

CITY AND BOROUGH OF SITKA

ORDINANCE NO. 2021-14

BALLOT PROPOSITION OCTOBER 5, 2021

AN ORDINANCE OF THE CITY AND BOROUGH OF SITKA PROPOSING TO AMEND TITLE 4 "REVENUE AND FINANCE" OF THE SITKA GENERAL CODE BY ADDING A NEW CHAPTER 4.27 "EXCISE TAX ON MOTOR FUEL" TO ESTABLISH AN EXCISE TAX ON MOTOR FUEL SOLD, TRANSFERRED, OR USED IN THE CITY AND BOROUGH OF SITKA, PROVIDING FOR ADMINISTRATION OF COLLECTING THE TAX, AND PROVIDING FOR PENALTIES FOR FAILURE TO PAY TAXES DUE; AND SUBMITTING THE QUESTION OF SUCH AN AMENDMENT TO THE QUALIFIED VOTERS AT THE REGULAR ELECTION ON OCTOBER 5, 2021

**POSTPONED INDEFINITELY ON SECOND READING
7/13/2021**

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 thereof to any person or circumstance is held invalid, the remainder of this ordinance and application thereof to any person or circumstances shall not be affected thereby.

3. PURPOSE. The purpose of this ordinance is to raise municipal revenues with an excise tax on motor fuels sold, transferred, or used within the municipality, including motor vehicle fuels and marine fuels. These revenues are intended for maintenance, repair, replacement, and construction of related municipal infrastructure. The proposed ordinance establishes the tax, provides for administration of collecting the tax, and provides for penalties for failure to pay and remit the tax. If ratified by the voters, this ordinance would add a \$.03 per gallon excise tax on motor fuels.

4. ENACTMENT. NOW, THEREFORE, BE IT ENACTED by the Assembly of the City and Borough of Sitka that the Sitka General Code Title 4, entitled "Revenue and Finance" be amended by adding a new Chapter 4.27, entitled "Excise Tax on Motor Fuel", to read as follows:

**Title 4
REVENUE AND FINANCE**

Chapters:

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4.27 Excise Tax on Motor Fuel

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Sections:

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4.27.240 Interest.
4.27.250 Penalties.
4.27.260 Remedies for a person aggrieved.
4.27.270 Definitions.

4.27.010 Applicability of chapter.

A. Unless provided otherwise, this chapter shall apply to the taxation of all fuel sales or transfers, or consumption of previously untaxed fuel by users, within the municipality.

B. The tax imposed under this chapter does not apply if the United States Constitution, Alaska Constitution, or other federal or state laws prohibit the municipality from levying this tax on fuel.

4.27.020 Excise tax on motor fuel.

A. An excise tax in the amount of three cents (\$0.03) per gallon, adjusted every five years as provided in subsection B., is hereby levied on all fuel sold, transferred, brought into or consumed in the municipality. The tax is imposed only once, upon the first taxable event. Fuel upon which the tax was imposed is not again subject to the tax in a subsequent sale, transfer or use. The tax is to be paid by the dealer or user to the municipality on the volume of fuel sold, transferred, or used.

B. The five-year adjustment to the fuel tax rate shall be based on the cumulative percent change in the Anchorage Consumer Price Index for All Urban Consumers (CPI-U) over the prior five years. The adjustment is the percent change in the Anchorage CPI-U beginning from the CPI-U report released five years prior at a time when any adjustments would be made effective July 1st of the year applied, up to the CPI-U report released in the fifth year after the last adjustment at a time when any adjustment would be made effective July 1st of the year applied. The adjustment shall become effective January 1 following the August release date in the fifth year since the last adjustment. The first such adjustment date shall be effective July 1, 2027.

C. All tax revenue collected by the municipality under this chapter shall be deposited by the finance director into the municipal accounts as follows; for motor vehicle fuel into the Public Infrastructure Sinking Fund and for marine fuel into the Harbor Enterprise Fund.

4.27.030 Tax exemptions; no deferral for mixed purchases.

A. The following transactions are exempt from the tax levied by section 4.27.020:

1. Fuel that is sold or transferred between qualified dealers;
2. Fuel that is sold or transferred to a person obtaining fuel with a valid certificate of use;
3. Fuel that is sold or transferred to a qualified dealer or persons to whom fuel may be transferred without collecting tax under AS 43.40;
4. Fuel that is exported;
5. Fuel that is purchased for use by federal, state, local government agencies or federally recognized tribe, unless the fuel is purchased for the purpose of resale; and
6. Loss of volume of fuel that occurs during handling, transportation, and storage, including loss of volume due to temperature changes of fuel.

B. The election to defer payment of fuel tax provided by the state to certain persons pursuant to 15 AAC 40.320 for sales or transfers for mixed uses is not provided by the municipality. A sale or transfer of fuel for mixed use purposes to a common storage tank shall be fully taxed, and after resale or use for an exempt purpose the purchaser may apply for a refund with appropriate documentation in accordance with section 4.27.170.

4.27.040 Intent and purpose of chapter; taxpayer.

A. It is the intent and purpose of this chapter to collect the tax from:

1. The person who sells or transfers fuel to a reseller or user within the municipality, and
2. A user who purchases or acquires fuel outside of the municipality and ships it into the municipality for personal use, or purchases or receives fuel in the municipality that was not taxed at the time of purchase or receipt and is used or consumed for a purpose that is not exempt. Fuel purchased or acquired outside of the municipality and brought into the municipality in the following circumstances are not subject to the tax:
 - a. In a fuel tank built in a vehicle or vessel and that supplies fuel directly to that motor vehicle's or vessel's combustion engine so long as that fuel is not off-loaded to a large storage tank, transport tank or container, or to another vehicle or vessel; or
 - b. In a small, personal use size container twenty gallons or less in volume, so long as that fuel is not off-loaded to a storage tank, transport tank or container larger than twenty gallons in volume.

B. Notwithstanding anything to the contrary contained in this chapter, the taxpayer shall be those persons described in this section and no others.

4.27.050 Certificate of registration: eligibility.

To be eligible for a certificate of registration, a person applying to conduct business as a dealer shall:

A. Possess a current business license as required by AS 43.70. A copy of the license must be provided to the municipality before a certificate of registration will be issued.

B. Provide verification and affirmation that all responsible parties for the dealer:

1. Have not at any time in the most recent five-year period been convicted of a crime related to theft of tax dollars, attempted theft of tax dollars, failure to remit taxes due, embezzlement, theft, or similar financial crimes;

2. Have not at any time during the most recent five-year period had a certificate of registration under this chapter revoked;

3. Not have delinquent tax obligations to the municipality or have substantially unpaid delinquent financial obligations to the municipality; and

4. Not have any unresolved issues regarding a prior certificate of registration issued under this chapter.

4.27.060 Certificate of registration: required.

A. Except as otherwise provided in this chapter, every dealer shall obtain a certificate of registration, prior to selling or transferring fuel to a reseller, user or other dealer.

B. Dealers shall display their certificate of registration in a conspicuous place where it can be readily viewed at the registered place of business.

C. A certificate of registration issued under this chapter shall state the following:

1. Business name and business address of the dealer;

2. Name of the person(s) owning the dealer business;

3. Dealer's form of business organization; and

4. Issue date of the certificate.

D. A certificate issued under this chapter is valid from the issue date through the following June 30.

E. A person whose certificate is lost, stolen or defaced shall immediately file an application with the department for reissuance of the certificate for the balance of the unexpired term.

F. A certificate issued by this chapter is in addition to any other license required by law.

G. A certificate issued under this section provides no right, entitlement or property interest created by the issuance of a certificate to a dealer.

4.27.070 Certificate of registration: application.

A. Application for registration to operate as a dealer within the municipality shall be made to the department on a form provided by the department, containing such information as the department requires, including:

1. The applicant dealer's name and mailing address;
2. Names and addresses of all owners of the applicant dealer and all responsible parties for the applicant dealer;
3. A copy of the applicant dealer's current State of Alaska business license;
4. A copy of the applicant dealer's current State of Alaska dealer license and, if applicable, qualified dealer license;
5. The name under which the applicant dealer will conduct business operations;
6. The location of each of the applicant dealer's business operations within the municipality ;
7. The signature of the applicant, firmly binding the applicant dealer, its owners, and all responsible parties to the following:
 - a. An agreement that any contemporaneous or future complaints filed by the department in the Alaska Court System related to responsibilities, duties, consequences, or disputes associated with this chapter shall at all times be within the venue of the District or Superior courts located in Sitka, First Judicial District;
 - b. An obligation, in the event that an owner, partner, managing member, responsible party, or employee of the applicant dealer subsequently commits civil fraud, as defined by this chapter and demonstrated by a preponderance of the evidence to have occurred, to remit to the municipality an amount that equals the taxes that would have been paid to the municipality if all the fuel excise taxes due had been remitted, pursuant to this chapter; and
 - c. An agreement that the applicant dealer and any person involved in a civil fraud, as defined by this chapter and demonstrated by a preponderance of evidence to have occurred, will become ineligible to register under this section for a period of five years, beginning with the date of conviction of fraud or the date of revocation of the applicant dealer's registration in accordance with section 4.27.110.
8. In addition to other requirements in this section, a corporation that applies for a certificate of registration shall provide the following information:

a. Corporation: names and addresses of the principal officers including president, vice-president, secretary, managing officer, and all stockholders who own ten percent or more of the stock in the corporation;

b. Partnership, including a limited partnership: names and addresses of all general partners and all partners with an interest of ten percent or more; or

c. Limited liability organization: names and addresses of all members with an ownership interest of ten percent or more and the names and addresses of all managers;

9. Such other information as the department may require.

B. An applicant dealer having more than one location within the municipality shall apply with the department to register each separate location, including:

1. The applicant's signature confirming that the applicant fully understands the relevant compliance requirements of this chapter; and

2. Each signature shall be by a person or agent having such authority to sign and bind the applicant and shall be under penalty of prosecution for unsworn falsification.

C. All persons registered under this chapter shall maintain compliance with all relevant Municipal and State of Alaska laws and administrative requirements related to the registered business, including but not necessarily limited to: business license, and any related required periodic reporting.

D. All persons applying for registration under this chapter shall affirm that the applicant dealer is current with all financial obligations due to the municipality.

E. A person's application for and acceptance of the certificate issued under this chapter constitutes confirmation of the person's acknowledgement on behalf of the applicant and dealer of the duties pursuant to this chapter.

4.27.080 Certificate of registration: denial.

A. The department may deny an application for registration if:

1. There is reasonable cause to believe that the applicant has willfully withheld information requested to determine the applicant dealer's eligibility to receive a certificate of registration;

2. There is reasonable cause to believe that information submitted in the application is false or misleading and is not made in good faith;

3. There is reasonable cause to believe that the applicant dealer's business organization has been structured to avoid payment of taxes, penalties, interest, or costs due under this chapter;

4. The applicant dealer has an unpaid financial obligation due to the municipality;

5. The applicant dealer, or any owner, partner, member, responsible party, or employee had a certificate under this chapter revoked by the department within the previous five years;

6. The applicant dealer, or any owner, partner, member, responsible party, or employee has been convicted of a felony or misdemeanor theft of money within the previous five years; or

7. The application is not complete.

B. The department shall provide the reasons for a denial in writing to the applicant.

C. The department shall deny an application if the applicant dealer does not currently possess all other licenses required by law.

4.27.090 Certificate of registration: fee, renewal.

A. There shall be no charge or fee for issuing a certificate of registration for an original or renewal application, or for a new location for a dealer who relocates the business.

B. A fee of \$30 shall be charged for reissuing a certificate that has been lost, stolen or defaced.

C. A dealer may apply for renewal of its certificate up to two months prior to expiration of the current certificate.

4.27.100 Certificate of registration: expiration.

A. A certificate of registration issued under this chapter shall automatically expire as follows:

1. Immediately after the following June 30;

2. If the dealer moves the business to another location within the municipality the dealer shall immediately file an application with the department for issuance of a replacement certificate for the new location for the remaining balance of the term; or

3. If a dealer ceases to engage in business as a dealer, ceases to engage in business at its registered place(s) of business, changes its name, or changes the name by which the registered dealer's business operation is advertised or marketed by the dealer.

B. A dealer must submit an updated application, as prescribed by the finance director, upon any change in form of ownership or business name, or if the dealer is owned by a business entity, upon any change in the owners of the entity who owns the dealer. The finance director will review the updated application, pursuant to this chapter. A new certificate of registration will not be issued until the department has received the expired certificate.

4.27.110 Certificate of registration: surrender, suspension, or revocation.

A. A dealer shall surrender its certificate of registration to the department as follows:

1. Within ten days after its certificate expires;

2. Immediately, upon suspension or revocation by the department.

B. The department may suspend or revoke a certificate issued under this chapter for any violation of this chapter.

C. The department shall revoke a certificate of registration if:

1. A dealer fails to remit substantially all (at least ninety-five percent) of the taxes due under this chapter within 45 calendar days of the due date;

2. Subsequent to the issuance of the certificate the department discovers that the dealer has willfully withheld information requested to determine the applicant's eligibility to receive a certificate, or there is reasonable cause to believe that information submitted in the application was false or misleading and was not made in good faith; or

3. When the dealer's circumstances change to a point where it no longer meets eligibility requirements set forth in section 4.27.050.

D. If the department decides to revoke a certificate issued under this chapter, based on any violation of this chapter, the department shall notify the dealer of the date it intends to enforce such revocation. A dealer may apply to the department to request a hearing before the finance director on the department's action or determination as set forth in section 4.27.260.

4.27.120 Certificate of registration: non-transferable.

Non-transferable. The certificate of registration issued under this section is not assignable or transferable, except that in the case of death, bankruptcy, receivership, or incompetency of the dealer (or its principals if the dealer is an entity), or if the certificate is transferred to another by operation of law, the department may extend the certificate for a limited time to the executor, administrator, trustee, receiver, or the transferee.

4.27.130 Tax return and remittance.

A. On or before the last day of each calendar month, every dealer shall submit to the department a tax return upon a form provided by the department and shall remit therewith all taxes required to be paid by this chapter on fuel sales or transfers during the immediately preceding calendar month. A tax return shall be filed even if there are no taxes due for the period being reported. Tax returns and taxes to be remitted under this chapter must be actually received by the department within the time required by this section.

1. The tax return shall be signed under penalty of perjury by an officer of the dealer and shall include the following:

a. The name and mailing address of the dealer;

b. The name and title of the person filing the tax return;

c. The aggregate amount of all fuel sold or transferred by the dealer within the municipality during the month, including exempt sales;

d. The net taxable gallons of all fuel sold or transferred by the dealer during the month, as reported to the State of Alaska;

e. The aggregate amount of any allowable exemptions, as set forth in section 4.27.030, and supporting documentation for said exemptions;

f. The amount of fuel excise tax due;

g. Fuel inventory reconciliation data, such as:

i. Fuel receipt data in whole gallons, with gallons received for taxable purposes reported separately from gallons received for exempt purposes;

ii. Fuel disbursement data in whole gallons, with gallons delivered for taxable purposes reported separately from gallons delivered for exempt purposes;

iii. Breakdown of fuel delivered for exempt purposes (e.g., to qualified dealers, U.S. government agencies for official use, etc.);

iv. Losses of volume of fuel that occur during handling, transportation, and storage, including losses for volume due to temperature changes of fuel.

h. Schedules detailing fuel receipt and disbursement data; and

i. Such other relevant information and supporting documentation as the department may require.

2. If a dealer fails to file a tax return under this section or when the finance director finds that a tax return filed by a dealer is not supported by the records required to be maintained under this chapter, the finance director may prepare and file an involuntary tax return on behalf of the dealer. Taxes due on an involuntary tax return may be premised upon any information that is available to the finance director, including comparative data for similar businesses. A dealer shall be liable for the taxes stated on an involuntary tax return, together with the penalties and interest provided in this chapter.

3. The department shall notify the dealer of an involuntary tax return, the basis of the department's calculations, the dealer's rights under section 4.27.260, and provide written notice that payment of the taxes, penalties, and interest is due immediately.

4. Unless otherwise determined by the finance director in a decision under section 4.27.260, taxes due under this section shall be due on the same date as if a tax return had been filed by the dealer in accordance with this chapter, and interest, penalties, and costs thereon shall accrue from such date.

5. A tax return prepared by the finance director is prima facie evidence of taxes due, and the penalties and interest accruing from said tax liability. In an application under section 4.27.260, it is the dealer's burden to rebut the presumed sufficiency of a tax return prepared by the department.

6. A dealer with multiple locations must either file a separate tax return for each location or use a supporting schedule that clearly identifies the balances associated with each separate location.

4.27.140 Amended tax returns.

Any tax return filed under the section may be amended by the dealer.

4.27.150 Application of payments.

Any payment submitted to the department for taxes, interest, penalties or costs due under any tax return, provision of this chapter, or any finding or determination by the department under this chapter shall be credited to the tax period for which remitted, but shall be credited first to the payment of costs and then to the payment of penalties, interest, and taxes due, in that order.

4.27.160 Tax refunds to dealer.

A. If the department determines after audit that a dealer's tax remittance exceeds the actual amount due, the department shall, upon written request of the dealer, refund the excess to the dealer without interest.

B. The dealer shall apply for a refund in writing on a form acceptable to the department no later than two years from the date the excess payment was transmitted to the department. Any claim for a refund filed more than two years after the date of the excess payment is forever barred. For purposes of this section, a "refund" means payment by the municipality to the dealer or book entry by the municipality to offset other current or future amounts due from the dealer.

C. If a dealer discovers that it has miscalculated the fuel excise tax, and a reseller or other purchaser of the fuel paid more tax than should have been collected, the dealer shall refund to the reseller or purchaser the excess amount collected. If the dealer has not located the reseller or purchaser and refunded the excess tax collected within 30 days, the excess tax shall be remitted to the municipality.

4.27.170 Tax refunds to purchaser.

A. If a person obtains fuel on which the tax levied by this chapter has been paid, such as fuel delivered to a common storage tank, and uses the fuel in a manner that makes the fuel exempt from the tax, the person may apply to the department for a refund of the tax levied.

B. The application for refund must be made on a form prescribed by the department within 90 days from the end of the month in which the purchase was made of the Fuel, as indicated on the invoice or receipt.

C. Failure to apply for a refund within the 90-day period is a waiver of the right to the refund. A claim is considered to be filed when it is mailed or personally presented to the department.

D. Except as provided in subsection E of this section, the claim must include a copy of the invoice(s) of each purchase of fuel for which a refund is being claimed. The invoices must show the type of fuel purchased, the number of gallons of fuel purchased, and the amount of tax paid under this chapter.

E. An agency of the federal, state or local government whose employees make purchases of fuel exclusively for official use and use a credit card issued to that agency may submit a claim for refund containing a schedule of invoices of purchases of fuel, in lieu of providing original invoices for the fuel purchases, as long as:

1. Charges on the credit card are billed directly to the governmental agency;
2. The schedule of invoices complies with generally accepted internal accounting controls, is capable of verification by audit, and details the following information for each purchase of fuel:
 - a. The transaction date;
 - b. The invoice number;
 - c. The type of fuel purchased;
 - d. The name of the reseller and physical location of the pump;
 - e. The name of the governmental agency purchasing the fuel;
 - f. The price per gallon of fuel paid;
 - g. The number of gallons of fuel purchased;
 - h. The tax paid on each gallon of fuel purchased; and
 - i. Any other information required by the department in order to evaluate if the claim for refund meets the requirements of this chapter.

4.27.180 Confidentiality of records.

A. All tax returns filed under this chapter, all data obtained from such tax returns, and all financial information obtained from an inspection of records in accordance with this chapter are confidential and may not be released except upon court order, pursuant to an information-sharing agreement with the State of Alaska Department of Revenue, when necessary to enforce the provisions of or to collect the taxes due under this chapter, and except for inspection by the mayor, the finance director, the municipal attorney, the internal auditor and municipal assessor or the assembly in the performance of their official duties.

B. Except when necessary to the performance of their official duties to enforce the provisions of or to collect taxes due under this chapter, no person may divulge, without express written permission by the dealer, to another any information, data or financial information of a dealer, a dealer's records or a tax return filed under this chapter unless the person receiving such information, data or financial information is a person authorized by this chapter to inspect the tax return, information, data or financial information.

C. It is the duty of the finance director to safely keep tax returns, all data taken therefrom, and all financial information obtained from an inspection of the dealer's records secure from public and private inspection, except as provided by this chapter.

D. This section does not prohibit the municipality from compiling and publishing statistical information concerning the data submitted, provided no identification of particular tax returns or dealer information, data or financial information is made.

4.27.190 Maintenance and inspection of documents and records.

A. Every person subject to this chapter shall keep records to make a complete accounting for the information required on the fuel excise tax return or claim for a refund under this chapter, including fuel purchases, sales and transfers. The records must include an accounting for inventories of fuel on the first and last days of the month, or in the case of a claim for a refund, inventories on the first and last days of the claim period.

B. Specification in this chapter of the records to be kept by a dealer shall not relieve the dealer of its responsibility to keep sufficient records. Unless a longer period is ordered by the finance director under section 4.27.200 or a court of competent jurisdiction, a dealer shall keep and preserve all required records within the municipality for not less than three calendar years after the end of the calendar year in which such records are created and shall make available such records for inspections by the department upon request. Sufficient records shall include, but not necessarily be limited to:

1. Each sale or transfer of fuel within the municipality shall be recorded by the dealer and the record shall include, at minimum: the date of sale, the type of Fuel sold or transferred, the quantity of fuel sold, the sales price, and the amount of excise taxes due on the sale or transfer.

2. Books of account, journals, ledgers, and other compilations of source documents that reconcile to total sales and transfers, as listed on the tax returns filed with the department under the authority of this chapter;

3. Detailed inventory records;

4. Fuel acquisition data; and

5. Sufficient documentation confirming eligibility.

C. Persons subject to this chapter shall keep such other documents and records as the department prescribes.

D. All records and documents required by this chapter to be kept or retained are subject to inspection within the municipality upon demand by the department.

E. The finance director or a designee, upon presentation of proper identification, may inspect the records which a person is required to maintain under this section, whether on-site or at an off-site location, or inspect the records of a person whom the finance director has probable cause to believe is a dealer or a person subject to this chapter in order to determine whether that person is a dealer or is subject to this chapter.

1. Upon notice of the department's intent to inspect records, a person or dealer subject to this chapter shall retain such records and preserve their availability to the department until released by the department in writing, regardless of whether such retention and preservation continues beyond the three-year period specified in this section.

2. The finance director's authority to inspect records shall not be limited to records within the three calendar year retention period. If a person subject to this chapter has possession or control of records described in this section that are older than the three-year period

specified in this section, the person subject to this chapter shall make such records available for inspection upon request.

F. The finance director may enter the business premises of a dealer, so far as it may be necessary for the purpose of examining business records required to this chapter.

G. The department may inspect records required by this chapter of all responsible parties who had control of, or access to, the dealer's records, and such persons shall be subject to the requirements of this section.

H. Where the Constitution of the United States or of the State of Alaska so requires, the finance director shall obtain an administrative search warrant authorizing an inspection and shall exhibit the warrant to the person in charge of the premises before conducting the inspection. The finance director shall apply to the trial courts of the State of Alaska to obtain an administrative search warrant, stating in the application the name and address of the premises to be inspected, the authority to conduct the inspection, the nature and extent of the inspection, and the facts and circumstances justifying the inspection. Warrants issued under this section shall be returned to the court by which issued within ten days after the date issued.

4.27.200 Tax avoidance, civil fraud.

A. If the department has reasonable cause to believe that a dealer has structured a fuel sale or transfer to avoid being subject to the fuel excise tax levied under this chapter, or has wrongfully deceived resellers, users, or the department, the department may take one or both of the following actions:

1. Declare there is a rebuttable presumption that the substance of a specific fuel sale or transfer is a taxable transaction under this chapter and proceed to establish, levy and collect the tax together with costs, penalties and interest as provided for in this chapter; or

2. Prepare and file an involuntary return(s) on behalf of the dealer, as provided in section 4.27.130.

B. Civil fraud. If the department finds a tax deficiency or part of a tax deficiency is due to fraud, then a penalty shall be assessed against the person committing the fraud. A civil fraud penalty may be assessed against a person in addition to a penalty for failure to file or failure to pay.

1. Fraud is the intentional misrepresentation of a material fact with the intent to evade payment of tax which the person believed to be owing. The person must have had knowledge of its falsity and intended that it be acted upon or accepted as the truth. The department must prove fraud by a preponderance of the evidence.

2. An intent to evade tax may be demonstrated by any relevant evidence, including but not limited to the following:

a. The person provided false explanations regarding understated or omitted acquisitions of fuel;

b. The person provided falsified or incomplete source documents;

c. The person has not justified an omission or understatement of a significant amount of acquisitions of fuel;

d. The person substantially overstated a deduction and has failed to justify the overstatement;

e. The person knowingly provided false statements, falsified documents, or falsified evidence to acquire a significant amount of fuel in a manner that results in the evasion of payment for taxes due under this chapter; or

f. The person, without possessing the proper State and Municipal licenses or certificates, exchanged or bartered taxable fuel, in any manner or by any means whatsoever, for consideration.

4.27.210 Tax lien.

A. Taxes due and not paid on the date required by this chapter, together with all interest, penalties and costs accruing thereafter, shall immediately become a lien in favor of the municipality upon all of the dealer's real and personal property, including rights to such property. Such lien shall continue until all taxes, penalties, interest and costs due the municipality have been paid, or the lien released in whole or in part.

1. A separate notice of such lien shall be given to each dealer liable for the taxes by mail, and shall be recorded in the Sitka Recording District, First Judicial District, State of Alaska and any other recording district the department may choose.

2. Notice of the lien shall specify the person(s) liable for payment of the tax, the amount of taxes and the date they were due, a statement of the interest, penalties and costs accrued and which may thereafter accrue, the tax period for which the taxes were due and such other information as the department may determine or as may be required by law.

B. No failure or defect in the notice of lien, except as to the amount if different than the recording thereof, shall adversely affect the existence or priority of the lien created under this section to the extent of the correct amount which is the same or less than that stated in the recorded lien.

4.27.220 Collection of taxes, interest, penalties, and costs.

Taxes, interest, penalties, and costs due under this chapter and unpaid may be collected by any lawful means, including a civil action for the collection of a debt, by foreclosure of the tax lien in accordance with AS 09.45.170 through 09.45.220 or similar statutes in substitution thereof, or by any combination of the above.

4.27.230 Prohibited acts.

In addition to other acts and omissions prohibited by this chapter:

A. No person shall engage in business as a dealer or conduct any exchange or barter for consideration, in any manner or by any means whatsoever, of taxable fuel in the municipality without a proper and current registration under this chapter.

B. No person shall fail or refuse to pay the tax imposed by this chapter.

C. No dealer or responsible party shall deny the finance director, subsequent to proper identification, access to the dealer's fuel records required by this chapter, for purposes of inspection under this chapter.

D. A person shall not prepare and submit to the department a false tax return with the intent to fail to remit taxes due pursuant to this chapter.

E. No person whose certificate is suspended or revoked shall acquire, sell or transfer, or offer to sell or transfer fuel during the period of the suspension or revocation on any premises occupied or controlled by that person.

F. A person shall not knowingly use, allow or permit the use of real property in the municipality by a dealer for use in conducting its business as a dealer, unless the dealer is properly registered with the department under this chapter. Providing such real property after notice from the department that such provision of real property violates this subsection is prima facie evidence of the violation.

G. A person shall not knowingly provide advertising, web hosting, or other marketing services to a dealer in the municipality that is not properly registered under this chapter. Providing such services after notice from the department that such provision of services violates this subsection is prima facie evidence of the violation.

4.27.240 Interest.

In addition to any penalties imposed by this chapter, interest at the rate of 12 percent per annum shall accrue daily and be due from the dealer on the unremitted balance of taxes after the date on which their remittance was due.

4.27.250 Penalties.

A. A dealer who fails to file a tax return within seven calendar days following its due date shall automatically incur a civil penalty for each tax return not filed equal to ten percent of the taxes actually due the municipality. A dealer who fails to remit the full amount of any tax due within seven calendar days following its due date shall incur and pay a civil penalty of ten percent of the actual amount of taxes due but remaining unpaid after such date. If a person fails to pay the full amount of the tax due or file a tax return or report required under this chapter within 16 calendar days after its due date, each of the aforementioned civil penalties shall be increased from ten percent to 25 percent.

1. The penalty shall be computed on the unpaid balance of the tax liability as determined by the department.

2. Notice of the penalties incurred and to be incurred shall be given to the person responsible for payment of the taxes or filing the tax return or report when such tax payment or tax return or report is delinquent for seven calendar days after its due date.

3. The penalties provided for in this subsection shall be in addition to all other penalties and interest provided for under this chapter.

B. The department may revoke a certificate of registration issued under this chapter for any violation of this chapter.

C. If a dealer fails to remit at least 95 percent of the taxes due under this chapter within 45 calendar days of the due date, the department shall revoke the dealer's certificate of registration issued under this chapter and the dealer shall incur a civil penalty up to and including an amount equal to the unpaid delinquent taxes.

D. A managing member, officer, director, owner or responsible party of an enterprise engaged in business as a dealer without a certificate of registration issued under this chapter is personally liable for all taxes which should have been remitted to the municipality, plus a penalty equal to 25 percent of the tax which should have been remitted, in addition to all costs, taxes, interest and other penalties due under this chapter.

E. The municipal attorney may petition the court for injunctive relief against a person engaged in business as a dealer without a certificate of registration issued under this chapter.

F. In addition to any other remedy or penalty provided by this chapter, a dealer, responsible party or any person who violates or threatens to violate a provision of this chapter or a valid order of the department or finance director authorized under this chapter, shall be subject to a civil penalty as described in this section, or injunctive relief to restrain the person from continuing the violation or threat of violation, or both such civil penalty and injunctive relief. Upon application by the municipality for injunctive relief and a finding that a person is violating or threatening to violate a provision of this chapter or a valid order of the department or finance director authorized under this chapter, the Superior Court shall grant injunctive relief to restrain the violation.

G. Any person who violates any provision of this chapter shall be liable for a civil penalty of up to \$1,000.00 for each separate violation. Where multiple instances of the same violation occur, each instance shall constitute a separate violation.

H. Civil and criminal penalties shall be cumulative remedies and shall not relieve a dealer, responsible party, or person conducting sales or transfers of fuel of the duties imposed under this chapter.

I. A person who owns or controls the real property where an unregistered dealer is operating and who, after being notified by the department that the continued operation of the unregistered dealer is in violation of this chapter, allows the unregistered dealer to continue to sell taxable fuel on the property and fails to take reasonable action to prevent prohibited sales of taxable fuel from the real property is complicit in a prohibited act under section 4.27.230 and shall be subject to penalties set forth in this section.

J. A person who provides advertising, web hosting, or other marketing services to a dealer in the municipality not having a certificate of registration under this chapter after receiving notice from the department to cease providing advertising, hosting or marketing for taxable fuel sale by this dealer is complicit in a prohibited act under section 4.27.230 and shall be subject to penalties set forth in this section.

K. A person who commits an act prohibited by this chapter is subject to prosecution pursuant to applicable state and/or municipal law.

4.27.260 Remedies for a person aggrieved.

A. Any person aggrieved by any action or determination of the department under this chapter may apply to the department and request a hearing before the finance director on the department's action or determination within 30 days from the date the department mails notice of the department's action or determination.

1. An application for a hearing must notify the department of the specific action or determination complained of and the amount of tax, interest, cost or penalty contested and the reason for such contest.

2. The uncontested portion of any tax due under this chapter shall be paid when due regardless of any application for a hearing. Payment of the total amount due may be made at any time before the hearing. If the department has reasonable cause to believe that collection of the total amount due might be jeopardized by delay, immediate payment of the total amount may be demanded and the department may pursue any collection remedies provided by law. Payment in full does not affect a person's right to a hearing.

B. Upon timely application for a hearing under subsection A of this section, the finance director shall hold a hearing and render a decision or determination in accordance with applicable municipal policy and/or code to determine whether a correction or reversal of the department's action or determination is warranted.

1. If a person requesting a hearing fails to appear at the hearing, the finance director may issue a decision without taking evidence from that person, unless the person shows reasonable cause for failure to appear within seven days after the date scheduled for the hearing.

C. Within 30 days after receipt of a written decision by the finance director, a person aggrieved by the decision may appeal the decision to the Superior Court of the First Judicial District.

1. The person aggrieved shall be given access to the department's file in the matter for preparation of such appeal.

2. Taxes, costs, penalties, and interest declared to be due in the decision of the finance director must be paid within 30 days after the date of the decision or a supersedeas bond guaranteeing their payment must be filed with the court in accordance with Alaska Court Rules of Appellate Procedures.

D. If after the appeal to the Superior Court is heard it appears that the action or determination of the department and/or the decision of the finance director was correct, the court shall confirm such action, determination or decision, as the case may be. If the department's action or determination or the decision of the chief fiscal officer's decision was incorrect, the court may determine the proper action, determination or decision. If the person aggrieved is entitled to recover all or part, of any tax due or paid, the court shall order the repayment and the department shall pay such amount within 14 days and attach a certified copy of the judgment to the payment.

E. Hearings before the finance director under this chapter may, at the option of the finance director, be conducted by an administrative hearing officer designated by the finance director. If the finance director refers such matter to an administrative hearing officer, the administrative

845 hearing officer shall conduct the hearing and prepare findings and conclusions. These findings
846 and conclusions shall be forwarded to the finance director for adoption, rejection or modification
847 and issuance of a final order or decision by the finance director.

848
849
850 **4.27.270 Definitions.**

851 Any words, terms and phrases not defined in this section shall, if defined therein, have the
852 meaning given in AS 43.40.100 or regulations adopted by the state to implement its fuel tax
853 pursuant to AS Ch 43.40, or otherwise shall have their ordinary and common meaning. The
854 following words, terms, and phrases, when used in this chapter, shall have the meanings
855 ascribed to them in this section, except where the context clearly indicates a different meaning:
856

857 A. "Certificate of registration" or "Certificate" means a license issued by the department
858 authorizing a specified dealer to assess, collect, and timely remit to the department the excise
859 tax on fuel levied by this chapter.

860
861 B. "Certificate of use" means the certificate provided to the State of Alaska Department of
862 Revenue - Tax Division that is obtained by the dealer from a fuel purchaser at the time of the
863 first sale or transfer of the fuel to that purchaser stating the fuel that has been or will be
864 purchased or received is not intended for use as taxable fuel.
865

866 C. "Common storage tank" means a storage tank serving taxable and exempt uses, or multiple
867 taxable uses to which various tax rates apply.
868

869 D. "Consideration" means something of value given by both parties to a contract that induces
870 them to enter into the agreement to exchange mutual performances. Consideration must have a
871 value that can be objectively determined.
872

873 E. "Dealer" means a person who sells or otherwise transfers in the municipality fuel upon which
874 the taxes imposed by this chapter have not been paid. The term includes qualified dealers.
875

876 F. "Department" means the finance department of the municipality.
877

878 G. "Export" means the transport of fuel as cargo out of the municipality by or for the seller or
879 purchaser and intended for use or resale outside of the municipality.
880

881 H. "Finance director" means the finance director of the municipality or designee.
882

883 I. "Funds" means money, assets or intangible assets that can be converted to United States
884 currency and/or coin.
885

886 J. "Issue" date means the date the department has completed the review of the application and
887 has generated and is prepared to release the certificate of registration to the applicant.
888

889 K. "Motor fuel" or "fuel" means all liquid substances refined, compounded, or produced for the
890 purpose of use in an engine for the propulsion of a motor vehicle that is required to be licensed
891 or registered to be driven on a public road or highway, and use in an engine for the propulsion
892 of boats is required to be licensed or registered to be used in public places within the state. This
893 does not include aviation fuel.
894

L. "Municipality" means the City and Borough of Sitka.

M. "Official use" means use by a federal, state or local government agency, but does not include the following:

1. consumption by a contractor who purchases fuel either for its own account or as the agent of a government agency for use in the performance of a contract with that agency;
2. use in a private vehicle; or
3. sales of fuel.

N. "Person" includes an individual, company, partnership, limited liability partnership, joint venture, joint agreement, limited liability company, association (mutual or otherwise), corporation, estate, trust, business trust, receiver, trustee, syndicate, or any combination acting as a unit.

O. "Qualified dealer" has the meaning established in state statute and regulation, AS 43.40.100(3) and 15 AAC 40.600, and a person with a qualified dealer license from the state.

P. "Reseller" means a person who sells or otherwise transfers in the municipality fuel upon which the taxes imposed by this chapter have been paid.

Q. "Responsible party" means a person who has a level of control over, or entitlement to, the funds or assets of a dealer that, as a practical matter, enables the individual, directly or indirectly, to control, manage, or direct the dealer or the dealer's operations.

R. "User" means a person consuming, using, or purchasing fuel that is the subject of this chapter.

S. "Tax return" means the monthly report to be submitted to the department as required by section 4.27.130.

* * *

5. BALLOT PROPOSITION. The following question shall be placed on the ballot at the regular election on October 5, 2021:

Shall the Sitka General Code be amended effective January 1, 2022, by adopting a three cent per gallon excise tax on motor fuels, including motor vehicle and marine, sold, transferred or used in the municipality, and place the tax revenues in dedicated municipal funds for the maintenance, repair, replacement, and/or construction of related municipal infrastructure?

Yes ☐ No ☐

Informational: See Ordinance 2021-14

6. EFFECTIVE DATE. This ordinance shall become effective January 1, 2022, upon certification of the October 5, 2021, election results that show a majority of qualified voters approved the enactment.

PASSED, APPROVED, AND ADOPTED by the Assembly of the City and Borough of Sitka, Alaska this 13th day of July, 2021.

Steven Eisenbeisz, Mayor

ATTEST:

Jessica Earnshaw
Acting Municipal Clerk

1st reading: 6/22/2021
2nd and final reading: 7/13/2021
2nd reading 7/13/2021 postponed indefinitely

Sponsors: Knox / Himschoot