charter, together with all the implied powers necessary to carry into execution all powers granted.

Among its enumerated powers, which may be implemented by ordinance subject to the limitations specified in this Charter, shall be the following:

1. Authority to impose a retail sales tax and use tax of no more than two percent of those gross receipts taxed pursuant to Chapter 57-39.2 and 57-40.2, North Dakota Century Code (N.D.C.C.), subject to the following:
 - a. The following shall be specifically exempted from any tax imposed pursuant to this article:
 - (1) Sales tax of fuel oil, propane and natural gas.
 - (2) Those sales exempted from the imposition and computation of the state sales tax and use tax pursuant to sections 57-39.2-04, 57-39.2-04.1, 57-40.2-04, and 57-40.2-04.1, N.D.C.C., Sales to contractors that are exempt pursuant to subsection 15 of section 57-39.2-04, N.D.C.C., shall be exempt from any city sales tax, but contractors shall be subject to the city use tax on those items used within the city that would be taxed pursuant to section 57-40.2-03.3, N.D.C.C., on which the city sales tax has not previously been paid.
 - (3) Any other transactions exempted from imposition of the state sales tax or use tax pursuant to state law.

NORTH DAKOTA
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Christina Dugan
Secretary of State



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- (4) Gross receipts from coin-operated amusement machines.
- b. The tax shall not exceed \$25.00 on any single sales transactions involving one (1) or more items.
 - c. Any retail sales tax or use tax imposed will be computed and collected in the same manner provided by law for the collection of the state sales tax and use tax. The bracket system for the application of the state sales tax set forth in section 57-39.2-08.2, N.D.C.C., shall be adjusted to incorporate the additional city sales tax.
 - d. One-fourth of the 2% city sales and use tax proceeds shall be dedicated to the purchase of, construction, operation, and maintenance of the Beulah Park District's municipal swimming pool.
 - e. One-fourth of the 2% city sales and use tax proceeds shall be used for the purchase of, construction, operation and maintenance of Beulah area capital improvements including, but not limited to, street systems, water systems, sewer systems, public safety improvements, municipal swimming pool, or other projects important for the betterment of Beulah.
 - f. One-half of the 2% city sales and use tax proceeds adopted pursuant to this article shall expire upon the full repayment of the original construction indebtedness resulting from the construction of the Beulah Wellness/Recreation Center.
 - g. An ordinance imposing a 1% city sales and use tax dedicated to the purchase of, construction, operation, and maintenance of the Beulah Park District's municipal swimming pool and of Beulah area capital improvements adopted pursuant to this article shall expire no later September 30, 2020 unless the ordinance has previously been referred and rescinded by a majority of the qualified voters.
 - h. An ordinance imposing a 1% city sales and use tax for the Beulah Wellness/Recreation Center shall terminate upon the full payment of the original construction indebtedness.
2. Authority to engage in any utility, business or enterprise permitted by the constitution or not prohibited by statute or to grant and regulate franchises therefore to a private person, firm, corporation, or limited liability company.

ARTICLE 4 – REFERENDUM AND INITIATIVE

Section 1: The voters of the city of Beulah have the power to refer and initiate ordinances, except that the power of initiative and referendum shall not extend to the annual appropriation ordinances, nor to those ordinances implementing public projects upon which an election has previously been held, or special improvement projects under which the law provides for protest procedures.

Section 2: Initiative petitions must be signed by qualified voters of the city equal to at least twenty (20) percent of the total votes cast in the city at the most recent gubernatorial election.

Section 3: Referendum petitions must be signed by qualified voters of the city equal to at least twenty (20) percent of the total votes cast in the city at the most recent gubernatorial election.

Section 4: Each petition, whether for initiating or referring an ordinance, shall contain or have attached thereto throughout their circulation the full text of the ordinance proposed or referred. In addition, each petition shall list the names of the three electors who shall constitute the "Committee of the Petitioners" who shall represent and act for the petitioners. Each petition shall also contain an affidavit signed by the circulator of that petition affirming that the signors of the petition are believed by the circulator to be qualified voters of the city.

Section 5: Referendum petitions must be filed with the City Auditor within 90 days after the second reading of the ordinance referred.

Section 6: The City Auditor shall pass upon the sufficiency of each petition and shall have 20 days after the petition is filed to certify as to its sufficiency. A petition shall be deemed sufficient if the City Auditor has not certified to the contrary within the 20 day period. If the City Auditor finds the petition insufficient, the City Auditor shall notify the "Committee of the Petitioners", specifying the insufficiencies, and allow 20 days for correction or amendment.

Section 7: Upon proper filing of a referendum petition, the ordinance referred except emergency ordinances as defined in this section, shall be suspended. Such suspension shall terminate:

1. If the petitions are determined to be insufficient and not corrected or amended as provided in Section 6 of this article; or
2. The petitions are withdrawn by the "Committee of the Petitioners", as provided in Section 10 of this articles; or
3. The governing body of the city repeals the ordinance; or

An "emergency ordinance" is an ordinance designated as an emergency ordinance by the city governing body and passed by a $\frac{3}{4}$ vote of the city governing body.

Section 8: Upon the final determination of the sufficiency of the petitions for initiating an ordinance the city governing body shall have 60 days in which to adopt the proposed ordinance. If the city governing body fails to adopt an ordinance, without any change in the substance from that proposed, within the 60 day time period, the city governing body shall submit the ordinance to the voters of the city at an election to be held within 120 days after the final determination of the sufficiency of the petitions. If no regular city election is to be held within that time period, the city governing body shall provide for a special election. Copies of the proposed ordinance shall be available at the office of the City Auditor at least 10 days prior to the election. The ballot shall fairly state a summary of the provisions of the proposed ordinance and copies of the ordinance shall be available at the polling places.

Section 9: Upon final determination of the sufficiency of the petitions of referendum, the city governing body shall cause an election on the referral to be held within 90 days. The election shall be at a regular city election, if one is scheduled within that time period, or at a special election called by the city governing body. Copies of the ordinance shall be available at the office of the City Auditor at least 10 days prior to the election. The ballot shall fairly state a summary of the ordinance referred, and copies of the ordinance shall be available at the polling places.

Section 10: An initiative or referendum petition may be withdrawn at any time prior to the scheduling of the election by the city governing body upon filing of a request for withdrawal signed by all of the members of the "Committee for the Petitioners".

Section 11: If a majority of electors voting on an initiated ordinance vote in its favor, it shall be considered adopted upon certification of election results and shall stand the same as if adopted by the city governing body. If a majority of electors voting on a referred ordinance vote against it, the ordinance shall be considered repealed upon certification of election results.

Section 12: The city governing body may not repeal or make any material amendments to an initiated ordinance for five years after it is approved by the voters, except by a unanimous vote of the city governing body.

Section 13: An ordinance referred and repealed by a vote of the electors shall not be re-enacted by the city governing body before a period of at least two years from the date of the referral election.

Section 14: This Article shall be executing and all of its provisions treated as mandatory. Ordinances shall be enacted to facilitate its operation, but no ordinance shall be enacted to hamper, restrict, or impair the exercise of the rights reserved to the people.

ARTICLE 5 – REFERENDUM BY GOVERNING BODY

Before adopting ordinances the governing body may on its own motion submit questions to the electorate for an advisory vote of the people at any city-wide election specified by the governing body. If a question is submitted in the form of a proposed ordinance and it is approved by a majority of the votes cast thereon, and the governing body thereafter adopts the ordinance within six (6) months of such vote, such ordinance shall not be subject to referral by petition for a period of two (2) years.

ARTICLE 6 – SEPARABILITY CLAUSE

If any section or part of section of this Charter shall be held invalid by a court of competent jurisdiction, such holding shall not affect the remainder of this Charter, except to the extent that an entire section or part of section may be inseparably connected in meaning and effect with the section or part of section to which such holding shall directly apply.

ARTICLE 7 – PLENARY AND IMPLIED POWERS OF THE GOVERNING BODY

The governing body shall have plenary power to enact and make all property and necessary ordinances, resolutions and order to carry out and give effect to the express and implied powers granted in this Charter to the end that a complete, harmonious and effective municipal government may be initiated, installed, operated and maintained in the City, and thereby protect and safeguard the rights, interests, safety, morality, health and welfare of the City and its inhabitants.

ARTICLE 8 – SUCCESSION IN GOVERNMENT

Section 1 Rights of Officers and Employees Preserved

Nothing in this Charter, except as specifically provided, shall affect or impair the rights or privileges of officers or employees of the City or of any office, department or agency existing at the time when this Charter shall take effect, or any provision of law in force at the time when this Charter shall take effect and not inconsistent with the provision of law in force at the time when this Charter shall take effect and not inconsistent with the provisions of this Charter, in relation to the personnel, appointment removal, pension and retirement rights, civil rights or any other rights or privileges of officers or employees of the City or any office, department or agency.

Section 2 Continuance of Present Officers

All persons holding executive and administrative office at the time this Charter takes effect shall continue in office and shall continue the performance of their duties until provisions shall have been made by the governing body for the performance of such duties in some other manner or the discontinuance of such office.

Section 3 Continuance of Present Offices, Departments, or Agencies

Any office, department, or agency, heretofore existing, shall continue to exercise powers and duties the same as were heretofore exercised and shall have the power to continue any business proceedings or other matters within the scope of its regular powers and duties until such office, department or agency shall be changed or abolished by the governing body.

The powers conferred and the duties imposed upon any office, department or agency of the City by the laws of this state, if such office, department or agency be abolished by this Charter or under its authority, be thereafter exercised and discharged by the office, department or agency designated by the governing body.

Section 4 Continuance of Appointive Boards and Commissions

All appointive boards and commissions, heretofore existing, shall continue and shall exercise such powers and duties as were granted them until such boards and commissions shall be changed or abolished by the governing body.

Section 5 Continuance of Contracts

All contracts entered into by the City, or for its benefit, prior to the taking effect of this

Charter, shall continue in full force and effect.

Section 6 Pending Actions and Proceedings

The adoption of this Charter shall not abate or otherwise affect any action or proceeding civil or criminal, pending when it takes full effect, brought by or against the City or any office, department, agency, or officer thereof.

Section 7 Ordinances to Remain in Force

All ordinances, resolutions and regulations of the City in force at the time this Charter takes effect, and not inconsistent with the provisions thereof, are hereby continued in force until the same shall be duly amended or repealed.

Section 8 Inauguration of Government Under this Charter

If a majority of the qualified electors of the City voting on the questions, vote to ratify this Charter, the provisions of this Charter shall go into effect upon the filing of the Charter by the governing body with the Secretary of State, the Clerk of the District Court for Mercer County, and the office of the City Auditor of Beulah. Said filings shall be completed not later than ninety (90) days after the election ratifying the Charter.

ARTICLE 9 – CHANGING THE FORM OF GOVERNMENT

Changes in the form of government may be proposed on motion of the governing body or may be proposed by petitions bearing the signatures of qualified city electors equal to twenty-five (25%) percent of those voting for the office of governor in the last election. Proposals for changing the form of government shall be voted upon at a special election called by the governing board not earlier than thirty (30) days nor more than ninety (90) days after the passage of said motion by the governing board or the filing of said petitions with the City Auditor, or at a regular municipal election if the same is fixed within said time frame.

ARTICLE 10 – CONSTRUCTION

The powers of the City under this Charter shall be construed liberally in favor of the City, and the specific mention of particular powers in the Charter shall not be construed as limiting in any way the general power stated in this Charter.

ARTICLE 11 – METHOD OF AMENDMENT AND REPEAL

This Charter may be amended or repealed as provided by Section 40-05.1-07 of the North Dakota Century Code and acts amendatory thereto.

ARTICLE 12 – RECALL OF ELECTED OFFICIALS

The provisions of the North Dakota State Constitution and North Dakota Century Code

regarding the recall of elected officials are adopted by this Charter and fully incorporated herein.

ARTICLE 13 – PUBLIC RECORDS

The provisions of the North Dakota State Constitution and the North Dakota Century Code regarding the publication, inspection and copying of public records are adopted by this Charter and fully incorporated herein.

ARTICLE 14 – SUNSET CLAUSE

At the general municipal election prior to the completion of repayment of the original construction indebtedness for the Beulah Wellness/ Recreation Center, the governing body of the City shall refer to vote of the electorate the question of whether the home rule form of government shall continue in effect. If a majority of the qualified voters do not vote to continue the home rule form of government then this Charter shall be repealed and the City shall revert to the traditional (non-modern) council form of government utilized by the City prior to the adoption of this Charter.

CERTIFICATE

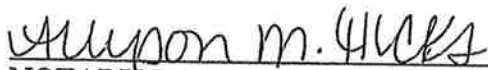
I, HEATHER FEREBEE, City Auditor of the City of Beulah, Mercer County, North Dakota, do hereby certify that the attached copy of the Home Rule Charter for the City of Beulah, Mercer County, North Dakota, reflects the amendment voted upon and approved by a majority of the votes cast at the general municipal election held on June 10, 2014.

I further certify that the Home Rule Charter as amended by the results of the June 10, 2014 is hereinafter filed with the Secretary of State of the State of North Dakota pursuant to N.D.C.C. § 40-05.1-07.


HEATHER FEREBEE, City Auditor

STATE OF NORTH DAKOTA)
)
COUNTY OF MERCER)

On this 24 day of May, 2017, before me personally appeared HEATHER FEREBEE, City Auditor of the City of Beulah, North Dakota, known to me to be the person who is described in and who executed the within and foregoing Certificate and acknowledged to me that she executed the same.


NOTARY PUBLIC
MERCER COUNTY, NORTH DAKOTA

