

BIG SKY RESORT AREA DISTRICT

ORDINANCE No. 2008-1, as amended

Adopted on: April 8, 2020

(Effective on: May 8, 2020)

AN ORDINANCE DESCRIBING THE PROCEDURES FOR ENFORCEMENT AND COLLECTION OF THE BIG SKY RESORT TAX

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. 2008-1 AS FOLLOWS:

1. **Amendment.** Ordinance No. 2008-1 as adopted on February 10, 2010 and effective March 12, 2010, is hereby repealed on the effective date of this amendment to Ordinance No. 2008-1, but shall remain in full force and effect until this amendment to Ordinance No. 2008-1 is adopted by the Board. This Ordinance and any amendments thereto shall be known as the “Compliance Ordinance.”
2. **Purpose.** Pursuant to Ordinance No. 98-01-ORD, as amended (“Administrative Ordinance”), the District Board is vested with the power of enforcing the collection of resort tax and overseeing the methods and procedures to be used in enforcement. The District Board thus empowers the District to use all lawful methods and procedures in enforcing compliance with the Administrative Ordinance as provided therein and in this Compliance Ordinance. Such enforcement actions may include, but are not limited to, correspondence demanding compliance, audits, penalties, civil lawsuits, liens, referrals for criminal prosecution, and possible revocation of liquor, food services establishment, lodging facility licenses by referrals to licensing authorities applicable to any delinquent Establishment.
3. **Incorporation.** The provisions of the Administrative Ordinance, and any duly adopted rules and procedures of the District are incorporated herein by reference. This Compliance Ordinance shall be construed in accordance with the provisions of the Administrative Ordinance and any interpretations, rules, policies and procedures adopted by the District from time to time. Any capitalized terms not otherwise defined in this Compliance Ordinance shall have the meaning prescribed to them in the Administrative Ordinance. To the extent any provision set forth in the Administrative Ordinance conflicts with a provision in this Compliance Ordinance, the provision in the Administrative Ordinance shall control.
4. **Definitions.** As used in this Compliance Ordinance, the following definitions apply:
 - A. **Establishment.** The term “Establishment” means a Person required by the Administrative Ordinance to collect and pay Resort Taxes to the District.
 - B. **Individual.** The term “individual” means a single human being.
 - C. **Person.** The term “Person” means an individual, a corporation (domestic or foreign), a partnership, a business trust, an estate, a trust, a limited liability company, an association

(incorporated or unincorporated), a joint venture, or any other legal or commercial entity.

- D. **Responsible Individual.** The term “responsible individual” means any individual who is an officer, member, manager, employee, director, shareholder, partner, or other individual having control or supervision of, or who is charged with the responsibility for, the collecting, accounting, reporting or payment of Resort Taxes for an Establishment.
- E. **Resort Tax.** The term “Resort Tax” or “Resort Taxes” means all resort taxes described in the Administrative Ordinance, including both Resort Tax and Infrastructure Resort Tax.

5. Deadline for Registering Establishment; Reporting and Payment of Resort Taxes.

- A. All Persons operating a business within the District boundaries shall submit the proper forms to register with the District prior to conducting, transacting or engaging in business of any kind within the District. Any Person who fails to register with the District prior to operating a business within the District boundaries shall be in violation of the Administrative Ordinance.
 - B. It is the responsibility of a Person registered with the District to notify the District in writing immediately upon any change in ownership or upon complete or partial termination of the registered business. The notice must include the date of closure or date of sale. If the registered Person is ceasing doing business in the District, the notice must state that the registration should be canceled. If the business of the Person registered within the District was sold, the notice must state the last day of operation by the Person, the name of the new owner(s), and the contact information of the new owner(s), including their address, phone numbers, and email address. The Person who is the new owner of the sold business is required to register with the District. If the required information is not furnished to the District, and the new owner continues to operate the business without re-registering the business under the name of the new owner(s), the Responsible Individual(s) may be held liable responsible for all Resort Tax liability incurred during the period that the new owner operates the business.
 - C. Each Establishment shall report and account for the Resort Taxes collected and pay the Resort Taxes by the deadlines established pursuant to the Administrative Ordinance (the “Deadline”). The proper forms for reporting and accounting for Resort Taxes collected must be submitted to the District per the District’s Time of Remittance policy even if no resort taxes are collected based on the District approved remittance schedule for the Establishment (monthly, quarterly, or seasonal).
6. **Electronic Reporting and Payment.** The District has established an electronic process for registration of new Establishments, and reporting and payment of resort tax online at <https://resorttax.org>. Establishments are strongly encouraged to register, and report and pay resort taxes electronically using the District’s electronic system. Any Establishment that fails to report taxable sales or remit resort tax electronically shall be imposed a monthly fee as established by the District Board. An additional fee as established by the District Board shall be imposed for all non-electronic payments returned to the District for insufficient funds.
7. **Resort Tax Administration.** The following actions may be taken against a delinquent Establishment to enforce the resort tax laws of the District:

- A. Charge interest for failure to report or remit resort tax payments by the Deadline which shall accrue on the delinquent taxes owed pursuant to the Administrative Ordinance and the policies and procedures of the District;
 - B. Charge late fees for failure to report or remit resort tax payments by the Deadline which shall accrue pursuant to the Administrative Ordinance and the policies and procedures of the District;
 - C. Declare a forfeiture of an Establishment's right to withhold an administrative fee as provided in Section 11 of the Administrative Ordinance for any month an Establishment fails to report or remit resort tax payments by the Deadline;
 - D. Audit an Establishment as provided in Section 14 of the Administrative Ordinance that fails within thirty (30) days after the Deadline to report or remit resort tax payments. Such audit will be at the expense of the Establishment;
 - E. Referral of violation to county law enforcement officers;
 - F. Possible revocation of liquor, food services establishment, lodging facility license through referral of violation to licensing authority applicable to license held by the delinquent Establishment;
 - G. Require the Establishment to post a resort tax bond, cash bond or letter of credit bond with the District pursuant to Section 13 of this Ordinance;
 - H. Require the Establishment grant the District a general or specific lien to secure the Establishments obligations to comply the Administrative Ordinance;
 - I. Establish higher late fees for Establishments having three or more delinquencies in reporting or remitting Resort Taxes during less than a twenty-four (24) month period;
 - J. Inclusion of an Establishment in a publication of delinquent Establishments list showing the names of Establishments who failed to timely remit or pay Resort Taxes, together with relevant information which in the opinion of the District Board may assist in the collection of delinquent Resort Taxes; or
 - K. Any other action authorized under Section 17 of the Administrative Ordinance.
8. **Courtesy Correspondence.** The Administrative Officer of the District may send courtesy reminders to any Establishment that violates any provision of the Ordinances of the District. A courtesy reminder by any means does not delay the accrual of the obligation to pay resort taxes, interest, late fees or penalties, or any other enforcement action authorized by this Compliance Ordinance, the Administrative Ordinance, or other applicable laws.
9. **Notice of Violation:** At any time after the Deadline, the District may issue a Notice of Violation to a delinquent Establishment. Such notice shall describe in reasonable detail the alleged violation, section(s) of any District Ordinance applicable to the violation, and a time period of at least ten (10) days in which the District requires the delinquent Establishment to cure the violation. If the

violation is not cured by the date stated in the Notice of Violation, the District may file a civil enforcement action in the appropriate court seeking all legal and equitable remedies available to the District under applicable law or proceed with any other enforcement action authorized by the Ordinances of the District.

10. Civil Action. The District may initiate a civil action in any court of competent jurisdiction against a delinquent Establishment and any Responsible Individual(s) if after sending to an Establishment a Notice of Violation, the Establishment fails to cure the violation in the time period required by the District. If the District prevails in court, the District is authorized to request that the court include any of the following amounts and remedies in the final judgment:

- A. Declaration that the Establishment has violated an Ordinance(s) of the District or other applicable resort tax law(s);
- B. Declaration of liability of Responsible Individual(s);
- C. Amount of delinquent Resort Taxes;
- D. Pre-judgment and Post-judgment interest on the delinquent Resort Taxes of 12% per annum;
- E. A late fee for each reporting month that the Resort Taxes are delinquent;
- F. A civil penalty up to fifty percent (50%) of the delinquent Resort Taxes found due;
- G. Revocation or suspension of an Establishment's license;
- H. The costs and attorney fees incurred by the District in the court action and any pre-filing collection efforts; and
- I. Any other penalty, remedy or judicial relief to which the District is entitled.

11. Criminal Prosecution Referral. The District may refer an Establishment and/or any Responsible Individual to the proper county law enforcement agency for criminal prosecution if after sending an Establishment a Notice of Violation, the Establishment fails to cure the violation in the time period required by the District. The referral of an Establishment and/or any Responsible Individual for criminal investigation does not preclude the District from proceeding with any other enforcement action authorized by the Ordinances of the District.

12. License Reporting. As provided in Section 17 of the Administrative Ordinance, the District may report an Establishment to a proper licensing authority and request that such licensing authority take action to suspend or revoke such license until the required resort taxes are paid in full. License reporting will only occur after the District sends a delinquent Establishment a Notice of Violation, and the Establishment fails to cure the violation in the time period required by the District. Any reporting to a licensing authority does not preclude the District from proceeding with any other enforcement action authorized by the Ordinances of the District.

13. Resort Tax Bond.

- A. Existing Establishments may be required to post a bond in an amount set by resolution of the District Board when they have had two or more delinquencies in reporting or remitting Resort Taxes during the last twenty-four (24) months. If the District Board requires a resort tax bond, such bond shall be executed by a surety company licensed to do business in Montana. In lieu of a surety bond, the Establishment may submit a cash bond or irrevocable letter of credit of equal value payable to the District and issued by an FDIC insured financial institution for the same purpose.
- B. Any bond required by this Section 13 must be approved by the District Board and must be conditioned upon the Establishment's collection and remittance of Resort Taxes in accordance with all requirements of the Administrative Ordinance. Any resort tax bond, cash or letter of credit must remain effective for two (2) full calendar years after the date of issuance.
- C. When an existing Establishment that is subject to a resort tax bond changes ownership, the new owner must provide a resort tax bond to the District in the same manner set forth above.
- D. If the Establishment fails to collect, report, and remit Resort Taxes or otherwise violates the provisions of the Administrative Ordinance, the District may proceed to revoke the bond, cash or letter of credit to pay the entity's unpaid Resort Taxes, as well as interest, civil penalties and attorney's fees allowed by Ordinances of the District or state law.
- E. If an Establishment violates this section and the District must pursue the bond, cash bond, or letter of credit for unpaid Resort Taxes, the bonding requirement under this section is extended for five (5) years for the offending Establishment.

14. **Liability Imposed.** A Responsible Individual(s) is personally liable for Resort Taxes, penalties, and interest owed by an Establishment arising under the Administrative Ordinance.

15. Successor Liability.

- A. If an Establishment liable for any amount of Resort Taxes sells their business, the purchaser shall make an inquiry to the District and withhold from the purchase price any amount of Resort Taxes that may be due until such time as the Establishment produces a receipt stating that no amount of Resort Taxes are due.
- B. If the purchaser of an Establishment fails to withhold from the purchase price as above required, that purchaser is personally liable for the payment of the amount required to be withheld under this Section 15.

16. **Waiver Authority.** A delinquent Establishment has no right to an adjustment of interest, late fees and/or penalties authorized under the Administrative Ordinance or this Compliance Ordinance. However, the Administrative Officer has the authority to adjust the amount of interest, late fees and/or penalties authorized under the Administrative Ordinance or this Compliance Ordinance for reasonable cause, provided the delinquent Establishment first pays in full delinquent principal amount of Resort Taxes owed to the District, and delivers to the Administrative Officer upon making such payment a written request for any adjustment to the interest, late fees and/or penalties

imposed by the District. Such request must state facts and circumstances that in the opinion of the delinquent Establishment satisfy the standard of reasonable cause for the requested adjustment. The general standard for determining whether reasonable cause exists is whether the delinquent Establishment exercised ordinary business care and prudence and was nevertheless unable to perform the act required, or significant mitigating factors exist. In reviewing a request for an adjustment, the Administrative Officer may review and consider the delinquent Establishment's prior reporting and payment history and the complexity, amount, frequency and materiality of the violation. The determination of the Administrative Officer shall be made within ten (10) days after receipt of an adjustment request, and such determination is final. Any adjustment in excess of five thousand dollars (\$5,000.00) must be approved by the District Board.

17. **Severance Clause.** If any section, subsection, subdivision, paragraph, sentence, or phrase of this Compliance 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 Compliance Ordinance or any part thereof.
18. **No Waiver; Remedies.** No failure on the part of the District to exercise, and no delay in exercising, any right to enforce the Ordinances of the District shall operate as a waiver thereof; nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The enforcement actions authorized, and remedies provided are cumulative and not exclusive of any remedies provided by law.

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

1st Reading: March 11, 2020

Vote: 5 in Favor with 0 Opposed


Kevin P Germain (Apr 10, 2020)

Chair, Kevin Germain

2nd Reading: April 8, 2020

Vote: 5 in Favor with 0 Opposed


Kevin P Germain (Apr 10, 2020)

Chair, Kevin Germain

Effective Date: May 8, 2020


Kevin P Germain (Apr 10, 2020)

Chair, Kevin Germain


Steven Johnson (Apr 11, 2020)

Vice Chair, Steve Johnson


Paul Davis (Apr 11, 2020)

Secretary, Paul 'Buz' Davis


Sarah Blechta (Apr 11, 2020)

Treasurer, Sarah Blechta

Ciara Wolfe

Ciara Wolfe (Apr 13, 2020)

Director, Ciara Wolfe