

BIG SKY RESORT AREA DISTRICT

ORDINANCE No. 98-01-ORD, as amended
Adopted on: January 14, 2015
(Effective on: June 1, 2015)

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 and 7-6-1547, 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:

(1) "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.

(2) "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.

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

(4) "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.

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

(6) "Medicine" means substances sold for curative or remedial properties, including both physician prescribed and over-the-counter medications.

(7) "Prepared food" means

(a) Food sold in a heated state or heated by the seller; or

(b) Two or more food ingredients mixed or combined by the seller for sale as a single item, but not including food that is only cut repackaged, or pasteurized by the seller, and eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer.

(c) Food sold with eating utensils “provided by the seller” including plates, knives forks, spoons, glasses, cups, napkins, or straws. A plate does not include a container or packaging used to transport the food. Under the approved interpretation of the “Streamlined Sales and Use Tax Act (SSUTA),” a 75% (3/4) Threshold Test was created to add consistency to the meaning of the term “provided by the seller”.

The calculation is as follows:

- The numerator includes sales of “Prepared food” under (a) and (b) of the definition and food where plates, bowls, glasses or cups are necessary to receive the food (e.g. dispensed mil, fountain beverages, and salad bar). Alcoholic beverages are not included in the numerator.
- The denominator includes sales of all food and food ingredients, including prepared food, candy, dietary supplements, and soft drinks. Alcoholic beverages are not included in the denominator.

(i) For sellers with a sales percentage of 75% or less, utensils are provided by the seller if the seller’s practice for the item (as represented by the seller) is to physically give or hand the utensil to the purchaser, except that plates, bowls, glasses, or cups necessary for the purchaser to receive the food (e.g., dispensed milk, salad bar) need only be made available.

(ii) When a seller sells food items that have a utensil placed in a package by a person other than the seller, and that person’s North American Industry Classification System (NAICS) classification code is that of a manufacturer (sector 311), the seller shall not be considered to have provided the utensil except as provided in 1-3 above. For any other packager with any other NAICS classification code (e.g., sector 722 for caterers), the seller shall be considered to have provided the utensil.

(d) “Prepared food” does not include the following sold without eating utensils:

(i) Food sold by a seller whose proper primary NAICS classification is manufacturing in section 311, except food gift items sold as a package or unit;

(ii) Food sold in an unheated state by weight as a single item;

(iii) Food sold in an unheated state by volume, (items that contain four or more servings), as a single item; or

(iv) Bakery items, including bread, rolls, buns biscuits, bagels, croissants, pastries, donuts, cakes, tortes, pies, tarts, muffins, bars, cookies and tortillas.

(8) "Served" means a response made to an order for one or more individual portions of food in a form that is edible without washing, cooking, or additional preparation.

(9) "Food service establishment" means:

(a) A fixed or mobile restaurant, coffee shop, cafeteria, short-order cafe, luncheonette, grille, tearoom, sandwich shop, soda fountain, food store serving food or beverage samples, food or drink vending machine, tavern, bar, cocktail lounge, nightclub, industrial feeding establishment, catering kitchen, commissary, private organization routinely serving the public, or similar place where food or drink is prepared, served, or provided to the public at retail, with or without charge.

(b) The term does not include:

(i) Operations, vendors, or vending machines that sell or serve only packaged, nonperishable foods in their unbroken, original containers;

(ii) A private organization serving food only to its members;

(iii) Custom meat cutters or wild game processors who cut, process, grind, package, or freeze game meat for the owner of the carcass for consumption by the owner or the owner's family, pets, or nonpaying guests;

(iv) An establishment, as defined in 50-51-102, that serves food only to its registered guests and day visitors."

(10) "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 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 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 luxuries, and goods and services sold within the Gallatin County and Madison County segments of the District.

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

Section 8. Taxation of Goods and Services Sold at Enumerated Establishments: 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:

- (1) Hotels, motels, and other lodging or camping facilities;
- (2) Restaurants, fast food stores, and other food service establishments;
- (3) Taverns, bars, night clubs, lounges, and other public establishments that serve beer, wine, liquor, or other alcoholic beverages by the drink; and
- (4) Destination ski resorts and other destination recreational facilities.

Section 9. Luxuries Subject to the Resort Tax: Goods and services purchased, reserved, committed or occurring fully or partially within the boundaries of the District are considered to be sold in the District. 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:

- (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) Voluntary recreational activities:

(a) Golfing, swimming, skiing and other voluntary recreational daily tickets and season passes;

(b) Discretionary or voluntary ski and golf fees and dues.

(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;

(6) All souvenirs, curios, jewelry, books, and home accessories; gift, art and photographic items; food gift items prepared and sold as a package or unit, flowers not used in landscaping; and sales of fireworks;

(7) All prepared or 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.

(13) Services for private events such as weddings, meeting groups and reunions, including, but not limited to space rental, equipment rental, photography, florist, catering and event management.

Section 10. “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:

(1) Food purchased unprepared or unserved;

(2) Medicine, medical supplies and services;

- (3) Appliances;
- (4) Hardware supplies and tools;
- (5) School activities and nonprofit youth programs;
- (6) All other goods and services not subject to taxation as set forth in section 9 above.

Section 11. Time of Remittance of Resort Tax:

(1) 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.

(2) 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.

(3) If the last day falls on Saturday, Sunday or a holiday, resort taxes collected must be received on the next business day.

(4) Resort taxes collected must be mailed to the following address: Big Sky Resort Area District, P.O. Box 161331, Big Sky, Montana, 59716.

(5) 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) 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 (2) 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 the resort tax.

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

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

(1) 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 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) 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) 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 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. 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.

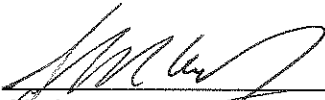
Section 21. Ratification: The District Board hereby ratifies all prior appropriations and obligations of resort tax funds made by the Madison and Gallatin County Commissions which preceded the creation of the District.

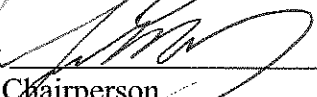
Section 22. Severance Clause: If any section, subsection, subdivision, paragraph, sentence, or phrase of this Ordinance or any part thereof is for any reason held to be unconstitutional or in violation of any law, such decision shall not affect the validity of the remaining portions of this Ordinance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

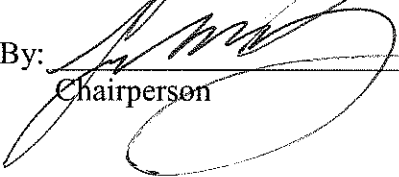
Section 23. Amendment of Ordinance: This Administrative Ordinance may be amended at any time thereafter as may be necessary to effectively administer the resort tax and must include the requirements of section 7-6-1505, MCA, but may not be amended to alter the specifications contained in the original 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 District as approved by the electors on April 7, 1998, is attached to this Ordinance for reference.

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

1st Reading  _____ Vote: Unanimous Date: December 10, 2014
Chairperson

2nd Reading  _____ Vote: Unanimous Date: January 14, 2015
Chairperson

By:  _____ Date: January 14, 2015
Chairperson