

CITY AND BOROUGH OF SITKA
ORDINANCE NO. 2016-30

AN ORDINANCE OF THE CITY AND BOROUGH OF SITKA AMENDING SITKA GENERAL CODE CHAPTER 4.09 "SALES TAX" SECTION 4.09.100 "EXEMPTIONS" BY INCLUDING AN EXEMPTION FOR SALES TAX ON GROCERIES AND AMENDING SECTION 4.09.420 "DEFINITIONS" BY ADDING A DEFINITION FOR GROCERIES

FAILED ON SECOND READING SEPTEMBER 13, 2016

1. **CLASSIFICATION.** This ordinance is of a permanent nature and is intended to be a part of the Sitka General Code of the City and Borough of Sitka, Alaska.
2. **SEVERABILITY.** If any provision of this ordinance or any application thereof to any person or circumstance is held invalid, the remainder of this ordinance and application thereof to any person and circumstances shall not be affected thereby.
3. **PURPOSE.** The purpose of this ordinance is to add sales tax on groceries to the list of sales types that are exempt from taxation. This exemption would become effective July 1, 2017 but only if the amendment to the Charter set forth in Ordinance 2016-26 is approved by voters at the regular election held on October 4, 2016.
4. **ENACTMENT.** NOW, THEREFORE, BE IT ENACTED by the Assembly of the City and Borough of Sitka that Sitka General Code Chapter 4.04.100 is amended by adding a sales tax exemption for groceries and amending Section 4.09.420 to add a definition for (new language underlined; deleted language stricken):

**Chapter 4.09
Sales Tax**

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4.09.100 Exemptions

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R. ~~Reserved. Sale of groceries, as defined elsewhere within this Chapter, are exempt.~~

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4.09.420 Definitions.

In this chapter:

A. "Consideration" means a valuable inducement and includes, without limitation, money, property, and services;

B. "Engaging in business" means carrying on or causing to be carried on any activity with the purpose of direct or indirect benefit;

C. "Groceries" means breads, cereals, fruits, vegetables, meats, fish, poultry and dairy products as well as those foods and items that have been determined to be eligible for the USDA Supplemental Nutrition Assistance Program (SNAP) benefits. Groceries does not include beer, wine, liquor, cigarettes, tobacco products, any nonfood items such as pet foods, soaps, paper products, household supplies, vitamins and medicines, foods that will be eaten in the store and hot foods.

CD. "Lease," "leasing," or "rental," regardless of whether a transaction is characterized as a lease or rental under generally accepted accounting principles, 26 U.S.C. (Internal Revenue Code), AS 45.01 through AS 45.08, AS 45.12, AS 45.14, and AS 45.29 (Uniform Commercial Code), or other provisions of federal, state, or local law:

1. Means a transfer of possession or control of tangible personal property of a fixed or indeterminate term for consideration; a lease or rental may include future options to purchase or extend;
2. Does not include:
 - a. A transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;
 - b. A transfer of possession or control of property under an agreement that requires the transfer of title upon completion of required payments if payment of an option price does not exceed the greater of one hundred dollars or one percent of the total required payments; or
 - c. Providing tangible personal property along with an operator for a fixed or indeterminate period of time; a condition of this exclusion is that the operator is necessary for the equipment to perform as designed; for the purpose of this subsection, an operator must do more than maintain, inspect, or set up the tangible personal property;
3. Includes agreements covering motor vehicles and trailers if the amount of consideration may be increased or decreased by reference to the amount realized upon sale or disposition of the property as defined in 26 U.S.C. 7701(h)(1);

DE. "Maintaining an office or other place of business" means:

1. A person's having or maintaining in the city and borough of Sitka, directly or by an affiliate, an office, distribution house, sales house, warehouse, or place of business; or

2. An agent's operating within the city and borough of Sitka under the authority of the person or its affiliate, whether the place of business or agent is located in the city and borough of Sitka permanently or temporarily or whether the person or affiliate is authorized to do business in the city and borough of Sitka;

EE. "Manufacturing" means combining or processing components or materials, including the processing of ores in a mill, smelter, refinery, or reduction facility, to increase the value of the components or materials for sale in the ordinary course of business; "manufacturing" does not include construction;

EG. "Person" means an individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate, or other entity, including a gas, water, or electric utility owned or operated by a borough, municipality, or other political subdivision of the state;

EH. "Purchase price" means "sales price" and applies to the measure subject to sales tax;

HI. Residential Rent. Rent paid for residential housing for thirty or more consecutive days or an entire calendar month by a person or persons for a room, set of rooms, structure, or suite is exempt from sales taxes. This exemption does not apply to any transaction taxable under Chapter 4.24 regarding the hotel, motel, and bed and breakfast transient room tax;

IJ. "Sale," "selling," or "purchasing" means the transfer of property for consideration or the performance of a service for consideration;

JK. "Sales price":

1. Means the total amount of consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for the following:

a. The seller's cost of the property sold;

b. The cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;

- c. Charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;
 - d. Delivery charges;
 - e. Installation charges;
 - f. The value of exempt personal property given to the purchaser where taxable and exempt personal property have been bundled together and sold by the seller as a single product or piece of merchandise;
 - g. Credit for a trade-in, as determined by state law;
2. Does not include:
- a. Discounts, including cash, term, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale;
 - b. Interest, financing, and carrying charges from credit extended on the sale of personal property or services if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser;

KL. "Sales tax" means the applicable tax imposed by Section 4.09.010;

LM. "Service" means an activity that is engaged in for another person for consideration and that is distinguished from the sale or lease of property; in determining what a service is, the intended use, principal objective, or ultimate objective of the contracting parties is irrelevant; "service" includes:

1. Activities performed by a person for its members or shareholders;
2. Construction activities and all tangible personal property that will become an ingredient or component part of a construction project; and
3. Labor; professional services; transportation; telephone or other communications service; entertainment, including cable, subscription, or pay television or other telecommunications service; the supplying of food, lodging, or other accommodations in hotels, restaurants, or elsewhere; admission to exhibitions; the use of a computer, computer time, a computer system, a computer program, a computer network, or any part of a computer system or network; and the supplying of equipment for use;

4. Travel and adventure services means tours and charters on land and water, guide services, admissions, lectures, transportation services (excluding air transportation), and the rental of lodging, aircraft, vehicles, watercraft, and equipment, including fishing, boating, camping and other tour or adventure related goods. Travel and adventure services also include sales of goods incidental or related to such services.

MN. "Tangible personal property" means personal property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses; "tangible personal property" includes electricity, water, gas, steam, and prewritten computer software;

NO. "Tax" means the tax levied by Section 4.09.010.

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5. **EFFECTIVE DATE.** Ordinance 2016-30 shall become effective on July 1, 2017 but only if the amendment to the Charter set forth in Ordinance 2016-26 is approved by voters at the regular election held on October 4, 2016.

PASSED, APPROVED, AND ADOPTED by the Assembly of the City and Borough of Sitka, Alaska this 13th day of September, 2016.

Mim McConnell, Mayor

ATTEST:

Melissa Henshaw
Acting Municipal Clerk