

**ORDINANCE NO. 19**  
(SERIES OF 2021)

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ASPEN, COLORADO, AMENDING SECTION 23.48.060 – WHEELER OPERA HOUSE REAL ESTATE TRANSFER TAX AND DELETING SECTION 23.48.061 – WHEELER OPERA HOUSE RESERVE LINE ITEM OF THE MUNICIPAL CODE OF THE CITY OF ASPEN AND SUBMITTING SUCH AMENDMENTS TO THE CITY ELECTORATE FOR CONSIDERATION.**

WHEREAS, pursuant to Section 5.5 of the Home Rule Charter of the City of Aspen, the City Council, on its own motion, has the power to submit at a general or special election any proposed ordinance or question to a vote of the people.

WHEREAS, the Wheeler Opera House real estate transfer tax (“WRETT”) imposes a “real estate transfer tax on every document in writing, where in or whereby title to real property situated in the City is transferred, which tax shall be measured by the consideration paid or to be paid for such grantor conveyance and shall be due and payable by the grantee at the time of transfer and contemporaneously therewith.” *See* City of Aspen Municipal Code, § 23.48.060(a).

WHEREAS, presently, funds received by the City of Aspen pursuant to the WRETT are placed in a special revenue fund and are subject to appropriation by the City Council of the City of Aspen “only for the purpose of renovation, reconstruction and maintenance of the Wheeler Opera House or for the payment of principal and interest on bonds issued for such purposes and for the purpose of supporting the visual and performing arts.” *See* City of Aspen Municipal Code, § 23.48.060(c).

WHEREAS, City Council reaffirms its continuing support for the Wheeler Opera House as a valuable asset of the City of Aspen and the use of taxes generated by the WRETT for the activities,

operations, or physical improvements necessary to ensure a performing arts venue that provides arts programming opportunities to the citizens of the community.

WHEREAS, presently, WRETT funds available for support of the visual and performing arts are limited to one-hundred thousand dollars (\$100,000.00) *except* if “approved by at least sixty percent (60%) of the electors voting at a regular or special election.”

WHEREAS, pursuant to Section 23.48.060(c) of the Aspen Municipal Code, as adopted by Ordinance No. 20, Series of 1979, more than \$100,000.00 of WRETT funds may be available to support the visual and performing arts only if “approved by at least sixty percent (60%) of the electors voting at a regular or special election”

WHEREAS, the Red Brick Center for the Arts has been supporting the arts since the acquisition of the property by a vote of the citizens of Aspen in 1992 and is currently a home to numerous local artists and other community serving groups and provides a venue for displays and programs for local artists and community groups.

WHEREAS, the City Council supports the amendment of Section 23.48.060 to remove the limitations on the use of taxes generated by the WRETT for the support of the cultural, visual and performing arts and to include within the support of the cultural, visual and performing arts the support of the Red Brick Center for the Arts, upon the approval of this Ordinance by at least sixty percent (60%) of the electors voting at the coordinated election to be held on November 2, 2021.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ASPEN, COLORADO THAT:**

**Section 1:**

Section 23.48.060 – Wheeler Opera House real estate transfer tax, of the Aspen Municipal Code is hereby amended as follows, with additions shown in bold, underline and deletions shown as ~~strikethrough~~:

**Sec. 23.48.060. Wheeler Opera House real estate transfer tax.**

(a) *Tax Imposed.* There is hereby imposed a real estate transfer tax on every document in writing, wherein or whereby title to real property situation in the city is transferred, which tax shall be measured by the consideration paid or to be paid for such grantor conveyance and shall be due and payable by the grantee at the time of transfer and contemporaneously therewith. No document shall be recorded whereby or wherein title to real property situation in the City is transferred until the real estate transfer tax has been paid.

(b) *Amount of tax.* The amount of real estate transfer tax payable shall be computed at the rate of one-half of one percent (.5%) of the consideration paid in return for the transfer of ownership or title.

(c) *Application of funds.* All funds received by the City of Aspen pursuant to this Section 23.48.060 shall be deposited in the Wheeler Opera House real estate transfer tax special revenue fund, which fund is hereby created. The account shall be subject to appropriation by the City Council of the City of Aspen ~~only~~ for the purpose of renovation, reconstruction and maintenance of the Wheeler Opera House, ~~or~~ for the payment of principal and interest on bonds issued for such purposes and for the purpose of supporting the **cultural, visual and performing arts, including but not limited to, the capital and operational support of the Red Brick Center for the Arts.** However, ~~the City Council shall not appropriate in excess of one hundred thousand dollars (\$100,000.00) of real estate transfer tax funds in any single calendar year for the purpose of supporting the visual and performing arts without obtaining the approval of sixty percent (60%) of the electors voting at a regular or special election on the same. The City Council, pursuant to ordinance, and without an election, may borrow money, issue bonds, or otherwise extend the credit of the city for renovation and reconstruction of the Wheeler Opera House provided that the bonds or other obligations shall be made payable from the funds derived from this Chapter. For purposes of this Section, the following definitions shall apply: "Renovation, Reconstruction and Maintenance" shall be defined as those activities, operations, or physical improvements necessary to ensure a performing arts venue that provides arts programming opportunities to the citizens of the community. and an endowment fund in perpetuity. Funds available "for the purpose of supporting the visual and performing arts" in addition to the one hundred thousand dollars (\$100,000.00) of real estate transfer tax funds shall include all revenues generated by the operation of the Wheeler Opera House~~

~~to include gross revenues generated from lease agreements for space within the Wheeler Opera House, gross theater rental revenue, gross ticket processing fee and ticketing services revenue, and gross artist concessions revenue.~~

(d) *Effective date.* The provisions of this Section 23.48.060 shall be effective on the first day of January 1980.

(e) *Duration of ordinance.* This section 23.48.060 shall continue effective insofar as the levy of the real estate transfer tax is concerned through December 31, 2039; and insofar as the collection of the tax levied in the aforesaid period and actions or proceedings for collecting any tax so levied, including interest and penalties thereon and enforcing any of the provisions of this Chapter are concerned, this Chapter shall continue effective until all of said taxes levied in the aforesaid period are fully paid and any and all suits and prosecutions for the collection of said taxes and for the punishment of violations of this Chapter shall have been fully terminated.

(f) *Provisions irreplaceable or unamendable.* Subsections (b) and (c) of this Section 23.48.060 providing for the amount of the tax and the application of funds shall be and remain irrevocable and unamendable without the approval of the electorate for the repeal or amendment pursuant to the requirements of Section 12.1 of the Charter of the City.

(g) *Administration.* The Director of Finance shall administer this Section 23.48.060 and shall prepare such forms and adopt such regulations consistent with this Chapter, as he or she deems necessary to implement the same. *The Arts and Non Profit Grant Review Committee for the City of Aspen shall submit a report to the City Council on an annual basis describing funding activities for the past year and the available funds for the support of the purposes set forth herein, including the visual and performing arts for the next fiscal year.* This Section 23.48.060 shall be administered in accordance with Chapters 23.04 through 23.28 of this Title, to the extent that they do not conflict with the provisions of this Section, for all taxes due or paid after November 1, 2000.

## **Section 2.**

All previous amendments to Section 23.48.060, as set forth in the provisions above, are hereby adopted.

## **Section 3.**

**Sec. 23.48.061 - Wheeler Opera House Reserve Line Item**, adopted pursuant to Ordinance No. 3, Series of 2010, is hereby deleted in its entirety.

**Section 4.**

This ordinance shall not affect any existing litigation and shall not operate as an abatement of any action or proceeding now pending under or by virtue of the ordinances repealed or amended as herein provided, and the same shall be conducted and concluded under such prior ordinances.

**Section 5.**

If any section, subsection, sentence, clause, phrase, or portion of this ordinance is for any reason held invalid or unconstitutional in a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and shall not affect the validity of the remaining portions thereof.

**Section 6:**

Pursuant to Ordinance 20, Series of 1979, this Ordinance shall be effective only upon approval of at least sixty percent (60%) of the electors voting at the coordinated election to be held on November 2, 2021. The ballot question submitted to the electorate by resolution of City Council shall be in substantially the form that follows:

CITY OF ASPEN QUESTION NO. \_\_\_\_\_  
CODE AMENDMENT - WHEELER OPERA HOUSE REAL ESTATE TRANSFER  
TAX

Shall Ordinance No. 19, Series of 2021, which if approved by at least sixty percent (60%) of the electors voting, will continue the use of the Wheeler Opera House real estate transfer tax for the benefit of the Wheeler Opera House, will allow for the use of the Wheeler Opera House real estate transfer tax for the purpose of supporting the cultural, visual and performing arts, including the capital and operational support of the Red Brick Center for the Arts, and will remove the current limitation of \$100,000 on the grant of funds generated by the tax for the purpose of supporting cultural, visual and performing arts, including the support of the Aspen Red Brick Center for the Arts, be approved?

Yes   
No

**Section 7:**


A public hearing on this ordinance shall be held on the 24<sup>th</sup> day of August 2021, at a meeting of the Aspen City Council commencing at 5:00 p.m. in the City Council Chambers, Aspen City Hall, Aspen, Colorado


**Section 8:**

The City Clerk is directed, upon the adoption of this Ordinance, to publish a copy of this ordinance in a newspaper of general circulation within ten (10) days, or as soon as possible thereafter as possible.

**INTRODUCED, READ AND SCHEDULED FOR SECOND READING** as provided by law, by the City Council of the City of Aspen on the 10<sup>th</sup> day of August 2021.

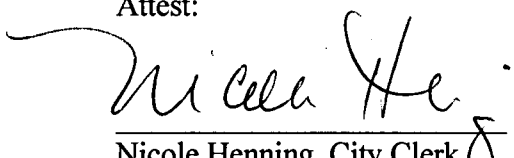
Attest:

  
\_\_\_\_\_  
Nicole Henning, City Clerk

  
\_\_\_\_\_  
Torre, Mayor

**FINALLY** adopted, passed and approved this 31<sup>st</sup> day of August 2021.

Attest:

  
\_\_\_\_\_  
Nicole Henning, City Clerk

  
\_\_\_\_\_  
Torre, Mayor