

**Note: All interlinings are proposed language deletions
All underlinings and yellow are proposed new language**

BIG SKY RESORT AREA DISTRICT

**ORDINANCE No. 98-01-ORD, as amended
(Effective on March 12, 2010)**

**AN ORDINANCE PROVIDING FOR THE ADMINISTRATION OF THE RESORT TAX IN THE
BIG SKY RESORT AREA DISTRICT.**

**PURSUANT TO THE AUTHORITY VESTED IN THE BIG SKY RESORT AREA DISTRICT
BOARD OF DIRECTORS UNDER §§ 7-6-1505, 7-6-1542, 7-6-1547, and 7-6-1542, MCA, BE IT
ORDAINED BY THE BOARD OF DIRECTORS OF THE BIG SKY RESORT AREA DISTRICT TO
AMEND ORDINANCE NO. 98-01-ORD AS FOLLOWS:**

Section 1. Definitions: For purposes of this Ordinance, the following definitions apply, some of which are the same definitions as set forth in section 7-6-1501, MCA:

(1a) “Administrative Officer” means the person hired by the District Board to assist in the administration of the resort tax and who serves at the pleasure of the District Board.

(2b) “Antique” includes but is not limited to a relic, object, work of art, piece of furniture, or decorative object represented or marketed as an antique, or sold in an antique shop or other business. An antique, as defined herein, shall be deemed a luxury item and not a necessity of life.

(3e) “District,” ~~“Resort Area District”~~ or “Big Sky Resort Area District” means the district created under sections 7-6-1531 through 1550, MCA, that has been established as a resort area under section 7-6-1508.

(4d) “District Board” means the board of directors of the Big Sky Resort Area District elected pursuant to Title 7, Chapter 6, Part 15, MCA.

(5e) “Luxuries” means any gift item, luxury item, or other item normally sold to the public or to transient visitors or tourists. The term does not include food purchased unprepared or unserved; medicine, medical supplies and services; appliances; hardware supplies and tools; or any necessities of life.

(6f) “Medical supplies” means items that are sold to be used for curative, prosthetic, or medical maintenance purposes, whether or not prescribed by a physician.

(7g) “Medicine” means substances sold for curative or remedial properties, including both physician prescribed and over-the-counter medications.

(8) “Resale” means goods and services sold for wholesale purposes.

Section 2. Effective Date of the Resort Tax: The resort tax became effective on June 1, 1992.

Section 3. Duration of the Resort Tax: The duration of the resort tax is for twenty years commencing on June 1, 1992 and terminating on June 1, 2012. On November 7, 2006, by a majority vote of the qualified electors, the District was extended twenty (20) years to 2032.

Section 4. Effective Date of the Big Sky Resort Area District: The ~~Big Sky Resort Area~~ District became effective on April 7, 1998.

Section 5. Rate of the Resort Tax: The rate of the resort tax is three percent (3%) of the retail value of ~~all luxury~~ luxuries, and goods or services sold at designated establishments as set forth in sections 8, 9 and 10 below.

Section 6. Imposition of Resort Tax in the Big Sky Resort Area District: Pursuant to the election held on April 13, 1992 in Gallatin County, and the election held on April 21, 1992 in Madison County, a resort tax was imposed on the retail value of ~~all luxury,~~ luxuries, and goods and services sold within the Gallatin County and Madison County segments of the ~~Big Sky Resort Area~~ District. ~~in Montana.~~

Section 7. Collection of Resort Tax: Establishments that sell luxuries, goods or services within the ~~Resort Area~~ District must collect a the resort tax on said luxuries, goods or services.

Section 8. ~~Subject to Tax:~~ Taxation of Goods and Services Sold at Enumerated Establishments: ~~The following items, goods, and services are subject to the resort tax~~ All goods and services sold at the following establishments in the District, other than those sold for resale within the District, are subject to the resort tax:

~~(a) Luxuries;~~

~~(b) All goods and services sold within the Resort Area District by the following establishments:~~

~~(1) i) Hotels, motels, and other lodging or camping facilities;~~

~~(2) ii) Restaurants, fast food stores, and other food service establishments;~~

~~(3) iii) Taverns, bars, night clubs, lounges, and other public establishments that serve beer, wine, liquor, or other alcoholic beverages by the drink; and~~

~~(4) iv) Destination ski resorts and other destination recreational facilities.~~

Section 9. Luxuries Subject to the Resort Tax: ~~In accordance with section 7-6-1505, MCA, "luxuries" is further classified and specified to mean:~~ The following goods and services sold at establishments in the District other than those establishments enumerated in section 8 above, are deemed to be luxuries and subject to the resort tax unless sold for resale within the District:

~~(a) clothing items;~~

~~(b) fishing tackle and sporting goods;~~

~~(c) rentals and sales of snowmobiles, all-terrain vehicles, motorcycles, bicycles, skis, ski lessons, ski lift tickets, snowboards, boats, campers, boat motors and all recreational equipment;~~

~~(d) automobile rentals unless exempt under section 10(y);~~

~~(e) all recreational activities and services on land, water, or in air, including but not limited to fishing trips, hunting trips, and other outfitter trips, scenic rides, balloon and other air flights,~~

~~horseback riding, golfing, tennis, skiing, and guided tours if purchased, reserved, committed, or occurred within the boundaries of the District;~~

~~(f) all souvenirs, curios, jewelry, antiques, gift and art items, and food gift items prepared and sold as a package or unit;~~

~~(g) all beverages, including but not limited to beer, wine, liquor, or other alcoholic beverages sold by the drink; all entertainment, including but not limited to, tickets or other admissions to concerts, theaters, movies, shows, plays or sporting events; gaming; and movies, video games, and all related rental equipment;~~

~~(h) massages unless exempt under section 10(x);~~

~~(i) all rental agreements for lodging facilities, unless exempt under section 10(o);~~

~~(j) fundraising activities, or parts thereof that are substantially commercial in character;~~

~~(k) items not exempt under section 10; and~~

~~(l) services not exempt under section 10.~~

(1) All clothing including, but not limited to, furs, logo wear, recreational clothing, gear and accessories;

(2) Sporting goods;

(3) Automobile rentals and rental of all recreational equipment, including but not limited to snowmobiles, all-terrain vehicles, skis, snowboards, bicycles, kayaks, motorcycles, campers, boats and boat motors;

(4) Golfing, swimming, skiing and other voluntary recreational daily tickets, seasonal passes, and discretionary or voluntary memberships except for school system and related memberships;

(5) All recreational lessons and guided tour services provided on land, water or in air, including, but not limited to, skiing, snowboarding, fishing trips, hunting trips, backcountry dining trips, and other outfitter trips; horseback riding, golfing, rock climbing, cycling, rafting, canoeing, kayaking, dog sledding and ballooning, if purchased, reserved, committed or occurring within the boundaries of the District;

(6) All souvenirs, curios, jewelry, antiques, and home accessories; gift, art and photographic items; food gift items prepared and sold as a package or unit, and sales of fireworks;

(7) All prepared and served food and catering;

(8) All alcoholic beverages, including, but not limited to, beer, wine, liquor or other alcoholic beverages sold in an open container or by the drink;

(9) All non-alcoholic beverages sold in an open container or by the drink;

(10) All entertainment, including, but not limited to, tickets or other admissions to concerts, theatres, movies, shows, plays, sporting events and firework shows; rental movies, rental video games and all related rental equipment;

(11) Massages, unless prescribed by a physician, facials and other spa services, and manicures and pedicures;

(12) All rental agreements for lodging facilities, except rental agreements for a duration longer than thirty (30) days and employee housing regardless of duration or location within the District.

Section 10. Tax Exempt Goods and Services: The following items are not subject to the tax:

“Necessities of Life” Exempt from the Resort Tax. The following goods and services sold at establishments in the District other than those establishments enumerated in section 8 above, are deemed “necessities of life” and exempt from the resort tax:

- ~~(a) food purchased unprepared or unserved;~~
- ~~(b) utilities and utility services;~~
- ~~(c) medical supplies and services and medicine;~~
- ~~(d) wholesale merchandise for resale at retail or used in the purchaser's business as supplies;~~
- ~~(e) gasoline and other motor vehicle fuel;~~
- ~~(f) liquor sold at agency liquor stores, or by the bottle;~~
- ~~(g) propane and other home fuels;~~
- ~~(h) automobiles and trucks;~~
- ~~(i) labor and parts for automobile and truck repair;~~
- ~~(j) all non-luxury labor and services, including but not limited to, services prescribed by a physician;~~
- ~~(k) all business payroll and labor costs;~~
- ~~(l) lumber, hardware supplies, tools, and other construction related supplies;~~
- ~~(m) household appliances;~~
- ~~(n) real estate sales;~~
- ~~(o) all rental agreements when contracted for a period longer than thirty (30) consecutive days;~~
- ~~(p) catalog sales except to the extent that the luxury item is paid for and the exchange made within the boundaries of the Big Sky Resort Area District;~~

- ~~(q) newspapers;~~
- ~~(r) office supplies;~~
- ~~(s) garage sales;~~
- ~~(t) services provided by non-profit religious organizations;~~
- ~~(u) toilet paper, personal hygiene products, and diapers;~~
- ~~(v) industrial, commercial and household strength cleaning materials, including soaps, laundry and dishwashing detergents and disinfectants;~~
- ~~(w) postage stamps and postal services;~~
- ~~(x) massages prescribed by a physician; and~~
- ~~(y) automobile rentals used during emergency repair.~~
- (1) Food purchased unprepared or unserved;**
- (2) Medicine, medical supplies and services;**
- (3) Appliances;**
- (4) Hardware supplies and tools;**
- (5) All other goods and services not subject to taxation as set forth in section 9 above.**

Section 11. Time of Remittance of Resort Tax:

- (1a)** For establishments that remit resort taxes on a monthly basis, the resort taxes collected must be received by the District on or before the last day of each month for the prior month.
- (2b)** For establishments that remit resort taxes on a quarterly basis, the resort taxes collected must be received by the District on or before the last day of April, July, October, and January for the prior quarter.
- (3e)** If the last day falls on Saturday, Sunday or a holiday, resort taxes collected must be received on the next business day.
- (4d)** Resort taxes collected must be mailed to the following address: Big Sky Resort Area District, P.O. Box 161331, Big Sky, Montana 59716.
- (5e)** Tax payments received after the last day of a month, following the reporting month or quarter, will be deemed delinquent and subject to the penalties, interest and late fees described in section 14.

(6)f) Establishments that collect less than \$1,000.00 of resort taxes in the prior year, extending from January through December, may remit the resort taxes collected on a quarterly basis as set forth in (b) above.

Section 12. Remittance of Resort Tax to District Board: The District Board, or the Administrative Officer if so authorized by the District Board, is responsible for ~~receiving and~~ accounting for the resort tax. ~~receipts.~~

Section 13. Enforcement of Collection of Resort Tax: The District Board shall enforce the collection of ~~the~~ resort taxes and oversee the methods and procedures to be used in the ~~enforcement enforcing the~~ collection of the resort tax within the Big Sky Resort Area District ~~as described in Ordinance No. 2008-1.~~

Section 14. Penalties, Interest, Late Fees and Liens:

(1a) The following penalties, referrals, or liens may be imposed as authorized by section 7-6-1505, MCA, for failure to report resort taxes due, failure to remit resort taxes due, and violations of this Ordinance:

(a) a criminal penalty, not to exceed a fine of \$1,000.00 or six months imprisonment, or both;

(b) a civil penalty if the ~~Resort Area~~ District prevails in a suit for the collection of resort taxes, not to exceed fifty percent (50%) of the resort taxes found due, plus the costs and attorney fees incurred by the District in the enforcement action;

(c) upon referral to the County Commissioners of Gallatin or Madison Counties, revocation of the county license held by the offender, if applicable;

(d) upon proper legal procedure secure and file a lien against the property of the establishment failing to report, collect or remit resort taxes.

(2)(b)(i) Delinquent taxes shall bear interest at the rate of one percent (1%) per calendar month, for the delinquent month (12% per annum). The assessed interest of one percent (1%) per month, shall apply after the last day of the month in which the payment is due, and to each subsequent month, regardless of when the payment is made; and

(3)(ii) A one-time late fee of \$30 shall be assessed for each reporting month that is delinquent.

Section 15. Administration Fee for Each Vendor and Commercial Establishment: Pursuant to section 7-6-1505, MCA, each establishment collecting resort taxes is entitled to withhold the authorized maximum of five percent (5%) of the resort taxes collected to defray the establishment's costs for the administration of the tax collection. The administration fee may be withheld by the establishment at time of remitting the resort taxes to the resort area district.

Section 16. Reporting Forms for Resort Tax - Confidentiality:

(1) The District Board shall provide each establishment in the ~~Big Sky Resort Area~~ District responsible for collecting the resort tax with the proper forms for reporting and accounting for the resort taxes collected.

(2) The records and forms submitted to the District Board by the establishments shall be confidential and not open to public inspection unless so ordered by the District Board pursuant to Article II, Sections 9 and 10, of the Constitution of the State of Montana, a court of competent jurisdiction, or upon the filing of an action in District Court.

Section 17. Audits: Under the direction of the District Board, audits may be conducted of establishments collecting the resort tax. ~~and resort tax recipients.~~ All establishments and recipients must cooperate in the conduct of said audits. Failure to cooperate with an audit shall constitute a violation of this Ordinance.

Section 18. Maintenance of Records by Establishments: Each establishment required to collect and remit resort taxes to the District Board shall keep and maintain all records necessary to determine the verity of the taxes collected and remitted for a period of not less than five (5) years. Such records, upon request, must be made available for audit and inspection at all reasonable times. Such records include but are not limited to: electronic documents and materials, books, ledgers, registers; original records necessary to document gross receipts of the establishment; specific documentation of exempt sales; and correct copies of state and federal income tax returns, schedules and forms.

Section 19. Appropriation, Expenditure, and Purpose of Resort Tax: (1) The revenue derived from the imposition of the resort tax will be appropriated by the District Board and expended for infrastructure facilities (as that term is commonly defined) in the Big Sky Resort Area District; public services, including but not limited to the establishment and maintenance of an adequately-sized post office; ambulance and other emergency medical services; public transportation systems; snow plowing; tourism development for the Big Sky Resort Area District; other services that provide for the public health, safety, and welfare within the Big Sky Resort Area District; and reimbursement or payment to the resort area district of the costs associated with the collection, administration, and litigation of the resort tax.

(a) The Board may issue bonds and pledge the proceeds to implement the appropriation, expenditure and purpose of the resort tax as authorized in section 7-6-1542, MCA, and as more fully described in an Ordinance.

Section 20. Authority to Hire Administrative and Other Employees: The District Board may hire an administrative officer and other employees to assist in the administration of the resort tax who shall serve at the pleasure of the District Board.

Section 21. Ratification: The District Board hereby ratifies all prior appropriations and obligations of resort tax funds made by the Madison and Gallatin County Commissions which preceded the creation of the ~~Big Sky Resort Area~~ District.

Section 22. Severance Clause: If any section, subsection, subdivision, paragraph, sentence, or phrase of this Ordinance or any part thereof is for any reason held to be unconstitutional or in violation of any law, such decision shall not affect the validity of the remaining portions of this Ordinance or any part thereof.

Section 23. Amendment of Ordinance: ~~Except for Sections 2, 3, 4, 5, 6, 19 and 21 of this Ordinance, said~~ This Administrative Ordinance may be amended at any time thereafter as may be necessary to effectively administer the resort tax and must include the requirements of section 7-6-1505, MCA, but may not be amended to alter the specifications contained in the original ballot approved by the electors creating the resort area and imposing the resort tax.

Section 24. Map of Big Sky Resort Area District: A map of the ~~Big Sky Resort Area~~ District as approved by the electors on April 7, 1998, is attached to this Ordinance for reference.

~~**Section 25. Extension of District:** On November 7, 2006, by a majority vote of the qualified electors, the District was extended twenty (20) years to 2032. (Note: This section was incorporated into section 3 of this Ordinance.)~~

Passed by the District Board of the Big Sky Resort Area District on the following dates:

1st Reading _____ Vote: _____
Chairperson

2nd Reading _____ Vote: _____
Chairperson

By: _____
Chairperson

DATED this _____ day of _____, 2014