

CITY OF GUSTAVUS, ALASKA
TITLE IV
Revenue and Finance
Chapter 4-14

AN ORDINANCE OF THE CITY OF GUSTAVUS CREATING AND
ADOPTING TITLE IV: REVENUE AND FINANCE PROVISIONS OF THE
MUNICIPALITY'S CODE OF ORDINANCE CHAPTER 4-14, ROOM 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 provision 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 Title IV, Revenue and Finance, Chapter 4.14, Room Tax be created and adopted.

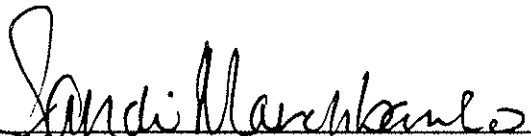
Section 4. Effective Date. This ordinance becomes effective July 8, 2004.

DATE INTRODUCED: June 16, 2004

DATE OF 1st PUBLIC HEARING: June 23, 2004

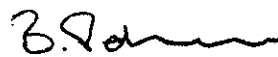
DATE OF 2ND PUBLIC HEARING: July 8, 2004

PASSED AND ADOPTED by the Gustavus City Council this 8th day of July, 2004.



Mayor

ATTEST:



Clerk

Title 4-14

Revenue and Finance

Room Tax

Sections:

- 04.14.010 Purpose and Intent
- 04.14.020 Definitions
- 04.14.030 Imposition of Room Rental Tax
- 04.14.040 Operator to Add Tax to Rent
- 04.14.050 Monthly Returns – Penalties and Interest for Delinquency
- 04.14.060 Operator’s Compensatory Collection Discount
- 04.14.070 Assessment Limitation Periods – Record Keeping
- 04.14.080 Delinquency – Failure to Submit Return or to Remit Taxes - Assessments
- 04.14.090 Protest of Tax and Appeal
- 04.14.100 Appeals
- 04.14.110 Forgiveness of Uncollected Taxes, Penalties, and Interest
- 04.14.120 Criminal Liability
- 04.14.130 Registration
- 04.14.140 Deposit by Non-Residents
- 04.14.150 Reserved
- 04.14.160 Sale of Business – Final Tax Return – Liability of Purchaser
- 04.14.170 Suits for Collection
- 04.14.180 Lien for Tax, Interest, and Penalty
- 04.14.190 Collected Taxes
- 04.14.200 Use of Proceeds

Section 04.14.010 Purpose and Intent

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

Section 04.14.020 Definitions

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

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.

Guest: An individual, corporation, partnership, or association paying monetary, barter, or other consideration for the use of a sleeping room or rooms in a hotel/motel/inn/lodge/bed and breakfast (B&B).

Hotel/Motel: A structure, or portions of a structure, occupied, intended, or designed for occupancy by transients for dwelling, lodging, or sleeping purposes and includes any hotel, motel, inn, lodge, Bed and Breakfast, or similar structure.

Include and "By way of illustration only" and shall not be interpreted as a

Including: limitation except where expressly so provided.

May: Permissive.

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

Must and Each is mandatory.

shall:

Operator: A person, firm, corporation, or other legal entity that furnishes, offers for rent, or otherwise makes available in the City, rooms in a hotel/motel for monetary, barter, or other consideration, whether acting directly or through an agent or employee.

Person: An individual natural person.

Rent(s): The amount paid or promised, in terms of money, as consideration for the use by a transient of a room or rooms in a hotel, motel, lodge, bed and breakfast, or other place of public accommodation.

Transient(s): A person(s) who occupies or rents a suite, room, or rooms in a hotel/motel for fewer than thirty (30) consecutive days for the purposes of habitation.

Section 04.14.030 Imposition of Room Rental Tax

a. The City hereby levies a tax on hotel/motel room rentals for transients equal to four percent (4%) of the room rent. The tax shall be applicable to all room rentals for transients unless the rental is specifically exempted from taxation by constitution or other valid law.

b. Each guest is responsible for the room rental tax imposed by this chapter and the tax shall be due and payable the month the guest departs. The tax shall apply to all rentals where the guest or the transient indicated that the room, or rooms, will be

occupied by the transient for less than thirty (30) days. Room rentals for transients which continue for thirty (30) or more consecutive days shall not be taxable for rentals on and after the thirtieth (30th) consecutive day. Rentals which are less than thirty (30) consecutive days shall be subject to the tax even if the room or rooms were originally taken with the intent to use or occupy for thirty (30) or more consecutive days. Any unpaid tax shall be due and payable when the transient ceases to occupy or use space in the hotel/motel.

c. Every hotel/motel operator renting rooms subject to taxation under this chapter shall collect the taxes imposed by this chapter from the transient guest at the time of collection of the charge for the room and shall transmit the same, monthly, to the City. The tax imposed shall be shown on the billing to the guest as a separate and distinct item.

d. The tax imposed under this chapter shall not be levied on any sales tax levied under Title 4-15, nor shall the tax imposed under Title 4-15 be levied on the tax levied under this chapter.

Section 04.14.040 Operator to Add Tax to Rent

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

Section 04.14.050 Monthly Returns – Penalties and Interest for Delinquency

a. Every operator making rentals within the City shall on or before the last day of the month, unless the last day of the month is a Saturday, Sunday, or Federal, State or City holiday in which case the due date will be extended until the next business day, immediately following the end of each filing period complete a return for the

required filing period setting forth the total amount of all rentals, regardless of whether such transactions are taxable or nontaxable, the amount of room tax due, and such other information as the City may require, and sign and deliver or mail the return to the City Clerk. 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 as authorized in this section and section 04.15.100. An operator, other than a governmental agency, making only exempt sales may be allowed, upon written request to the City Clerk or the manager, to file returns for periods which vary from the each calendar month and which cover time periods up to one year.

b. The tax levied under this ordinance, whether or not collected from the buyer, except for credit transactions covered in subsection C of this section, must be remitted by the operator 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, until a total late payment penalty of twenty-five percent (25%) has accrued 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.

c. The operator shall report uncollectible bed tax to the City for bed tax previously paid by the operator on any rental made on credit to the extent the operator 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.

e. 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 deducible 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 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. The following information shall be

made available to the public: the name and address of operators; whether or not a business is registered to collect bed tax in the City; whether or not a business is current in filing bed tax returns and in remitting bed tax; the amount of delinquent bed tax due; and the number of returns not filed. There may be published, from time to time, the names of operators delinquent in remitting bed taxes and the amount thereof, provided that the names of operators who have signed a confession of judgment for the delinquent bed 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 if the identity of particular operators is not revealed by the reports.

Section 04.14.060 Operator's Compensatory Collection Discount

All operators and persons rendering bed tax returns to the City shall be allowed to compensate themselves for costs incurred in 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 monthly return that is filed on a timely basis with a remittance of all bed taxes due. The deduction may not exceed one hundred dollars (\$100.00) for any reporting period and may not be taken if any bed tax, penalty, or interest is due for any previous reporting period.

Section 04.14.070 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 Council. 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 04.15.080 of this ordinance within such three-year (3-year) period, unless the operator waives the protection of this section.

b. In order to facilitate the administration and enforcement of the provisions of this ordinance, each operator or person 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, supporting records, and other records prescribed by the City official administering this ordinance. 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 official administering this ordinance, a operator shall make available for examination in the City the books, records, and other documentation of the operator unless said official authorizes examination to be conducted at a different location.

Section 04.14.080 Delinquency – Failure to Submit Return or to Remit Taxes – Assessments

a. Whenever the City official administering this ordinance reasonably believes a return contains inaccurate reporting or whenever any operator has become delinquent in the submission of the required monthly return or in remitting sales taxes, there shall be mailed to the delinquent operator's last known address a written demand by certified mail, return receipt requested for 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 official administering this ordinance may make a sales tax assessment against the taxable revenue received by the operator during the monthly period in question. A copy of the assessment shall be sent to the operator at his last known address by certified mail, return receipt which time the operator shall make available for examination the books, papers, records, and other requested. The operator shall have a right to a hearing before the City official administering this ordinance with documents pertaining to the revenue of the period involved in the assessment. The operator may exercise his right to a hearing by delivering to the City Clerk or City official administering this ordinance within fifteen (15) days of the date the notice was mailed a written request for a hearing. The City Clerk or official administering this ordinance 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 operator'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 operator 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 04.14.090 Protest of Tax and Appeal

a. A buyer who protests the payment of the tax levied under this ordinance shall pay the tax and shall provide the operator and the City official administering this ordinance 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 operator's name, mailing address, telephone number, and the basis for the protest.

b. If the operator protests his liability on an assessment under Section 04.14.080, which has become final, he 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 operator under written protest filed at or before the time of payment.

Section 04.14.100 Appeals

a. Informal Appeal:

For controversies involving bed taxes, penalties, and interest not exceeding five hundred dollars (\$500.00), or involving procedures implemented by the City official administering this ordinance, an appeal by a financially aggrieved taxpayer or merchant 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 official administering this ordinance 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 bed 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 “A” of this section, there is established a Board of Appeals which shall consist of the City Council.

2. The City Council shall adopt rules of 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 04.14.110 Forgiveness of Uncollected Taxes, Penalties, and Interest

The City Council, or the City official administering this ordinance 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 (owed by a operator to the City) upon a determination by the City official administering this ordinance that such uncollected sales taxes have never been collected by a substantial portion of a clearly definable class of operator, or, which have never been collected on a substantial portion of a clearly defined class of type of transaction or service.

Section 04.14.120 Criminal Liability

Any person, firm, co-partnership, corporation, or an officer, director, or agent of a corporation 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 04.14.130 Registration

a. An operator, firm, co-partnership, corporation or other business entity shall register with the city official administering this ordinance before making rentals within the City.

Section 04.14.140 Deposit by Non-Residents

a. A person, corporation, or other association that is about to make rentals shall first register with the City official administering this ordinance, upon evidence of an Alaska Business License held by said person, firm, co-partnership, corporation, or other business entity, and shall make the deposit required by this section unless the person has been a resident of the City for six (6) months prior to registering or the 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).

b. The deposit must be refunded upon written request and a determination by the City official administering this ordinance that:

1. The operator 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 operator has filed a Statement that he/she has ceased engaging in transactions within the City and has remitted all sales taxes due; and

3. The deposit must be refunded within thirty (30) days of the receipt of the request unless the City official administering this ordinance has initiated an audit of the operator or has otherwise questioned a return made during the period under consideration.

c. The City official administering this ordinance may order the withdrawal from the deposit of the operator so much as said official determines is required to make up for any deficiency or late payment of taxes. No operator may engage in transactions within the City after receipt of written notice that the City official administering this ordinance has withdrawn all or a portion of the operator's deposit for application to a delinquent or insufficient payment of bed taxes. Upon the deposit with the City of funds restoring the deposit to its original amount or such higher amount as the City official administering this ordinance determines is appropriate in the light of the actual sales experience of the operator, the operator may again engage

in transactions. A operator may not deduct the deposit from his/her last or any other sales tax return.

Section 04.14.150 Reserved

Section 04.14.160 Sale of Business – Final Tax Return – Liability of Purchaser

a. If any operator sells, assigns, transfers, conveys, leases, forfeits, or abandons the business to another person, the operator shall make a final bed 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 bed 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 operator shall file with the City official administering this ordinance an informational notice identifying the name and address of each person or entity involved in the transaction, the nature of the transaction, and the effective date of the transactions.

Section 04.14.170 Suits for Collection

Taxes due but not paid or taxes collected but not transmitted may be recovered in an action at law against the transient guest or the hotel/motel operator. Tax returns shall be prima facie proof of taxes collected but not transmitted.

Section 04.14.180

Lien for Tax, Interest, and Penalty

a. The tax, interest, 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 person 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 person is sold at foreclosure sales. The lien is not valid as against a prior mortgagee, pledger, 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; and
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 04.14.190

Collected Taxes

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

Section 04.14.200

Use of Proceeds

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

b. In accordance with the Petition for Incorporation, fifty percent (50%) of the collected four percent (4%) Bed Tax may be made available to the visitor industry represented by the Gustavus Visitors' Association for tourism enhancement, upon submission and approval of a yearly marketing plan developed by the Gustavus Visitors' Association.

This Room Tax Ordinance shall become effective July 8, 2004. Reservations booked after July 8, 2004, shall be taxed.