

# Town of West Yellowstone

Town Council Work Session

Tuesday, August 11, 2015

West Yellowstone Town Hall, 440 Yellowstone Avenue

West Yellowstone, Montana

6:00 PM

## Agenda

### Public Comment Period/Council Comments

Resort Tax, West Yellowstone Ski Education Foundation (WYSEF)

Discussion

Operations Manager Recruitment Process

Discussion

**No action will be taken, the Public is invited to attend.**



**ORDINANCE No. 258**

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF WEST YELLOWSTONE, MONTANA REVISING THE WEST YELLOWSTONE MUNICIPAL CODE TO REVISE THE RESORT TAX ORDINANCE AMENDING SECTION 3.12.**

WHEREAS, the Town Council of the Town of West Yellowstone has enacted a Resort Tax Ordinance pursuant to §7-6-1502 et. seq, MCA; and

WHEREAS, the Town Council of the Town of West Yellowstone believes that changes and updates to that ordinance are in order for the benefit and well being of the citizens of the Town of West Yellowstone; and

WHEREAS, the Town Council has consider the proposed amendments to the Town Code at a public meeting on April 21, 2015 and at a public hearing on May 5, 2015, and allowed for public comment at both; and

WHEREAS, after due consideration, the Town Council of the Town of West Yellowstone desires to adopt the changes proposed and discussed:

NOW THEREFORE, BE IT ORDAINED by the Town Council of the Town of West Yellowstone that the amendments that are set out on the attached Exhibit A, which effectively amend the municipal code of the Town of West Yellowstone, more specifically Sections 3.12.010 through 3.12.190 as set out on the attached exhibit:

**Section 1: See attached Exhibit A**

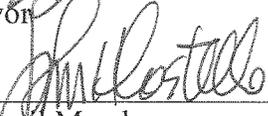
**Section 2: REPEALER:** All ordinances and parts of ordinances in conflict with provisions of this ordinance, except as provided above, are hereby amended or repealed.

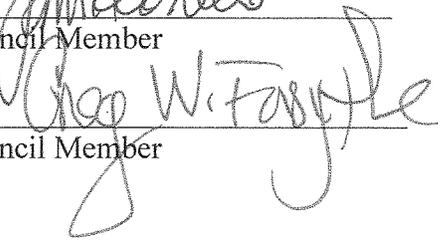
**Section 3: EFFECTIVE DATE:** This ordinance shall be in full force and effect thirty (30) days after final adoption by the Town Council of the Town of West Yellowstone.

**Section 4: SEVERABILITY:** If any portion of this ordinance or the application therefore to any person or circumstance is held invalid, such invalidity shall not affect other provisions of this ordinance which may be given effect without the invalid provisions or application and, to this end, the provisions of this ordinance are declared to be severable.

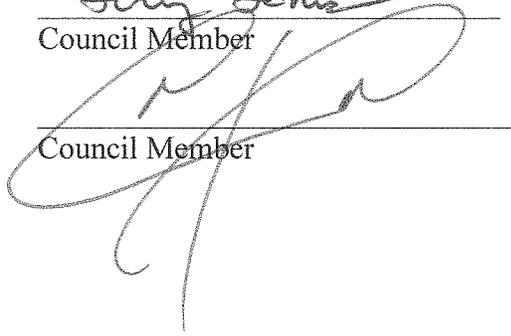
PASSED BY the Town Council and approved by the Mayor of the Town of West Yellowstone, Montana, this 5 day of May, 2015.

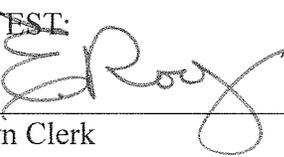
  
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Mayor

  
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Council Member

  
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ATTEST:  
  
\_\_\_\_\_  
Town Clerk

### 3.12.010 Created--General provisions--Imposed.

A. There is imposed a resort tax on the retail value of all goods and services sold or provided by businesses, groups or organizations located within the town, regardless of the method or manner of the transaction, by the following:

1. Hotels, motels, condominiums, vacation rentals, cabins and any other nightly or weekly lodging or camping facilities;
2. Restaurants, fast food stores, convenience stores, and other food service establishments;
3. Taverns, bars, nightclubs, lounges and other public establishments that serve beer, wine, liquor or other alcoholic beverages by the drink;
4. Groups, organizations, or temporary vendors, with or without tax exempt status;
5. Any business that sells luxuries as defined in 3.12.040 below.

Businesses or organizations that sell luxuries must collect a tax on such luxuries.

### 3.12.020 Definitions.

A. The terms "luxuries," "medical supplies," and "medicine" shall be defined as set forth in MCA Section 7-6-1501, and as set forth in more detail below.

B. All references to the "resort tax" and "tax" in this chapter shall refer to the resort tax passed by the electorate of West Yellowstone and as enacted by the ordinance codified in this chapter.

### 3.12.030 Imposed.

There is imposed a duty on each operator of any of the establishments mentioned in this chapter to collect, upon sale, the tax imposed as set forth in this chapter on all customers, regardless of state or federal tax status, with the only exceptions being those set out in § 3.12.130.

### 3.12.040 Luxuries tax.

Each business, group or organization subject to the tax shall collect the same on the retail value of all goods and services sold within the town by the establishments set forth in Section 3.12.010. All luxuries shall be taxed.

"Luxuries" shall include but not be limited to:

a.) any gift item, luxury item or service, or other item, or other item normally sold to the public or to transient visitors or tourists; but the term does not include unprepared food, medicine, medical supplies and services, or any necessities of life.

b.) sporting goods or the rental thereof,

c.) rentals on or for the following snowmobiles, automobiles, all-terrain vehicles, motorcycles, bicycles, skis, boats, campers, boat motors;

d.) recreational lessons and recreational services, including float trips, guided trips, skiing, fishing trips, hunting trips, backcountry dining trips, other outfitter trips; horseback riding; golfing, rock climbing, cycling, rafting, canoeing, kayaking, dog sledding and ballooning, tours and other attractions;

e.) all souvenir and localized items such as imprinted hats and T-shirts and curios; all nonfood items such as , housewares (other than household appliances), automotive supplies and parts; ice; retail liquor, beer and wine, except that sold at state stores.

f.) all attractions such as arcades, bowling centers, concerts, movie/theater tickets and all concessions; event and entertainment tickets (regardless of the method or location of purchase), cover charges, rodeo tickets, voluntary recreational activities such as golfing, swimming, skiing, tanning beds , and other voluntary recreational daily tickets and season passes.

g.) any other goods or services not exempt by §3.12.130 below.

### 3.12.050 Rate--Duration.

A. The exact rate of the resort tax is three percent.

B. The duration of the resort tax as approved by the voters on November 5, 1985 is twenty years from its effective date. The effective date of the resort tax is January 1, 1986.

C. The duration of the resort tax renewal as approved by the voters on November 5, 2002, is twenty years from its effective date. The effective date of the resort tax renewal is January 1, 2006.

### 3.12.060 Resort tax payment.

The resort taxes collected by a business in any month are to be paid to the town on or before the twentieth day of the following month, or if such day falls on a Saturday, Sunday or holiday, then on the next business day. Resort tax payments sent by mail or private courier must be received by the town on or before the twentieth day of each month, or if such day falls on a Saturday, Sunday or holiday, then on the next business day.

**3.12.070 Collection duties and responsibilities.**

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- A. The office responsible for receiving and accounts for the resort tax receipts is the town clerk and treasurer.
- B. The operations manager and his/her agents shall be responsible for enforcing the collection of resort taxes and shall be responsible for overseeing the methods and procedures to be used in enforcing the collection of the resort taxes.

**3.12.080 Resort tax collection fee.**

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Each collecting merchant shall be entitled to withhold two and one-half percent of the resort taxes collected to defray costs for collecting the resort tax, providing that resort tax payments are timely made in accordance with Section 3.12.060. The resort tax collection fee may be withheld by the business at the time of paying the tax to the town. Failure to withhold the fee shall constitute waiver and forfeiture of the same.

**3.12.090 Records and forms.**

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The town shall provide each business that is required to collect resort tax with the proper forms for reporting and making payment to the town. Resort tax payments to the town shall be tabulated and accounted for on forms prescribed and furnished to the business by the town. The records and forms held by the town shall be confidential, and shall not be open to inspection by the public unless so ordered by a court of competent jurisdiction. Each business that is required to collect resort tax must maintain adequate accounting records and pay the resort tax to the town on the forms provided by the twentieth day of the following month. The accounting records maintained must be accurate, verifiable, and provide a reasonable audit trail. Failure to maintain adequate accounting records constitutes a violation of this chapter.

**3.12.100 Preservation of records.**

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Every business required to collect and pay resort tax shall keep and preserve for a period of not less than three years all records necessary to determine the accuracy of the taxes paid, and shall make these records available for audit or inspection on its business premises at all reasonable times. Any audit or inspection shall be conducted in West Yellowstone on the premises of the business or establishment collecting the resort tax or at such other location as the town may determine.

### **3.12.110 Random audit.**

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Periodic random audits shall be conducted under the direction of the mayor, operations manager or a designated representative and all business operators shall cooperate in all respects in the conduct of the audits. Any random audit shall be for the previous calendar year, and shall be conducted in West Yellowstone on the premises of the business or establishment collecting the resort tax or at such other location as the town may determine. If the audit determines a deficiency it will be at the discretion of the town to audit the previous two years and require a follow up audit on the next reporting year. Payments and or arrangements for payment of the amount determined as outstanding resort tax owed must be paid or arranged within thirty (30) days of the date of the notification of the audit results. Failure to cooperate in any audit or inspection of records, including the failure to make the appropriate records available within fourteen (14) calendar days of the auditor's scheduled audits in West Yellowstone, may result in an automatic non-renewal of the business license for the subsequent business license year and shall constitute a violation of the provisions of this chapter.

### **3.12.120 Appeals.**

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Any business may appeal to the town council any assessment of penalty or interest; provided, that notice of appeal in writing is filed with the town clerk within thirty days of the serving or mailing of the determination of the amount of penalty and interest due. The town council shall on the next immediate regular town council meeting fix the time and place for hearing the appeal and the town clerk shall cause notice in writing to be personally served by a peace officer upon the operator. The findings and decision of the town council shall be final and conclusive and shall be served upon the appellant in the manner prescribed for service of notice of hearing or by certified mail directed to the business operator's last known address. Any amount found to be due shall be immediately payable upon service of the findings and decision.

### **3.12.130 Exemptions.**

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Notwithstanding Section 3.12.040, however, the following goods and services shall be exempt from the tax:

- A. Utilities and utility services;
- B. Medical supply services and medicine;
- C. Wholesale merchandise for resale at retail or used in the purchaser's business as supplies;
- D. Gasoline and other motor vehicle fuel;
- E. Liquor sold at state liquor stores;

- F. Propane and similar home fuels;
- G. Sales of automobiles, trucks, snowmobiles, motorcycles, all-terrain vehicles, bicycles, skis, boats, outboard motors and chain saws;
- H. Labor on automobiles, trucks, snowmobiles, motorcycles, all-terrain vehicles, bicycles, boats, outboard motors and chain saws;
- I. All non-recreational labor, services and non-recreational state licensed professions and trades;
- J. All payroll and business and labor costs;
- K. Lumber, building supplies and tools, and other tools;
- L. Household appliances;
- M. Any hotel, motel, campground or other lodging facility occupancy, with respect to any person or persons who occupy a room or a space for a period longer than thirty consecutive calendar days; provided, that such person certifies prior to occupancy that the occupancy will exceed thirty consecutive calendar days and does in fact exceed thirty consecutive calendar days;
- N. All sales of goods from businesses via the Internet, catalog or telephone that are shipped out of town and the purchaser never enters the boundaries of the town shall be exempt. Any goods, services or luxuries that are sold by any means and that will either be obtained, consumed, or enjoyed within the town are not exempt. Further, the services described in 3.12.040 above and sold by a business located within the town but consumed or enjoyed outside the boundaries of the Town are not exempt, regardless of the method of payment.

**3.12.140 Use of tax moneys.**

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- A. The tax moneys derived from the resort tax may be appropriated by the town council for any activity, undertaking, or administrative service that the municipality is authorized by law to perform, including costs resulting from the imposition of the tax.
- B. There is established a marketing and promotion (MAP) fund for the town. Two and one-half percent of the three percent resort tax collected by the collecting merchant shall be dedicated exclusively to the MAP fund, which fund shall be used solely for the marketing and promotion of West Yellowstone and the surrounding area, as well as the associated costs of administering the fund. The town council may appropriate additional resort tax receipts to the MAP fund.

C. The town council shall by resolution establish a board of not less than three or more than seven qualified persons to oversee the MAP fund. At least one member of this board shall be a sitting member of the town council or the council's designee. The board shall establish policies and procedures for its operation and the general management of the fund in accordance with the council's resolution establishing the board. The board shall also select individual marketing and promotion projects and approve expenditure of funds for such projects, subject to approval by the town council.

#### 3.12.150 Reduction of property tax levy.

Annually anticipated receipts from the resort tax must be applied to reduce the municipal property tax levy for the fiscal year in an amount equal to five percent of the resort tax revenues derived during the preceding fiscal year.

#### 3.12.160 Property tax relief fund.

In the event the town receives more resort tax revenues than had been included in the annual municipal budget, it shall establish a municipal property tax relief fund, and all resort tax revenues received in excess of the budget amount must be placed in the fund. The entire fund must be used to replace municipal property taxes in the ensuing fiscal year.

#### 3.12.170 Resort tax administration.

The town shall administer resort tax collections according to the following rules:

- A. Resort tax payments shall be made to the town finance office by the established deadline.
- B. Failure to report or make resort tax payments by the payment deadline shall result in forfeiture of the resort tax collection fee for the month in which the payment is due.
- C. Failure to pay resort tax before the end of the month in which the payment is due shall result in an administrative fee of either: (1) twenty-five dollars for businesses with gross sales of one thousand five hundred dollars or less for the reported month; or (2) fifty dollars for businesses with gross sales in excess of one thousand five hundred dollars for the reported month, which shall be in addition to any civil penalties awarded to the town in a suit for collection of resort tax.
- D. At the end of each subsequent month after the original payment is due, the town will assess interest at the rate of three percent (3%) of any delinquent resort tax, which shall be assessed on the first business day of the subsequent month and on the first day of each month thereafter until the total amount due, including the

administrative fee, is paid in full. This and all administrative fees shall be assessed in addition to any civil penalties awarded to the town in a suit for collection of resort tax.

E. The town may revoke the business license of any person or business that violates any provision of this chapter. The town may revoke a violator's business license either through the administrative procedure described in Chapter 5.04 or through a court order or judgment in accordance with Section 3.12.180.

3.12.180 Violation--Civil penalties.

For failure to report taxes when due, failure to pay taxes when due, and other violations of this chapter, the town may seek the following penalties or remedies:

- A. A court judgement in the amount of all unpaid resort taxes, including any unpaid administrative fees assessed under Section 3.12.170 and any resort tax collection fees forfeited in accordance with Section 3.12.080;
- B. Interest at the rate of ten percent (10%) per annum on unpaid resort taxes or administrative fees from the due date or assessment date until paid;
- C. A civil penalty in the amount of fifty percent (50%) of the unpaid resort taxes, which includes forfeited resort tax collection fees, plus all costs and attorney's fees incurred by the town in any court action;
- D. An order requiring the delinquent business to undergo a financial audit by the town or its representatives to determine the proper amount of resort taxes due, including payment by the business of all audit costs and expenses incurred by the town or its representatives;
- E. Revocation of the violator's town business license, either through judicial order or the administrative procedure described in Chapter 5.04;
- F. Any other penalty, remedy or judicial relief to which the town is entitled.

3.12.190 Violation--Criminal penalties.

A person or business violating any provision of this chapter is guilty of a misdemeanor and subject to a fine not exceed one thousand dollars for each violation, or imprisonment not to exceed six months for each violation, or both.