

POSSIBLE MOTION

I MOVE TO approve Ordinance 2015-41 on
first reading.

Memo

To: Mayor McConnell and Assembly Members

From: Michelle Putz and Ben Miyasato

Date: July 25, 2015

Re: Not-for-profit Ordinance

The concept behind this ordinance is that currently-existing taxes on sales by Sitka's not-for-profit organizations would help to fund Sitka's not-for-profit organizations in the future.

This ordinance would create a dedicated fund for not-for-profit organizations in Sitka. This ordinance has been put forward as means:

- to provide a source of sustainable funding to the grant fund for not-for-profit organizations in Sitka,
- to clarify and appropriately expand our code, and
- to reduce costs for those who can least afford to live in Sitka.

With the tight budget year, the City is looking to reduce costs and increase revenue – both through taxes and increased business opportunities. At the same time, many people in Sitka are struggling to make ends meet and are having difficulty paying for housing, food, and utilities and cannot afford increases in taxes.

This ordinance attempts to use and slightly modify the current tax code to meet many needs in Sitka:

Reduce the costs of funding not-for-profit grants to the City...currently not-for-profit funding is part of our general budget. As set up, this fund would collect those taxes that are additional to the funds previously collected and would disperse 95% of those additional taxes to not-for-profit groups. This fund is not meant to be additional to general budget funds, but replace part or all of that funding. If taxes raised are enough, it may even increase the level of funding going to not-for-profit groups.

Continue to support not-for-profit organizations by providing grants using a dedicated fund for not-for-profits...we have heard from numerous not-for-profit groups how important it is for them to show City support when they apply for other funds and grants. By setting up this fund, we and they will be assured of a pot of money available through the City despite the City's (and the State's) future budget conditions. As stated above, if taxes raised are enough, it may even increase the level of funding going to not-for-profit groups because 95% of those taxes would be dedicated to these organizations.

Provide a means of taxation which is considered “progressive”...this tax would be levied on such items as concert tickets, auction items, and admission fees. This tax would not affect necessities. Instead it would tax items such as entertainment and optional items.

While there are some groups who are opposed to sales by not-for-profits being taxed, it is important to clarify: **collecting Sales tax from not-for-profit groups is not a new concept and has been a part of Sitka General Code for many years (SGC 4.09.100 L) (June 9, 2015 email to the Assembly from Jay Sweeney) .***** Recently, compliance with the existing law has been examined and enforced, as appropriate. This ordinance is not setting up a new tax on not-for-profits. Instead, it seeks to use funds from the existing tax in a way that supports not-for-profits in their efforts to support the community of Sitka.

June 9, 2015 email to the Assembly from Jay Sweeney

***I believe it is critical and essential to separate compliance with current law, as currently contained in the Sitka General Code, from sales taxation policy, which is the purview of the Assembly. There is misunderstanding, especially within the non-profit community, as to current law which sets forth the responsibility to collect and remit sales taxes. As I explain below, non-profit entities are not uniformly exempted by law from the responsibility of collecting and remitting sales tax. Many non-profits have historically collected and remitted sales tax and are in full compliance with the Sitka General Code.

Title 4 of the Sitka General Code⁴ (SGC 4.09.030) sets forth the overall concept that all sales in the Municipality are presumed to be taxable, unless otherwise exempted by some other section of the Sitka General Code. Thus, for a sale by any entity to be exempt from taxation, there must be another section of law specifically exempting the sale.

In regards to sales by non-profit entities, the Sitka General Code states that such sales from taxation are exempt if (1) the non-profit entity has no paid employees, and, (2) the non-profit entity does not have regular business hours (SGC 4.09.100 L). If a non-profit meets these two criteria, then its sales are taxable unless otherwise exempted by some other portion of the Sitka General Code.

Please note that exemption from the requirement by non-profits to pay sales taxes is different from the requirement to collect and remit sales taxes. They are two separate and distinct requirements.

In specific regard to ticket sales, no section of the Sitka General Code exempts the sales of tickets to entertainment events from sales taxation. Thus, if a non-profit meets the dual criteria of having at least one paid employee and regular office hours, ticket sales to entertainment events sold by that non-profit are taxable under current law, as reflected by the Sitka General Code.

This is a critical point - no new law has been passed. Rather, compliance with the existing law is being examined and enforced, as appropriate.

CITY AND BOROUGH OF SITKA

ORDINANCE NO. 2015-41

AN ORDINANCE OF THE CITY AND BOROUGH OF SITKA AMENDING SITKA GENERAL CODE CHAPTER 4.09 "SALES TAX" BY ADDING A NEW SECTION 4.09.050 "NON-PROFIT ACTIVITIES ENHANCEMENT FUND," MODIFYING SECTION 4.09.100L "EXEMPTIONS" BY CLARIFYING SALES MADE BY NONPROFIT CHARITABLE ORGANIZATIONS; AMENDING SECTION 4.09.420 "DEFINITIONS" BY MODIFYING SUBSECTION "I." TO INCLUDE OUTCRY, SILENT AUCTIONS, AND ADMISSION FEES AS SALES AND ADDING SUBSECTIONS "O" "DONATION", AND "P" "ADMISSION FEE"

1. CLASSIFICATION. This ordinance is of a permanent nature and is intended to become a part of the Sitka General Code.

2. SEVERABILITY. If any provision of this ordinance or any application to any person or circumstance is held invalid, the remainder of this ordinance and application to any person or circumstance shall not be affected.

3. PURPOSE. The purpose of this ordinance is to establish a Non-Profit Activities Enhancement Fund, modify exemption of sales made by nonprofit charitable organizations from the collection and remittance of sales tax, add terms "donation" and "admission fee" to the list of applicable definitions in Section 4.09.420 of Sitka General Code and include outcry, silent auctions, and admission fees as sales.

4. ENACTMENT, NOW, THEREFORE, BE IT ENACTED by the Assembly of the City and Borough of Sitka a new section 4.09.050 is created; sections 4.09.100 "L" is amended, 4.09.420 "I," is amended, and 4.09.420 "O" and "P" are added to read as follows (new language underlined; deleted language stricken):

Chapter 4.09
Sales Tax

Sections:

- 4.09.010 Levy of sales tax.
4.09.020 Collection of tax.
4.09.030 Presumption of taxability—Sales price and purchase price.
4.09.040 Separate statement of tax—No advertising to absorb or refund tax.
4.09.050 Non-Profit Activities Enhancement Fund

4.09.050
NON-PROFIT ACTIVITIES ENHANCEMENT FUND

43 A. A new special revenue fund of the City and Borough of Sitka, entitled the Non-Profit
44 Activities Enhancement Fund, is henceforth created. The purpose of the Non-Profit Activities
45 Enhancement Fund shall be to serve as a depository for a portion of sales taxes collected and
46 remitted by non-profit entities until such funds are appropriated for non-profit enhancement
47 purposes.

48 B. On a quarterly basis, 95% of all sales taxes collected from not-for-profit entities for the
49 prior quarter which are in excess of the amount collected in Fiscal Year 2015 for the same
50 quarter, henceforth referred to as the “baseline quarters”, shall be transferred into the Non-profit
51 Activities Enhancement Fund.

52 C. The Administrator, through the preparation of the Annual Consolidated Operating Budget
53 of the Municipality, shall plan for the appropriation of funds contained in the Non-Profit
54 Activities Enhancement Fund. If appropriations are required above the amount authorized in the
55 Annual Consolidated Operating Budget of the Municipality, the Administrator shall bring forth
56 supplemental appropriation ordinances, in accordance with the Home Rule Charter of the City
57 and Borough of Sitka.

58 D. The proceeds contained in the Non-Profit Activities Enhancement Fund may be
59 appropriated by the Assembly for any purpose related to the enhancement of non-profit activities
60 in the Municipality. All such procurements shall be subject to Municipal procurement
61 regulations in accordance with Title 3 of the Sitka General Code.

62 E. If at any such time the Non-Profit Activities Enhancement Fund is dissolved, the net
63 proceeds of the Fund will revert back to the General Fund.

64 F. Any investment earnings on the unspent proceeds contained in the Non-Profit Activities
65 Enhancement Fund shall be added to the corpus of the Fund and will be available for
66 appropriation by the Assembly.

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68 **4.09.100 Exemptions**

69 L. Nonprofit Charitable Organizations. Sales made by nonprofit charitable organizations
70 which do not have paid employees or engage contractors for services basic or fundamental to the
71 service or product they offer and which do not ~~keep normal business hours~~ have either a physical
72 address, mailing address, or a physical presence within the City and Borough of Sitka are
73 exempt. The existence of an internet web site which advertises and promotes the activities of the
74 nonprofit organization within the City and Borough of Sitka shall be considered as maintaining a
75 physical presence within the City and Borough of Sitka for purposes of this chapter. To qualify
76 under this exemption, a nonprofit organization must meet the definition of charitable

77 organization as set forth in IRS Code 7.25.3.5, apply annually for an exemption, and include in
78 the application how the purpose of the nonprofit organization meets the definition of a charitable
79 organization as set forth in the IRS code. Any organization completely exempted from the
80 collection and remittance of sales taxes under this Section will still be required to prepare and
81 submit sales tax returns under the provisions of this Chapter reporting the total amount of sales
82 exempted from taxation.

83 ***

84 **4.09.420 Definitions**

85 I. “Sale”, “selling” or “purchasing” means the transfer of property for consideration or the
86 performance of a service for consideration. The transfer of property via an outcry or silent
87 auction shall be considered a sale for purposes of sales taxability. Admission fees shall also be
88 considered as sales for the purposes of sales taxability.

89 ***

90 O. “Donation” means the gift of money, personal property for which no return consideration is
91 received. Admission fees or ticket sales for admission to events are considered sales and not
92 donations if the admission to the event for the general public can only be gained by purchase of a
93 ticket or payment of an admission fee.

94 P. “Admission Fee” means the fee charged to the general public for admission to an event. For
95 purposes of this chapter, the definition of “Admission Fee” shall also include the terms
96 “admission ticket”, “hand stamp” and “cover charge”.

97 ***

98 **5. EFFECTIVE DATE. This ordinance shall become effective October 1, 2015.**

99 **PASSED, APPROVED, AND ADOPTED** by the Assembly of the City and Borough of
100 Sitka, Alaska this 25th day of August, 2015.

101
102
103 ATTEST:
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105 _____
106 Sara Peterson, CMC
107 Municipal Clerk

Mim McConnell, Mayor