

**ORDINANCE NO. 2015-1
(EFFECTIVE ON: January 6, 2016)**

**AN ORDINANCE PROVIDING FOR THE ADMINISTRATION OF THE
GARDINER RESORT AREA DISTRICT**

PURSUANT TO THE AUTHORITY VESTED IN THE GARDINER RESORT AREA DISTRICT BOARD OF DIRECTORS UNDER §§7-6-1505, 7-6-1542, AND 7-6-1547, MCA, BE IT ORDAINED BY THE BOARD OF DIRECTORS OF THE GARDINER RESORT AREA DISTRICT TO ADOPT ORDINANCE NO. 2015-1 AS FOLLOWS:

WHEREAS, the Gardiner Resort Area District (“District”) was approved by the qualified electors residing within the Gardiner Resort Area on May 5, 2015; and

WHEREAS, members of the District Board of Directors (“Board”) were duly elected by the qualified electors residing within the District on November 3, 2015; and

WHEREAS, the Board has the authority to adopt administrative ordinances pursuant to §7-6-1542, MCA,

NOW THEREFORE, the Board adopts the following administrative ordinance:

Section 1. Definitions: For purposes of this Ordinance, the following definitions apply, some of which are the same definitions as set forth in §7-6-1501, MCA.

(1) “Administrative officer” means the person employed or retained by the District Board to assist in the administration of the District.

(2) “Antique” means a relic, object, work of art, piece of furniture, or decorative object represented or marketed as an antique. An antique, as defined herein, shall be deemed a luxury item and not a necessity of life.

(3) “Board” or “District board” means the board of directors of the Gardiner Resort Area District elected pursuant to §§7-6-1544 and 7-6-1545.

(4) “District” means the Gardiner Resort Area District created pursuant to §§7-6-1531-1550, MCA.

(5) “Luxuries” means any gift item, luxury item, or other item normally sold to the public or to transient visitors or tourists. The term does not include food purchased unprepared or unserved; medicine, medical supplies and services; appliances; hardware supplies and tools, or any necessities of life.

(6) “Medical supplies” means items that are sold to be used for curative, prosthetic, or medical maintenance purposes, whether or not prescribed by a physician.

(7) “Medicine” means substances sold for curative or remedial properties, including both physician prescribed and over-the-counter medications.

- (8) "Sale" or "sold" for purposes of the imposition of the resort tax means where the goods, services or luxuries are purchased or partially or fully occurring.
- (9) "Resale" means good or services sold for wholesale purposes.

Section 2. Effective Date of the Resort Tax. The resort tax became effective on June 1, 2014.

Section 3. Duration of the Resort Tax. The resort tax is in effect from June 1st through September 30th for twenty (20) years commencing on June 1, 2014 and terminating on September 30, 2034.

Section 4. Effective Date of the Gardiner Resort Area District. The District became effective on May 5, 2015.

Section 5. Rate of the Resort Tax. The rate of the resort tax is three (3%) of the retail value of all goods and services sold by lodging and food service establishments, establishments that sell alcoholic beverages by the drink, destination recreational facilities and on luxuries sold by other establishments, as further clarified and specified in §§8 & 9 below.

Section 6. Imposition of Resort Tax in the Gardiner Resort Area District. Pursuant to the election held on April 8, 2014, a resort tax was imposed on the retail value of goods, services and luxuries sold within the Gardiner Resort Area as further clarified and specified in §§8 & 9 below.

Section 7. Collection of Resort Tax. Establishments that sell goods, services or luxuries as further clarified and specified in §§8 & 9 below, within the District, must collect the resort tax on said goods, services, and luxuries and remit said resort taxes to the District.

Section 8. Taxation of Goods and/or Services Sold at Specific Establishments Subject to the Resort Tax: (1) All goods and services sold at the following establishments in the District, other than those sold for resale within the district, are subject to the resort tax:

- (a) Hotels, motels, and other lodging establishments;
- (b) Restaurants, fast food stores, and other food service establishments;
- (c) Bars, taverns, and other public establishments that serve alcoholic beverages by the drink; and
- (d) Destination ski resorts and other recreational facilities.

(2) Establishments that sell luxuries as further clarified and specified in §9 below must also collect a tax on such luxuries.

Section 9. "Luxuries" Subject to the Resort Tax: The following goods and services sold at establishments other than those establishments listed in §8(1) above, are deemed to be "luxuries" and subject to the resort tax unless sold for resale within the District. "Luxuries" purchased, reserved, committed or occurring fully or partially within the boundaries of the District are considered to be sold in the District:

(1) All clothing including, but not limited to, logo wear, recreational clothing, gear and accessories;

(2) All sporting goods;

(3) Automobile rentals;

(4) Rental of all recreational equipment, including but not limited to snowmobiles, all-terrain vehicles, skis, snowboards, bicycles, kayaks, motorcycles, campers, boats and boat motors;

(5) All recreational activities and lessons, and guided tour services provided on land, water or in air, including but not limited to horseback riding, hiking, skiing, snowboarding, fishing, hunting, golfing, backcountry dining trips and other outfitter trips, rock climbing, cycling, rafting, canoeing, kayaking, dog sledding, scenic rides and ballooning;

(6) All souvenirs, curios, jewelry, antiques, books, art and photographic items, food gift items prepared and sold as a package or unit, flowers, and fireworks;

(7) All prepared or served food, and catering;

(8) All alcoholic beverages including but not limited to beer, wine, liquor or other alcoholic beverages sold in an open container or by the drink;

(9) All non-alcoholic beverages sold in an open container or by the drink;

(10) All entertainment including but not limited to tickets or other admissions to concerts, theaters, movies, shows, plays, sporting events and firework shows; rental movies, rental video games and all related rental equipment;

(11) Massages unless prescribed by a physician, facials and other spa services, manicures and pedicures;

(12) All rental agreements for lodging facilities except rental agreements for a duration longer than thirty (30) days and employee housing regardless of duration or location within the District;

(13) Services for private events such as weddings, meeting groups and reunions, including but not limited to space rental, equipment rental, photography, florist, catering and event management; and

(14) Goods and services not exempt from taxation in section 10 below.

Section 10. Goods and Services Deemed “Necessities of Life” and Exempt from the Resort

Tax: The following goods and services sold at establishments in the District, other than those establishments enumerated in section 8(1) above, are deemed “necessities of life” and exempt from the resort tax:

(1) Food purchased unprepared or unserved;

(2) Medicine, medical supplies and services;

(3) Household appliances;

(4) Hardware supplies, tools and other construction related supplies; and tools;

(5) School activities and nonprofit youth programs;

(6) Utilities and utility services;

- (7) Wholesale merchandise for resale at retail or used in the purchaser's business as supplies;
- (8) Gasoline and other motor vehicle fuel;
- (9) Propane and other home fuels;
- (10) Alcoholic beverages sold at agency liquor stores, or by the bottle;
- (11) Automobiles and trucks;
- (12) Automobile rental used during emergency repairs;
- (13) Labor and parts for automobile and truck repair;
- (14) All no-luxury labor and services, including but not limited to services provided by a physician;
- (15) All business payroll and labor costs;
- (16) Lumber;
- (17) Furniture and fixtures;
- (18) Real estate sales;
- (19) All rental agreements when contracted for a period longer than thirty (30) consecutive days;
- (20) Newspapers, and books and publications required by accredited institutions;
- (21) Office supplies;
- (22) Goods sold at garage sales;
- (23) Services provided by non-profit religious organization;
- (24) Personal hygiene and related products and diapers;
- (25) Industrial, commercial and household strength cleaning materials including soaps, laundry and dishwashing detergents and disinfectants;
- (26) Postal products and services;
- (27) Other "necessities of life" as determined by the Board.

Section 11. Reimbursement of Administrative Fee to Establishments Collecting the Resort Tax: Pursuant to §7-6-1505, MCA, each establishment collecting the resort tax is entitled to withhold the authorized maximum of five percent (5%) of the resort tax collected to defray the establishment's costs for the administration of the tax collection. The administrative fee may be withheld by the establishment at the time of remitting the collected resort taxes to the District.

Section 12. Remittance of Resort Tax to the District: The District Board or its designee(s) is responsible for receiving and accounting for the resort tax revenue collected within the District.

Section 13. Collection and Time of Remittance of Resort Tax to District-Delinquency:

(1) Establishments that sell goods, services or luxuries within the District must collect the resort tax and remit the resort taxes collected to the District.

(2) Resort taxes must be remitted on a monthly basis to the District and be postmarked or received by the District on or before the last day of each month for the prior month. If the

last day falls on a Saturday, Sunday, or holiday, resort taxes must be postmarked or received by the District by no later than the next business day.

(3) The resort taxes collected must be remitted to the District at P.O. Box _____, Gardiner, Montana or other designated address.

(4) Resort tax remittances received after the last day of the month following the reporting month, will be deemed delinquent and subject to the penalties, interest and late fees described in Section 14.

Section 14. Enforcement of Collection and Remittance of the Resort Tax: The District Board shall enforce the collection and remittance of the resort tax and oversee the methods and procedures to be used in the enforcement.

Section 15. Penalties, Interest, Late Fees and Liens: (1) The following penalties, referrals, or liens may be imposed on an establishment as authorized by section 7-6-1505, MCA, for failure to collect the resort taxes due, to report the resort taxes collected, to remit the resort taxes due, and for violation of this Ordinance:

(a) A criminal penalty, not to exceed a fine of \$1,000.00 or six months imprisonment, or both;

(b) A civil penalty if the District prevails in a lawsuit for the collection and remittances of resort taxes, not to exceed fifty percent (50%) of the resort taxes determined to be due, plus the costs and attorney fees incurred by the District in the enforcement action;

(c) Upon referral to the County Commissioners of Park County, revocation of the county license held by the offending establishment, if applicable;

(d) Upon proper legal procedure secure and file a lien against the property of the establishment failing to report, collect or remit the resort taxes due.

(2) Delinquent taxes shall bear interest at the rate of one percent (1%) per calendar month, for the delinquent month (12% per annum). The assessed interest of one percent per month, shall apply after the last day of the month in which the remittance is due, and to each subsequent month, regardless of when payment is made; and

(3) A one-time late fee of \$30.00 shall be assessed for each reporting month that is delinquent.

(4) A delinquent establishment may appeal the imposition of a penalty, interest and late fee to the District Board if the notice of appeal is made in writing and filed with the District within thirty (30) days of receiving the letter or notice of delinquency. The District Board shall fix a time and place for hearing the appeal and shall inform the establishment in writing of such time and place. The findings of the District Board shall be final and mailed or personally delivered to the establishment

Section 16. Reporting Forms for Resort Tax – Confidentiality:

(1) The District Board shall provide each establishment in the District responsible for collecting and remitting the resort tax with the proper forms for reporting and accounting for the resort taxes collected.

(2) The records and reporting forms submitted to the District by the establishments shall be confidential and not open to public inspection unless so ordered by the Board pursuant to Article II, Section 9 and 10 of the Constitution of the State of Montana, a court of competent jurisdiction, or upon the filing of an action in District Court.

Section 17. Audits: Under the direction of the District Board, audits may be conducted of establishments collecting and remitting the resort tax. All establishments must cooperate in the conduct of said audits. Failure to cooperate with an audit shall constitute a violation of this Ordinance.

Section 18. Maintenance of Records by Establishments Collecting the Resort Tax: Each establishment required to collect and remit resort taxes to the District Boards shall keep and maintain all records necessary to determine the accuracy of the taxes collected and remitted for a period of not less than five (5) years. Such records, upon request, must be made available for audit and inspection at all reasonable times. Such records include but are not limited to: all electronic documents and materials, books, ledgers, registers; original records necessary to document gross receipts of the establishment; specific documentation of exempt sales; and correct copies of state and federal income tax returns, schedules and forms.

Section 19. Appropriation, Expenditure, and Purpose of Resort Tax: (1) The resort tax revenue derived from the imposition of the resort tax will be appropriated by the District Board and expended for the following purposes:

- (a) For each year until 2034, from resort tax revenue collected during the preceding fiscal year, 5% for property tax relief; and 5% to rebate fees that appear on the property tax bill, in equal amounts to each taxpayer;
- (b) 5% to a Community Services and Cultural grant account;
- (c) 5% to fund the operational expenses of the resort tax;
- (d) 50% to an infrastructure, and community development grant account including, but not limited to: grants funding emergency services, major transportation improvements or maintenance, water and sewer work, energy efficiency and renewable investment in existing or future public facilities and other local projects as identified by the Board;
- (e) 15% to a Visitor Center capital grant account which will revert to the general infrastructure account listed above once the visitor center is fully funded;
- (f) 10% to a Visitor Center operations and maintenance account; and
- (g) 5% reimbursement of administrative fee to establishments collecting the resort tax as more fully described in §11 above.

(2) The 5% appropriations for (A) and (C) shall be set aside and separated from the resort tax receipts in subaccounts.

(3) Resort taxes shall be used for reimbursement or payment related to any litigation on the resort tax.

Section 20. Authority to Employ and/or Retain an Administrative Officer and other Employees: The District Board may employ and/or retain the services of an administrative officer and other employees to assist in the administration of the resort tax. Such person(s) shall serve at the pleasure of the District Board.

Section 21. Ratification: The District Board hereby ratifies all prior appropriations and obligations of resort tax funds made by the Park County Commission which preceded the creation and/or full implementation of the Gardiner Resort Area District as authorized by law.

Section 22. Severance Clause: If any section, subsection, subdivision, paragraph, sentence or phrase of this Ordinance or any part thereof is for any reason held to be unconstitutional or in violation of any law, such decision shall not affect the validity of the remaining portions of this Ordinance or any part thereof.

Section 23. Amendment of Ordinance: This Ordinance may be amended at any time hereafter as may be necessary to effectively administer the resort tax and must include the requirements of §7-6-1505, MCA, but may not be amended in substance to alter the specifications contained in the original ballot approved by the electors creating the resort area and imposing the resort tax.

Section 24. Map of the Gardiner Resort Area District. A map of the District as approved by the electors on May 5, 2015, is attached to this Ordinance for reference.

PASSED AND ADOPTED BY THE BOARD OF DIRECTORS OF THE GARDINER RESORT AREA DISTRICT ON THE FOLLOWING DATES:

1st Reading: R. Demaree Vote: Unanimous Date: November 18, 2015
Chairperson

2nd Reading: R. Demaree Vote: Unanimous Date: December 7, 2015
Chairperson

BY: R. Demaree
Chairperson