

**ORDINANCE NO. 19-\_\_\_\_\_**

**AN ORDINANCE OF THE CITY OF ELK RIVER, MINNESOTA  
ADOPTING A SALES AND USE TAX**

The City Council of the City of Elk River hereby ordains as follows:

Section 1. ADOPTION OF MUNICIPAL CODE CHAPTER 2, ARTICLE IV, Finance.  
Chapter 2, Division 1 of the Elk River Municipal Code is hereby amended as follows:

**Article IV – FINANCE**

**Division I. Sales and Use Tax**

**Sec. 2-161. – Authority.**

- (a) At the general election held November 6, 2018, the voters of the City of Elk River approved the imposition of a one-half of one percent sales and use tax to pay for the cost of collecting and administering the taxes and to pay for certain costs related to the funding of certain designated projects, as defined in Section 2-162(d), below.
- (b) The Minnesota Legislature has by Laws of Minnesota for 2019, First Special Session, Chapter 6, Article 6, Section 17, authorized the City to impose a one-half of one percent sales and use tax within the City to provide revenues to pay for the cost of collecting and administering the taxes and to pay for certain costs related to the funding of the designated projects, as defined in Section 2-163. The City approved the act in accordance with applicable law.

**Sec. 2-162. – Definitions.**

The words, terms and phrases used in this Article shall have the meaning ascribed to them in Minnesota Statutes, Section 297A.99, except where the context clearly indicates otherwise. In addition, the following definitions shall apply:

- (a) “Act” shall mean Laws of Minnesota for 2019, First Special Session, Chapter 6, Article 6, Section 17, as amended.
- (b) “City” shall mean the City of Elk River.
- (c) “Commissioner” shall mean the Commissioner of Revenue for the State of Minnesota, acting under the 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 Elk River Sales and Use Tax.

- (d) “Designated projects” shall mean the planning, design, and construction of the projects listed in this subparagraph (d) in a total amount not to exceed \$35 million, plus the costs related to the issuance and paying debt service on bonds for these projects, subject to the limits that may be spent on each individual project as follows:
- (1) \$26,000,000 for a multipurpose facility and Lion John Weicht Park improvements;
  - (2) \$1,500,000 Senior Center Facility improvements;
  - (3) \$1,000,000 Lake Orono dredging;
  - (4) \$2,000,000 trail improvements;
  - (5) \$2,500,000 Orono Park improvements, and
  - (6) \$2,000,000 Youth Athletic Complex improvements.
- (e) “Retailer”, or any like term, shall mean “Retailer” as defined in Minnesota Statutes, Chapter 297A, as subsequently amended or recodified.
- (f) “Elk River Sales and Use Tax” shall mean the sales and use tax imposed and collected pursuant to this Article.

**Sec. 2-163. –Sales and Use Tax.**

Except as otherwise provided in this Article, there is hereby imposed an excise tax in the amount of one-half of one percent on the gross receipts from sales at retail and the storage, use, distribution or consumption of goods or services which are taxable, pursuant to Minnesota Statutes, Chapter 297A and occur within the City of Elk River. The imposition, administration, collection and enforcement of this tax shall be governed by the provisions of Minnesota Statutes, Section 297A.99.

**Sec. 2-164. –Separate Statement; Collection from Purchaser; Advertising No Tax; Minimum Uniform Tax Collection Methods.**

The Elk River Sales and Use Tax shall be stated and charged separately from the sales price or charge for service insofar as practical and should be a debt from the purchaser to the seller recoverable at law in the same manner as other debts. In computing the tax to be collected as a result of any transaction, any amount of tax less than one-half of one cent may

be disregarded and amounts of tax less than one-half of one cent may be disregarded and amounts of tax one-half cent or more may be considered an additional cent. If the sales price of any sale at retail in ninety-nine cents or less, no tax shall be collected.

**Sec. 2-165. –Exemption Certificates.**

A fully completed exemption certificate taken from a purchaser to the effect that the property purchased is for resale or that the sale is otherwise exempt from the application of the tax imposed by this chapter will conclusively relieve the retailer from collecting and remitting the tax to the extent the seller is also relieved of liability for the sales and use tax under Minnesota Statutes, Section 297A.665. A person who has obtained from the Commissioner an exemption certificate pursuant to the Minnesota Statutes, Section 297A.72 may use such exemption certificate for the purposes of the sales tax imposed by the City.

**Sec. 2-166. –Presumption of Purpose of Sale.**

For the purpose of the proper administration and enforcement of Section 2-163 of this Article, it shall be presumed that all retail sales for delivery in the City are for storage, use, or other consumption in the City until the contrary is established.

**Sec. 2-167. –Collection of Sales and Use Tax at Time of Sale.**

- (a) Any retailer making deliveries within the City, any retailer maintaining a place of business in the City, or any other retailer otherwise doing business within the City, upon making sales of any items described in Section 2-163 which are not exempted from the sales tax imposed under that section and which are to be delivered or caused to be delivered within the City to the purchaser, shall at the time of making such sales collect the sales and use tax from the purchaser. The tax collected by such retailer shall be remitted to the Commissioner on behalf of the City.
- (b) Any retailer required to collect the Elk River Sales and Use Tax and remit such tax to the Commissioner pursuant to this section shall register with the Commissioner and provide such other information as the Commissioner may require.

**Sec. 2-168. –Agent of Retailer.**

When in the opinion of the Commissioner it is necessary for the efficient administration of the tax, the Commissioner may regard any salesman, representative, trucker, peddler or canvasser as the agent of the dealer, distributor, supervisor, employer or other person under whom such salesman, representative, trucker, peddler or canvasser operated or from whom the tangible property is being sold is obtained, and may regard the dealer, distributor, supervisor, employer or other person as a retailer for the purposes of this Article.

**Sec. 2-169. –Collection and Enforcement.**

The Elk River Sales and Use Tax imposed by the City pursuant to this Article shall be subject to the same interests, penalties, and other rules as are applicable to the State general sales tax imposed by Minnesota Statutes Chapters 270C, 289A and 297A. The Elk River Sales and Use Tax imposed by the City pursuant to this Article may be collected by the State on behalf of the City as provided by an appropriate agreement with the Minnesota Commissioner or Revenue. The Elk River Sales and Use Tax imposed by the City pursuant to this Article shall expire at the earlier of (1) 25 years after the tax is first imposed, or (2) when the City Council determines that \$35,000,000 has been received from the tax to pay for the designated projects, plus an amount sufficient to pay the costs related to the issuance and paying debt service on the bonds. Any funds remaining after payment of all such costs and retirement or redemption of the bonds shall be placed in the general fund of the City. The Elk River Sales and Use Tax imposed by the City pursuant to this Article may expire at any earlier time if the City Council so determines by ordinance.

**Sec. 2-170. –Tax Clearance; Issuance of Licenses.**

The City may not issue or renew a license for the conduct of trade or business in the City if the Commissioner notifies the City that the applicant for such license owes delinquent Elk River Sales and Use Taxes as provided in this Article, or penalties or interest due on such taxes. For the purposes of this section, the following terms have the following meanings:

- (a) Elk River Sales and Use Taxes include sales and use tax as provided in this Article including all penalties and interest due on said sales and use taxes.
- (b) Delinquent taxes do not include a tax liability if:
  - (1) an administrative or court action which contests the amount or validity of the liability has been filed or served;
  - (2) the appeal period to contest the tax liability has not expired; or
  - (3) the applicant has entered into a payment agreement and is current with the payments.
- (c) 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 in the name of a corporation, partnership or other entity.
- (d) A copy of the notice of delinquent taxes given to the City shall also be sent to the applicant taxpayer. In the case of renewal of a license, if the applicant requests a hearing in writing, within thirty (30) days of the receipt of the notice of delinquent taxes, then a contested case hearing shall be held by the Commissioner under the same procedures as provided in Minnesota Statutes, Section 270C.72 for the State sales and use tax imposed under Minnesota Statutes, Chapter 297A, provided that if a hearing must be held on the State sales and use tax, the hearings may be combined.

**Sec. 2-171. –Effective Date; Transitional Sales.**

Except as otherwise provided herein, the Elk River Sales and Use Tax authorized by this Article shall apply to sales made on or after October 1, 2019, and shall be in addition to all other taxes now in effect. The Elk River Sales and Use Tax is governed by Minnesota Statutes, Chapter 297A regarding sales that occur during the transition.

**Secs. 5-79-5-87. –Reserved.**

Section 2.     EFFECTIVE DATE. This ordinance shall take effect after its adoption.

Passed by the City Council of the City of Elk River on this 17th day of June, 2019.

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John J. Dietz, Mayor

ATTEST:

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Tina Allard, City Clerk