ORDINANCE NO. 18

COOKE CITY, SILVER GATE, AND COLTER PASS RESORT AREA TAX ADMINISTRATIVE ORDINANCE

WHEREAS, on October 4, 2005, the residents of Cooke City, Silver Gate and Colter Pass in Park County, Montana, passed a resort area tax;

WHEREAS, state law requires that an administrative ordinance provide for the administration of the resort area tax, the collection and reporting of the resort area tax, penalties for failure to report and remit for resort area tax due, penalties for violating this administrative ordinance, and for providing further clarification and specification in the categories of goods and services subject to the resort tax;

WHEREAS, a public hearing shall be heard on this ordinance on Nov 15, 2005, at 9:00 o'clock A.m. and Nov 30, 2005, o'clock A.m., at the Park County Commission's office in the City/County Building, 414 East Callender, Livingston, Montana, for the purpose of receiving public comment on this ordinance. Copies of this ordinance are and have been posted and are available for public inspection at the office of the Park County Clerk and Recorder.

THEREFORE, BE IT RESOLVED by the Park County Commission as follows:

SECTION 1

Definitions.

For the purpose of this ordinance, the following definitions apply and are the same as the definitions set forth in Section 7-1-1501 and Section 7-6-1531, MCA:

A. "*Antique*" includes but is not limited to a relic, object, work of art, piece of furniture, or decorative object represented or marketed as an antique, or sold in an antique shop or other business. An antique, as defined herein, shall be deemed a luxury item and not a necessity of life.

B. "*Area*", "*Resort Area*" or "*Cooke City, Silver Gate and Colter Pass Resort Area*" mean the area created under Section 7-6-1508, MCA.

C. "*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.

appliances, hardware supplies and tools, or any necessities of life.
D. "*Medical Supplies*" means items that are sold to be used for curative, prosthetic, or medical maintenance purposes, whether or not prescribed by a physician.
E. "*Medicine*" means substances sold for curative or remedial properties, including both physical prescribed and over-the-counter medications.

SECTION 2

Effective Date or Resort Area Tax and Administrative Ordinance.

The resort area tax and this administrative ordinance shall become effective on January 1, 2006.

SECTION 3

Duration of the Resort Area Tax.

The duration of the resort area tax is for twenty years commencing on January 1, 2006, and ending December 31, 2025.

SECTION 4

Rate of the Resort Area Tax.

The rate of the resort area tax is three percent (3%) of the retail value of all luxury goods and services.

SECTION 5

Imposition of Resort Area Tax.

Pursuant to the election held on [illegible], 2005, the resort area tax was imposed on the retail value of all luxury goods and services sold within the Cooke City, Silver Gate and Colter Pass Resort Area in Park County, Montana.

SECTION 6

Collection of Resort Area Tax.

Establishments that sell luxury goods or providing luxury services within the resort area must collect a resort area tax on said luxury goods and services.

SECTION 7

Retail Items and Services Subject to Resort Area Tax.

The following items, goods, and services are subject to the resort area tax:

A. Luxuries;

B. All goods and services wold within the resort ear by the following establishments:

1. Hotels, motels, and other lodging or camping facilities;
2. Restaurants, fast food stores, and other food service establishments;
3. Taverns, bars, night clubs, lounges, and other public establishments that serve beer, wine, liquor or other alcoholic beverages by the drink; and
4. Destination ski resorts and other destination recreational facilities.

SECTION 8

Luxuries Subject to Tax.

In accordance with Section 7-6-1505, MCA, " luxuries" is further classified and specified to mean:

A. Clothing items;
B. Fishing tackle and sporting goods;
C. Rentals of snowmobiles, all-terrain vehicles, motorcycles, bicycles, skis, ski lessons, ski lift tickets, snow boards, boats, campers, boat motors and all recreational equipment;
D. Automobile rentals unless exempt under Section 9.Y;
E. All recreational activities and services on land, water, or in air, including but not limited to fishing trips, hunting trips and other outfitter trips, scenic rides, balloon and other air flights, horseback riding, golfing, tennis, skiing, and guided tours if purchased, reserved, committed or occurring within the boundaries of the resort area;
F. All souvenirs, curios, jewelry, antiques, gift and art items, and food gift items prepared and sold as a package or unit;
G. All beverages, including but not limited to beer, wine, liquor, or other alcoholic beverages sold by the drink;
H. All entertainment, including but not limited to, tickets, or other admissions to concerts, theaters, movies, shows, plays or sporting event; gaming; and movies, video games, and all related rental equipment;
I. Massages unless exempt under Section 9.X;
J. All rental agreements for lodging facilities, unless exempt under Section 9.O;
K. Fundraising activities, or part thereof, that are substantially commercial in character;
L. Items not exempt under Section 9; and
M. Services not exempt under Section 9.

SECTION 9

Tax Exempt Goods and Services.

The following items and services are not subject to the resort area tax:

A. Food purchased unprepared or unserved;

B. Utilities and utility services;

C. Medical supplies and services and medicine;

D. Wholesale merchandise for resale at retail or used in the purchaser's business as supplies;

E. Gasoline and other motor vehicle fuel;

F. Liquor 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. All business payroll and labor costs;

L. Lumber, hardware supplies, tools, and other construction related supplies;

M. Household appliances;

N. Real estate sales;

O. All rental agreements when contracted for a period longer than thirty(30) consecutive days;

P. Catalog sales except to the extent that the luxury item is paid for and the exchange made within the boundaries of the resort area;

Q. Newspapers;

R. Office supplies;

S. Garage sales;

T. Services provided by non-profit religious organizations;

U. Toilet paper, personal hygiene products, and diapers;

V. Industrial, commercial and household strength cleaning materials, including soaps, laundry and dishwashing detergents and disinfectants;

W. Postage stamps and postal services;

X. Massages prescribed by a physician; and

Y. Automobile rental used during emergency repair.

SECTION 10

Time or Remittance of Resort Area Tax.

The resort area tax collected must be remitted quarterly on the last day of the month following the end of the quarter, or if the last day falls on a Saturday, Sunday, or Holiday, then on the next business day to the Park County Treasurer, 414 East Callender Street, Livingston, MT 59047. Resort area tax payments made after the last day of the month following the end of the quarter shall be deemed delinquent and subject to the penalties, interest and late fees described in Section 13.

SECTION 11

Remittance of Resort Area Tax to Park County Treasurer.

The Park County Treasurer is responsible for receiving and accounting for the resort area tax receipts.

SECTION 12

Enforcement of Collection of Resort Area Tax.

The Park County Commission shall enforce the collection of the resort area tax and oversee the methods and procedures to be used in enforcing the collection of the resort area tax within the Cooke City, Silver Gate and Colter Pass Resort Area.

SECTION 13

Penalties, Interest, Late Fees and Liens.

A. The following penalties, referrals, or liens may be imposed as authorized by Section 7-6-1505, MCA, for the failure to report resort area taxes due, failure to remit resort taxes due, and violations of this ordinance:

1. A criminal penalty not to exceed a fine of $1,000 or six months imprisonment, or both;
2. A civil penalty if the resort area prevails in a suit for collection of resort taxes not to exceed fifty percent (50%) of the resort taxes found due, plus the costs and attorney fees incurred by the district in the enforcement action;
3. Upon referral to the Park County Commission, revocation of any county license held by the offender, if applicable;

4. Upon proper legal procedure, secure and file a lien against the property of the establishment failing to report, collect or remit resort area taxes;

B. 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.

C. A one time late fee of $30 shall be assessed for each reporting quarter that is delinquent.

D. Establishments may appeal any assessment of penalty or interest to the Park County Commission, providing that the notice of appeal is made in writing and filed with the Park County Treasurer within thirty (30) days of the serving or mailing of the determination of the amount of penalty and interest due. The Park County Commission shall fix a time place for hearing the appeal and notice shall be personally served upon the establishment by a peace officer. The findings and decision of the Park County Commission shall be final and conclusive. The findings shall be served upon the establishment by certified mail or by service by a peace officer. Any amount found to be due shall be immediately payable upon receipt of the findings and decision.

SECTION 14

Administration Fee for Each Vendor and Commercial Establishment.

Pursuant to Section 7-6-1505, MCA, each establishment collecting resort area taxes is entitled to withhold the authorized maximum of five percent (5%) of the resort area taxes to defray the establishment's costs for the administration of the resort are tax collection. The administration fee may be withheld by the establishment at the time of remitting the resort area taxes to the Park County Treasurer.

SECTION 15

Reporting Forms for Resort Area Tax - Confidentiality.

A. The Park County Treasurer shall provide each establishment in the resort area responsible for collecting the resort area tax with the proper forms for reporting and accounting for the resort area taxes collected upon notification from the Cooke City Chamber of Commerce, the establishment, the Advisory Board or other reputable source of the existence of the establishment in the resort area.

B. The records and forms submitted to the Park County Treasurer by the establishments

shall be confidential and not open to public inspection unless so ordered by the Park County Commission pursuant to Article II, Sections 9 and 10, of the Montana State Constitution or a court of competent jurisdiction.

SECTION 16

Audits.

Under the direction of the Park County Commission and/or the Park County Treasurer, audits may be conducted of establishments collecting and receiving the resort area tax. All establishments and recipients must cooperate in the conduct of said audits. Failure to cooperate with an audit shall constitute a violation of this ordinance.

SECTION 17

Maintenance of Records by Establishments.

Each establishment required to collect and remit resort area taxes to the Park County Treasurer 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. Such records shall be made available for audits and inspections at all reasonable times. Such records include, but are not limited to, books, ledgers, registers; original records necessary to document gross receipts of the establishment; specific documentation of exempt sales; correct copies of state and federal income tax returns, schedules and forms.

SECTION 18

Appropriation, Expenditure and Purpose of Resort Area Tax.

A. The revenue derived from the imposition of the resort area tax will be appropriated by the Park County Commission and expended for:

5% for merchant collection fees

10% for property tax relief to property owners within the map boundaries

1% for county administration

84% for capital improvements, emergency services, tourism development and other local projects as identified that provide for the public health, safety and welfare with the resort area.

B. The ten percent (10%) for property tax relief and the one percent (1%) for county administration shall be set aside and separated each quarter from the resort area tax receipts in subaccounts.

C. Beginning in November of 2006, receipts from the resort area tax will be applied to reduce real property taxes in the resort area for the assessed fiscal year in an amount equal to ten

percent (10%) of the resort area tax revenues derived during the preceding fiscal year.

D. Resort area receipts shall also be used for reimbursement or payment for any litigation of the resort area tax.

SECTION 19

Resort Area Board of Advisors.

A. The Park County Commission may create a three member Resort Area Advisory Board to advise and make recommendations to the Park County Commission on the purposes to be funded with resort area tax revenue and other maters related to the collection and administration of the resort area tax.

B. The Advisors shall consist of one person from Cooke City, one person from Silver Gate and at least one person from the Colter Pass area. The Advisors terms shall be for three (3) years.

SECTION 20

Severability.

If any provision of this ordinance or the application to any person or circumstance is held invalid, such invalidity shall not affect the other provision of this ordinance which may be given effect without the invalid provision or application and, to this end, the provisions of this ordnance are declared to be severable.

SECTION 21

Amendment of Ordinance.

Except for Sections 2, 3, 4, 5, 6, and 18 of this Ordinance, said administrative ordinance may be amended at any time as may be necessary to effectively administer the resort area tax and must include the requirements of Section 7-6-1505, MCA.

SECTION 22

Map of Resort Area.

A map of the Cooke City, Silver Gate and Colter Pass Resort Area as approved by the election on October 4, 2005, is attached to this ordinance for reference.

BE IT FURTHER RESOLVED THAT the Park County Clerk and Recorder shall post a copy of this ordinance and shall make copies available to the public upon the first Reading and Approval of this ordinance.

BE IT FURTHER RESOLVED THAT this resolution be entered upon the minutes of the Park County Commission.

1st Reading and Approval : November 15, 2005.

PARK COUNTY COMMISSION

LARRY LAHREN, Chair

JAMES R. DURGAN

DICK MURPHY

ATTEST:

DENISE NELSON
Park County Clerk & Recorder

2nd Reading and Approval: November 30, 2005.

PARK COUNTY COMMISSION

LARRY LAHREN, Chair

JAMES R. DURGAN

ABSENT

DICK MURPHY

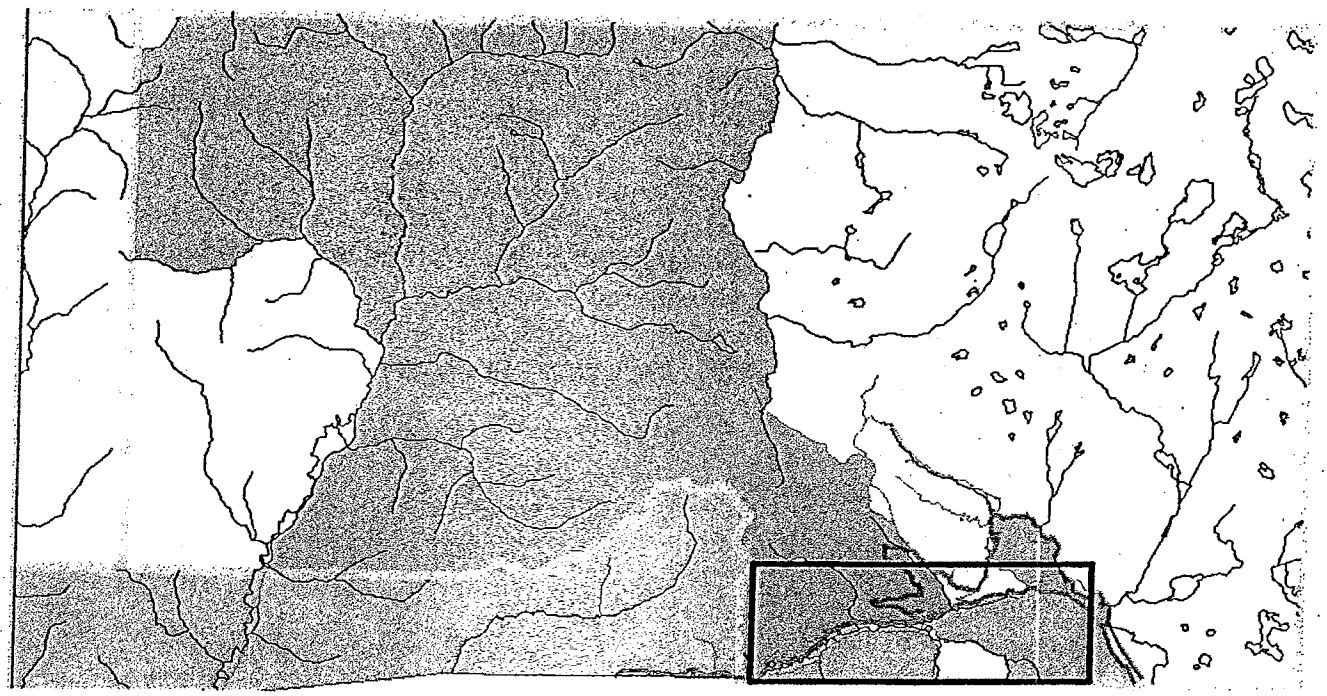
ATTEST:

DENISE NELSON
Park County Clerk & Recorder

APPROVED AS TO FORM:

Attorney

Cooke City School District (Precinct 5C)

Commencing at the Northeast corner of Section 1, T8S, R15E, thence West along the Park County boundary line to the Northwest corner of Section 2, T8S, R12E; thence South to the Montana-Wyoming border; thence East along said state border to the Southeast corner of Park County, lying in T9S, R15E; thence North along the east boundary line of Park County to the place of beginning.

COOKE CITY SCHOOL DISTRICT (PRECINCT 5C)