

CITY AND BOROUGH OF SITKA

ORDINANCE NO. 2021-14

BALLOT PROPOSITION OCTOBER 5, 2021

AN ORDINANCE OF THE CITY AND BOROUGH OF SITKA PROPOSING TO AMEND TITLE 4 "REVENUE AND FINANCE" OF THE SITKA GENERAL CODE BY ADDING A NEW CHAPTER 4.27 "EXCISE TAX ON MOTOR FUEL" TO ESTABLISH AN EXCISE TAX ON MOTOR FUEL SOLD, TRANSFERRED, OR USED IN THE CITY AND BOROUGH OF SITKA, PROVIDING FOR ADMINISTRATION OF COLLECTING THE TAX, AND PROVIDING FOR PENALTIES FOR FAILURE TO PAY TAXES DUE; AND SUBMITTING THE QUESTION OF SUCH AN AMENDMENT TO THE QUALIFIED VOTERS AT THE REGULAR ELECTION ON OCTOBER 5, 2021

1. CLASSIFICATION. This ordinance is of a permanent nature and is intended to become a part of the Sitka General Code.

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 application thereof to any person or circumstances shall not be affected thereby.

3. PURPOSE. The purpose of this ordinance is to raise municipal revenues with an excise tax on motor fuels sold, transferred, or used within the municipality, including motor vehicle fuels and marine fuels. These revenues are intended for maintenance, repair, replacement, and construction of related municipal infrastructure. The proposed ordinance establishes the tax, provides for administration of collecting the tax, and provides for penalties for failure to pay and remit the tax. If ratified by the voters, this ordinance would add a \$.03 per gallon excise tax on motor fuels.

4. ENACTMENT. NOW, THEREFORE, BE IT ENACTED by the Assembly of the City and Borough of Sitka that the Sitka General Code Title 4, entitled "Revenue and Finance" be amended by adding a new Chapter 4.27, entitled "Excise Tax on Motor Fuel", to read as follows:

Title 4
REVENUE AND FINANCE

Chapters:

4.27 Excise Tax on Motor Fuel

Sections:

- 4.27.010 Applicability of chapter.
4.27.020 Excise tax on motor fuel.
4.27.030 Tax exemptions; no deferral for mixed purchases.
4.27.040 Intent and purpose of chapter; taxpayer.
4.27.050 Certificate of registration: eligibility.

- 52 4.27.060 Certificate of registration: required.
- 53 4.27.070 Certificate of registration: application.
- 54 4.27.080 Certificate of registration: denial.
- 55 4.27.090 Certificate of registration: fee, renewal.
- 56 4.27.100 Certificate of registration: expiration.
- 57 4.27.110 Certificate of registration: surrender, suspension, or revocation.
- 58 4.27.120 Certificate of registration: non-transferable.
- 59 4.27.130 Tax return and remittance.
- 60 4.27.140 Amended tax returns.
- 61 4.27.150 Application of payments.
- 62 4.27.160 Tax refunds to dealer.
- 63 4.27.170 Tax refunds to purchaser.
- 64 4.27.180 Confidentiality of records.
- 65 4.27.190 Maintenance and inspection of documents and records.
- 66 4.27.200 Tax avoidance, civil fraud.
- 67 4.27.210 Tax lien.
- 68 4.27.220 Collection of taxes, interest, penalties, and costs.
- 69 4.27.230 Prohibited acts.
- 70 4.27.240 Interest.
- 71 4.27.250 Penalties.
- 72 4.27.260 Remedies for a person aggrieved.
- 73 4.27.270 Definitions.

74
75 **4.27.010 Applicability of chapter.**

76 A. Unless provided otherwise, this chapter shall apply to the taxation of all fuel sales or
77 transfers, or consumption of previously untaxed fuel by users, within the municipality.

78
79 B. The tax imposed under this chapter does not apply if the United States Constitution, Alaska
80 Constitution, or other federal or state laws prohibit the municipality from levying this tax on fuel.

81
82 **4.27.020 Excise tax on motor fuel.**

83 A. An excise tax in the amount of three cents (\$0.03) per gallon, adjusted every five years as
84 provided in subsection B., is hereby levied on all fuel sold, transferred, brought into or
85 consumed in the municipality. The tax is imposed only once, upon the first taxable event. Fuel
86 upon which the tax was imposed is not again subject to the tax in a subsequent sale, transfer or
87 use. The tax is to be paid by the dealer or user to the municipality on the volume of fuel sold,
88 transferred, or used.

89
90 B. The five-year adjustment to the fuel tax rate shall be based on the cumulative percent
91 change in the Anchorage Consumer Price Index for All Urban Consumers (CPI-U) over the prior
92 five years. The adjustment is the percent change in the Anchorage CPI-U beginning from the
93 CPI-U report released five years prior at a time when any adjustments would be made effective
94 July 1st of the year applied, up to the CPI-U report released in the fifth year after the last
95 adjustment at a time when any adjustment would be made effective July 1st of the year applied.
96 The adjustment shall become effective January 1 following the August release date in the fifth
97 year since the last adjustment. The first such adjustment date shall be effective July 1, 2027.

98
99 C. All tax revenue collected by the municipality under this chapter shall be deposited by the
100 finance director into the municipal accounts as follows; for motor vehicle fuel into the Public
101 Infrastructure Sinking Fund and for marine fuel into the Harbor Enterprise Fund.

102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150

4.27.030 Tax exemptions; no deferral for mixed purchases.

A. The following transactions are exempt from the tax levied by section 4.27.020:

1. Fuel that is sold or transferred between qualified dealers;
2. Fuel that is sold or transferred to a person obtaining fuel with a valid certificate of use;
3. Fuel that is sold or transferred to a qualified dealer or persons to whom fuel may be transferred without collecting tax under AS 43.40;
4. Fuel that is exported;
5. Fuel that is purchased for use by federal, state, local government agencies or federally recognized tribe, unless the fuel is purchased for the purpose of resale; and
6. Loss of volume of fuel that occurs during handling, transportation, and storage, including loss of volume due to temperature changes of fuel.

B. The election to defer payment of fuel tax provided by the state to certain persons pursuant to 15 AAC 40.320 for sales or transfers for mixed uses is not provided by the municipality. A sale or transfer of fuel for mixed use purposes to a common storage tank shall be fully taxed, and after resale or use for an exempt purpose the purchaser may apply for a refund with appropriate documentation in accordance with section 4.27.170.

4.27.040 Intent and purpose of chapter; taxpayer.

A. It is the intent and purpose of this chapter to collect the tax from:

1. The person who sells or transfers fuel to a reseller or user within the municipality, and
2. A user who purchases or acquires fuel outside of the municipality and ships it into the municipality for personal use, or purchases or receives fuel in the municipality that was not taxed at the time of purchase or receipt and is used or consumed for a purpose that is not exempt. Fuel purchased or acquired outside of the municipality and brought into the municipality in the following circumstances are not subject to the tax:
 - a. In a fuel tank built in a vehicle or vessel and that supplies fuel directly to that motor vehicle's or vessel's combustion engine so long as that fuel is not off-loaded to a large storage tank, transport tank or container, or to another vehicle or vessel; or
 - b. In a small, personal use size container twenty gallons or less in volume, so long as that fuel is not off-loaded to a storage tank, transport tank or container larger than twenty gallons in volume.

B. Notwithstanding anything to the contrary contained in this chapter, the taxpayer shall be those persons described in this section and no others.

4.27.050 Certificate of registration: eligibility.

151 To be eligible for a certificate of registration, a person applying to conduct business as a dealer
152 shall:

153
154 A. Possess a current business license as required by AS 43.70. A copy of the license must be
155 provided to the municipality before a certificate of registration will be issued.

156
157 B. Provide verification and affirmation that all responsible parties for the dealer:

158
159 1. Have not at any time in the most recent five-year period been convicted of a crime
160 related to theft of tax dollars, attempted theft of tax dollars, failure to remit taxes due,
161 embezzlement, theft, or similar financial crimes;

162
163 2. Have not at any time during the most recent five-year period had a certificate of
164 registration under this chapter revoked;

165
166 3. Not have delinquent tax obligations to the municipality or have substantially unpaid
167 delinquent financial obligations to the municipality; and

168
169 4. Not have any unresolved issues regarding a prior certificate of registration issued
170 under this chapter.

171
172 **4.27.060 Certificate of registration: required.**

173 A. Except as otherwise provided in this chapter, every dealer shall obtain a certificate of
174 registration, prior to selling or transferring fuel to a reseller, user or other dealer.

175
176 B. Dealers shall display their certificate of registration in a conspicuous place where it can be
177 readily viewed at the registered place of business.

178
179 C. A certificate of registration issued under this chapter shall state the following:

180
181 1. Business name and business address of the dealer;

182
183 2. Name of the person(s) owning the dealer business;

184
185 3. Dealer's form of business organization; and

186
187 4. Issue date of the certificate.

188
189 D. A certificate issued under this chapter is valid from the issue date through the following
190 June 30.

191
192 E. A person whose certificate is lost, stolen or defaced shall immediately file an application
193 with the department for reissuance of the certificate for the balance of the unexpired term.

194
195 F. A certificate issued by this chapter is in addition to any other license required by law.

196
197 G. A certificate issued under this section provides no right, entitlement or property interest
198 created by the issuance of a certificate to a dealer.

199
200

201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250

4.27.070 Certificate of registration: application.

A. Application for registration to operate as a dealer within the municipality shall be made to the department on a form provided by the department, containing such information as the department requires, including:

1. The applicant dealer's name and mailing address;
2. Names and addresses of all owners of the applicant dealer and all responsible parties for the applicant dealer;
3. A copy of the applicant dealer's current State of Alaska business license;
4. A copy of the applicant dealer's current State of Alaska dealer license and, if applicable, qualified dealer license;
5. The name under which the applicant dealer will conduct business operations;
6. The location of each of the applicant dealer's business operations within the municipality ;
7. The signature of the applicant, firmly binding the applicant dealer, its owners, and all responsible parties to the following:
 - a. An agreement that any contemporaneous or future complaints filed by the department in the Alaska Court System related to responsibilities, duties, consequences, or disputes associated with this chapter shall at all times be within the venue of the District or Superior courts located in Sitka, First Judicial District;
 - b. An obligation, in the event that an owner, partner, managing member, responsible party, or employee of the applicant dealer subsequently commits civil fraud, as defined by this chapter and demonstrated by a preponderance of the evidence to have occurred, to remit to the municipality an amount that equals the taxes that would have been paid to the municipality if all the fuel excise taxes due had been remitted, pursuant to this chapter; and
 - c. An agreement that the applicant dealer and any person involved in a civil fraud, as defined by this chapter and demonstrated by a preponderance of evidence to have occurred, will become ineligible to register under this section for a period of five years, beginning with the date of conviction of fraud or the date of revocation of the applicant dealer's registration in accordance with section 4.27.110.
8. In addition to other requirements in this section, a corporation that applies for a certificate of registration shall provide the following information:
 - a. Corporation: names and addresses of the principal officers including president, vice-president, secretary, managing officer, and all stockholders who own ten percent or more of the stock in the corporation;

251 b. Partnership, including a limited partnership: names and addresses of all general
252 partners and all partners with an interest of ten percent or more; or
253

254 c. Limited liability organization: names and addresses of all members with an
255 ownership interest of ten percent or more and the names and addresses of all
256 managers;
257

258 9. Such other information as the department may require.
259

260 B. An applicant dealer having more than one location within the municipality shall apply with
261 the department to register each separate location, including:
262

263 1. The applicant's signature confirming that the applicant fully understands the relevant
264 compliance requirements of this chapter; and
265

266 2. Each signature shall be by a person or agent having such authority to sign and bind
267 the applicant and shall be under penalty of prosecution for unsworn falsification.
268

269 C. All persons registered under this chapter shall maintain compliance with all relevant
270 Municipal and State of Alaska laws and administrative requirements related to the registered
271 business, including but not necessarily limited to: business license, and any related required
272 periodic reporting.
273

274 D. All persons applying for registration under this chapter shall affirm that the applicant dealer
275 is current with all financial obligations due to the municipality.
276

277 E. A person's application for and acceptance of the certificate issued under this chapter
278 constitutes confirmation of the person's acknowledgement on behalf of the applicant and dealer
279 of the duties pursuant to this chapter.
280

281 **4.27.080 Certificate of registration: denial.**

282 A. The department may deny an application for registration if:
283

284 1. There is reasonable cause to believe that the applicant has willfully withheld
285 information requested to determine the applicant dealer's eligibility to receive a certificate
286 of registration;
287

288 2. There is reasonable cause to believe that information submitted in the application is
289 false or misleading and is not made in good faith;
290

291 3. There is reasonable cause to believe that the applicant dealer's business organization
292 has been structured to avoid payment of taxes, penalties, interest, or costs due under this
293 chapter;
294

295 4. The applicant dealer has an unpaid financial obligation due to the municipality;
296

297 5. The applicant dealer, or any owner, partner, member, responsible party, or employee
298 had a certificate under this chapter revoked by the department within the previous five
299 years;
300

301 6. The applicant dealer, or any owner, partner, member, responsible party, or employee
302 has been convicted of a felony or misdemeanor theft of money within the previous five
303 years; or

304
305 7. The application is not complete.

306
307 B. The department shall provide the reasons for a denial in writing to the applicant.

308
309 C. The department shall deny an application if the applicant dealer does not currently possess
310 all other licenses required by law.

311
312 **4.27.090 Certificate of registration: fee, renewal.**

313 A. There shall be no charge or fee for issuing a certificate of registration for an original or
314 renewal application, or for a new location for a dealer who relocates the business.

315
316 B. A fee of \$30 shall be charged for reissuing a certificate that has been lost, stolen or
317 defaced.

318
319 C. A dealer may apply for renewal of its certificate up to two months prior to expiration of the
320 current certificate.

321
322 **4.27.100 Certificate of registration: expiration.**

323 A. A certificate of registration issued under this chapter shall automatically expire as follows:

324
325 1. Immediately after the following June 30:

326
327 2. If the dealer moves the business to another location within the municipality the dealer
328 shall immediately file an application with the department for issuance of a replacement
329 certificate for the new location for the remaining balance of the term; or

330
331 3. If a dealer ceases to engage in business as a dealer, ceases to engage in business at
332 its registered place(s) of business, changes its name, or changes the name by which the
333 registered dealer's business operation is advertised or marketed by the dealer.

334
335 B. A dealer must submit an updated application, as prescribed by the finance director, upon
336 any change in form of ownership or business name, or if the dealer is owned by a business
337 entity, upon any change in the owners of the entity who owns the dealer. The finance director
338 will review the updated application, pursuant to this chapter. A new certificate of registration will
339 not be issued until the department has received the expired certificate.

340
341 **4.27.110 Certificate of registration: surrender, suspension, or revocation.**

342 A. A dealer shall surrender its certificate of registration to the department as follows:

343
344 1. Within ten days after its certificate expires;

345
346 2. Immediately, upon suspension or revocation by the department.

347
348 B. The department may suspend or revoke a certificate issued under this chapter for any
349 violation of this chapter.

350

351 C. The department shall revoke a certificate of registration if:

352 1. A dealer fails to remit substantially all (at least ninety-five percent) of the taxes due
353 under this chapter within 45 calendar days of the due date;

354
355 2. Subsequent to the issuance of the certificate the department discovers that the dealer
356 has willfully withheld information requested to determine the applicant's eligibility to
357 receive a certificate, or there is reasonable cause to believe that information submitted in
358 the application was false or misleading and was not made in good faith; or

359
360 3. When the dealer's circumstances change to a point where it no longer meets eligibility
361 requirements set forth in section 4.27.050.

362
363 D. If the department decides to revoke a certificate issued under this chapter, based on any
364 violation of this chapter, the department shall notify the dealer of the date it intends to enforce
365 such revocation. A dealer may apply to the department to request a hearing before the finance
366 director on the department's action or determination as set forth in section 4.27.260.

367
368 **4.27.120 Certificate of registration: non-transferable.**

369 Non-transferable. The certificate of registration issued under this section is not assignable or
370 transferable, except that in the case of death, bankruptcy, receivership, or incompetency of the
371 dealer (or its principals if the dealer is an entity), or if the certificate is transferred to another by
372 operation of law, the department may extend the certificate for a limited time to the executor,
373 administrator, trustee, receiver, or the transferee.

374
375 **4.27.130 Tax return and remittance.**

376 A. On or before the last day of each calendar month, every dealer shall submit to the
377 department a tax return upon a form provided by the department and shall remit therewith all
378 taxes required to be paid by this chapter on fuel sales or transfers during the immediately
379 preceding calendar month. A tax return shall be filed even if there are no taxes due for the
380 period being reported. Tax returns and taxes to be remitted under this chapter must be actually
381 received by the department within the time required by this section.

382
383 1. The tax return shall be signed under penalty of perjury by an officer of the dealer and
384 shall include the following:

385
386 a. The name and mailing address of the dealer;

387
388 b. The name and title of the person filing the tax return;

389
390 c. The aggregate amount of all fuel sold or transferred by the dealer within the
391 municipality during the month, including exempt sales;

392
393 d. The net taxable gallons of all fuel sold or transferred by the dealer during the
394 month, as reported to the State of Alaska;

395
396 e. The aggregate amount of any allowable exemptions, as set forth in section
397 4.27.030, and supporting documentation for said exemptions;

398
399 f. The amount of fuel excise tax due;

400

- 401 g. Fuel inventory reconciliation data, such as:
- 402
- 403 i. Fuel receipt data in whole gallons, with gallons received for taxable
- 404 purposes reported separately from gallons received for exempt purposes;
- 405
- 406 ii. Fuel disbursement data in whole gallons, with gallons delivered for taxable
- 407 purposes reported separately from gallons delivered for exempt purposes;
- 408
- 409 iii. Breakdown of fuel delivered for exempt purposes (e.g., to qualified dealers,
- 410 U.S. government agencies for official use, etc.);
- 411
- 412 iv. Losses of volume of fuel that occur during handling, transportation, and
- 413 storage, including losses for volume due to temperature changes of fuel.
- 414
- 415 h. Schedules detailing fuel receipt and disbursement data; and
- 416
- 417 i. Such other relevant information and supporting documentation as the
- 418 department may require.
- 419

420 2. If a dealer fails to file a tax return under this section or when the finance director finds

421 that a tax return filed by a dealer is not supported by the records required to be maintained

422 under this chapter, the finance director may prepare and file an involuntary tax return on

423 behalf of the dealer. Taxes due on an involuntary tax return may be premised upon any

424 information that is available to the finance director, including comparative data for similar

425 businesses. A dealer shall be liable for the taxes stated on an involuntary tax return,

426 together with the penalties and interest provided in this chapter.

427

428 3. The department shall notify the dealer of an involuntary tax return, the basis of the

429 department's calculations, the dealer's rights under section 4.27.260, and provide written

430 notice that payment of the taxes, penalties, and interest is due immediately.

431

432 4. Unless otherwise determined by the finance director in a decision under section

433 4.27.260, taxes due under this section shall be due on the same date as if a tax return had

434 been filed by the dealer in accordance with this chapter, and interest, penalties, and costs

435 thereon shall accrue from such date.

436

437 5. A tax return prepared by the finance director is prima facie evidence of taxes due, and

438 the penalties and interest accruing from said tax liability. In an application under section

439 4.27.260, it is the dealer's burden to rebut the presumed sufficiency of a tax return

440 prepared by the department.

441

442 6. A dealer with multiple locations must either file a separate tax return for each location

443 or use a supporting schedule that clearly identifies the balances associated with each

444 separate location.

445

446 **4.27.140 Amended tax returns.**

447 Any tax return filed under the section may be amended by the dealer.

448

449

450

451 **4.27.150 Application of payments.**

452 Any payment submitted to the department for taxes, interest, penalties or costs due under any
453 tax return, provision of this chapter, or any finding or determination by the department under this
454 chapter shall be credited to the tax period for which remitted, but shall be credited first to the
455 payment of costs and then to the payment of penalties, interest, and taxes due, in that order.

456
457 **4.27.160 Tax refunds to dealer.**

458 A. If the department determines after audit that a dealer's tax remittance exceeds the actual
459 amount due, the department shall, upon written request of the dealer, refund the excess to the
460 dealer without interest.

461
462 B. The dealer shall apply for a refund in writing on a form acceptable to the department no
463 later than two years from the date the excess payment was transmitted to the department. Any
464 claim for a refund filed more than two years after the date of the excess payment is forever
465 barred. For purposes of this section, a "refund" means payment by the municipality to the dealer
466 or book entry by the municipality to offset other current or future amounts due from the dealer.

467
468 C. If a dealer discovers that it has miscalculated the fuel excise tax, and a reseller or other
469 purchaser of the fuel paid more tax than should have been collected, the dealer shall refund to
470 the reseller or purchaser the excess amount collected. If the dealer has not located the reseller
471 or purchaser and refunded the excess tax collected within 30 days, the excess tax shall be
472 remitted to the municipality.

473
474 **4.27.170 Tax refunds to purchaser.**

475 A. If a person obtains fuel on which the tax levied by this chapter has been paid, such as fuel
476 delivered to a common storage tank, and uses the fuel in a manner that makes the fuel exempt
477 from the tax, the person may apply to the department for a refund of the tax levied.

478
479 B. The application for refund must be made on a form prescribed by the department within 90
480 days from the end of the month in which the purchase was made of the Fuel, as indicated on
481 the invoice or receipt.

482
483 C. Failure to apply for a refund within the 90-day period is a waiver of the right to the refund. A
484 claim is considered to be filed when it is mailed or personally presented to the department.

485
486 D. Except as provided in subsection E of this section, the claim must include a copy of the
487 invoice(s) of each purchase of fuel for which a refund is being claimed. The invoices must show
488 the type of fuel purchased, the number of gallons of fuel purchased, and the amount of tax paid
489 under this chapter.

490
491 E. An agency of the federal, state or local government whose employees make purchases of
492 fuel exclusively for official use and use a credit card issued to that agency may submit a claim
493 for refund containing a schedule of invoices of purchases of fuel, in lieu of providing original
494 invoices for the fuel purchases, as long as:

495
496 1. Charges on the credit card are billed directly to the governmental agency;

497
498 2. The schedule of invoices complies with generally accepted internal accounting
499 controls, is capable of verification by audit, and details the following information for each
500 purchase of fuel:

- 501
- 502 a. The transaction date;
- 503
- 504 b. The invoice number;
- 505
- 506 c. The type of fuel purchased;
- 507
- 508 d. The name of the reseller and physical location of the pump;
- 509
- 510 e. The name of the governmental agency purchasing the fuel;
- 511
- 512 f. The price per gallon of fuel paid;
- 513
- 514 g. The number of gallons of fuel purchased;
- 515
- 516 h. The tax paid on each gallon of fuel purchased; and
- 517
- 518 i. Any other information required by the department in order to evaluate if the claim
- 519 for refund meets the requirements of this chapter.
- 520

521 **4.27.180 Confidentiality of records.**

522 A. All tax returns filed under this chapter, all data obtained from such tax returns, and all

523 financial information obtained from an inspection of records in accordance with this chapter are

524 confidential and may not be released except upon court order, pursuant to an information-

525 sharing agreement with the State of Alaska Department of Revenue, when necessary to enforce

526 the provisions of or to collect the taxes due under this chapter, and except for inspection by the

527 mayor, the finance director, the municipal attorney, the internal auditor and municipal assessor

528 or the assembly in the performance of their official duties.

529

530 B. Except when necessary to the performance of their official duties to enforce the provisions

531 of or to collect taxes due under this chapter, no person may divulge, without express written

532 permission by the dealer, to another any information, data or financial information of a dealer, a

533 dealer's records or a tax return filed under this chapter unless the person receiving such

534 information, data or financial information is a person authorized by this chapter to inspect the tax

535 return, information, data or financial information.

536

537 C. It is the duty of the finance director to safely keep tax returns, all data taken therefrom, and

538 all financial information obtained from an inspection of the dealer's records secure from public

539 and private inspection, except as provided by this chapter.

540

541 D. This section does not prohibit the municipality from compiling and publishing statistical

542 information concerning the data submitted, provided no identification of particular tax returns or

543 dealer information, data or financial information is made.

544

545 **4.27.190 Maintenance and inspection of documents and records.**

546 A. Every person subject to this chapter shall keep records to make a complete accounting for

547 the information required on the fuel excise tax return or claim for a refund under this chapter,

548 including fuel purchases, sales and transfers. The records must include an accounting for

549 inventories of fuel on the first and last days of the month, or in the case of a claim for a refund,

550 inventories on the first and last days of the claim period.

551
552
553
554
555
556
557
558
559
560
561
562
563
564
565
566
567
568
569
570
571
572
573
574
575
576
577
578
579
580
581
582
583
584
585
586
587
588
589
590
591
592
593
594
595
596
597
598
599
600

B. Specification in this chapter of the records to be kept by a dealer shall not relieve the dealer of its responsibility to keep sufficient records. Unless a longer period is ordered by the finance director under section 4.27.200 or a court of competent jurisdiction, a dealer shall keep and preserve all required records within the municipality for not less than three calendar years after the end of the calendar year in which such records are created and shall make available such records for inspections by the department upon request. Sufficient records shall include, but not necessarily be limited to:

1. Each sale or transfer of fuel within the municipality shall be recorded by the dealer and the record shall include, at minimum: the date of sale, the type of Fuel sold or transferred, the quantity of fuel sold, the sales price, and the amount of excise taxes due on the sale or transfer.

2. Books of account, journals, ledgers, and other compilations of source documents that reconcile to total sales and transfers, as listed on the tax returns filed with the department under the authority of this chapter;

3. Detailed inventory records;

4. Fuel acquisition data; and

5. Sufficient documentation confirming eligibility.

C. Persons subject to this chapter shall keep such other documents and records as the department prescribes.

D. All records and documents required by this chapter to be kept or retained are subject to inspection within the municipality upon demand by the department.

E. The finance director or a designee, upon presentation of proper identification, may inspect the records which a person is required to maintain under this section, whether on-site or at an off-site location, or inspect the records of a person whom the finance director has probable cause to believe is a dealer or a person subject to this chapter in order to determine whether that person is a dealer or is subject to this chapter.

1. Upon notice of the department's intent to inspect records, a person or dealer subject to this chapter shall retain such records and preserve their availability to the department until released by the department in writing, regardless of whether such retention and preservation continues beyond the three-year period specified in this section.

2. The finance director's authority to inspect records shall not be limited to records within the three calendar year retention period. If a person subject to this chapter has possession or control of records described in this section that are older than the three-year period specified in this section, the person subject to this chapter shall make such records available for inspection upon request.

F. The finance director may enter the business premises of a dealer, so far as it may be necessary for the purpose of examining business records required to this chapter.

601 G. The department may inspect records required by this chapter of all responsible parties who
602 had control of, or access to, the dealer's records, and such persons shall be subject to the
603 requirements of this section.

604 H. Where the Constitution of the United States or of the State of Alaska so requires, the
605 finance director shall obtain an administrative search warrant authorizing an inspection and shall
606 exhibit the warrant to the person in charge of the premises before conducting the inspection.
607 The finance director shall apply to the trial courts of the State of Alaska to obtain an
608 administrative search warrant, stating in the application the name and address of the premises
609 to be inspected, the authority to conduct the inspection, the nature and extent of the inspection,
610 and the facts and circumstances justifying the inspection. Warrants issued under this section
611 shall be returned to the court by which issued within ten days after the date issued.

612
613 **4.27.200 Tax avoidance, civil fraud.**

614 A. If the department has reasonable cause to believe that a dealer has structured a fuel sale
615 or transfer to avoid being subject to the fuel excise tax levied under this chapter, or has
616 wrongfully deceived resellers, users, or the department, the department may take one or both of
617 the following actions:

618
619 1. Declare there is a rebuttable presumption that the substance of a specific fuel sale or
620 transfer is a taxable transaction under this chapter and proceed to establish, levy and
621 collect the tax together with costs, penalties and interest as provided for in this chapter; or
622

623 2. Prepare and file an involuntary return(s) on behalf of the dealer, as provided in
624 section 4.27.130.

625
626 B. Civil fraud. If the department finds a tax deficiency or part of a tax deficiency is due to
627 fraud, then a penalty shall be assessed against the person committing the fraud. A civil fraud
628 penalty may be assessed against a person in addition to a penalty for failure to file or failure to
629 pay.

630
631 1. Fraud is the intentional misrepresentation of a material fact with the intent to evade
632 payment of tax which the person believed to be owing. The person must have had
633 knowledge of its falsity and intended that it be acted upon or accepted as the truth. The
634 department must prove fraud by a preponderance of the evidence.

635
636 2. An intent to evade tax may be demonstrated by any relevant evidence, including but
637 not limited to the following:

638
639 a. The person provided false explanations regarding understated or omitted
640 acquisitions of fuel;

641
642 b. The person provided falsified or incomplete source documents;

643
644 c. The person has not justified an omission or understatement of a significant
645 amount of acquisitions of fuel;

646
647 d. The person substantially overstated a deduction and has failed to justify the
648 overstatement;

649

650 e. The person knowingly provided false statements, falsified documents, or falsified
651 evidence to acquire a significant amount of fuel in a manner that results in the evasion
652 of payment for taxes due under this chapter; or

653
654 f. The person, without possessing the proper State and Municipal licenses or
655 certificates, exchanged or bartered taxable fuel, in any manner or by any means
656 whatsoever, for consideration.

657
658 **4.27.210 Tax lien.**

659 A. Taxes due and not paid on the date required by this chapter, together with all interest,
660 penalties and costs accruing thereafter, shall immediately become a lien in favor of the
661 municipality upon all of the dealer's real and personal property, including rights to such property.
662 Such lien shall continue until all taxes, penalties, interest and costs due the municipality have
663 been paid, or the lien released in whole or in part.

664
665 1. A separate notice of such lien shall be given to each dealer liable for the taxes by
666 mail, and shall be recorded in the Sitka Recording District, First Judicial District, State of
667 Alaska and any other recording district the department may choose.

668
669 2. Notice of the lien shall specify the person(s) liable for payment of the tax, the amount
670 of taxes and the date they were due, a statement of the interest, penalties and costs
671 accrued and which may thereafter accrue, the tax period for which the taxes were due and
672 such other information as the department may determine or as may be required by law.

673
674 B. No failure or defect in the notice of lien, except as to the amount if different than the
675 recording thereof, shall adversely affect the existence or priority of the lien created under this
676 section to the extent of the correct amount which is the same or less than that stated in the
677 recorded lien.

678
679 **4.27.220 Collection of taxes, interest, penalties, and costs.**

680 Taxes, interest, penalties, and costs due under this chapter and unpaid may be collected by any
681 lawful means, including a civil action for the collection of a debt, by foreclosure of the tax lien in
682 accordance with AS 09.45.170 through 09.45.220 or similar statutes in substitution thereof, or
683 by any combination of the above.

684
685 **4.27.230 Prohibited acts.**

686 In addition to other acts and omissions prohibited by this chapter:

687
688 A. No person shall engage in business as a dealer or conduct any exchange or barter for
689 consideration, in any manner or by any means whatsoever, of taxable fuel in the municipality
690 without a proper and current registration under this chapter.

691
692 B. No person shall fail or refuse to pay the tax imposed by this chapter.

693
694 C. No dealer or responsible party shall deny the finance director, subsequent to proper
695 identification, access to the dealer's fuel records required by this chapter, for purposes of
696 inspection under this chapter.

697
698 D. A person shall not prepare and submit to the department a false tax return with the intent
699 to fail to remit taxes due pursuant to this chapter.

700
701
702
703
704
705
706
707
708
709
710
711
712
713
714
715
716
717
718
719
720
721
722
723
724
725
726
727
728
729
730
731
732
733
734
735
736
737
738
739
740
741
742
743
744
745
746
747
748

E. No person whose certificate is suspended or revoked shall acquire, sell or transfer, or offer to sell or transfer fuel during the period of the suspension or revocation on any premises occupied or controlled by that person.

F. A person shall not knowingly use, allow or permit the use of real property in the municipality by a dealer for use in conducting its business as a dealer, unless the dealer is properly registered with the department under this chapter. Providing such real property after notice from the department that such provision of real property violates this subsection is prima facie evidence of the violation.

G. A person shall not knowingly provide advertising, web hosting, or other marketing services to a dealer in the municipality that is not properly registered under this chapter. Providing such services after notice from the department that such provision of services violates this subsection is prima facie evidence of the violation.

4.27.240 Interest.

In addition to any penalties imposed by this chapter, interest at the rate of 12 percent per annum shall accrue daily and be due from the dealer on the unremitted balance of taxes after the date on which their remittance was due.

4.27.250 Penalties.

A. A dealer who fails to file a tax return within seven calendar days following its due date shall automatically incur a civil penalty for each tax return not filed equal to ten percent of the taxes actually due the municipality. A dealer who fails to remit the full amount of any tax due within seven calendar days following its due date shall incur and pay a civil penalty of ten percent of the actual amount of taxes due but remaining unpaid after such date. If a person fails to pay the full amount of the tax due or file a tax return or report required under this chapter within 16 calendar days after its due date, each of the aforementioned civil penalties shall be increased from ten percent to 25 percent.

1. The penalty shall be computed on the unpaid balance of the tax liability as determined by the department.

2. Notice of the penalties incurred and to be incurred shall be given to the person responsible for payment of the taxes or filing the tax return or report when such tax payment or tax return or report is delinquent for seven calendar days after its due date.

3. The penalties provided for in this subsection shall be in addition to all other penalties and interest provided for under this chapter.

B. The department may revoke a certificate of registration issued under this chapter for any violation of this chapter.

C. If a dealer fails to remit at least 95 percent of the taxes due under this chapter within 45 calendar days of the due date, the department shall revoke the dealer's certificate of registration issued under this chapter and the dealer shall incur a civil penalty up to and including an amount equal to the unpaid delinquent taxes.

749 D. A managing member, officer, director, owner or responsible party of an enterprise engaged
750 in business as a dealer without a certificate of registration issued under this chapter is
751 personally liable for all taxes which should have been remitted to the municipality, plus a penalty
752 equal to 25 percent of the tax which should have been remitted, in addition to all costs, taxes,
753 interest and other penalties due under this chapter.

754
755 E. The municipal attorney may petition the court for injunctive relief against a person engaged
756 in business as a dealer without a certificate of registration issued under this chapter.

757
758 F. In addition to any other remedy or penalty provided by this chapter, a dealer, responsible
759 party or any person who violates or threatens to violate a provision of this chapter or a valid
760 order of the department or finance director authorized under this chapter, shall be subject to a
761 civil penalty as described in this section, or injunctive relief to restrain the person from
762 continuing the violation or threat of violation, or both such civil penalty and injunctive relief. Upon
763 application by the municipality for injunctive relief and a finding that a person is violating or
764 threatening to violate a provision of this chapter or a valid order of the department or finance
765 director authorized under this chapter, the Superior Court shall grant injunctive relief to restrain
766 the violation.

767
768 G. Any person who violates any provision of this chapter shall be liable for a civil penalty of up
769 to \$1,000.00 for each separate violation. Where multiple instances of the same violation occur,
770 each instance shall constitute a separate violation.

771
772 H. Civil and criminal penalties shall be cumulative remedies and shall not relieve a dealer,
773 responsible party, or person conducting sales or transfers of fuel of the duties imposed under
774 this chapter.

775
776 I. A person who owns or controls the real property where an unregistered dealer is operating
777 and who, after being notified by the department that the continued operation of the unregistered
778 dealer is in violation of this chapter, allows the unregistered dealer to continue to sell taxable
779 fuel on the property and fails to take reasonable action to prevent prohibited sales of taxable
780 fuel from the real property is complicit in a prohibited act under section 4.27.230 and shall be
781 subject to penalties set forth in this section.

782
783 J. A person who provides advertising, web hosting, or other marketing services to a dealer in
784 the municipality not having a certificate of registration under this chapter after receiving notice
785 from the department to cease providing advertising, hosting or marketing for taxable fuel sale by
786 this dealer is complicit in a prohibited act under section 4.27.230 and shall be subject to
787 penalties set forth in this section.

788
789 K. A person who commits an act prohibited by this chapter is subject to prosecution pursuant
790 to applicable state and/or municipal law.

791
792 **4.27.260 Remedies for a person aggrieved.**

793 A. Any person aggrieved by any action or determination of the department under this chapter
794 may apply to the department and request a hearing before the finance director on the
795 department's action or determination within 30 days from the date the department mails notice
796 of the department's action or determination.

797

798 1. An application for a hearing must notify the department of the specific action or
799 determination complained of and the amount of tax, interest, cost or penalty contested and
800 the reason for such contest.

801
802 2. The uncontested portion of any tax due under this chapter shall be paid when due
803 regardless of any application for a hearing. Payment of the total amount due may be made
804 at any time before the hearing. If the department has reasonable cause to believe that
805 collection of the total amount due might be jeopardized by delay, immediate payment of
806 the total amount may be demanded and the department may pursue any collection
807 remedies provided by law. Payment in full does not affect a person's right to a hearing.
808

809 B. Upon timely application for a hearing under subsection A of this section, the finance
810 director shall hold a hearing and render a decision or determination in accordance with
811 applicable municipal policy and/or code to determine whether a correction or reversal of the
812 department's action or determination is warranted.

813
814 1. If a person requesting a hearing fails to appear at the hearing, the finance director
815 may issue a decision without taking evidence from that person, unless the person shows
816 reasonable cause for failure to appear within seven days after the date scheduled for the
817 hearing.
818

819 C. Within 30 days after receipt of a written decision by the finance director, a person
820 aggrieved by the decision may appeal the decision to the Superior Court of the First Judicial
821 District.

822
823 1. The person aggrieved shall be given access to the department's file in the matter for
824 preparation of such appeal.

825
826 2. Taxes, costs, penalties, and interest declared to be due in the decision of the finance
827 director must be paid within 30 days after the date of the decision or a supersedeas bond
828 guaranteeing their payment must be filed with the court in accordance with Alaska Court
829 Rules of Appellate Procedures.
830

831 D. If after the appeal to the Superior Court is heard it appears that the action or determination
832 of the department and/or the decision of the finance director was correct, the court shall confirm
833 such action, determination or decision, as the case may be. If the department's action or
834 determination or the decision of the chief fiscal officer's decision was incorrect, the court may
835 determine the proper action, determination or decision. If the person aggrieved is entitled to
836 recover all or part, of any tax due or paid, the court shall order the repayment and the
837 department shall pay such amount within 14 days and attach a certified copy of the judgment to
838 the payment.
839

840 E. Hearings before the finance director under this chapter may, at the option of the finance
841 director, be conducted by an administrative hearing officer designated by the finance director. If
842 the finance director refers such matter to an administrative hearing officer, the administrative
843 hearing officer shall conduct the hearing and prepare findings and conclusions. These findings
844 and conclusions shall be forwarded to the finance director for adoption, rejection or modification
845 and issuance of a final order or decision by the finance director.
846
847

848 **4.27.270 Definitions.**

849 Any words, terms and phrases not defined in this section shall, if defined therein, have the
850 meaning given in AS 43.40.100 or regulations adopted by the state to implement its fuel tax
851 pursuant to AS Ch 43.40, or otherwise shall have their ordinary and common meaning. The
852 following words, terms, and phrases, when used in this chapter, shall have the meanings
853 ascribed to them in this section, except where the context clearly indicates a different meaning:
854

855 A. "Certificate of registration" or "Certificate" means a license issued by the department
856 authorizing a specified dealer to assess, collect, and timely remit to the department the excise
857 tax on fuel levied by this chapter.
858

859 B. "Certificate of use" means the certificate provided to the State of Alaska Department of
860 Revenue - Tax Division that is obtained by the dealer from a fuel purchaser at the time of the
861 first sale or transfer of the fuel to that purchaser stating the fuel that has been or will be
862 purchased or received is not intended for use as taxable fuel.
863

864 C. "Common storage tank" means a storage tank serving taxable and exempt uses, or multiple
865 taxable uses to which various tax rates apply.
866

867 D. "Consideration" means something of value given by both parties to a contract that induces
868 them to enter into the agreement to exchange mutual performances. Consideration must have a
869 value that can be objectively determined.
870

871 E. "Dealer" means a person who sells or otherwise transfers in the municipality fuel upon which
872 the taxes imposed by this chapter have not been paid. The term includes qualified dealers.
873

874 F. "Department" means the finance department of the municipality.
875

876 G. "Export" means the transport of fuel as cargo out of the municipality by or for the seller or
877 purchaser and intended for use or resale outside of the municipality.
878

879 H. "Finance director" means the finance director of the municipality or designee.
880

881 I. "Funds" means money, assets or intangible assets that can be converted to United States
882 currency and/or coin.
883

884 J. "Issue" date means the date the department has completed the review of the application and
885 has generated and is prepared to release the certificate of registration to the applicant.
886

887 K. "Motor fuel" or "fuel" means all liquid substances refined, compounded, or produced for the
888 purpose of use in an engine for the propulsion of a motor vehicle that is required to be licensed
889 or registered to be driven on a public road or highway, and use in an engine for the propulsion
890 of boats is required to be licensed or registered to be used in public places within the state. This
891 does not include aviation fuel.
892

893 L. "Municipality" means the City and Borough of Sitka.
894

895 M. "Official use" means use by a federal, state or local government agency, but does not include
896 the following:
897

898 1. consumption by a contractor who purchases fuel either for its own account or as the
899 agent of a government agency for use in the performance of a contract with that agency;

900
901 2. use in a private vehicle; or

902
903 3. sales of fuel.

904
905 N. "Person" includes an individual, company, partnership, limited liability partnership, joint
906 venture, joint agreement, limited liability company, association (mutual or otherwise),
907 corporation, estate, trust, business trust, receiver, trustee, syndicate, or any combination acting
908 as a unit.

909
910 O. "Qualified dealer" has the meaning established in state statute and regulation, AS
911 43.40.100(3) and 15 AAC 40.600, and a person with a qualified dealer license from the state.

912
913 P. "Reseller" means a person who sells or otherwise transfers in the municipality fuel upon
914 which the taxes imposed by this chapter have been paid.

915
916 Q. "Responsible party" means a person who has a level of control over, or entitlement to, the
917 funds or assets of a dealer that, as a practical matter, enables the individual, directly or
918 indirectly, to control, manage, or direct the dealer or the dealer's operations.

919
920 R. "User" means a person consuming, using, or purchasing fuel that is the subject of this
921 chapter.

922
923 S. "Tax return" means the monthly report to be submitted to the department as required
924 by section 4.27.130.

925
926 * * *

927
928 **5. BALLOT PROPOSITION.** The following question shall be placed on the ballot at
929 the regular election on October 5, 2021:

930
931 Shall the Sitka General Code be amended effective January 1, 2022, by adopting a
932 three cent per gallon excise tax on motor fuels, including motor vehicle and marine, sold,
933 transferred or used in the municipality, and place the tax revenues in dedicated
934 municipal funds for the maintenance, repair, replacement, and/or construction of related
935 municipal infrastructure?

936
937 Yes No

938
939 Informational: See Ordinance 2021-14

940
941 **6. EFFECTIVE DATE.** This ordinance shall become effective January 1, 2022,
942 upon certification of the October 5, 2021, election results that show a majority of qualified voters
943 approved the enactment.

944
945 **PASSED, APPROVED, AND ADOPTED** by the Assembly of the City and Borough of
946 Sitka, Alaska this 13th day of July, 2021.

947

948
949
950
951
952
953
954
955
956
957
958
959
960
961
962

ATTEST:

Jessica Earnshaw
Acting Municipal Clerk

1st reading: 6/22/2021
2nd and final reading: 7/13/2021

Sponsors: Knox / Himschoot

Steven Eisenbeisz, Mayor