

Duplicate Numbered Resolution

CITY OF GUSTAVUS, ALASKA ORDINANCE 2008-27

AN ORDINANCE FOR THE CITY OF GUSTAVUS AMENDING TITLE 4.15 REVENUE AND FINANCE, SALES TAX

BE IT ENACTED BY THE GUSTAVUS CITY COUNCIL AS FOLLOWS:

- Section 1. Classification This ordinance is of general and permanent nature and shall become a part of the City of Gustavus Municipal Code.
- Section 2. Severability If any provisions of this ordinance or any application thereof to any person or circumstance is held invalid, the remainder of this ordinance and its application to other persons, or circumstances shall not be affected thereby.
- Section 3. Enactment Now therefore, be it enacted by the Gustavus City Council that Section 4.15 be amended as follows.
Bolded items are additions, ~~strikethroughs~~ are deletions.

Title 4-15

Revenue and Finance

Sales Tax

Sections:

- 04.15.010 Purpose and Intent
- 04.15.020 Definitions
- 04.15.030 Imposition of Sales Tax
- 04.15.040 Exemptions
- 04.15.050 Regulations and Procedures
- 04.15.060 Seller to Add Tax to Selling Price
- 04.15.061 Collection of Fish Box Rate**
- 04.15.070 Monthly Returns – Penalties and Interest for Delinquency
- 04.15.080 Seller’s Compensatory Collection Discount
- 04.15.090 Assessment Limitation Periods – Record Keeping
- 04.15.100 Delinquency – Failure to Submit Return or to Remit Taxes - Assessments
- 04.15.110 Protest of Tax
- 04.15.120 Appeals
- 04.15.130 Forgiveness of Uncollected Taxes, Penalties, and Interest

- 04.15.140 Criminal Liability
- 04.15.150 Registration
- 04.15.160 Deposit by Non-Residents
- 04.15.170 Reserved
- 04.15.180 Sale of Business – Final Tax Return – Liability of Purchaser
- 04.15.190 Suits for Collection
- 04.15.200 Lien for Tax, Interest, and Penalty
- 04.15.210 Collected Taxes
- 04.15.220 Use of Proceeds

Section 04.15.010 Purpose and Intent

The purpose of the tax levied under this chapter is to raise revenues. To that end, the scope of the tax levied shall be broadly interpreted and exemptions shall be allowed only when the sale, rental or service clearly falls within an exemption defined in this ordinance

Section 04.15.020 Definitions

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

- Buyer consumer. Include without limiting the scope thereof, every consumer.
- City: The City of Gustavus, Alaska, or the area within the territorial limits of the City of Gustavus, Alaska.
- City Council: The Gustavus City Council or the Gustavus City Council’s designees.
- Fish Box:** **A fish box is any packaging by a fish charter operator or processor of fish and/or seafood caught or taken as part of the charter by a fish charter customer.**
- Flat Rate:** **A flat rate of \$10.00 levied on fish boxes as described under definition for fish box.**
- Include and “By way of illustration only” and shall not be

Including interpreted as a limitation except where expressly so provided.

May: Permissive.

Mayor: The City Mayor or his/her authorized designee.

Must and shall: Each is mandatory.

Packaging: To contain, protect, preserve a product for transport, storage, and use.

Person: An individual natural person.

Process: A method or system for achieving a commercial result. For purpose of the Flat Fish Box Tax, a processor is a person and/or business that performs (processes) one, some, or all of the following: skinning, gutting, filleting, cutting, packaging individual portions of fish/seafood, and/or packing or packaging multiple portions of fish/seafood for transport.

Retail Sale: Any sale of real or tangible personal property including barter, credit, installment, and conditional sales for any purpose other than resale in the regular course of business. The delivery of goods in the City by a seller whose principal place of business is outside the City to a buyer or consumer is a retail sale made within the City if such retailer maintains any office, distribution, or sales house, warehouse or any other place of business, or solicits business or received orders through any agent, salesman, or other type of representation within the City.

Rent: Any rental other than that which would be taxable under Section 04.14.

Sale for Resale: The sale of tangible personal property to a buyer whose principal business is the resale of the property whether in the same or altered form.

Seller: Every person, firm, corporation or other legal entity making retail sales to a buyer or consumer, renting property or performing services for consideration whether acting as principal or using the services of an agent or broker.

Selling Price and Price: The gross amount of a transaction between a buyer and a seller.

Services: All services of every manner and description that are performed or furnished for consideration whether in conjunction with the sale of goods or not, but does not include services rendered by an employee to an employer. All retail services by a seller within the City of services to be provided or performed in whole or in part within the City, regardless of the buyer's place of residence; or buyer's physical location upon acceptance of the offer, or exchange of consideration.

State: State of Alaska.

Section 04.15.030 Imposition of Sales Tax

- a. There shall be levied and collected a tax equal to two percent (2%) of the selling price on retail sales, rentals made, and services performed within the City.
- b. There shall be no Sales Tax on any sale subject to the Room Tax in Chapter 04.14.030.
- c. The taxability of a sale of goods is determined by the delivery of the tangible personal property. The taxability of a rental made is determined by the place where the service is performed or rental property is located except as provided below, the sale of a service is subject to the Sales Tax if the service is performed within the City.

1. Where a buyer receives a service within the corporate limits of the City of Gustavus, and the service begins or ends therein, or where the buyer receives an entire service therein the sale is subject to the City of Gustavus Sales Tax.

2. A person who furnishes proof, in the form required by the City Clerk, that he has paid the tax in some jurisdiction other than the City, on the sale of a service, is required to pay the City's Sales Tax to the extent [of the difference] of the amount of Sales Tax paid elsewhere and the amount of tax levied by the City. This paragraph applies to a Sales Tax in any taxing jurisdiction, whether inside or outside the State.

- d. Every seller making sales, rentals or performing services subject to taxation under this chapter shall collect taxes imposed by this chapter from the buyer at the time of collection and shall transmit the same, monthly, to the City.
- e. There shall be levied and collected a flat sales tax of \$10.00 per fish box.
 - 1. A flat rate of \$10.00 per fish box shall be levied on the packaged fish and or seafood caught or taken and retained by fish charter customers as part of the fish charter. This tax shall be paid by the fish charter customer, collected by whomever packages the fish or seafood caught or taken by the fish charter customer. For the purposes of this section, a fish box means any packaging by a fish charter operator or processor, of fish and or seafood caught or taken as part of the charter by a fish charter customer.

* Section e and e(1) were added by a majority vote at a special election held July 8, 2008.

Section 04.15.040 Exemptions

The tax levied under this chapter shall not apply to the following:

- a. Casual and isolated sales not made in the regular course of business;
- b. Sales, services, rentals, and transactions which the municipality is prohibited from taxing under the Constitution and laws of the United States or the State;
- c. Sales of goods and associated shipping and handling charges where the resulting goods are ordered from and delivered outside the City. Delivery outside the City must be verified by postal documents or shipping documents;

- d. Sales of medical, dental, nursing services, and of counseling services by clinical psychologists licensed by the State, alcohol and drug counselors certified by the State, and social workers who have a minimum of a masters degree in social work (MSW) and other allied health practitioners licensed by the State;
- e. Sales and resale of hearing aides, crutches, prescriptions, wheelchairs, and personal property specifically manufactured for a patient;
- f.. Membership dues, assessments, initiation fees, and donations paid to non-profit organizations that have obtained a 501(c) exemption certificate from the Internal Revenue Service;
- g. Sales, services, and rentals to a buyer, or made by a seller, organized and administered solely by an organization that has obtained a 501(c)(4) exemption ruling from the Internal Revenue Service and an exemption certificate from the finance director, provided, this exemption applies to sellers only if the income from the sale is exempt from federal income taxation;
- h. Sales, services, and rentals to or by a foreign government, the United States government, the State and its political subdivisions and municipalities. The exemption does not apply to rentals or to the sale of materials, supplies, and services to contractors for the manufacture or production of property or services for government agencies on a contract;
- i. Sales of food and beverages in public and private school cafeterias, which are operated primarily for teachers or students and which are not operated for profit;
- h. Child day care, pre-elementary school, and babysitting services;
- k. Sales Tax paid on leases under a lease/purchase agreement may be credited toward the payment of the tax due on the exercise of the purchase option in the same proportion as the lease payments are applied to the purchase price, provided there will be no refund of taxes paid on the lease;

- l. That part of the selling price of travel and adventure services, rentals, and goods, excluding lodging, sold outside but delivered within the City which is not remitted to the provider of the service and which represents a selling cost or commission or similar charge;
- m. Sales of services or goods for resale – goods or a service is sold for resale when the service is directly integrated into services or goods sold by the buyer to another purchaser in the normal course of business, and the service is purchased separately for each resale, and the service is identified, charged for, and billed separately from any other service;
- n. Sales of transportation and handling services for goods rendered by sellers primarily engaged in furnishing such services, where the goods are either transported from, or delivered to, a point outside the City provided that the retail seller of goods may not exclude transportation or handling charges from the selling price of the goods;
- o. Sales for resale of tangible personal property, as defined in section 04.15.020, to a buyer who holds a valid resale certificate issued by the City.
- p. Commissions charged by an agent on the sale of a service that is subject to the Sales Tax provided that the commission may be deducted from the selling price of the service on which the Sales Tax is levied. (Amendment and addition published August 12th, 2004. Public hearing and adoption August 19, 2004.)

Section 04.15.050 Regulations and Procedures

- a. A Mayor or a City official designated by the Council shall administer this ordinance and make recommendations for regulations, policies, fees, and guidelines for the determination of the taxability of transactions. The City Council shall adopt policy guidelines, regulations, fees, and procedures for the management of this ordinance by resolution. Sellers claiming an exemption may be required to obtain and may rule on specific transactions upon request. The written ruling on a specific sale may be relied upon by the parties to the sale unless essential facts were not provided to the person making the ruling or the ruling is clearly contrary to provisions of this ordinance.
- b. The burden of proving an exemption shall be on the seller. Sellers claiming an exemption may be required to obtain an exemption

certificate. Certificates issued under this ordinance shall expire as determined by guidelines established by the City Council.

c. The City Council, or the City Clerk when so authorized by the City Council, shall take all steps necessary and appropriate to fulfill the requirements of this ordinance, which includes the authority to compromise and abate penalties and interest, and to negotiate and enter into payment plans for delinquent taxes, penalties, and interest.

Section 04.15.060 Seller to Add Tax to Selling Price

Every seller shall add the amount of the tax levied by this chapter to the total selling price and the tax shall be stated separately on any sales receipts, slips, rent receipts, charge tickets, invoices, statements of account, or other tangible evidence of sale.

Section 04.15.061 Collection of Fish Box Rate

Every seller or processor of fish/seafood shall collect the Fish Box Rate from the charter customer. The number of fish boxes and amount of the Flat Tax receipts received shall be stated separately on any sales receipts, slips, charge tickets, invoices, statements of accounts or other tangible evidence of sale.

Section 04.15.070 Monthly Returns –
Penalties and Interest for Delinquency

a. Every person making sales, rentals, **processing charter fish boxes** or performing services within the City shall on or before the last day of the month complete a signed return for the required filing period and deliver or mail the return to the City Clerk. The return shall set forth the total amount of all sales, rentals or services regardless of whether such sales, rentals or services are taxable or nontaxable, the amount of Sales Tax due and such other information as the City may require. If the last day of the month is a Saturday, Sunday, or Federal, State or City holiday, the due date will be extended until the next business day, immediately following the end of each filing period.

b. Returns shall be filed for each calendar month, unless the operator is allowed or directed by the City Clerk to file for a different time period.

c. An operator, other than a governmental agency, making only exempt sales may be allowed, upon written request to the City Clerk, to

file returns for periods which vary from the each calendar month and which cover time periods up to one year.

d. The tax levied under this ordinance, whether or not collected from the buyer, except for credit transactions covered in subsection "e" of this section, must be remitted by the seller to the City at the time of transmitting the return, and if not so remitted or if the return is not timely filed, such tax is delinquent. The postmark shall determine the date of filing mailed returns. In addition, a late payment penalty of five percent (5%) per month or any fraction thereof, not to exceed a total accrual of twenty-five percent (25%) shall be added to all returns until such tax, penalty, and interest thereon have been paid. Such penalty shall be assessed and collected in the same manner as the tax is assessed and collected. In addition to these penalties, interest at the rate of fifteen percent (15%) per year on the delinquent tax is collected.

e. The seller shall report Sales Tax to the City for Sales Tax previously paid by the seller on any sale, service or rental made on credit to the extent the seller declares such debt to be uncollectible and a bad debt. Such bad debt credit must be claimed on a filed monthly Sales Tax report within two years from the date of sale in which the bad debt arose.

f. There may be published, from time to time, the names of sellers delinquent in remitting Sales Taxes and the amount thereof, provided that the names of sellers who have signed a confession of judgment for the delinquent Sales Taxes, penalties, and interest, and a stipulation to postpone such stipulation as of the date on which the names are submitted to the publisher, will not be published. Information may also be made available to the public in the form of statistical reports and financial statements if the identity of particular sellers is not revealed by the reports. The following information shall be made available to the public:

1. The name and address of sellers;
2. If a seller is registered to collect Sales Tax in the City;
3. If a seller is current in filing Sales Tax returns and in remitting Sales Tax;
4. The number of returns not filed.

g. Information shall be confidential. Except as otherwise provided herein, all returns, reports, and information required to be filed with the City under this ordinance and all information deductible from such filed returns, reports, and information shall be kept confidential and are not subject to public inspection. Except upon court order, such returns, reports, and information shall be made available only to the City Clerk,

Mayor and employees of the City whose job responsibilities are directly related to such returns, reports, and information or to the person authorized in writing by the person supplying such returns, reports and information.

Section 04.15.080 Seller's Compensatory Collection Discount

All sellers and operators rendering Sales Tax returns to the City shall be allowed to compensate themselves for costs incurred in the collection, record keeping, remittance, and accounting for the tax imposed by taking two percent (2%) of the tax due as a tax collection discount to reduce the tax to be remitted on any timely filed and fully paid return. The deduction may not exceed one hundred dollars (\$100.00) for any reporting period and may not be taken if any Sales Tax, penalty, or interest is due for any previous reporting period.

Section 04.15.090 Assessment Limitation Periods – Record Keeping

a. The amount of any tax imposed under this ordinance may be determined and assessed for a period of three (3) years after the date the return was filed with the City. No suit for the collection of such tax may be commenced after the expiration of the three-year period except for taxes, penalty, and interest due for such months as are the subject of a written demand or assessment made under Section 04.15.070 of this ordinance within such three-year (3-year) period, unless the seller waives the protection of this section.

b. In order to facilitate the administration and enforcement of the provisions of this ordinance, each seller or operator otherwise engaged in applicable business within the City shall maintain and keep for a period of three (3) years all of the monthly sales tax reports, forms, and supporting records and other records prescribed by the City. The failure to maintain adequate records to allow documentation of the taxability of each transaction will result in the loss of any tax exemption, deduction, or credit for that particular transaction. Upon the request of the City Clerk, a seller shall make available for examination in the City Hall the books, records, and other documentation of the seller unless said official authorizes examination to be conducted at a different location.

Section 04.15.100 Delinquency – Failure to Submit Return or to Remit Taxes – Assessments

a. Whenever the City Clerk reasonably believes a return contains inaccurate reporting or whenever any seller has become delinquent in

the submission of the required monthly return or in remitting Sales Taxes, there shall be mailed to the delinquent seller's last known address a written demand by certified mail, return receipt, requesting the submission of the corrected or required Sales Tax return and remittance within ten (10) days. In the event of non-compliance with such demand, the City Clerk make a Sales Tax assessment against the taxable revenue received by the seller during the monthly period in question. A copy of the assessment shall be sent to the seller at his last known address by certified mail, return receipt, which time the seller shall make available for examination the books, papers, records, and other requested documents at the City Hall unless the City Clerk authorizes the examination be conducted at a different location. The seller shall have a right to a hearing before the City Clerk with documents pertaining to the revenue of the period involved in the assessment. The seller may exercise his right to a hearing by delivering to the City Clerk within fifteen (15) days of the date the notice was mailed, a written request for a hearing. The City Clerk shall establish a date and time for a hearing to be held within ten (10) days of receipt of the request, unless a later time is mutually agreeable. The person conducting the hearing shall issue an amended assessment if it is determined an amendment should be made. The amended assessment, or the original assessment, if no amendment is made within five (5) days of the hearing, shall be the final assessment for the purpose of determining the seller's liability to the City. If no timely request for a hearing is made, the original assessment shall be the final assessment thirty (30) days after the mailing of the notice of the original assessment unless the seller has submitted an accurate return within the thirty (30) days.

b. The City may file a civil action for collection of any taxes, penalty, or interest due before or after making a demand or assessment under Subsection "a" of this section.

Section 04.15.110 Protest of Tax

a. A buyer who protests the payment of the tax levied under this ordinance shall pay the tax and shall provide the seller and the City Clerk with a written statement of protest within five (5) working days of the sale that identifies the sale, rental, or service that is the subject of the tax protested, the amount of tax paid, the buyer's and seller's name, mailing address, telephone number, and the basis for the protest.

b. If the seller protests his liability on an assessment under Section 04.15.100, which has become final, he/she shall pay the tax under

written protest setting forth the basis for the protest. No action for a refund may be maintained nor may a defense to non-payment be maintained in a civil action unless the amount in dispute has been paid by the seller under written protest filed at or before the time of payment.

Section 04.15.120 Appeals

a. Informal Appeal:

1. For controversies involving Sales Taxes, penalties, and interest not exceeding five hundred dollars (\$500.00), or involving procedures implemented by the City Clerk, an appeal by a financially aggrieved buyer or seller shall be directed to the Mayor. The Mayor shall advise the appellant of a date certain for a hearing and shall informally review the appeal claim, make written findings, and state reasons for the decision. The decisions shall be maintained and indexed by the City Clerk for review by the public. The appellant may appeal the decision of the Mayor to the Board of Appeals within fifteen (15) days after receipt of the written decision of the Mayor, and failure of the appellant to so appeal shall be deemed to be a waiver of any right to appeal such decision.

b. Board of Appeals:

1. In order to provide an appeal mechanism for controversies involving Sales Taxes, penalties, and interest exceeding five hundred dollars (\$500.00), and in order to hear appeals from decisions of the Mayor as provided under Subsection "b,1" of this section, there is established a Board of Appeals which shall consist of the City Council.
2. The City Council shall adopt Policy and Procedure for the Board of Appeals provided for in Subsection b,1 of this section. Such rules may not be inconsistent with this ordinance.

Section 04.15.130 Forgiveness of Uncollected Taxes, Penalties, and Interest

The City Council, or the City Clerk when so authorized by the City Council, may forgive the payment of uncollected Sales Taxes, interest, and penalty thereon and penalties for failure to file.

Section 04.15.140 Criminal Liability

All sellers violating any of the provisions of this ordinance or failing or refusing to comply with a lawful request or demand of a City official authorized by or made under this ordinance is guilty of a Class A misdemeanor.

Section 04.15.150 Registration

All sellers shall register with the City Clerk before making retail sales, rendering services or making rentals within the City.

Section 04.15.160 Deposit by Non-Residents

a. A seller that is about to make sales, rentals or perform services shall first register with the City Clerk, upon evidence of an Alaska Business License held by said seller. Seller shall make the deposit required by this section unless the seller has been a resident of the City for six (6) months prior to registering or the seller's corporation or association is composed of such residents or has been regularly engaged in business within the City for nine (9) of the twelve (12) months preceding registration.

b. The deposit required under Subsection "a" will be Two Hundred Fifty Dollars (\$250.00).

c. The deposit must be refunded upon written request and a determination by the City Clerk that:

1. The seller has filed Sales Tax returns and made full remittance of Sales Taxes owing for the first calendar year of business in the City;
2. That the seller has filed a statement that he/she has ceased engaging in transactions within the City and has remitted all Sales Taxes due.
3. The deposit must be refunded within thirty (30) days of the receipt of the request unless the City Clerk has initiated an audit of the seller or has otherwise questioned a return made during the period under consideration.

d. The City Clerk may order the withdrawal from the deposit of the seller the amount determined to make up for any deficiency or late payment of taxes. No seller may engage in transactions within the City fifteen (15) days from the date of written notice sent to the seller's last known address by certified mail, return request, notifying said seller that the City Clerk has withdrawn all or a portion of the seller's deposit for application to a delinquent or insufficient payment of Sales Taxes. Upon deposit with the City of funds restoring the deposit to its original amount or such higher amount as the City Clerk determines is appropriate in light of the actual sales experience of the seller, the seller may again engage in transactions. A seller may not deduct the deposit from his/her last or any other Sales Tax return.

Section 04.15.170 Reserved

Section 04.15.180 Sale of Business – Final Tax Return – Liability of Purchaser

a. If any seller sells, assigns, transfers, conveys, leases, forfeits, or abandons the business to another person, the seller shall make a final Sales Tax return within fifteen (15) days after the date of selling, assigning, transferring, conveying, leasing, forfeiting, or abandoning the business showing that all tax obligations imposed by this ordinance have been paid. The purchaser, successor, transferee, lessee, assignee, creditor, or secured party shall withhold a sufficient portion of the purchase money to pay the amount of such Sales Taxes, penalties, and interest as may be due and unpaid to the City. If the purchaser, assignee, transferee, lessee, successor, creditor, or secured party fails to withhold from the purchase money, or fails to otherwise provide for or make the payment of the taxes, interest, and penalty owed by the business as provided in this ordinance, the purchaser, assignee, transferee, lessee, successor, creditor, or secured party shall be personally liable for the payment of the taxes, penalties, and interest accruing and unpaid to the City on account of operation of business of any former owner, owners, operators, or assigns.

b. Before the sale, lease, assignment, transfer, or other disposition of the business is completed; the seller shall file with the City Clerk an informational notice identifying the name and address of each operator or entity involved in the transaction, the nature of the transaction, and the effective date of the transactions.

Section 04.15.190 Suits for Collection

Taxes due but not paid or taxes collected but not transmitted may be recovered in an action at law against the buyer or seller. Tax returns shall be prima facie proof of taxes collected but not transmitted.

Section 04.15.200 Lien for Tax, Interest, and Penalty

a. The tax, interest, and penalty imposed under this ordinance in addition to the lien filing fee under Subsection "b" of this section shall constitute a lien in favor of the City upon the assets, including all real and personal property, of every seller making taxable sales within the City. The lien arises upon delinquency and continues until liability for the amount is satisfied or the property of the delinquent seller is sold at foreclosure sales. The lien is not valid as against a prior mortgagee, pledgee, purchaser, or judgment creditor until notice of the lien is filed in the office of the recorder for the Juneau recording district in the manner provided for federal tax liens in AS 43.10.090 through 43.10.150.

b. Fees for filing and releasing of liens shall be:

1. Filing of liens, twenty-five dollars (\$25) plus recorder's office filing fee;
2. Release of liens, twenty-five dollars (\$25) plus recorder's office filing fee;
3. The above rates may be changed in guidelines adopted by the City Council by resolution from time to time to reflect the costs of providing municipal services generally.

Section 04.15.210 Collected Taxes

Taxes collected under this ordinance by a seller shall belong to the City of Gustavus and shall be held by the seller in trust for the City of Gustavus until paid over as provided in this ordinance.

Section 04.15.220 Use of Proceeds

Proceeds of this tax shall be used for the general expenses of the City, which may include the expense of any municipal service.

This Sales Tax Ordinance shall become effective July 8, 2004.

Duplicate Numbered Ordinance

Implementation of Fish Box Flat Tax shall begin July 11, 2008.

Section 4. Effective Date This ordinance becomes effective upon adoption by the Gustavus City Council.

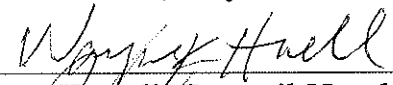
Date of Introduction and Publication: November 13, 2008

Date of Public Hearing & Adoption: December 11, 2008

**Passed and Approved by the Gustavus City Council this 13 day
of November, 2008.**




William Unkel, Mayor



Wayne Howell, Council Member



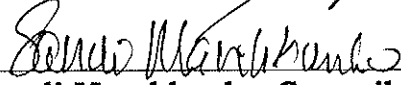
John Nixon, Council Member



Louis Cacioppo, Council Member



Paul Berry, Vice Mayor



Sandi Marchbanks, Council Member



Paul Berry, Council Member

**Attest: Kapryce Manchester
City Clerk**