

**TOWN OF ENNIS
ORDINANCE NO. 133**

**AN ORDINANCE PROVIDING FOR THE ADMINISTRATION OF THE
RESORT TAX IN THE RESORT COMMUNITY OF ENNIS, MONTANA**

BE IT ORDAINED BY THE GOVERNING BODY OF THE RESORT COMMUNITY OF ENNIS, MONTANA PURSUANT TO THE AUTHORITY GRANTED UNDER §7-6-1505, MCA, TO ADOPT ORDINANCE NO. 133 WHICH READS AS FOLLOWS:

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

(a) "Governing body" means the Town Commission of Ennis, Montana, which is the governing body of the resort community of Ennis as described in §7-6-1505(1), MCA.

(b) "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 as defined in §7-6-1501(1), MCA.

(c) "Medical supplies" means items that are sold to be used for curative prosthetic or medical maintenance purposes whether or not prescribed by a physician as defined in §7-6-1501(2), MCA.

(d) "Medicine" means substances sold for curative or remedial properties, including both physician prescribed and over-the-counter medications as defined in §7-6-1501(3), MCA.

Section 2. Effective Date and Duration: The resort tax shall be effective for (10) ten years beginning in 2011 and shall be in effect from July 1st through and including September 30th of each year.

Section 3. Rate of the Resort Tax: The rate of the resort tax is 3%.

Section 4. Imposition of the Resort Tax: Pursuant to an election conducted on or about March 1, 2011 in Ennis, Montana, a resort tax was approved by a majority of the qualified electors voting on the question of the imposition of the resort tax.

Section 5. Items Subject to the Resort Tax: (1) The following goods and services are subject to the resort tax:

- (a) All goods and services sold by the following establishments;
 - i. Hotels, motels, and other lodging establishments,

- ii. Restaurants, fast food stores, and other food service establishments,
- iii. Bars, taverns and other public establishments that serve alcoholic beverages by the drink,
- iv. Destination recreational facilities.
- (b) Luxuries sold by other establishments; and
- (c) All other goods and services not exempt in Section 6 of this Ordinance.

Section 6. Goods and Services Exempt from the Resort Tax: (1) The following goods and services are exempt from the resort tax:

- (a) Food purchased unprepared or unserved;
- (b) Utilities and utility services;
- (c) Medicine, medical supplies and services;
- (d) Wholesale merchandise for resale at retail or used in the purchaser's business as supplies;
- (e) Gasoline and other motor vehicle fuel and supplies;
- (f) Alcoholic beverages sold at agency liquor stores or by the bottle;
- (g) Propane and other home fuels;
- (h) Automobiles and trucks;
- (i) Labor and parts for automobile and truck repair;
- (j) All non-luxury labor and services, including but not limited to services prescribed by a physician;
- (k) Lumber, hardware supplies, tools and other construction related supplies;
- (l) All business and labor costs;
- (m) Household appliances, furniture and fixtures unless the item qualifies as a luxury item;
- (n) Real estate sales;
- (o) All rental agreements when contracted for a period longer than thirty (30) consecutive days;
- (p) Newspapers;
- (q) Office supplies;
- (r) Garage and not for profit thrift store sales;
- (s) Personal hygiene and related products;
- (t) Industrial, commercial and household strength cleaning products;
- (u) Postal products and services;
- (v) Clothing items without advertising or identifying slogans and/or pictures unless the item qualifies as a luxury;
- (w) Clothing items displaying only a brand name;
- (x) Sales at farmers' markets if the goods and services are food purchased unprepared or unserved or qualify as a necessity of life; and
- (y) Other necessities of life.

Section 7. Reimbursement of Administration 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 taxes collected to defray the establishment's costs for the collection, remittance and reporting of the resort tax. The

administration fee may be withheld by the establishment at the time of remitting the resort taxes to the governing body.

Section 8. Appropriation, Expenditure and Purpose of Resort Tax:

(1) The revenue collected from the resort tax shall be appropriated by the governing body as set forth in “A Resolution of the Town of Ennis, Montana, Calling for an Election on the Imposition of a Resort Tax” dated May 25, 2010 and as amended on November 4, 2010, as follows:

(2) A reduction in the municipal property tax levy in each fiscal year in an amount equal to at least 5% but not more than 25% of the resort taxes collected during the preceding fiscal year; and

(3) On any activity, undertaking or administrative service that the town of Ennis is authorized by law to perform including but not limited to water and sewer system improvements and rate reductions, emergency services, law enforcement, parks, bike paths, sidewalks, streets, library services, economic and tourism development and other projects authorized by law.

(4) All resort taxes collected must be spent within the boundaries of the Town of Ennis.

Section 9. Collection and Time of Remittance of Resort Taxes-Delinquency:

(1) Except as indicated in (4) below, establishments that sell taxable goods, services and luxuries within the resort community of Ennis must collect the resort tax and remit the taxes collected to the governing body.

(2) The resort taxes collected annually from July 1st through and including September 30th must be remitted to the offices of the governing body or postmarked on or before November 1st of that year. Remittance address: Town of Ennis/Resort Tax, P.O. Box 147, Ennis, MT. 59729.

(3) The annual remittance of resort taxes made after November 1st shall be deemed delinquent and subject to the penalties, interest and late and other fees authorized by law and set forth in section 10 below.

(4) Resort taxes collected at special events and activities must be remitted to the offices of the governing body or postmarked on or before two (2) weeks following the last day of the event or activity to the address specified in (2) above. Vendors attending three (3) or more events or activities may remit the resort taxes collected as set forth in (2) above.

Section 10. Enforcement - Remedies Available – Interest – Late Fee:

(1) The governing body shall enforce the collection, reporting and remittance of resort taxes.

(2) The following remedies as authorized by §7-6-1505, MCA, are available remedies for the failure of an establishment to collect, report, and remit resort taxes and for violation of this Ordinance:

(a) A criminal penalty not to exceed a fine of \$1,000.00 or six (6) months imprisonment or both;

(b) A civil penalty if the Ennis resort community prevails in a lawsuit for the collection of resort taxes, not to exceed fifty percent (50%) of the resort taxes found to be due and owing, plus the costs and attorney fees

incurred in the enforcement of the reporting, collection and remittance of the resort taxes;

(c) A lien against the property of the establishment secured by applicable legal procedure.

(3) Interest: 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 (1%) per month, shall apply after the last day of the month in which the payment is due and to each subsequent month, regardless of when the payment is made.

(4) Late Fee: A one time late fee of \$30.00 shall be assessed for each reporting month that is delinquent.

Section 11. Reporting Coupons for Resort Tax – Confidentiality:

(1) The governing body shall provide each establishment in the Ennis Resort Community responsible for collecting the resort tax with the proper coupons for reporting and accounting for the resort taxes collected.

(2) The reporting coupons submitted to the governing body by an establishment shall be confidential and not open to public inspection unless so ordered by the governing body pursuant to Article II, Sections 9 & 10 of the Montana Constitution, a court of competent jurisdiction, or upon the filing of an enforcement action in District Court.

Section 12. Audits: Under the direction of the governing body, confidential audits may be conducted of establishments collecting the resort tax. All establishments must cooperate in the conduct of an audit and failure to cooperate with an audit shall constitute a violation of this Ordinance.

Section 13. Maintenance of Records by Establishments: Each establishment required to collect and remit resort taxes to the governing body and shall keep and maintain for a period of not less than five (5) years, all records necessary to determine the verity of the taxes collected and remitted and shall make such records available for audit and inspection at all reasonable times. Such records, whether maintained and developed in hard copy or on a computer or other electronic device, include but are not limited to: accounting books, ledgers, registers, original records necessary to determine gross receipts, specific documentation of exempt sales, and copies of state and federal income tax returns.

Section 14. Ennis Resort Tax Advisory Council-Staggering of Terms: Within 60 days after the resort tax has been approved by a majority of the qualified electors voting on the question, the governing body shall appoint a five (5) member Ennis Resort Tax Advisory Council. The Advisory Council shall make recommendations to the governing body on the administration of the resort tax.

Members shall serve a two (2) year term except for the first round of appointments where two (2) of the members shall serve a 1 year term. Initial terms shall be determined by lot. All successive terms shall be two (2) years and there shall be no term limits imposed on the appointees to this Advisory Council.

The qualifications of the appointees to this Advisory Council are set forth below:

- Three (3) residents of Ennis who are qualified electors on the resort tax question,
- One (1) resident of Ennis who is a qualified elector on the resort tax question and owns a business in Ennis, and
- One person who is not a qualified elector on the resort tax question, does not reside in Ennis and owns a business in Ennis.

Section 15. Savings Clause: If any section, subsection, paragraph or sentence of this Ordinance is for any reason held to be unconstitutional or in violation of any law, such court decision shall not affect the validity of the remaining portions of this Ordinance or any part thereof.

Section 16. Amendment of Ordinance: Except for §§2, 3, 4, 7 and 8 of this Ordinance, the Ordinance may be amended at any time thereafter as may be necessary to effectively administer the resort tax and must include the requirements of §7-6-1505, MCA.

Section 17. Taxability Decisions: The governing body shall maintain a binder containing its decisions on questions of taxability that are presented to it for its consideration. The taxability of the items and services considered by the governing body are in addition to those contained in sections 5 & 6 of this Ordinance. All decisions will be made following applicable notice and hearing requirements established by law.

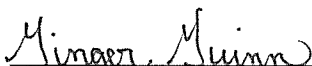
PROVISIONAL PASSAGE: This Ordinance shall become effective only if the question of imposing the resort tax in the resort community of Ennis is approved by a majority of the qualified electors voting on the question on or about March 1, 2011.

READ AND PROVISIONALLY PASSED AND ADOPTED BY THE ENNIS TOWN COMMISSION ON THE FOLLOWING DATES:

1st reading and adoption:  Date: 10-14-2010

2nd reading and adoption:  Date: 11-04-2010

ATTEST:


Ginger Guinn, Clerk

