

CITY AND BOROUGH OF SITKA
ORDINANCE NO. 2018-31

FAILED ON FIRST READING 7/10/18

AN ORDINANCE OF THE CITY AND BOROUGH OF SITKA AMENDING TITLE 4 "REVENUE AND FINANCE" OF THE SITKA GENERAL CODE BY MODIFYING CHAPTER 4.09 "SALES TAX" AT SECTION 4.09.100 "EXEMPTIONS" BY INCLUDING AN EXEMPTION FOR SALES TAX ON GROCERIES AND RESIDENTIAL UTILITIES AND AMENDING SECTION 4.09.420 "DEFINITIONS" BY ADDING A DEFINITION FOR GROCERIES

1. CLASSIFICATION. This ordinance is of a permanent nature and is intended to be 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 exempt groceries and residential utilities from sales tax. This exemption would become effective January 1, 2019, but only if the amendment to the Charter set forth in Ordinance 2018-32 (millage rate limit increase) is approved by voters at the regular election held on October 2, 2018.

4. ENACTMENT. NOW, THEREFORE, BE IT ENACTED by the Assembly of the City and Borough of Sitka that Sitka General Code section 4.04.100 "Exemptions", subsection R and T, and section 4.09.420 "Definitions", subsection C, are amended to read as follows (new language underlined; deleted language stricken):

**TITLE 4
REVENUE AND FINANCE**

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**Chapter 4.09
SALES TAX**

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4.09.100 Exemptions

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

S. Service Performed by a Licensed Undertaker or Mortician. Fees charged by a licensed undertaker or mortician for services and goods supplied in the course of the undertaking business are exempt.

T. ~~Reserved.~~ Fees levied by the city and borough of Sitka for residential utilities 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, marijuana, 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.

~~C.~~ D. A "Household" consists of all the people who occupy a "housing unit"; a house, an apartment or other group of rooms, or a single room, is regarded as a housing unit when it is occupied or intended for occupancy as separate living quarters; that is, when the occupants do not live with any other persons in the structure and there is direct access from the outside or through a common hall; a previously designated live aboard vessel in the city and borough harbor system is also regarded as a housing unit; a household includes the related family members and all the unrelated people, if any, such as lodgers, foster children, wards, or employees who share the housing unit; a person living alone in a housing unit, or a group of unrelated people sharing a housing unit such as partners or roomers, is also counted as a household; the count of households excludes group quarters;

~~D.~~ E. "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);

E F. "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;

F G. "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;

G-H. "Obligation" or "debt" means any sum of money which a citizen of the city and borough, or customer of the city and borough in some capacity, is legally obligated to pay to the city and borough for any purpose;

H-I. "Past-due" refers to any obligation or debt owed to the city and borough which has not been paid within thirty days of the date the payment was due; as an exception, debts owed for utility services consumed are considered overdue fifteen days after the date the payment was due;

I J. "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;

J K. "Purchase price" means "sales price" and applies to the measure subject to sales tax

K L. "Rebate" refers to "sales tax rebate";

L M. "Resident" means a person who has established a residence in the city and borough and has the intent to remain in the city and borough indefinitely and to make a home in the city and borough; a person demonstrates the intent required to be a resident by maintaining a principal place of abode in the city and borough for at least 60 consecutive days immediately prior to submitting an application and with the intent of continuing to reside in the city and borough for the remainder of the calendar year; an applicant is not considered a resident if he or she establishes or claims residency in another state or country; an applicant may be required to provide proof of residency by the finance department;

~~M-N.~~ 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;

~~N-O.~~ "Sale," "selling," or "purchasing" means the transfer of property for consideration or the performance of a service for consideration;

~~O-P.~~ "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;

~~P-Q.~~ "Sales tax" means the applicable tax imposed by Section 4.09.010;

~~Q-R.~~ "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.

R S. "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;

S I. "Tax" means the tax levied by Section 4.09.010.

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5. EFFECTIVE DATE. This Ordinance shall become effective on January 1, 2019 but only if the amendment to the Charter set forth in Ordinance 2018-32 is approved by voters at the regular election held on October 2, 2018.

PASSED, APPROVED, AND ADOPTED by the Assembly of the City and Borough of Sitka, Alaska this 24th day of July, 2018.

Matthew Hunter, Mayor

ATTEST:

Sara Peterson, MMC
Municipal Clerk

1st reading 7/10/18

2nd reading 7/24/18

Sponsors: Knox / Potrzuski