

PROCEEDINGS OF THE CITY COUNCIL
Rapid City, South Dakota

January 31, 2007

Pursuant to due call and notice thereof, a special meeting of the City Council of the City of Rapid City was held at the City/School Administration Center in Rapid City, South Dakota on Wednesday, January 31, 2007 at 12:30 P.M.

The following members were present: Mayor Jim Shaw and the following Alderpersons: Michael Schumacher, Karen Olson, Ron Kroeger, Sam Kooiker, Tom Johnson, Lloyd LaCroix, Bill Okrepkie, Bob Hurlbut, and Deb Hadcock; and the following Alderpersons arrived during the course of the meeting: None; and the following were absent: Malcom Chapman.

Staff members present included Finance Officer Jim Preston, City Attorney Jason Green, Growth Management Director Marcia Elkins, and Administrative Coordinator Jackie Gerry.

The Mayor presented No. SC013107-01, to approve a Travel Request for Malcom Chapman, Lloyd LaCroix, Bill Okrepkie, Karen Gundersen Olson, and Deb Hadcock to attend National League of Cities, Washington, D.C., March 8 – 15, 2007 for an estimated cost of \$12,934. Finance Officer Preston presented a revised Travel Request that included Tom Johnson, who would attend the National League of Cities at a revised estimated cost of \$15,495. Okrepkie moved, second by LaCroix to approve a Travel Request for Tom Johnson, Malcom Chapman, Lloyd LaCroix, Bill Okrepkie, Karen Gundersen Olson, and Deb Hadcock to attend National League of Cities, Washington, D.C., March 8 – 15, 2007 for an estimated cost of \$15,495. Alderman Schumacher offered his appreciation to the two Council members who are sharing a room, believing this is fiscally responsible.

Substitute motion was made by Schumacher reducing the amount that we would approve if you had room sharing, between the male members that are going, reducing the cost by \$1,760; reducing registration to \$410 for early registration; visit with Airport Manager Short about waiving parking fees; reducing the total appropriation to \$13,225. Substitute motion was seconded by Kooiker. Alderman Johnson reminded the members of the policy on travel, and the right to chose whether lodging will be shared. Upon a roll call vote on the substitute motion, motion failed with the following voting AYE: Schumacher and Kooiker; NO: Olson, Kroeger, Johnson, LaCroix, Okrepkie, Hurlbut, and Hadcock.

Alderman Kooiker pointed out that there has been a lot of frivolous travel, and a lot of misuse of taxpayer funds. Alderman Hadcock believed it is worth the Council's time to attend conference in order to gain some knowledge and education. Alderman Hurlbut indicated that there is only a hand full of conference and seminars available to the Council, and pointed out that room sharing has been repeatedly voted down. Alderman LaCroix believed that City staff makes every effort to register and make travel arrangements for Council members, most economically. Alderman Schumacher extended his appreciation to Alderman Okrepkie on his pursuit of locating lodging that would save \$540 for the taxpayer for a conference he is expected to attend in the very near future. Schumacher believed that continuing education is valuable for elected officials, but savings on travel arrangements is worth pursuing. Alderman Kooiker indicated that the Council needs to discuss the reality of sending six Council members, a quorum, out-of-state, to a conference. He indicated that there have been concerns about sending quorums of boards out-of-state to previous conferences. He explained that he is not against travel, but there are ways

to save funds and more appropriately utilize travel funds when travel is done. In response to a request from Alderman Johnson, City Attorney Green indicated that the mere fact that there is a quorum of the Council in the same place at the same time does not in and of itself constitute a violation of the law. When staff knows that this is going to happen, a public meeting is noticed.

Kroeger called the question, second by Hadcock. The Chair ruled that the membership would move on to the question on the floor.

Upon a roll call vote on the motion to approve, motion carried with the following voting AYE: Olson, Kroeger, Johnson, LaCroix, Okrepkie Hurlbut, and Hadcock; NO: Kooiker and Schumacher.

The Mayor presented No. CC011507-03, a Resolution Authorizing the Issuance of Sales Tax Revenue Bonds Payable from the Rapid City Economic Development and Civic Improvements Fund, Series 2007A of the City of Rapid City, South Dakota, Pledging a Portion of the Sales Tax Receipts of the City to the Payment of Said Bonds, Authorizing Officers of the City to Approve, Execute and Deliver Certain Agreements and Documents Relating to the Bonds. The following resolution was introduced, read, and Kroeger moved its adoption.

A RESOLUTION AUTHORIZING THE ISSUANCE OF SALES TAX REVENUE BONDS PAYABLE FROM THE RAPID CITY ECONOMIC DEVELOPMENT AND CIVIC IMPROVEMENTS FUND, SERIES 2007A OF THE CITY OF RAPID CITY, SOUTH DAKOTA; PLEDGING A PORTION OF THE SALES TAX RECEIPTS OF THE CITY TO THE PAYMENT OF SAID BONDS; AUTHORIZING OFFICERS OF THE CITY TO APPROVE, EXECUTE AND DELIVER CERTAIN AGREEMENTS AND DOCUMENTS RELATING TO THE BONDS

BE IT RESOLVED by the City Council of the City of Rapid City, South Dakota, as follows:

Section 1. Findings. It is hereby found, determined and declared that:

(A) The City of Rapid City, in the County of Pennington and State of South Dakota (the "City"), is a political subdivision of the State of South Dakota and a body corporate and politic.

(B) Under the laws of the State of South Dakota, the City is possessed of all powers which are necessary, requisite or proper for the government and administration of its local and municipal matters, and all rights and powers that now or hereafter may be granted to municipalities by the laws of the State of South Dakota.

(C) The City is authorized by Chapter 10-52, South Dakota Codified Laws (the "Act") to levy a "non-ad valorem tax" (as defined by the Act) on the sale, use, storage and consumption of items taxed under Section 10-45 and 10-46 of the South Dakota Codified Laws, subject to certain exceptions; and the City has adopted and enacted Chapter 3.16 of the Rapid City Municipal Code (the "City Code"), as amended by Ordinances Nos. 5019 and 5046 (as so amended, the "Ordinance"), pursuant to the Act imposing the sales tax authorized by the Act within the City, such tax being hereinafter referred to as the "Sales Tax".

(D) The City may issue municipal non-ad valorem tax revenue bonds pursuant to Section 10-52-2.10 of the Act and Chapter 6-8B, South Dakota Codified Laws in anticipation of the collection of the Sales Tax. Such bonds are required to be payable solely from collections of the Sales Tax, and the City is required to covenant that it will continue to impose and collect the Sales Tax so long as such bonds are outstanding.

(E) The City is authorized under the Ordinance and Section 3.16.020 of the City Code to deposit up to 23% of the Sales Tax in the Rapid City Economic Development and Civic Improvements Fund (the "Economic and Civic Improvements Fund"), and to issue revenue bonds payable from the Economic and Civic Improvements Fund for the purpose of municipal infrastructure, civic improvements and economic development as those terms are defined therein.

(F) The City has heretofore issued its Sales Tax Revenue Bonds, Series 2000, in the original aggregate principal amount of \$10,000,000 (the "Series 2000 Bonds"), pursuant to a resolution adopted by the City Council on November 6, 2000, and an Indenture of Trust, dated as of July 1, 1995 (the "1995 Indenture"), as supplemented by a First Supplemental Indenture of Trust, dated as of December 1, 2000 (the "First Supplemental Indenture"), and its Sales Tax Revenue Bonds, Series 2005B, in the original aggregate principal amount of \$29,190,000 (the "Series 2005B Bonds"), pursuant to a resolution adopted by the City Council on November 7, 2005, and a Second Supplemental Indenture of Trust, dated as of December 1, 2005 (the "Second Supplemental Indenture," together with the 1995 Indenture and the First Supplemental Indenture, the "Original Indenture"), between the City and The First National Bank in Sioux Falls, in Sioux Falls, South Dakota (the "Trustee").

(G) As authorized by the Ordinance, the City Code and the Act, the City has determined that it is necessary and desirable to issue additional sales tax revenue bonds under Sections 4-1 and 4-2 of the Original Indenture, to be designated "City of Rapid City, South Dakota, Sales Tax Revenue Bonds, Series 2007A" (the "Bonds"), the proceeds of which would be used, together with any additional funds of the City which might be required, (i) to finance costs of land acquisition and construction of improvements of the kinds authorized by the City Code and the Ordinance (the "Improvements"), (ii) to make a deposit to the Reserve Fund created under the Indenture (as hereinafter defined), (iii) to pay the costs of issuance of the Bonds and the premium for bond insurance, if any, and (iv) to provide an allowance for original issue discount. The Bonds will be issued pursuant the Original Indenture, as amended and supplemented by a Third Supplemental Indenture of Trust (the "Third Supplemental Indenture," the Original Indenture, as amended and supplemented by the Third Supplemental Indenture is referred to herein as the "Indenture"), between the City and the Trustee.

Section 2. Authorization of Bonds.

(A) The City hereby authorizes the issuance of the Bonds in accordance with the provisions of the Act, the Ordinance, the City Code, the Indenture and this Resolution. The Bonds shall be issued in the amount necessary to pay construction costs of the Improvements, currently estimated to be approximately \$8,600,000, fund a reserve account and pay costs of issuance of the Bonds, including original issue discount, underwriter's discount and any bond insurance premium; provided that in no event shall the aggregate principal amount of the Bonds issued hereunder exceed \$10,000,000, all subject to the limitations of the laws of the State of South Dakota and of the Internal Revenue Code of 1986 (the "Code"). The Original Indenture permits the issuance of additional bonds payable on a parity with the Outstanding Bonds, as defined therein; and it is hereby found that the tests set forth in the Original Indenture for the issuance of additional bonds can be met.

(B) The Bonds shall be issued in such form, mature at the time or times and on such terms, consistent with this Resolution, as shall be provided in the Supplemental Indenture and other agreements whose execution and delivery is authorized by Section 6 of this Resolution, provided that the Bonds shall mature no later than December 1, 2014.

(C) The Bonds shall bear interest at the rate or rates per annum provided in the Supplemental Indenture authorized by Section 6 of this Resolution, but the average interest rate yield of the Bonds shall not exceed 4.50% per annum.

(D) The Bonds shall be special, limited obligations of the City, payable solely from the Sales Tax deposited in the Economic and Civic Improvements Fund and other moneys pledged therefor. The Bonds shall not be payable from any general or other fund of the City, and the Bonds shall not constitute general obligations of the City.

Section 3. Pledge of Sales Tax. A portion of the Sales Tax collections shall be pledged and appropriated to the payment of the Bonds as set forth in the Indenture.

Section 4. Retention of Managing Underwriter, Bond Counsel and Disclosure Counsel and Trustee. The City hereby retains Dougherty & Company, LLC, in Minneapolis, Minnesota, as senior managing underwriter (the "Underwriter"), together with such other underwriters as may be named in the Bond Purchase Agreement described below, for the purpose of underwriting the Bonds. The City hereby retains the firm of Dorsey & Whitney LLP, Minneapolis, Minnesota, to act as bond counsel and disclosure counsel with respect to the Bonds. The City hereby retains The First National Bank in Sioux Falls, in Sioux Falls, South Dakota as the Registrar, Trustee and Paying Agent for the Bonds.

Section 5. Official Statement. The Mayor, Finance Officer and the City Attorney, are authorized, in cooperation with the Underwriter, to prepare an Official Statement to be distributed to prospective purchasers of the Bonds. The Mayor and the Finance Officer are hereby authorized and directed to approve, and, if requested, to execute the Official Statement.

Section 6. Authorization of Documents. In connection with the authorization, issuance and delivery of the Bonds, the officers of the City designated by Section 7 of this Resolution shall enter into, execute and deliver the following indenture, agreements and documents:

(A) the Third Supplemental Indenture to provide for the issuance of the Bonds and setting forth the terms thereof;

(B) the Bond Purchase Agreement or similar agreement providing for sale of Bonds at a purchase price of not less than 99.2% of the par amount (exclusive of original issue discount not exceeding 2%) of the Bonds plus accrued interest;

(C) a continuing disclosure agreement or undertaking satisfying the requirements of Rule 15c2-12 adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended; and

(D) such other documents, agreements or instruments as may be necessary to make covenants and recite facts required to demonstrate the validity and enforceability of Bonds under the laws of the State of South Dakota and to assure the exclusion of the interest thereon from the gross income of the owners of the Bonds under the Code and to effectuate the terms and intent of this Resolution. The execution and delivery of such indenture, agreements and documents is hereby authorized and directed, the indenture, agreements and documents to be in such form and to contain such terms, consistent with this Resolution, as the officers of the City designated herein shall determine to be necessary and desirable.

Section 7. City Officers. The Mayor, City Finance Officer and City Attorney of the City are hereby authorized and directed to execute and deliver the indenture, agreements and documents authorized by Section 6 hereof. Execution and delivery of such items by the Mayor,

City Finance Officer and City Attorney shall constitute evidence that such items are consistent with the terms of this Resolution and have been duly authorized, executed and delivered by the City and are enforceable against the City in accordance with their terms, subject to customary exceptions relating to bankruptcy, reorganization, insolvency and other laws affecting creditors' rights. The Mayor, City Finance Officer and City Attorney are further authorized to take such other actions as may be required to effectuate the terms and intent of this Resolution. In the event of the absence or disability of the Mayor, City Finance Officer or City Attorney, the President of the City Council, the Assistant Finance Officer or the Assistant City Attorney are hereby authorized to act in the place and stead of the Mayor, City Finance Officer and City Attorney, and to take all actions and execute all documents approved hereby. The City Finance Officer is authorized to designate the Bonds as "qualified tax exempt obligations" for purposes of Section 265(b) of the Internal Revenue Code of 1986, as amended, if bond counsel determines that such designation is appropriate.

Section 8. Ratification. All actions heretofore taken by the City or any of its officers in connection with the Bonds are hereby ratified and confirmed.

Section 9. Amendment. This Resolution may be amended at any time prior to the issuance of the Bonds by adoption of an administrative resolution.

Dated this 31st day of January, 2007.

ATTEST:
s/ James F. Preston
Finance Officer

CITY OF RAPID CITY
s/ Jim Shaw, Mayor

(SEAL)

The motion for the adoption of the foregoing resolution was second by Johnson for discussion. Finance Officer Preston indicated that the resolution authorizes a bond size up to \$10 Million at the rate of 4.5 percent. City Attorney Green outlined the timeline for awarding the Civic Center expansion project, explaining bids were opened January 30th, January 31st the Council is to approve the resolution authorizing the bond issuance, February 3rd the resolution is to be published in the legal advertisements of the local newspaper, February 24th the resolution will become effective, and March 1st the bids will expire. He indicated the Council will need to convene in a special meeting anytime on February 26th, 27th or 28th to award a contract. Responding to questions from Alderman Kooiker, Preston explained that the rate of 4.5 percent is the rate being paid on the money being borrowed through the bonding process; and that the City is currently working through the bonding agent used by the City in the past. Preston also explained that the City does not have to bond the full amount and will not bond for any additional money that is not needed. Assistant Finance Officer Schmidt indicated that resolution authorizes the issuance of the bonds; and if another source is found, the Council does not need to issue the bonds. She indicated that the action does not obligate the issuance of the bond, but it only puts it in place. In response to a question from Alderman Kooiker, City Attorney Green advised that there is no need for another Council vote unless the Council decides to change course; and the Council will have the option to change course until February 23, 2007. Alderman Kooiker indicated his desire to explore other funding options and the need to look at an \$18 Million project. Responding to questions from Alderman Okrepkie, Preston explained

that \$18 Million is identified in the 2012 Plan; the first phase of the project is approximately \$3 Million, leaving \$15 Million in the 2012 Plan for the project. To fund a \$22 Million project, is an estimated \$7 Million, resulting in a seven year bond to June 2014. Alderman Johnson indicated that the 4.5 percent is not a large interest rate. He pointed out that when originally built, the Council of the time decided to save several thousand dollars which was a mistake because it eliminated events that could have been staged in the Civic Center. He suggested the structure will be functional, and will serve the community well and generate income for the Civic Center. Alderman Kooiker believed the bonding costs are more than 4.5 percent, as there is the cost of bonding itself. In response to a question from Mayor Shaw, Preston indicated that any of this is an estimate at this time because the rates can change. Preston explained that when the City does a bond for \$9.7 Million, the City will have \$8,595,000 for construction. A ten percent reserve must be established to cover costs of the bonding, such as legal fees, etc. Alderman Hadcock urged the Council to move forward with the bonding process; and suggested the Council still has an opportunity to look at other funding options that may be brought forward by Council member. Alderman Johnson believed no other option is better than bonding. He explained that the bond reserve is the City's money; it is only held there to ensure that the City has the money to pay back. He pointed out that the true bonding costs are the attorney's fees, the copying fees, and the interest. Johnson reminded the members that every other option that was brought forward involved borrowing from somewhere; and it must be paid back. Steven Brenden, Rapid City asked the Council to deny the bond issue suggesting there is no savings in the new bids. Dave Davis, former Civic Center Board member, addressed the Council and spoke of the attendance at the Black Hills Stock Show and Rodeo and indicated that the attendees are paying sales tax. He spoke of the visionaries of thirty years earlier, who thought a Civic Center could have a positive economic and cultural impact. He pointed out that one million people have gone through the Civic Center during 2006. He also pointed out that there are events throughout the year that bring people to Rapid City and who will spend money in the community. He reminded the members that the Civic Center is the first project from what is now the 2012 Program. Davis suggested the Council has the opportunity to be visionaries; and suggested being a visionary is not easy. He indicated there were nay-sayers thirty years ago and there are nay-sayers now; and thirty years ago there was a call for a public vote, and there is a possibility now; and thirty years ago there were people saying the Civic Center should pay its own way, just as there are people saying that now. Davis asked the Council to be strong, and not get caught up in the negative whirlpool, and provide the extension of 2012 and fully fund the project. Davis also asked the Council to look past the pettiness, past the negative from the public and the press, past the political aspirations, and think about the common man in Rapid City and what is good, and vote to fund the project. Alderman Kooiker indicated that it is important to understand the real issue. The Council approved the initial 2012 plan that included funding for the Civic Center. He explained that he parted ways with the process after the skybox proposals came through; and parted ways even more once the City bid in phases and broke grown in phase one without having the bids on the second phase. He pointed out that there are two issues, one is the Civic Center's desire to see a great Civic Center; and the other is a fiscally responsible path to get there. He suggested that the Council has collectively chosen the wrong path. Upon a roll call vote on the motion to approve, motion carried with the following voting AYE: Kroeger, Johnson, LaCroix, Okrepkie, Hurlbut, Hadcock, and Olson; NO: Kooiker and Schumacher.

The Mayor presented the appeal from Russell Puckett, Medicine Root Development, Kyle South Dakota regarding the denial of moving permit for structures to be moved from Pennington County to 5201 Pinedale Heights in Rapid City. City Attorney Green advised the members of

the Public Works Committee recommended approval of issuing the moving permit over the objection of the Building Official. Growth Management Director Elkins explained that Russell Puckett was issued a license for moving houses and was issued a moving permit to move the house in the Berry Pines area. Elkins indicated the house was left overnight, blocking the roadway. Staff denied the request for a moving permit to complete the move of two additional sections of the house. Staff had some significant concerns and believed it appropriate to bring the issue before the Council.

Olson moved, second by Schumacher to approve moving permit for structures to be moved from Pennington County to 5201 Pinedale Heights in Rapid City. Alderman Olson indicated that Alderman Chapman is concerned that the housing moving is completed, and in a timely manner; and that when the house moving license comes up for renewal, that is reviewed carefully. Upon a vote being taken on the motion to approve, motion carried.

As there was no further business to come before the Council at this time, the meeting adjourned at 12:52 P. M.

CITY OF RAPID CITY

ATTEST:

Finance Office

Mayor

(SEAL)