

KODIAK CITY COUNCIL

WORK SESSION AGENDA

Tuesday, January 21, 2020

Kodiak Public Library Multi-Purpose Room

7:30 p.m.

Work sessions are informal meetings of the City Council where Councilmembers review the upcoming regular meeting agenda packet and seek or receive information from staff. Although additional items not listed on the work session agenda are sometimes discussed when introduced by the Mayor, Council, or staff, no formal action is taken at work sessions and items that require formal Council action are placed on a regular Council meeting agenda. Public comments at work sessions are NOT considered part of the official record. Public comments intended for the "official record" should be made at a regular City Council meeting.

Discussion Items

- 1. Public Comments (limited to 3 minutes)
- 2. Discussion on the Sale of Marijuana Edibles1
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- 6. January 23, 2020, Agenda Packet Review

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**CITY OF KODIAK
ORDINANCE NUMBER XXXX**

**AN ORDINANCE OF THE COUNCIL OF THE CITY OF KODIAK AMENDING
CHAPTER 5.24 OF THE KODIAK CITY CODE TO REPEAL SECTION 5.24.040.**

WHEREAS, Title 5, Chapter 5, Section 5.24.040 of the Kodiak City Code prohibits the manufacture and sale of edible marijuana products,¹

WHEREAS, the prohibition has negatively affected licensees located within the City of Kodiak, and limited the ability of the state or municipality to collect otherwise available revenues, and

WHEREAS, the prohibition has negatively affected individuals who live in City of Kodiak and who visit the City of Kodiak by limiting the only available regulated and tested marijuana to marijuana bud and flower and concentrates that are only able to be consumed via inhalation methods, and

WHEREAS, the restriction of edible marijuana products negatively impacts consumers who, for health considerations and other reasons, cannot consume marijuana via inhalation.

THEREFORE, BE IT ORDAINED by the Council of the City of Kodiak, Alaska, as follows:

Section 1: Amendment of Section 5.24.040. Section 5.24.040 of the Kodiak City Code of Ordinances is hereby amended by adoption to read as follows:

~~**Section 5.24.040. Manufacture and Sale of Marijuana Edibles Prohibited.**
Manufacture of edible marijuana products on any licensed premises[,] and all sale of edible marijuana products is unlawful. [Repealed].~~

Section 2: Effective Date. This ordinance shall be effective one month after final passage and publication.

CITY OF KODIAK

MAYOR

ATTEST:

CITY CLERK

¹Section 5.24.040 Manufacture and sale of marijuana edibles prohibited. Manufacture of edible marijuana products on any licensed premises and all sales of edible marijuana re unlawful. [Ord. 1378 §6, 2018].



Alaska Department of Health and Social Services
Division of Public Health

Get the Facts About Marijuana



Be Careful When You Eat and Drink Marijuana.

THESE AREN'T YOUR GRANDMA'S BROWNIES.

Learn more about marijuana edibles.



- Get the Facts
- Parents & Adults
- Know the Law
- Using Too Much?
- Learn More
- Data & Statistics

Marijuana Edibles Safety

Be Careful When You Eat and Drink Marijuana

Marijuana edibles are foods and drinks that are made with marijuana or marijuana oils. These can be made at home, like pot brownies, but producers can make and sell marijuana edibles in many forms:

- gummy candies
- chocolate
- sodas and juices
- cookies and other treats

Q&A: Here are some common questions and answers about marijuana edibles in Alaska.

What kinds of edibles may be available in Alaska?

- > **Foods:** This could include brownies, prepared cookies, take-and-bake cookie dough, cupcakes, granola bars, cakes, snack mixes, honey sticks, and more.
- > **Drinks:** This could include pre-mixed sodas and juices, teas and other hot drinks, and flavored concentrates that can be mixed with other beverages.
- > **Candies:** This could include chocolate, gummies and chews, hard lozenges, lollipops, marshmallows, jellybeans, fudge, and more.
- > **Tinctures:** These are infused liquids made with alcohol, honey, or vegetable glycerin

Be Careful When Eating and Drinking Marijuana

Start low... Start with a single serving of 5 mg of THC or even less. THC is the chemical in marijuana that makes a person high.

And go slow. You may feel fine for several hours after consuming a marijuana edible, and then suddenly feel very high. Don't eat or drink more of a marijuana product until you have waited at least 2-4 hours.

First-time using? Be cautious. Eating too much of a marijuana edible too soon may lead to unwanted effects.

Driving while high is a DUI. If you've consumed marijuana edibles, do not get behind the wheel.



Don't give marijuana to children or anyone under 21 years old.

Steer clear if you are pregnant or breastfeeding. Using marijuana while pregnant or breastfeeding may harm your baby.

Store your marijuana and edibles safely. Lock it up, out of reach from children and pets.



If you consumed too much, call for help. Call the Poison Control Hotline at 1-800-222-1222 for free, fast, expert help anytime.

For more information visit marijuana.dhss.alaska.gov



On this page:

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 - > What?
 - > Who?
 - > Where?
 - > Storage
 - > Pregnancy and breastfeeding
 - > Selling edibles
 - > Serving size
 - > Different than smoking or vaping?
 - > First time users
 - > Driving high is a DUI
 - > How long after eating or drinking marijuana can I drive?
 - > Can you overdose?
 - > Children - what if
 - > Pets - what if
- > Start low and go slow
- > Know what you are eating
- > Don't share your stash
- > Steer clear when pregnant or breastfeeding
- > Lock it up, out of reach

that can be consumed by holding under the tongue while the tetrahydrocannabinol (THC) is absorbed directly into the blood stream. THC is the chemical in marijuana that makes a person feel high. Tinctures also can be added to foods and drinks.

- › **Oil or butter:** These infused products can be used at home when cooking or baking.

Who can legally eat or drink marijuana edibles?

In Alaska, non-medical marijuana use of all types is legal only for adults 21 years and older. That includes smoking, vaping, dabbing or consuming marijuana.

Where: Can I consume marijuana edibles in a public place?

No. Just like smoking a joint, it is illegal to consume marijuana edibles in any public place, including your vehicle when parked in a public area.

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Storage: Where should you store marijuana and marijuana edibles?

Always store marijuana edibles safely away from children and pets. Little bodies and developing brains cannot handle even small amounts of marijuana.

Products purchased from retail or medical marijuana retailers are required by Alaska law to use clearly labelled and child-safe packaging. Keep marijuana products in their original packaging so they are easily identified as containing THC. Keep them in a locked area.

How you store marijuana should change as children get older. Safe storage around young children may not stop older children or teens.

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Are marijuana edibles safe for pregnant or breastfeeding women?

Using marijuana while pregnant or breastfeeding may harm your baby. THC from the marijuana passes from the mother to her unborn child through the placenta. When a breastfeeding mother uses marijuana, THC passes through the breast milk to the baby and can potentially affect the baby. For more information, click here.

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What are the rules for selling edibles in Alaska? [13]

Alaska's commercial marijuana regulations state that the label on any edible product must:

- › identify the marijuana retail store selling the marijuana product by name or distinctive logo and marijuana establishment license number;
- › state the total estimated amount of THC in the labeled product;
- › contain each of the following statements:
 - › "Marijuana has intoxicating effects and may be habit forming and addictive."
 - › "Marijuana impairs concentration, coordination, and judgment. Do not operate a vehicle or machinery under its influence."
 - › "There are health risks associated with consumption of marijuana."
 - › "For use only by adults twenty-one and older. Keep out of the reach of children."
 - › "Marijuana should not be used by women who are pregnant or breastfeeding."

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What's the serving size for marijuana edibles?[13]

Alaska regulations define a single serving of marijuana product as 5 milligrams (mg) of THC. A package of edible product sold in Alaska may not contain more than 10 servings — or 50 milligrams — of THC. If the product contains multiple servings, the product itself must be marked or scored to clearly show each serving of the product. For liquid marijuana products with multiple servings, the packaging must indicate the number and size of individual servings.

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Will consuming marijuana have a different effect than smoking or vaping it?

The high from smoking marijuana can often be felt right away. The effects from eating or drinking marijuana, however, can take minutes to hours to develop, and then last longer. The effects can depend on how much THC you consumed, the amount and type of other foods consumed, and if you also drank alcohol or used other drugs.

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What if you're a first-time consumer of marijuana edibles?

- › **Read the label:** Alaska regulations require all edibles to be clearly labelled with the amount of THC in each serving, as well as the number and size of the servings in each package. Understand how much THC you will consume and how it could affect you. Start with a small amount (5mg or less) if you are not sure how you will react.
- › **Take your time:** The high from marijuana edibles may take up to four hours to peak, and can last for up to 10 hours. You may feel fine for several hours after consuming a marijuana edible, then suddenly feel very high. Until you know how edibles will affect you, wait at least 2-4 hours after the first serving before consuming more.

- › **Stay put:** Smoking, eating or drinking even one, 5 mg serving of a marijuana product may cause impairment, particularly for first-time and infrequent users. This can affect your ability to drive, bike, or perform other safety-sensitive activities. Plan ahead so you are in a safe place where you can stay until the impairing effects wear off.

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Can you drive after consuming marijuana edibles?

You should not drive, bike, ski, snowboard, skate or operate machinery after consuming edibles. Driving while impaired is **illegal and unsafe**. Getting high before you drive could get you arrested for driving under the influence (DUI). This is still true even though marijuana use is legal for adults. Even if marijuana is used medically, officers can arrest you based on impaired driving behaviors.

Marijuana use affects:[8]

- › Reaction time
- › Short-term memory
- › Hand-eye coordination
- › Concentration
- › Perception of time and distance

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How long should I wait to drive after consuming a marijuana edible?

Marijuana affects people differently. Many factors come into play. What we do know is that marijuana can make it unsafe to drive, bike, and do other activities.[1] The effects of marijuana can last longer than users think.

- › The more THC a person smokes or consumes, the greater the impairment will be.
- › The effects of marijuana can take longer to develop and last longer when eating or consuming marijuana.
- › Though a person might feel safe to drive after a few hours, impairment can last much longer.[1] As with other drugs, judgment is impacted when getting high.
- › Using alcohol and marijuana at the same time results in greater driving impairment than using either one alone.[1]
- › If you are impaired and need to get somewhere, do not get behind the wheel. Let someone who is sober drive. If you have no designated driver, take a bus, call a cab, or organize some other safe means of transportation.
- › In the end, law enforcement decides whether or not an individual is driving impaired. Driving high is a DUI.

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Can you overdose on marijuana edibles?

It is possible to consume more marijuana than your body and brain can handle (called acute marijuana intoxication).[14, 15]

The symptoms of using too much marijuana are both physical and mental:

- › Extreme confusion, anxiety, panic, or paranoia.
- › Hallucinations or delusions.
- › Increased blood pressure.
- › Fast heart rate.
- › Severe nausea and vomiting.

If you or someone you know has any of the symptoms above, call the Poison Control Hotline at 1-800-222-1222 for free, fast, expert help anytime. If the symptoms are severe, call 911 or go to an emergency room.

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What if a child consumes marijuana edibles?

A child who eats or drinks marijuana by accident may need immediate medical help.[15] Warning signs include problems walking or sitting up, difficulty breathing, and becoming sleepy.[1]

Call the free Poison Control Hotline at (800) 222-1222 if you are concerned that your child has consumed marijuana. The call is free and you will be helped quickly. If the child's symptoms are bad, call 911 or go to an emergency room right away.



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What if a pet consumes marijuana edibles? [16]

Pets that consume marijuana may act depressed or listless and lose motor control or balance. Depending on the ingredients in edibles, there may be other health concerns for pets. As an example, chocolate infused with THC is a concern because chocolate can be toxic for dogs. If you know or suspect your pet has consumed marijuana or a marijuana edible, call your veterinarian or a pet poison hotline. Click here for a list of phone numbers.[17] These services are available 24 hours a day for a small, per-incident fee. If your pet appears to be in any distress, seek emergency veterinary care immediately.

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Be careful when eating and drinking marijuana

Start low and go slow.

- › Start with a single serving of 5 milligrams (mg) of THC, or even less.
- › Don't eat or drink more of the marijuana edible until you have **waited at least 2-4 hours**. The effects from edibles can take hours to develop.
- › Eating too much of a marijuana edible too soon may lead to unwanted effects.
- › First-time users should be cautious: The effects of marijuana will vary person to person, and from one marijuana edible product to another.

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Know what you are eating and drinking.

- › Check the label and know how many servings are in the package.
- › Know how many milligrams of THC you are consuming, and how often you are consuming it.
- › Be cautious if you are consuming a marijuana edible made at home. It can be hard to control how much THC is in each serving when making marijuana edibles at home.

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Don't share your stash. Keep your marijuana edibles for yourself.

- › It is illegal to give marijuana to anyone under the age of 21.

Steer clear of marijuana edibles if you are pregnant or breastfeeding.

Store your marijuana and marijuana edibles safely. Lock it up, out of reach.

- › Keep marijuana edibles away from children and pets who could become very sick after consuming them.

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				Alaska Pioneer Homes	Health Care Services	Public Health
				Alaska Psychiatric Institute	Juvenile Justice	Seniors & Disabilities Services
Contacts	Accessibility	Public Notices	Staff	Behavioral Health	Office of Children's Services	Substance Misuse and Addiction Prevention
		Webmaster		Finance & Management Services	Public Assistance	

MEMORANDUM OF AGREEMENT

Section 1. Purpose. This Memorandum of Agreement (this “Agreement”) is effective as of the ___ day of _____, 2020 (the “Effective Date”), between the Alaska Municipal League (“AML”), an Alaska intergovernmental, not-for-profit organization, and the Alaska Remote Seller Sales Tax Commission (the “Commission”), an interlocal governmental entity, to set forth the terms for AML to provide administrative and support services to the Commission.

Section 2. Scope of Services. AML will provide the following services for the Commission (the “Services”):

- Support Commission Board meetings, activities, and communications, including the following tasks:
 - Make meeting arrangements
 - Provide agenda support
 - Prepare meeting minutes
 - Provide compliance oversight
 - Provide support for Commission contract and legal obligations
- Support member meetings, activities, and communications, including the following tasks:
 - Maintain Commission member list
 - Administer annual member meeting
 - Conduct annual rate, boundary, and member Code review
 - Send monthly emails with updates on compliance, reporting, and software development
 - Establish a Commission website with information available to members, taxpayers, and prospective members
 - AML will provide or organize the provision of legal support, at the direction of the Commission
- Enter into and manage software contracts necessary for collection, remittance, and reporting, and all other services as required by the Commission, with the provision that all contracts revert to the Commission if the Alaska Municipal League no longer acts as the administrator on behalf of the Commission. The Commission shall be notified 90 days prior to contract change or conclusion, and have the opportunity to assume or change the contract.
 - MUNIREvs Support – as required by contract attached as Exhibit A
 - TTR Support – as required by contract attached as Exhibit B
- Coordinate Commission decision-making and operational activities through AML’s Executive Director
 - Communicate staffing roles and responsibilities
- Manage day-to-day operations, including the following tasks:
 - Conduct outreach to online retailers and national contacts

- Conduct outreach to Alaska businesses
- Establish and manage separate accounting.
 - Reconciling accounts on a daily basis
 - Remit net revenue to members on an agreed-upon and consistent date
 - Report – review in partnership with members
- Follow the policies and procedures as set out by the board
- Managing and responding to legal or other questions
- Compliance – review in partnership with members
- Contract for a compliance audit and prepare required materials for audit
 - Provide to the board the auditor’s presentation of audit and oversight documents
- Maintain (including, without limitation, backing up its computer files, and maintaining facilities and procedures for safekeeping and retaining documents) books and records of the Commission and its operations
- Provide an annual report

Section 3. Equipment and Supplies. AML will provide all necessary equipment and facilities to timely and efficiently perform the Services.

Section 4. Standard of Care. AML agrees, at all times, to utilize its best efforts to complete the Services in a professional and timely fashion. In performing the Services, AML must exercise all due care and caution in accordance with the best industry practices. The Commission will cooperate fully to ensure that AML is capable of timely performing the Services.

Section 5. Commission Scope of Responsibilities. The Commission shall act in good faith in the execution of this Agreement, the Commission Bylaws, and the Intergovernmental Agreement. The Commission shall:

- Review and approve the budget, proposed by AML, for the administrative duties performed by AML
- Review and approve annual staffing plan, consistent with the budget, in support of necessary Commission functions
- Approve new contracts valued over \$10,000
- Have no supervisory authority over AML staff
- Approve policies and procedures
- Approve marketing and communication plan and strategy
- Approve implementation and amendment process of the Agreement and Code
- Participate in and receive the annual audit report and oversight documents
- Conduct an annual performance review of AML’s activities

Section 6. Term. The term of this Agreement shall commence as of the Effective Date and shall expire three years from the Effective Date, at which time the parties may renew the Agreement on similar terms and conditions for another term, unless sooner terminated as provided in Section 7 of this Agreement.

Section 7. Renewal. AML will be given the opportunity to renew this Agreement in three-year increments, after the initial period of operations.

Section 8. Termination for Convenience. This Agreement may be terminated by either party upon 120 days' written notice. In the event that this Agreement is terminated, the AML will be paid for invoiced work performed prior to termination.

Section 9. Mediation. If the Commission determines that AML has failed to fulfill in a timely and proper manner the obligations of this Agreement, the Commission will work with AML to address deficiencies, including to resolve through a mediator as necessary. The Commission expects resolution of identified deficiencies within ninety (90) days.

Section 10. Termination for Cause. If, through any cause, AML shall fail to fulfill in a timely and proper manner the obligations under this Agreement, unresolved by Section 9 and determined to be egregious, intentionally deficient, and/or significantly detrimental to the governance or fiduciary oversight of the Commission, then the Commission shall thereafter have the right to immediately terminate this Agreement, upon a three-quarter vote of the Board of Directors, by giving written notice to AML and specifying the effective date thereof. In that event, all finished or unfinished deliverable items under this Agreement prepared by AML shall, at the option of the Commission, become its property, and AML shall be entitled to receive just and equitable compensation for any satisfactory work completed on such materials. In such event, AML shall not be relieved of liability to the Commission for damages sustained by the Commission by virtue of any breach of this Agreement, and the Commission may withhold any payment due AML for the purpose of setoff until such time as the exact amount of damages due the Commission from such breach can be determined. Notwithstanding the foregoing, AML shall be entitled to not less than ten (10) days written notice to cure any reasonably curable condition alleged to constitute a default by the Commission before a breach of this Agreement shall be declared by the Commission as a result thereof.

Section 10. Fees. Fees will be applied to total revenues upon collection each month, deducted according to these terms, and the remainder of the revenue remitted to the member, or held until the appropriate remittance date required by the member (if quarterly).

- A. MUNIREvs. AML will facilitate payment of the Commission's MUNIREvs contracts fees, which may be reviewed and amended after five years after the Commission's contract (November 2024).

\$0-\$10M	\$10M-\$20M	\$20M+
12%	8%	4%

- B. TTR. AML will facilitate payment of the Commission's TTR contract fees, which may be reviewed and amended after three years after the Commission's contract (November 2022), including a \$100,000 up front payment (to be repaid to AML as a fee from members, either upon adoption of the Uniform Code or as part of subsequent collection

of sales tax revenue; any remainder balance – the difference between the number of members and total amount of loan shall be addressed through interest earnings on the fund balance or revenues received), and TTR’s fees addressed within the following fee structure on annual gross sales tax collected.

\$0-\$10M	\$10M-\$20M	\$20M+
1.25%	1.0%	.75%

C. Commission. The Commission’s fees will be collected based on a monthly calculation of the annual budget, applied as a % of revenue to gross sales tax collected. The total % collected from fees (between MUNIREvs, TTR and AML) shall be limited to not more than 20% in any one month, with the maximum preferred limit at 15%.

1. AML will submit monthly reports of fees and expenses to the Commission, and the Commission will pay AML’s direct expenses and 8% overhead expenses. Overhead will be applied to direct expenses and include rent, computers and electronic equipment, telecommunication equipment and services, and indirect staff time. Direct and indirect expenses will be evaluated annually to ensure appropriate allocation. AML’s direct expenses include:
 - i. Staff who are directly responsible for Commission programs. Costs include salary and benefits.
 - ii. Contracts, insurance, and miscellaneous costs directly related to AML’s performance of the Services.
 - iii. Commission fees are estimated not to exceed the following amounts, subject to the Commission’s budget, and be capped on fees from revenue beyond \$30M, unless approved by the board of directors.
2. Any loan of start-up capital by AML will be repaid in subsequent years in a manner as determined by the board and in agreement with AML, to include any interest.

Section 11. Insurance.

AML will maintain general and professional liability insurance coverages at all times during this Agreement with limits and retention amounts in commercially-prudent amounts consistent with industry standards to cover any loss arising as a result of any real or alleged negligence, errors, or omissions on the part of AML’s officers, agents or employees in any aspect of the performance of services under this Agreement. Notwithstanding, the commercial general liability must include minimum coverage of \$1,000,000.

The policy must name the Commission as an additional insured and provide that the policy may not be cancelled without 30 days’ prior written notice to the Commission. Upon reasonable request, the Commission shall be furnished with a certificate evidencing

issuance of such policy of liability insurance, and such certificate shall recite that said policy may not be canceled without 30 days' prior written notice to the Commission.

AML shall also maintain Worker's Compensation and Employers Liability Insurance. Worker's compensation insurance and employers' liability insurance shall be in compliance with the statutory requirements of the State of Alaska, and any other statutory obligation, whether federal or state pertaining to compensation of injured employees. The worker's compensation insurance and employers' liability insurance shall contain a waiver of subrogation provision in favor of the Commission.

Section 12. Indemnification.

- A. AML's Obligation to Indemnify. AML shall, indemnify, defend and hold the Commission harmless, including its directors, officers, employees, representatives, affiliates, successors, and permitted assigns (the "Commission Indemnified Parties") from and against all liability, damages, demands, penalties, fines, causes of action, losses, costs, or expenses, including attorneys' fees asserted against, imposed upon or incurred by any Commission Indemnified Party arising out of or resulting from: (a) any breach or nonfulfillment by AML of, or any failure by AML to perform, any of the covenants, terms, or conditions of, or any of its duties or obligations under, this Agreement, including without limitation any failure of AML to assume responsibility for any of the Services in a timely manner in accordance with this Agreement except to the extent that such breach, nonfulfillment, or failure is caused by the actions of any Commission Indemnified Party; and (b) any successful enforcement of this indemnity.
- B. The Commission's Obligation to Indemnify. The Commission shall indemnify and hold harmless AML and its directors, officers, employees, representatives, affiliates, successors, and permitted assigns (the "AML Indemnified Parties") from and against all liability, damages, demands, penalties, fines, causes of action, losses, costs, or expenses, including attorneys' fees asserted against, imposed upon or incurred by any AML Indemnified Party arising out of or resulting from: (i) any breach or nonfulfillment by the Commission of, or any failure by the Commission to perform, any of the covenants, terms or conditions of, or any of its duties or obligations under, this Agreement except to the extent that such breach, nonfulfillment, or failure is caused by the actions of any AML Indemnified Party; or (ii) any successful enforcement of this indemnity.

Section 13. Miscellaneous. This Agreement does not create, and shall not be construed as creating, any rights enforceable by any person or entity not a party to this Agreement. Nothing in this Agreement shall be deemed or construed to create the relationship of principal and agent, or of partnership, or of joint venture, or of any association between the Commission and AML. This Agreement may not be assigned without the prior written consent of the other party, which may not be unreasonably withheld. This Agreement represents the entire agreement and understanding between the parties with respect to the subject matter of this Agreement and supersedes all prior or contemporaneous, express or implied, written or oral agreements, representations, and conditions between the parties with respect to the subject matter of this Agreement. This Agreement may be

executed in any number of counterparts, including by electronically-transmitted signature, and each counterpart shall for all purposes be deemed to be an original; and all such counterparts shall together constitute but one and the same agreement. This Agreement may only be modified upon mutual agreement in writing by both parties.

[SIGNATURE PAGE FOLLOWS]

The parties have executed this Agreement effective as of the Effective Date.

The Commission:

ALASKA REMOTE SELLER
SALES TAX COMMISSION

By: _____

Its: _____

AML:

ALASKA MUNICIPAL LEAGUE

By: _____

Its: _____

LEGISLATIVE DRAFTING EXCERPT—DEFINITIONS

1. Many bills contain sections that define the terms used in the bill. A definition section in a bill may define only one word or many words. A definition section can be useful in making a bill precise, but, if great care is not used in defining a word, the definition may cause confusion rather than eliminate it.
2. Substantive provisions of the law must not be hidden in definitions, and a word should not be given a strained and artificial definition that is out of keeping with customary usage or contrary to other law. A definition should be used to limit to one definite meaning a word that otherwise might be subject to several differing but equally valid interpretations.
3. Statutory Construction. If the word is clear and unmistakable without definition, it is superfluous and confusing to define it. A drafter must use good judgment in this regard, however. A word that is not defined in a statute will probably be given its common law meaning by a court construing the statute.
 - 3.1. See Hugo v. City of Fairbanks, 658 P.2d 155 (Alaska App. 1983), where "intent to deprive" was construed to mean "intent to permanently deprive" because of the common law meaning of "deprive."
 - 3.2. For a discussion of how a court approaches the interpretation of a statutory term, see Gibson v. State, 719 P.2d 687 (Alaska App. 1986).
4. Repetition. A definition is often useful to eliminate undesirable repetition, as in the following examples:
 - (A) "commissioner" means the commissioner of health and social services;
 - (B) "school board" means the school board of a borough or city school district or a regional educational attendance area;
5. Means vs. Includes.
6. A definition may be all-inclusive, as in the foregoing examples, in which the word "means" equates the terms on either side. The word "includes" may be used in a definition, but only as an alternative to the word "means." It is used when the bill drafter intends to show that a meaning that might otherwise be in doubt is intended, in addition to the clear meaning of the word. An example is:
 - 6.1. "oath" includes affirmation
 - 6.2. See generally, Dickerson, The Fundamentals of Legal Drafting, 2d ed. (1986), sec. 7.1 - 7.6.

- 6.3. For an interpretation of the use of "includes" in a statutory definition, see Brown v. Wood, 575 P.2d 760, 767 (Alaska 1978). This interpretation has been adopted by the legislature and is codified at AS 01.10.040(b), which provides:

When the words "includes" or "including" are used in a law, they shall be construed as though followed by the phrase "but not limited to."

7. Limited vs. Not Limited. Consequently, it is not necessary to say "but not limited to" when using "includes" or "including." If you wish to limit the defined term, use the form set out in the above example defining "school board."
8. Alaska Statutes. The first step a drafter must take when considering the use of a definition section in a bill or the addition of a definition to a section that already exists is to check to see if the term in question is already defined in the statutes. A definition of the term might already be in one of the following places:
- 8.1. AS 01.10.055, 01.10.060, or 01.10.065 (definitions for all Alaska Statutes);
 - 8.2. the end of the title being amended (usually in the chapter headed "General Provisions");
 - 8.3. the end of the chapter being amended (usually the last section); or
 - 8.4. the end of the article or group of sections being amended.
9. Location in Code. If a definition applies to only one section of a fairly long bill, it is preferable to put the definition at end of the section of the bill to which it applies. In all other cases, the placement of the definition section should be as described in (2) - (4) above. In rare cases involving widely adopted uniform acts with nationwide implications, definitions have been placed at the beginning of chapters, e.g., the Uniform Commercial Code, the Uniform Probate Code, and the Uniform Interstate Family Support Act.
10. Alphabetized. Within a newly enacted definition section, the terms defined must be alphabetized.
11. Cross References. If a drafter wants to use a defined term that is located elsewhere in the statutes (but not in the title the drafter is amending), the proper form is "---- has the meaning given in AS ---.---.---." The drafter must realize, of course, that any future changes in the first definition will be incorporated in the second because of the cross-reference technique, so care must be taken to affirmatively decide that result would be desirable. If the two definitions should be independent, the drafter can simply define the new term with the same words used in the other location rather than use a cross-reference.

Benefits to Local Governments

- Maintain taxing authority
- Maintain rate and exemptions
- Delegated administration to AML avoids additional or duplicative costs
- Entirely up to local government
 - Opt-in = you take advantage of Wayfair
 - Opt-out = residents don't pay sales tax
- Levels the playing field for local business – increases local economic activity
- Increased revenue for education, public safety, roads and public works
- Increases ability to respond to State cost-shifting or cuts
- Replaces revenue eroded with decrease to Community Assistance over the years

Benefits to Business

- Levels the playing field – increases local purchase potential by ensuring that local retailers aren't penalized for collecting a tax they are required to, while remote retailers have an unfair advantage in not
- These aren't new taxes – these are taxes that local residents are already paying, collected by local businesses, but not collected by remote retailers
- Keeps tax rates stable – instead of increasing taxes, applying the existing tax to remote sellers ensures that local tax rates stay stable
- Maintains current local exemptions – necessary for local control
- Local revenues improve communities – enables greater investment in local infrastructure, which supports economic activity
- On par with other states – businesses across the U.S. are complying, so Alaska is expecting similar compliance by those businesses that make sales into or within Alaska
 - This is very quickly become common practice
- Strengthens local governments – greater capacity within local governments leads to greater efficiencies
- Local taxpayers, local budgets – residents help shape annual budgets, informed by economic development

Benefits to Alaskans

- Protects residents outside boundaries – right now Alaska hasn't set up any rules of the road when it comes to remote commerce, and without a tax look up map Alaska residents may be getting taxed where they aren't supposed to
- Consistent with activities in majority of U.S. – this puts Alaska on track with the activities of other states that are benefiting from this opportunity.
- Simplifies validation of exemptions, and access for remote sellers – single point of entry and delivery for exemption certificates

Intergovernmental Agreement

- Commits the local government to participate in the Commission
- Agrees to delegate to the Commission collection of remote sales tax
- Agrees to AML administration
- Action – pass a resolution authorizing signature to the Agreement

Alaska Remote Seller Sales Tax Commission

- Local government appoints a representative
- Annual meeting and notice of all meetings
- Governed by Bylaws
- Board of seven
 - Oversees administration
 - Approves annual budget
 - Development of the Remote Sales Tax Code

Alaska Remote Seller Sales Tax Code

- Applies the local jurisdiction’s tax rate, cap and exemptions to remote sales
 - Out of state sales – if the retailer does not have a physical presence in Alaska, they are expected to comply. The Commission anticipates that this applies to between 2,500 and 3,500 retailers.
 - In-state sales – if the retailer sells into your community, collection of sales tax is expected
- Standardizes compliance – reporting, penalties, audits, late filing rules, etc.
- Criteria Threshold (otherwise known as economic nexus)
 - \$100,000 in statewide, annual gross sales; and/or
 - 200 transactions annually, in Alaska
- Hold Harmless provision
 - All retailers who use the Commission’s software aren’t liable for inaccurate information contained therein
- Remote vs. Physical
 - If the retailer has only a physical presence, remit to the local government
 - If the retailer has a physical presence but also remote sales, continue remitting local taxes to the local government and remote taxes to the Commission
 - If the retailer is a marketplace facilitator, remit to the Commission
 - If the retailer is a marketplace facilitator that provides lodging, remit to the local government
- Late filings
 - Late filing fee is paid to the Commission for administrative action
 - Interest owed on taxes collected accrues to the local government
 - Penalty of 5% a month accrues to the local government
- Common definitions
 - The Code provides uniform definitions, including supplemental definitions that apply when a jurisdiction does not have their own

When does this take effect?

- The Commission has developed software that will be ready as of January 31, 2020. Upon adoption of the Remote Sales Tax Code by a local government, retailers will be notified that they should begin collection, and have 30 days to comply. As additional local governments adopt the Code, compliance will occur on a rolling basis. Assuming that the first local government adopts the Code in late January, early February, the Commission expects reporting and remittance as soon as March/April.

What about:

- Seasonal tax rate – the software will include reference applicable rate changes throughout the year, as long as there is 30 days’ notice. You will need to notify the Commission of seasonal tax rates, and the Commission will need the exact dates on an annual basis. Any tax holiday that occurs throughout the year should be noticed appropriately.
- All of our product exemptions – the Commission has established a tax variability matrix that tracks all product exemptions from all taxing jurisdictions. The exemption happens automatically within the API adopted by remote retailers or accessed via the website provided by the Commission. The Commission has adopted a common set of definitions that will assist in compliance.
- Entity-based exemptions
 - Apply to:
 - Senior exemptions – based on each local government’s definition of “senior”, when they apply. If applicable only to certain sales, the software will accommodate that variation.
 - Goods for wholesale - – these entities should be using their State of Alaska wholesale license in their purchase, which vendors they purchase from should recognize and apply tax-free status. Wholesale purchases will count toward establishing the criteria threshold for vendors selling into the state, even though taxes will not be collected. Sales and value of exemption will be reportable.
 - Churches, nonprofits, and governments – where a jurisdiction exempts these entities, the exemption should apply. Sales and value of exemption will be reportable.
 - Process:
 - Development of an Exemption Certificate Registry (ECR)
 - ECR is an online system that buyers can access from any internet browser. ECR provides buyers with tools to find, create, and store exemption certificates for future use. An exemption certificate created through ECR can be reused from vendor to vendor.
 - Once a buyer’s exemption certificates are set up in ECR, these certificates can be provided to vendors in various ways. From ECR, certificates can be emailed, downloaded, uploaded, printed, or even sent directly to vendors’ exemption certificate management systems.
 - Vendors are still responsible for storing exemption certificates received through ECR.
 - Buyer’s responsibility - It will be up to the buyer to upload their information, including locally produced certificate, if any, into their account on the ECR. Within the ECR, the buyer will direct that information to vendors. The buyer will go through the retailer’s established process to set up an individual tax exemption within their account, including to download from the ECR the correct documentation for that retailer.
 - Any inaccurate sales tax collection should be taken up first with the vendor, then brought to the Commission’s attention in case of a refund being necessary.
- Monthly filing – the default filing is monthly, consistent with national trends and best practice. Vendors will have the option to file quarterly but this must be approved by the Commission.

- Quarterly filing – notify the Commission if you would like reporting and remittance to occur on a quarterly basis. The Commission will hold any remittance occurring more frequently in trust for that distribution.
- Deliveries to post office boxes within our jurisdiction – these will be treated as taxable, based on the point of delivery
- Deliveries to addresses right outside our jurisdiction – the Commission has GIS-located all addresses in Alaska, such that these types of deliveries should not be taxable, and that all taxed sales are accurate. The software contractor has verified that boundary maps with the State DCRA, and each local government should notify the Commission upon adopting the Code of any discrepancies.

Changes to current code:

- Necessary - Exemption for remote sales will need to be removed, if applicable
- Optional – update your reporting requirements, definitions, etc. based on the remote sales tax code

What happens when the local government adopts the Code?

- Local government notifies the Commission by contacting Nils Andreassen at nils@akml.org
- The Program Manager will follow up, requesting that you complete a simple form that confirms rates, exemptions, sales tax boundaries, any changes to existing code, remittance preference, etc.
- The Program Manager will ask the local government to confirm all the settings in the software as accurate
- Upon receipt of the registration form, and confirmation that settings are correct, the Commission will notify remote sellers that they will need to comply within 30 days
- The Commission will send the local government representative log-in information for the Alaska Sales Tax Portal, where they can see all returns, and the calculations that go into remittance
- On a monthly or quarterly basis, and within 10 days of the last day of the month, the Commission will remit collected taxes to the local government
- The local government will confirm receipt and accuracy of the filing and remittance
- The local government should review filings, flag any they have questions about, and send the Program Manager questioned filings
- The Program Manager will review questioned filings and upon receipt of more than three of the same vendor, request an audit of their transactions for the applicable jurisdictions
- Amended filings, or refunds necessary, will be accounted for on a rolling basis



A PATHWAY TO ONLINE SALES TAX COLLECTION

1

Join the Alaska Remote Sellers Sales Tax Commission (ARSSTC)



2

Provide Current Tax Code and Verification of Boundaries



3

Pass Uniform Tax Code



\$

Receive Tax Return and Remittance of Taxes Collected

YOU'LL NEED TO

- Pass a resolution agreeing to join the Alaska Remote Sellers Sales Tax Commission (ARSSTC)
- Send your current Code and confirm that your sales tax boundaries match your municipal boundaries
- Pass ordinance adopting the Uniform Tax Code
- Review your existing Code to make sure remote sales are not exempt
- Consider aligning with Uniform Tax Code on deadlines, compliance, definitions, etc.

THE COMMISSION WILL

- Notify remote sellers of your participation with a 30-day notice to comply
- Sellers will report and remit funds monthly
- Commission remits funds to the municipality

RESULTS

- Access to all reporting for your municipality
- A likely revenue increase for you

Memo: Entity-based and Individual Exemptions
To: Alaska Municipal League
From: TTR
Date: 12/30/19

Subject: Simplifying Municipal Sales Tax Exemptions

TTR and MUNIREvs are working with the Alaska Municipal League to simplify collection of sales taxes on remote sales into Alaska member jurisdictions.

Many cities in Alaska have exemptions for sales to specific entities (such as church, non-profit, or government) or individuals (such as seniors) or exemptions for specific types of products being purchased. In this memo, we will call specific entities and individuals “buyers.”

To claim an exemption, buyers typically fill out an exemption certificate or provide some other proof of exemption. Cities and boroughs (municipal governments) are responsible for designating the kind of certificate or documentation buyers in their community have to provide.

In some cases, buyers hand over or show exemption documentation to vendors to get an exemption. Exemption documentation typically works well for sales in the local area. Exemption documentation can get challenging when applied to online or remote purchases.

TTR and MUNIREvs are working together with the Alaska Municipal League to simplify the sales tax exemption process.

What is the normal exemption process?

The normal exemption process involves buyers filling out and providing exemption certificates or exemption documentation to each vendor they purchase from.

With a copy of the certificate or documentation on file, vendors exempt sales to the buyer in whole or in part, according to type of exemption claimed. For example, a product-based exemption may only apply to “fish,” where an entity-based exemption may apply to “churches.”

Vendors are required to store and provide exemption certificates proving which sales are tax-exempt under audit. To help collect, store, and update these documents, vendors typically use some sort of exemption certificate management system.

It varies from state to state, but typically buyers are required to re-create their exemption certificate for each vendor they purchase from. Each vendor stores its copy.

Simplifying the exemption process

TTR is making the exemption process simpler for buyers by preparing the **Exemption Certificate Registry (ECR)** for use in remote sales into Alaska Municipal League member jurisdictions.

ECR is an online system that buyers can access from any internet browser. ECR provides buyers with tools to find, create, and store exemption certificates for future use. An exemption certificate created through ECR can be reused from vendor to vendor.

Once a buyer's exemption certificates are set up in ECR, these certificates can be provided to vendors in various ways. From ECR, certificates can be emailed, downloaded, uploaded, printed, or even sent directly to vendors' exemption certificate management systems.

Vendors are still responsible for storing exemption certificates received through ECR.

ECR works for churches, governments, non-profits, wholesalers, contractors, seniors, and any other buyer that qualifies for an exemption in Alaska Municipal League member jurisdictions.

For easy access, TTR suggests placing a link to ECR on the appropriate web pages of the Alaska Municipal League.

How does ECR work?

First, TTR works with Alaska Municipal League and member jurisdictions to ensure all exemption certificates and exemption documentation needs are prepared, verified, and maintained within ECR. Then:

- Buyers create user accounts on ECR
- Buyers fill in general information typically used in exemption certificates
- Buyers fill in additional information needed for specific exemption certificates or exemption documentation needed for purchases
- Buyers use ECR functions to send pre-filled exemption certificates or exemption documentation to vendors. For each new vendor, all the buyer has to do is select the appropriate certificate or documentation and add relevant vendor information

Examples of ECR use

Example #1. Individual in a member city wants to claim a senior exemption on a purchase from a Remote Seller:

- City requires an ID showing birthday and a statement confirming 2 years residency
- Individual registers with ECR, uploads a scan or picture of their ID card, confirms birthdate, and clicks a button confirming they have residency in the city for the last two years
- Individual goes to Amazon to make a purchase
- Individual goes through the usual process on Amazon to set up an individual tax exemption
- At the appropriate point, Individual opens their ECR account and downloads exemption certificate or documentation from ECR and uploads to the Amazon website
- Having provided exemption certificate or documentation to Amazon, Individual's purchase is made exempt from tax

Example #2. Contractor in a member city makes regular purchases of exempt lumber and taxable equipment for construction from five different Remote Sellers:

- City requires an exemption certificate to be filled out for exempt lumber including business tax identification number, name, date, and address
- Contractor registers with ECR, fills in all necessary information as per city requirements, from ECR is able to fill in Remote Seller information, and sends certificates directly to all five Remote Sellers
- Having received valid and up-to-date exemption certificate from contractor, Remote Seller bills Contractor with tax only on taxable equipment portion of sale

What is expected of member municipal governments?

Member municipal governments will review and provide up-to-date information about sales tax exemptions in their sales tax codes.

Member municipal governments will work with Alaska Municipal League and TTR to ensure municipal exemptions are correctly represented in the ECR system and are kept up to date.

Where a member municipal government does not already have a refund or rebate system in place, a refund or rebate system will need to be established. Below are some guidelines to assist:

- Refund or rebate requests typically come about when buyers make a purchase and they did not know or were not prepared to claim an exemption
- Buyers who find out later that they were exempt often want to get their tax money back, so they get the appropriate form or documentation and then contact the vendor or the municipal government
- While municipal governments prefer exemption certificates to be filled in ahead of or at the time of purchase, their laws often allow buyers to claim refunds within a certain amount of time of an audit (typically 120 days)
- Make it simple up front to know about and account for exemptions at time of purchase (greatly assisted by implementation of ECR and taxability matrixes to be provided by TTR)
- Make the refund process simple—be clear about what documentation is needed for an exemption or refund

TTR is looking forward to working with the Alaska Municipal League member jurisdictions.

Please feel free to reach out to TTR or the Alaska Municipal League with any questions or concerns.

Brian Smith | Leader Government Relations
Direct: (971) 901-4020
TTR, Inc. – Get Tax Right
3850 NE Three Mile Lane McMinnville, OR 97128-9402

Alaska's Local Governments Address Revenue and Economic Development

By Nils Andreassen

January 13, 2020

Many Alaskans are aware of the changes that have occurred in the last year with regards to the collection of taxes on remote sales. Numerous media reports have commented on the Supreme Court decision that paved the way for States across the U.S. to set up processes that have allowed them to start collecting sales tax from online and other remote retailers. The justification that has allowed this to occur is based on the scale, really, of internet sales. It's an entirely different landscape than it was just a few decades ago.

The guidelines that the Supreme Court set out for the collection, now, of sales tax on remote sales, correspond to avoiding undue burden on interstate commerce. This means that states have to provide some criteria for what economic nexus should look like – instead of being physically located in a state, this criteria needs to establish presence by setting out a total number of transactions or total amount of sales that constitute a level of economic activity in a state that triggers the collection of sales tax. This protects small businesses. The Court also calls for streamlined, statewide administration of tax collection.

While the State of Alaska does not have a sales tax in place, its local governments do – this is unique in the nation. Instead of the State setting up a system to collect sales tax on remote sales (which has occurred so far in the majority of U.S. states), Alaska's local governments have been working together to set up a system that complies with the Supreme Court's guidance.

A Commission has been established to provide governance of the overall administration. This ensures that due diligence occurs, with an active board of directors and members contributing to solutions that work for everyone. These solutions depend, too, on software that will remove what might otherwise be an undue burden on those retailers. The Commission is committed to delivering a service that meets the requirements of local governments that is in the interest of Alaskans.

Make no mistake, taking this step benefits Alaska. Most importantly, it benefits Alaska's businesses. For years, Alaska retailers have been penalized relative to online retailers. Online sales have had an automatic discount – a competitive advantage – over buying locally. The growth of online sales, too, has meant that Alaska's businesses are facing an uphill battle. By leveling the playing field, local businesses can now compete on cost as well as quality.

Yes, Alaskans are the ones paying this sales tax, but the system that is set up 1) avoids them paying sales tax incorrectly, and 2) has the potential to avoid increases in taxes. One of the Commission's roles is to establish a tax look-up map, which includes rates and exemptions based on GIS-based delivery coordinates. The Commission will also establish a statewide exemption registry, which will provide a clear pathway for seniors, nonprofits, and others to register as tax-exempt with those online retailers.

How does this avoid increases in taxes? Local governments have seen an erosion of state and federal revenue over the last five years. The application of current sales taxes to remote sales will result in stronger local governments, reduce the need for increased or additional taxes, and help ensure that the

services you depend on – public safety, education, roads, libraries, etc. – continue. Local governments, as well, have a role to play in economic development; by removing a disincentive to buying locally they contribute to a local economy that will ultimately benefit residents.

In the weeks to come Alaskans will see many local governments take up the adoption of a uniform remote sales tax code, which will streamline collection. There will be important conversations to occur at the local level, across the state, as communities weigh costs and benefits. This is historic, in many ways, as local governments have coordinated on an unprecedented level to accomplish something that no other state has had to.

Nils Andreassen is the Executive Director of the Alaska Municipal League (AML). AML is comprised of 165 incorporated cities and boroughs, and provides a range of services to its members. AML's newly launched Alaska Municipal Sales Tax Program will administer the collection and remittance of remote sales taxes on behalf of local governments in Alaska.

XX.XX.260. – *Supplemental Definitions.*

The Commission shall promulgate Supplemental Definitions that are incorporated into this Remote Seller Sales Tax Code. Supplemental Definitions are available at www.arsstc.org. Provisions of the Supplemental Definitions that are amended, deleted, or added prior to or after the effective date of the latest amendment to this chapter shall be applicable for purposes of this chapter on the effective date provided for such amendments, deletions, or additions, including retroactive provisions.

ALASKA REMOTE SELLER SALES TAX CODE
SUPPLEMENTAL DEFINITIONS

“Advertising” means services rendered to promote a product, service, idea, concept, issue, or the image of a person, including services rendered to design and produce advertising materials prior to the acceptance of the advertising materials for reproduction or publication, including research; design; layout; preliminary and final art preparation; creative consultation, coordination, direction, and supervision; script and copywriting; editing; and account management services.

“Aircraft charter service” means an air carrier operation that requires the customer to hire an entire aircraft rather than book passage in whatever capacity is available on a scheduled trip.

“Alcoholic beverages” means beverages that are suitable for human consumption and contain one-half of one percent or more of alcohol by volume.

“Arts and crafts” mean articles produced individually by artistic or craft skill such as painting, sculpture, pottery, jewelry or similar articles.

“ATV” or **“off-highway vehicle”** means a vehicle designed or adapted for cross-country operation over unimproved terrain, ice or snow, and which has been declared by its owner at the time of registration and determined by the department to be unsuitable for general highway use, although the vehicle may make incidental use of a highway as provided in this title; it does not include implements of husbandry and special mobile equipment.

“Authentic Native artwork” means any product which is Alaska Native handcrafted and is not made by machine. “Alaska Native handcrafted” means the skillful and expert use of the hands in making products solely by Alaska Natives within the United States, including the use of findings, hand tools and equipment for buffing, polishing, grinding, drilling or sewing. “Made by machine” means the producing or reproducing of a product in mass production by mechanically stamping, casting, blanking or weaving.

“Bank services” or **“financial services”** means deposit account services, loan transaction fees, transactions relating to the sale or exchange of currency or securities, transactions for conversion of negotiable instruments, safe deposit services, escrow collection services, late fees, overdraft fees, and interest charged on past due accounts.

“Boat” means a vessel used or capable of being used as a means of transportation on the water.

“Child care” means a regular service of care and education provided for compensation for any part of a day less than 24 hours to a child or children under 16 years of age whose parents work outside the home, attend an educational program or are otherwise unable to care for their children.

“Church” means a fellowship of believers, congregation, society, corporation, convention, or association that is formed primarily or exclusively for religious purposes and that is not formed for the private profit of any person.

“Clothing and related products” means all human wearing apparel suitable for general use. Clothing includes: aprons, household and shop; athletic supporters; baby receiving blankets; bathing suits and caps; beach capes and coats; belts and suspenders; boots; coats and jackets; costumes; children and adult diapers, including disposable; ear muffs; footlets; formal wear; garters and garter belts; girdles; gloves and mittens for general use; hats and caps; hosiery; insoles for shoes; lab coats; neckties; overshoes; pantyhose; rainwear; rubber pants; sandals; scarves; shoes and shoe laces; slippers; sneakers; socks and stockings; steel-toed boots; underwear; uniforms, athletic and nonathletic; and wedding apparel.

“Commercial airline tickets” means any card, pass, certificate, or paper, electronic or otherwise, providing or intending to provide for the carriage or transportation of any person or persons upon any airline.

“Common carrier” means an individual or a company, which is in the regular business of transporting freight for hire. This is distinguished from a private carrier which transports its own goods and equipment and makes deliveries of goods sold to its customers.

“Construction materials” means an item of tangible personal property that is used to construct or renovate a building, a structure, or an improvement on land and that typically loses its separate identity as personal property once incorporated into the real property. “Construction material” includes building materials, building systems equipment, landscaping materials, and supplies.

“Construction services” means all labor and services provided in connection with the construction, alteration, repair, demolition, reconstruction, or other improvements to real property.

“Crop production” means purchases of seed, plants, fertilizer, pesticides, fungicides, and other tangible personal property and agricultural machinery, tools, and equipment to be directly used in the production of food or commodities that are sold either for human consumption or for further food or commodity production. The phrase “directly used” means that the property must be integral and essential to the crop production process.

“Disabled veteran” means a disabled person:

- A. separated from the military service of the United States under a condition that is not

dishonorable who is a resident of the state, whose disability was incurred or aggravated in the line of duty in the military service of the United States, and whose disability has been rated as 50 percent or more by the branch of service in which that person served or by the United States Department of Veterans Affairs; or

- B. who served in the Alaska Territorial Guard, who is a resident of the state, whose disability was incurred or aggravated in the line of duty while serving in the Alaska Territorial Guard, and whose disability has been rated as 50 percent or more.

“Drug” means a compound, substance or preparation, and any component of a compound, substance or preparation, other than “food and food ingredients,” “dietary supplements” or “alcoholic beverages:”

- A. Recognized in the official United State Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, and supplement to any of them; or
- B. B. Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease; or
- C. C. Intended to affect the structure or any function of the body.

“Drugs for animal use” means:

- A. a drug for animal use recognized in the official United States Pharmacopoeia or National Formulary of the United States;
- B. a drug intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in animals;
- C. a drug, other than feed, medicated feed, or a growth promoting implant intended to affect the structure or function of the body of an animal; or
- D. a drug intended for use as a component of a drug in clause A., B., or C.

“Dues, Membership and Subscription” means monies paid for the purpose of membership, or qualifying or becoming eligible for goods or services, or discounts to goods or services.

“Durable medical equipment” means equipment including repair and replacement parts for same, but does not include “mobility enhancing equipment,” which:

- A. Can withstand repeated use; and
- B. Is primarily and customarily used to serve a medical purpose; and
- C. Generally is not useful to a person in the absence of illness or injury; and
- D. Is not worn in or on the body.

“Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

“Farming supplies” means animal food, seed, plants, fertilizers and other consumables used in an agriculture or mariculture business that sells its harvested grains, produce, meats, animal products or other farm production.

“Food” means any food or food product for home consumption except alcoholic beverages, tobacco, and prepared food. Food or food products includes property, whether in liquid,

concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value.

“Food stamps” means obligations of the United States government issued or transferred by means of food coupons or food stamps to enable the purchase of food for the eligible household.

“Funeral fees” means those services normally performed and merchandise normally provided by funeral establishments, including the sale of burial supplies and equipment, but excluding the sale by a cemetery of lands or interests therein, services incidental thereto, markers, memorials, monuments, equipment, crypts, niches, or vaults.

“Gaming” means any game defined in AS 05.15.690, as amended or renumbered.

“Gasoline, heating fuels and other consumable fuels” means refined petroleum and petroleum-based products used for internal combustion engines and as the primary source for residential heating or domestic hot water. This may also include other types of fossil fuels as well as fuel sources that are renewable.

“Government” means the federal government and any agency or instrumentality thereof; any State and any agency or instrumentality thereof; any local government within a State, and any unit, agency, or instrumentality of such local government; any tribal government; any other governmental instrumentality.

“Handling,” “crating,” or “packing” means charges by the seller of personal property or services for preparation and delivery to a location designated by the purchaser including, but not limited to, transportation, shipping, postage, handling, crating, and packing.”

“Insurance” means a contract whereby one undertakes to indemnify another or pay or provide a specified or determinable amount or benefit upon determinable contingencies.

“Internet service” means a service that enables users to access proprietary and other content, information electronic mail, and the Internet as part of a package of services sold to end-user subscribers.

“Loan” means an extension of credit resulting from direct or indirect negotiations between a lender and a debtor.

“Lobbying” means the practice of promoting or opposing the introduction or enactment of legislation before the legislature or legislators and the practice of promoting or opposing official action of any public official or the legislature.

“Long-term vehicle lease” means a lease of a motor vehicle, as defined in this Section, for a period of 24 months or longer.

“Manufacturing components” means sales of personal property as raw material to a person engaged in manufacturing for sale, where the property sold is consumed in the manufacturing

process of or becomes an ingredient or component part of a product manufactured for sale by the manufacturer.

“Marijuana accessories” means any equipment, products, or materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, composting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, vaporizing, or containing marijuana, or for ingesting, inhaling, or otherwise introducing marijuana into the human body;

“Medical equipment and supplies, and prescriptions” means all medicines, medical goods or equipment prescribed by a health care provider licensed to practice in Alaska or any other state in the United States.

“Medical services” means those professional services rendered by persons duly licensed under the laws of this state to practice medicine, surgery, chiropractic, podiatry, dentistry, and other professional services rendered by a licensed midwife, certified registered nurse practitioners, and psychiatric and mental health nurse clinical specialists, and appliances, drugs, medicines, supplies, and nursing care necessary in connection with the services, or the expense indemnity for the services, appliances, drugs, medicines, supplies, and care, as may be specified in any nonprofit medical service plan. “Medical services” include hospital services.

“Mobility enhancing equipment” means equipment including repair and replacement parts to same, but does not include “durable medical equipment,” which:

- A. Is primarily and customarily used to provide or increase the ability to move from one place to another and which is appropriate for use either in a home or a motor vehicle; and
- B. Is not generally used by persons with normal mobility; and
- C. Does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.

“Motor vehicle” means a motor vehicle, as defined in AS 28.90.990(17), that is either required to be registered under AS 28.10.011, or is exempted from registration under AS 28.10.011(6) and (11). However, “motor vehicle” does not include either an “off-highway vehicle” as defined in 13 AAC 40.010(a)(30) or a “snowmobile” as defined in 13 AAC 40.010(a)(49). “Motor vehicle” includes parts for a motor vehicle.

“Newspaper” means a publication of general circulation bearing a title, issued regularly at stated intervals at a minimum of not more than two weeks, and formed of printed paper sheets without substantial binding. It must be of general interest, containing information of current events. The word does not include publications devoted solely to a specialized field. It shall include school newspapers, regardless of the frequency of the publication, where such newspapers are distributed regularly to a paid subscription list.

“Nonprofit organization” means a business that has been granted tax-exempt status by the Internal Revenue Service (IRS); means an association, corporation, or other organization where no part of the net earnings of the organization inures to the benefit of any member, shareholder, or other individual, as certified by registration with the IRS.

“Over the counter drug” means a drug that contains a label that identifies the product as a drug as required by 21 C.F.R. § 201.66. The “over-the-counter-drug” label includes:

- A. A “Drug Facts” panel; or
- B. A statement of the “active ingredient(s)” with a list of those ingredients contained in the compound, substance or preparation.

“Periodical” means any bound publication other than a newspaper that appears at stated intervals, each issue of which contains news or information of general interest to the public, or to some particular organization or group of persons. Each issue must bear a relationship to prior or subsequent issues with respect to continuity of literary character or similarity of subject matter, and sufficiently similar in style and format to make it evident that it is one of a series.

“Precious gems and metals” means any mineral, including but not limited to gold, silver, platinum and palladium, and any gem that is valued for its character, rarity, beauty or quality, including diamonds, rubies, emeralds, sapphire, opals, pearls or any other such precious gems or stones that has been put through a process of refining and is in such a state or condition that its value depends upon its precious metal content (such as an ingot or bar) and not its form (such as jewelry or artwork).

“Prepared food” means:

- A. Food sold in a heated state or heated by the seller;
- B. Two or more food ingredients mixed or combined by the seller for sale as a single item; or
- C. Food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws. A plate does not include a container or packaging used to transport the food.

“Prepared food” in Subsection B. does not include food that is only cut, repackaged, or pasteurized by the seller, and eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the Food and Drug Administration in Chapter 3, Part 401.11 of its Food Code so as to prevent food borne illnesses.

“Prewritten computer software” means “computer software,” including prewritten upgrades, which is not designed and developed by the author or other creator to the specifications of a specific purchaser. The combining of two or more “prewritten computer software” programs or prewritten portions thereof does not cause the combination to be other than “prewritten computer software.” “Prewritten computer software” includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than the specific purchaser. Where a person modifies or enhances “computer software” of which the person is not the author or creator, the person shall be deemed to be the author or creator only of such person’s modifications or enhancements. “Prewritten computer software” or a prewritten portion thereof that is modified or enhanced to any degree, where such modification or enhancement is designed and developed to the specifications of a specific purchaser, remains “prewritten computer software;” provided, however, that where there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for such modification or enhancement, such modification or enhancement shall not constitute “prewritten

computer software.”

“Printing services” means those activities relating to the work of the printing, publishing or graphic arts industries and shall include any mechanical process whereby ink is transferred to paper or other materials.

“Professional services” means services performed by architects, attorneys-at-law, certified public accountants, dentists, engineers, land surveyors, surgeons, veterinarians, and practitioners of the healing arts (the arts and sciences dealing with the prevention, diagnosis, treatment and cure or alleviation of human physical or mental ailments, conditions, diseases, pain or infirmities) and such occupations that require a professional license under Alaska Statute.

“Prosthetic Device” means replacement, corrective, or supportive device including repair and replacement parts for same worn on or in the body to:

- A. Artificially replace a missing portion of the body;
- B. Prevent or correct physical deformity or malfunction; or
- C. Support a weak or deformed portion of the body.

“Raw Seafood” means uncooked marine and estuarine fauna or flora used as food or of a kind suitable for food and specifically includes, but is not limited to, shrimp taken for bait.

“Retail car rental” means renting a rental car to a consumer. “Rental car” means a passenger car, that is used solely by a rental car business for rental to others, without a driver provided by the rental car business, for periods of not more than thirty consecutive days. “Rental car” does not include:

- A. Vehicles rented or loaned to customers by automotive repair businesses while the customer's vehicle is under repair;
- B. Vehicles licensed and operated as taxicabs.

“Sales-Type Lease” means at lease commencement, (1) the lease transfers ownership of the underlying property, goods, or services to the lessee by the end of the lease term; (2) the lease grants the lessee an option to purchase the underlying property, goods, or services that the lessee is reasonably certain to exercise; (3) the lease term is for the major part of the remaining economic life of the underlying property, goods, or services. However, if the commencement date falls at or near the end of the economic life of the underlying property, goods, or services, this criterion shall not be used for purposes of classifying the lease; (4) the present value of the sum of the lease payments and any residual value guaranteed by the lessee that is not already reflected in the lease payments equals or exceeds substantially all of the fair value of the underlying property, goods, or services; (5) the underlying property, goods, or services is of such a specialized nature that it is expected to have no alternative use to the lessor at the end of the lease term.

“School materials” means items commonly used by a student in a course of study. “School materials” includes the following items: binders; book bags; calculators; cellophane tape; blackboard chalk; compasses; composition books; crayons; erasers; folders, expandable, pocket, plastic, and manila; glue, paste, and paste sticks; highlighters; index cards; index card boxes;

legal pads; lunch boxes; markers; notebooks; paper, loose-leaf ruled notebook paper, copy paper, graph paper, tracing paper, manila paper, colored paper, poster board, and construction paper; pencil boxes and other school supply boxes; pencil sharpeners; pencils; pens; protractors; rulers; scissors; and writing tablets. “School materials” does not include any item purchased for use in a trade or business.

“**School meals**” includes breakfasts, lunches, or the serving of foods or beverages, or both, or any combination thereof, served by a school cafeteria or a school lunchroom.

“**School transportation**” means transportation of students to and from schools in motor or other vehicles.

“**Seller**” means: a person making sales of property, products or services, or a marketplace facilitator acting on behalf of a seller

“**Senior citizen**” means any individual defined by a taxing jurisdiction as qualifying for an age-based exemption from sales tax.

“**Smoked fish**” means a freshwater or saltwater finfish that is prepared by treating it with salt (sodium chloride) and subjecting it to the direct action of the smoke from burning wood, wood sawdust, or similar burning material or from liquid smoke flavoring applied to the surface in a gaseous, liquid, or vaporized state with or without heat.

“**Snowmobile**” means a motor vehicle designed to travel over ice or snow, and supported in part by skis, belts, cleats, or low-pressure tires.

“**Software downloads**” means software, applications, services and other digital programming for computers, tablets, smartphones and other electronic devices. This includes online subscriptions or purchases of news services, publications, audio books and other similar electronic versions of printed materials.

“**Software maintenance contracts**” means a contract that obligates a vendor of computer software to provide a customer with future updates or upgrades to computer software, support services with respect to computer software or both. A “mandatory computer software maintenance contract” is a computer software maintenance contract that the customer is obligated by contract to purchase as a condition to the retail sale of computer software. An “optional computer maintenance contract” is a computer software maintenance contract that a customer is not obligated to purchase as a condition to the retail sale of computer software.

“**Specified digital products**” means electronically transferred:

- (1) digital audio works;
- (2) digital audiovisual works; or
- (3) digital books.

“**Streaming services**” means digital content provided online for on-demand consumption rather than downloadable consumption. This typically includes, but is not limited to, video and audio

files.

“Tax free days” means a duration of time in which persons who purchase goods or services are exempt from the Sales tax of the taxing jurisdiction.

“Telephone service” means the providing by any person of access to a telephone network, telephone network switching service, toll service, or coin telephone services, or the providing of telephonic, video, data, or similar communication or transmission for hire, via a telephone network, toll line or channel, cable, microwave, or similar communication or transmission system.

“Ticket admission” means the paid right or privilege to enter into or use a place or location.

“Title insurance premium” means and includes premium, examination fees, settlement fees, closing fees, and every other charge, whether denominated premium or otherwise, made by a title insurance company, agent of a title insurance company or an approved attorney of a title insurance company, or any of them, to an insured or to an applicant for insurance, for any policy or contract for the issuance of, or an application for any class or kind of, title insurance.

“Tobacco” means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco.

“Transportation services” means the transportation of individuals for hire.

“Travel agency” means a person or organization who represents, directly or indirectly, that the person or organization is offering or undertaking by any means or method, to provide travel services for a fee, commission, or other valuable consideration, direct or indirect.

**ADDENDUM A
REMOTE SELLER SALES TAX CODE & COMMON DEFINITIONS**

WHEREAS, the inability to effectively collect sales tax on sales of property, products or services transferred or delivered into Alaska is seriously eroding the sales tax base of communities, causing revenue losses and imminent harm to residents through the loss of critical funding for local public services and infrastructure; and

WHEREAS, the harm from the loss of revenue is especially serious in Alaska because the State has no income tax, and sales tax revenues are one of the primary sources of funding for services provided by local governments; and

WHEREAS, the failure to collect sales tax on remote sales creates market distortions by creating an unfair tax advantage for businesses that limit their physical presence in the taxing jurisdictions but still sell goods and services to consumers, which becomes easier and more prevalent as technology advances; and

WHEREAS, the failure to tax remote sales results in the creation of incentives for businesses to avoid a physical presence in the state and its respective communities, resulting in fewer jobs and increasing the share of taxes to those consumers who buy from competitors with a physical presence in the state and its cities; and

WHEREAS, the structural advantages for remote sellers, including the absence of point-of-sale tax collection, along with the general growth of online retail, make clear that erosion of the sales tax base is and has been occurring; and

WHEREAS, remote sellers who make a substantial number of deliveries into or have large gross revenues from Alaska benefit extensively from the Alaska market, affecting the economy as well as burdening local infrastructure and services; and

WHEREAS, delivery of goods and services into local municipalities rely on and burden local transportation systems, emergency and police services, waste disposal, utilities and other infrastructure and services; and,

WHEREAS, given modern computing and software options, it is neither unusually difficult nor burdensome for remote sellers to collect and remit sales taxes associated with sales into Alaska taxing jurisdictions; and

WHEREAS, due to a recent decision by the United States Supreme Court and the lack of a state sales tax it is appropriate for the municipalities to collectively amend their sales tax codes to account for remote sellers who do not have a physical presence either in the State of Alaska or in a specific taxing jurisdiction, but do have a taxable connection with the State of Alaska or taxing jurisdiction; and

WHEREAS, this ordinance is not retroactive in its application; and

WHEREAS, this ordinance provides a safe harbor to those who transact limited sales in Alaska; and

WHEREAS, amending local sales tax codes reflects the 2018 Supreme Court “*Wayfair*” decision to allow for the application of the taxing jurisdiction’s sales tax code requirements to sellers without a physical presence in the State of Alaska or taxing jurisdiction; and

WHEREAS, the intent is to levy municipal sales tax to the maximum limit of federal and state constitutional doctrines; and

WHEREAS, the [insert name of municipality] has entered into a cooperative agreement with other local governments called the Alaska Intergovernmental Remote Seller Sales Tax Agreement (“the Agreement”); and

WHEREAS, the terms of the Agreement require adoption of certain uniform provisions for collection and remittance of municipal sales tax applicable to sales made by remote sellers similar to the Streamlined Sales and Use Tax Agreement.

NOW, THEREFORE, it is enacted as follows:

Chapter __ of the [fill in name] Code of Ordinances is hereby amended by adopting a new Chapter __ to read as follows:

Sales Made by Remote Sellers: The Alaska Remote Sellers Sales Tax Code is an ordinance prepared by the Alaska Remote Seller Sales Tax Commission and hereby adopted by reference.

ALASKA REMOTE SELLER SALES TAX CODE

XX.XX.010 – Interpretation.

- A. In order to prevent evasion of the sales taxes and to aid in its administration, it is presumed that all sales and services by a person or entity engaging in business are subject to the sales tax.
- B. The application of the tax levied under this Code shall be broadly construed and shall favor inclusion rather than exclusion.
- C. Exemptions from the tax levied under this Code or from the taxing jurisdiction shall be narrowly construed against the claimant and allowed only when such exemption clearly falls within an exemption defined in this Code or the taxing jurisdiction's Code.
- D. The scope of this Code shall apply to remote sellers or marketplace facilitators, delivering products or services to Member municipalities adopting this Code, within the state of Alaska.

XX.XX.020 – Title to Collected Sales Tax

Upon collection by the remote seller or marketplace facilitator, title to collected sales tax vests in the Commission for remittance to the taxing jurisdiction. The remote seller or marketplace facilitator remits collected sales tax to the Commission on behalf of the taxing jurisdiction, from whom that power is delegated, in trust for the taxing jurisdiction and is accountable to the Commission and taxing jurisdiction.

XX.XX.030 – Imposition – Rate

- A. To the fullest extent permitted by law, a sales tax is levied and assessed on all remote sales where delivery is made within the local taxing jurisdiction(s) that is a Member, within the state of Alaska.
- B. The applicable tax shall be added to the sales price.
- C. The tax rate added to the sale price shall be the tax rate for the taxing jurisdiction(s) where the property or product is sold, or service that was rendered is received, and based on the date the property or product was sold or the date the service rendered was received.
- D. An Address and Tax Rate Database will be made available to remote sellers and marketplace facilitators, indicating the appropriate tax rate to be applied.
- E. The tax assessed shall be consistent with relevant jurisdictional tax caps, single unit sales, and exemptions.
- F. When a sale is made on an installment basis, the applicable sales tax shall be collected at each payment, calculated at the sales tax rate in effect, and with the cap applied, at the time of the original sale or the date the service is rendered, based on the local jurisdictions' Code(s).
- G. When a sales transaction involves placement of a single order with multiple deliveries made at different points in time that are separately invoiced, the applicable sales tax shall be collected on each separately invoiced delivery, calculated at the sales tax rate in effect, and with the cap applied, at the time of the original sale or the date the service is rendered.

XX.XX.040. – Obligation to Collect Tax - Threshold Criteria

- A. Any remote seller or marketplace facilitator must collect and remit sales tax in compliance

with all applicable procedures and requirements of law, provided the remote seller or marketplace facilitator has met one of the following Threshold Criteria (“Threshold Criteria”) in the previous calendar year:

1. The remote seller’s statewide gross sales, including the seller’s marketplace facilitator’s statewide gross sales, from the sale(s) of property, products or services delivered into the state meets or exceeds one hundred thousand dollars (\$100,000); or
 2. The remote seller, including the seller’s marketplace facilitator, sold property, products, or services delivered into the state in two hundred (200) or more separate transactions.
- B. For purposes of determining whether the Threshold Criteria are met, remote sellers or marketplace facilitators shall include all gross sales, from all sales of goods, property, products, or services rendered within the state of Alaska.

XX.XX.050. – No Retroactive Application

The obligations to collect and remit sales tax required by this chapter are applicable at the effective date of the ordinance adopting the Alaska Remote Seller Sales Tax Code.

XX.XX.060 – Payment and Collection

Pursuant to this Code, taxes imposed shall be due and paid by the buyer to the remote seller or marketplace facilitator at the time of the sale of property or product or date service is rendered, or with respect to credit transactions, at the time of collection. It shall be the duty of each remote seller or marketplace facilitator to collect the taxes from the buyer and to hold those taxes in trust for the taxing authority of the taxing jurisdiction. Failure by the remote seller or marketplace facilitator to collect the tax shall not affect the remote seller’s, or marketplace facilitator’s, responsibility for payment to the Commission.

XX.XX.070 – Remote Seller and Marketplace Facilitator Registration Requirement

- A. If a remote seller’s gross statewide sales within the last calendar year meets or exceeds the Threshold Criteria, the remote seller shall register with the Commission. If a marketplace facilitator’s gross statewide sales within the last calendar year meets or exceeds the Threshold Criteria, the marketplace facilitator shall register with the Commission.
- B. A remote seller or marketplace facilitator meeting the Threshold Criteria shall apply for a certificate of sales tax registration within thirty (30) calendar days of the effective date of this Code or within thirty (30) calendar days of meeting the Threshold Criteria whichever occurs second. Registration shall be to the Commission on forms prescribed by the Commission.
- C. An extension may be applied for and granted based on criteria established by the Commission, based on evidence produced to describe time necessary to update software or other technical needs, not to exceed ninety (90) days.
- D. Upon receipt of a properly executed application, the Commission shall confirm registration, stating the legal name of the remote seller or marketplace facilitator, the primary address, and the primary sales tax contact name and corresponding title. The failure of the Commission to confirm registration does not relieve the remote seller or marketplace facilitator of its duty to collect and remit sales tax.

- E. Each business entity shall have a sales tax registration under the advertised name.
- F. The sales tax certificate is non-assignable and non-transferable.

XX.XX.80.-Tax Filing Schedule

- A. All remote sellers or marketplace facilitators subject to this Code shall file a return on a form or in a format prescribed by the Commission and shall pay the tax due.
- B. Filing of sales tax returns are due monthly; quarterly filing is optional upon application and approval by the Commission, consistent with the code of the local jurisdiction.
- C. A remote seller or marketplace facilitator who has filed a sales tax return will be presumed to be making sales in successive periods unless the remote seller or marketplace facilitator files a return showing a termination or sale of the business in accordance with this Code.
- D. The completed and executed return, together with the remittance in full for the tax due, shall be transmitted to and must be received by the Commission on or before midnight Alaska Standard Time on the due date. Monthly returns are due the last day of the immediate subsequent month. Quarterly returns are due as follows:

Quarter 1 (January – March)	April 30
Quarter 2 (April – June)	July 31
Quarter 3 (July – September)	October 31
Quarter 4 (October – December)	January 31
- E. If the last day of the month following the end of the filing period falls on a Saturday, Sunday, federal holiday or Alaska state holiday, the due date will be extended until the next business day immediately following.
- F. Any remote seller or marketplace facilitator holding a remote seller registration shall file a sales tax return even though no tax may be due. This return shall show why no tax is due. If the remote seller or marketplace facilitator intends to continue doing business a return shall be filed reflecting no sales and a confirmation of the intent to continue doing business and shall continue to do so each filing period until the entity ceases doing business or sells the business. If the remote seller or marketplace facilitator intends to cease doing business, a final return shall be filed along with a statement of business closure.
- G. The remote seller or marketplace facilitator shall prepare the return and remit sales tax to the Commission on the same basis, cash or accrual, which the remote seller or marketplace facilitator uses in preparing its federal income tax return. The remote seller or marketplace facilitator shall sign the return, and transmit the return, with the amount of sales tax and any applicable penalty, interest or fees that it shows to be due, to the Commission.
- H. Remote sellers and marketplace facilitators failing to comply with the provisions of this Code shall, if required by the Commission and if quarterly filing has been chosen, file and transmit collected sales taxes more frequently until such time as they have demonstrated to the Commission that they are or will be able to comply with the provisions of this Code. Six (6) consecutive on-time sales tax filings, with full remittance of the sales taxes collected, shall establish the presumption of compliance and return to quarterly filing.
- I. The preparer of the sales tax return shall keep and maintain all documentation

supporting any and all claims of exempted sales and purchases. Documentation for exempted sales should include the number of the exemption authorization card presented by the buyer at the time of the purchase; the date of the purchase; the name of the person making the purchase; the organization making the purchase; the total amount of the purchase; and the amount of sales tax exempted. This documentation shall be made available to the Commission upon request. Failure to provide such documentation may invalidate that portion of the claim of exemption for which no documentation is provided.

XX.XX.90.- Estimated Tax

- A. In the event the Commission is unable to ascertain the tax due from a remote seller or marketplace facilitator by reason of the failure of the remote seller or marketplace facilitator to keep accurate books, allow inspection, or file a return, or by reason of the remote seller or marketplace facilitator filing a false or inaccurate return, the Commission may make an estimate of the tax due based on any evidence in their possession.
- B. Sales taxes may also be estimated, based on any information available, whenever the Commission has reasonable cause to believe that any information on a sales tax return is not accurate.
- C. A remote seller's or marketplace facilitator's tax liability under this Code may be determined and assessed for a period of six (6) years after the date the return was filed or due to be filed with the Commission. No civil action for the collection of such tax may be commenced after the expiration of the six- (6-) year period except an action for taxes, penalties and interest due from those filing periods that are the subject of a written demand or assessment made within the six- (6-) year period, unless the remote seller or marketplace facilitator waives the protection of this section.
- D. The Commission shall notify the remote seller or marketplace facilitator, in writing, that the Commission has estimated the amount of sales tax that is due from the remote seller or marketplace facilitator. The Commission shall serve the notice on the remote seller or marketplace facilitator by delivering the notice to the remote seller's or marketplace facilitator's place of business, or by mailing the notice by certified mail, return receipt requested, to the remote seller's or marketplace facilitator's last known mailing address. A remote seller or marketplace facilitator who refuses the certified mail will be considered to have accepted the certified mail for purposes of service.
- E. The Commission's estimate of the amount of sales tax that is due from a remote seller or marketplace facilitator shall become a final determination of the amount that is due unless the remote seller or marketplace facilitator, within thirty (30) calendar days after service of notice of the estimated tax:
 - 1. Files a complete and accurate sales tax return for the delinquent periods supported by satisfactory records and accompanied by a full remittance of all taxes, interest, penalties, costs and other charges due; or
 - 2. Files a written notice with the Commission appealing the estimated tax amount in accordance with the appeal procedures.
 - 3. Arguments or reasons for failure to timely file a return and remit taxes collected shall not be considered a valid basis or grounds for granting an appeal. The basis and grounds for granting an appeal of an assessment are:
 - a. The identity of the remote seller or marketplace facilitator is in error;

- b. The amount of the debt is erroneous due to a clerical error (and the nature and extent of the error is specified in the request for appeal); or
 - c. The remote seller or marketplace facilitator disputes the denial of exemption(s) for certain sales.
- F. The amount of sales tax finally determined to be due under this section shall bear interest and penalty from the date that the sales tax originally was due, plus an additional civil penalty of fifty dollars (\$50) for each calendar month or partial month for which the amount of sales tax that is due has been determined.

XX.XX.100.-Returns – Filing Contents

- A. Every remote seller or marketplace facilitator required by this chapter to collect sales tax shall file with the Commission upon forms furnished by the Commission a return setting forth the following information with totals rounded to the nearest dollar:
 - 1. Gross sales;
 - 2. The nontaxable portions separately stating the amount of sales revenue attributable to each class of exemption;
 - 3. Computation of taxes to be remitted;
 - 4. Calculated discount (if applicable) based on taxing jurisdiction’s code; and
 - 5. Such other information as may be required by the Commission.
- B. Each tax return remitted by a remote seller or marketplace facilitator shall be signed (digital or otherwise) by a responsible individual who shall attest to the completeness and accuracy of the information on the tax return.
- C. The Commission reserves the right to reject a filed return for failure to comply with the requirements of this Code for up to three (3) months from the date of filing. The Commission shall give written notice to a remote seller or marketplace facilitator that a return has been rejected, including the reason for the rejection.

XX.XX.110 – Refunds

- A. Upon request from a buyer or remote seller or marketplace facilitator the Commission shall provide a determination of correct tax rate and amount applicable to the transaction. In the case of an overpayment of taxes, the remote seller or marketplace facilitator shall process the refund and amend any returns accordingly.
- B. If the claimant is a remote seller or marketplace facilitator, and the tax refund is owed to any buyer, the remote seller or marketplace facilitator submits, and the Commission approves, a refund plan to all affected buyers.
- C. The Taxing Jurisdictions may allow a buyer to request a refund directly from the Taxing Jurisdiction.

X XX.XX.120. – Amended Returns

- A. A remote seller or marketplace facilitator may file an amended sales tax return, with supporting documentation, and the Commission may accept the amended return, but only in the following circumstances:
 - i. The amended return is filed within one (1) year of the original due date for the return; and
 - ii. The remote seller or marketplace facilitator provides a written justification for requesting approval of the amended return; and
 - iii. The remote seller or marketplace facilitator agrees to submit to an audit upon request

of the Commission.

- B. The Commission shall notify the remote seller or marketplace facilitator in writing (by email or otherwise) whether the Commission accepts or rejects an amended return, including the reasons for any rejection.
- C. The Commission may adjust a return for a remote seller or marketplace facilitator if, after investigation, the Commission determines the figure included in the original returns are incorrect; and the Commission adjusts the return within two (2) years of the original due date for the return.
- D. A remote seller or marketplace facilitator may file a supplemental sales tax return, with supporting documentation, and the Commission may accept the supplemental return, but only in the following circumstances:
 - i. The remote seller or marketplace facilitator provides a written justification for requesting approval of the supplemental return; and
 - ii. The remote seller or marketplace facilitator agrees to submit to an audit upon request of the Commission.

XX.XX.130. – Extension of Time to File Tax Return

Upon written application of a remote seller or marketplace facilitator, stating the reasons therefor, the Commission may extend the time to file a sales tax return but only if the Commission finds each of the following:

1. For reasons beyond the remote seller's or marketplace facilitator's control, the remote seller or marketplace facilitator has been unable to maintain in a current condition the books and records that contain the information required to complete the return;
2. Such extension is a dire necessity for bookkeeping reasons and would avert undue hardship upon the remote seller or marketplace facilitator;
3. The remote seller or marketplace facilitator has a plan to cure the problem that caused the remote seller or marketplace facilitator to apply for an extension and the remote seller or marketplace facilitator agrees to proceed with diligence to cure the problem;
4. At the time of the application, the remote seller or marketplace facilitator is not delinquent in filing any other sales tax return, in remitting sales tax to the Commission or otherwise in violation of this chapter;
5. No such extension shall be made retroactively to cover existing delinquencies.

XX.XX.140 – Audits

- A. Any remote seller or marketplace facilitator who has registered with the Commission, who is required to collect and remit sales tax, or who is required to submit a sales tax return is subject to a discretionary sales tax audit at any time. The purpose of such an audit is to examine the business records of the remote seller or marketplace facilitator in order to determine whether appropriate amounts of sales tax revenue have been collected by the remote seller or marketplace facilitator and remitted to the Commission.
- B. The Commission is not bound to accept a sales tax return as correct. The Commission may make an independent investigation of all retail sales or transactions conducted within the State or taxing jurisdiction.
- C. The records that a remote seller or marketplace facilitator is required to maintain under this chapter shall be subject to inspection and copying by authorized employees or agents of the Commission for the purpose of auditing any return filed under this chapter, or to

determine the remote seller's or marketplace facilitator's liability for sales tax where no return has been filed.

- D. In addition to the information required on returns, the Commission may request, and the remote seller or marketplace facilitator must furnish, any reasonable information deemed necessary for a correct computation of the tax.
- E. The Commission may adjust a return for a remote seller or marketplace facilitator if, after investigation or audit, the Commission determines that the figures included in the original return are incorrect, and that additional sales taxes are due; and the Commission adjusts the return within two (2) years of the original due date for the return.
- F. For the purpose of ascertaining the correctness of a return or the amount of taxes owed when a return has not been filed, the Commission may conduct investigations, hearings and audits and may examine any relevant books, papers, statements, memoranda, records, accounts or other writings of any remote seller or marketplace facilitator at any reasonable hour on the premises of the remote seller or marketplace facilitator and may require the attendance of any officer or employee of the remote seller or marketplace facilitator. Upon written demand by the Commission, the remote seller or marketplace facilitator shall present for examination, in the office of the Commission, such books, papers, statements, memoranda, records, accounts and other written material as may be set out in the demand unless the Commission and the person upon whom the demand is made agree to presentation of such materials at a different place.
- G. The Commission may issue subpoenas to compel attendance or to require production of relevant books, papers, records or memoranda. If any remote seller or marketplace facilitator refuses to obey any such subpoena, the Commissioner may refer the matter to the Commission's attorney for an application to the superior court for an order requiring the remote seller or marketplace facilitator to comply therewith.
- H. Any remote seller, marketplace facilitator, or person engaged in business who is unable or unwilling to submit their records to the Commission shall be required to pay the Commission for all necessary expenses incurred for the examination and inspection of their records maintained outside the Commission.
- I. After the completion of a sales tax audit, the results of the audit will be sent to the business owner's address of record.
- J. In the event the Commission, upon completion of an audit, discovers more than five hundred dollars (\$500) in additional sales tax due from a remote seller or marketplace facilitator resulting from a remote seller's or marketplace facilitator's failure to accurately report sales and taxes due thereupon, the remote seller or marketplace facilitator shall bear responsibility for the full cost of the audit. The audit fee assessment will be in addition to interest and penalties applicable to amounts deemed to be delinquent by the Commission at the time of the conclusion of the audit.

XX.XX.150.- Audit protest

- A. If the remote seller or marketplace facilitator wishes to dispute the amount of the estimate, or the results of an examination or audit, the remote seller or marketplace facilitator must file a written protest with the Commission, within thirty (30) calendar days of the date of the notice of estimated tax or results of an audit or examination. The protest must set forth:
 - 1. The remote seller's or marketplace facilitator's justification for reducing or

- increasing the estimated tax amount, including any missing sales tax returns for the periods estimated; or
2. The remote seller's or marketplace facilitator's reasons for challenging the examination or audit results.
- B. In processing the protest, the Commission may hold an informal meeting or hearing with the remote seller or marketplace facilitator, either on its own or upon request of the remote seller or marketplace facilitator, and may also require that the remote seller or marketplace facilitator submit to an audit, if one was not previously conducted or a more formal audit, if an estimation audit was previously performed.
 - C. The Commission shall make a final written determination on the remote seller's or marketplace facilitator's protest and mail a copy of the determination to the remote seller or marketplace facilitator.
 - D. If a written protest is not filed within thirty (30) days of the date of the notice of estimated tax or the result of a review, audit or examination, then the estimated tax, review, audit or examination result shall be final, due and payable to the Commission.

XX.XX.160. – Penalties and Interest for Late Filing

- A. A late filing fee of twenty-five dollars (\$25) per month (or quarter) shall be added to all late-filed sales tax reports in addition to interest and penalties.
- B. Delinquent sales tax bear interest at the rate of fifteen percent (15%) per annum until paid.
- C. In addition, delinquent sales tax shall be subject to an additional penalty of 5% per month, or fraction thereof, until a total of 20% of delinquent tax has been reached. The penalty does not bear interest.
- D. Fees, penalties and interest shall be assessed and collected in the same manner as the tax is assessed and collected, and applied first to fees, penalties and interest, second to past due sales tax.
- E. The filing of an incomplete return, or the failure to remit all tax, shall be treated as the filing of no return.
- F. A penalty assessed under this section for the delinquent remittance of sales tax or failure to file a sales tax return may be waived by the Commission, upon written application of the remote seller or marketplace facilitator accompanied by a payment of all delinquent sales tax, interest and penalty otherwise owed by the remote seller or marketplace facilitator, within forty-five (45) calendar days after the date of delinquency. A remote seller or marketplace facilitator may not be granted more than one (1) waiver of penalty under this subsection in any one calendar year. The Commission shall report such waivers of penalty to the taxing jurisdiction, in writing.

XX.XX.170 – Repayment Plans

- A. The Commission may agree to enter into a repayment plan with a delinquent remote seller or marketplace facilitator. No repayment plan shall be valid unless agreed to by both parties in writing.
- B. A remote seller or marketplace facilitator shall not be eligible to enter into a repayment plan with the Commission if the remote seller or marketplace facilitator has defaulted on a repayment plan in the previous two (2) calendar years.
- C. The repayment plan shall include a secured promissory note that substantially complies

with the following terms:

- i. The remote seller or marketplace facilitator agrees to pay a minimum of ten percent (10%) down payment on the tax, interest and penalty amount due. The down payment shall be applied first to penalty, then to accumulated interest, and then to the tax owed.
 - ii. The remote seller or marketplace facilitator agrees to pay the balance of the tax, penalty and interest owed in monthly installments over a period not to exceed two (2) years.
 - iii. Interest at a rate of fifteen percent (15%) per annum shall accrue on the principal sum due. Interest shall not apply to penalties owed or to interest accrued at the time the repayment plan is executed or accruing during the term of the repayment plan.
 - iv. If the remote seller or marketplace facilitator is a corporation or a limited liability entity the remote seller or marketplace facilitator agrees to provide a personal guarantee of the obligations under the repayment plan.
 - v. The remote seller or marketplace facilitator agrees to pay all future tax bills in accordance with the provisions of this chapter.
 - vi. The remote seller or marketplace facilitator agrees to provide a security interest in the form of a sales tax lien for the entire unpaid balance of the promissory note to be recorded by the Commission at the time the repayment plan is signed. The remote seller or marketplace facilitator shall be responsible for the cost of recording the tax lien.
- D. If a remote seller or marketplace facilitator fails to pay two (2) or more payments as required by the repayment plan agreement, the remote seller or marketplace facilitator shall be in default and the entire amount owed at the time of default shall become immediately due. The Commission will send the remote seller or marketplace facilitator a notice of default. The Commission may immediately foreclose on the sales tax lien or take any other remedy available under the law.

XX.XX.180. – Remote Seller or Marketplace Facilitator Record Retention

Remote sellers or marketplace facilitators shall keep and preserve suitable records of all sales made and such other books or accounts as may be necessary to determine the amount of tax which the remote seller or marketplace facilitator is obliged to collect. Remote sellers or marketplace facilitators shall preserve suitable records of sales for a period of six (6) years from the date of the return reporting such sales, and shall preserve for a period of six (6) years all invoices of goods and merchandise purchased for resale, and all such other books, invoices and records as may be necessary to accurately determine the amount of taxes which the remote seller or marketplace facilitator was obliged to collect under this chapter.

XX.XX.190. Cessation or Transfer of Business

- A. A remote seller or marketplace facilitator who sells, leases, conveys, forfeits, transfers or assigns the majority of their business interest, including a creditor or secured party, shall make a final sales tax return within thirty (30) days after the date of such conveyance.
- B. At least ten (10) business days before any such sale is completed, the remote seller or marketplace facilitator shall send to the Commission, by approved communication (email confirmation, certified first-class mail, postage prepaid) a notice that the remote

seller's or marketplace facilitator's interest is to be conveyed and shall include the name, address and telephone number of the person or entity to whom the interest is to be conveyed.

- C. Upon notice of sale and disclosure of buyer, the Commission shall be authorized to disclose the status of the remote seller's or marketplace facilitator's sales tax account to the named buyer or assignee.
- D. Upon receipt of notice of a sale or transfer, the Commission shall send the transferee a copy of this Code with this section highlighted.
- E. Neither the Commission's failure to give the notice nor the transferee's failure to receive the notice shall relieve the transferee of any obligations under this section.
- F. Following receipt of the notice, the Commission shall have sixty (60) days in which to perform a final sales tax audit and assess sales tax liability against the seller of the business. If the notice is not mailed at least ten (10) business days before the sale is completed, the Commission shall have twelve (12) months from the date of the completion of the sale or the Commission's knowledge of the completion of the sale within which to begin a final sales tax audit and assess sales tax liability against the seller of the business. The Commission may also initiate an estimated assessment if the requirements for such an assessment exist.
- G. A person acquiring any interest of a remote seller or marketplace facilitator in a business required to collect the tax under this chapter assumes the liability of the remote seller or marketplace facilitator for all taxes due the Commission, whether current or delinquent, whether known to the Commission or discovered later, and for all interest, penalties, costs and charges on such taxes.
- H. Before the effective date of the transfer, the transferee of a business shall obtain from the Commission an estimate of the delinquent sales tax, penalty and interest, if any, owed by the remote seller or marketplace facilitator as of the date of the transfer, and shall withhold that amount from the consideration payable for the transfer, until the remote seller or marketplace facilitator has produced a receipt from the Commission showing that all tax obligations imposed by this chapter have been paid. A transferee that fails to withhold the amount required under this subsection shall be liable to the Commission and taxing jurisdiction for the lesser of the amount of delinquent sales tax, penalty and interest due from the remote seller or marketplace facilitator as of the date of transfer, and the amount that the transferee was required to withhold.
- I. In this section, the term "transfer" includes the following:
 - 1. A change in voting control, or in more than fifty percent (50%) of the ownership interest in a remote seller or marketplace facilitator that is a corporation, limited liability company or partnership; or
 - 2. A sale of all or substantially all the assets used in the business of the remote seller or marketplace facilitator; or
 - 3. The initiation of a lease, management agreement or other arrangement under which another person becomes entitled to the remote seller's or marketplace facilitator's gross receipts from sales, rentals or services.
- J. Subsection H of this section shall not apply to any person who acquires their ownership interest in the ongoing business as a result of the foreclosure of a lien that has priority over the Commission's sales tax lien.
- K. Upon termination, dissolution or abandonment of a corporate business, any officer

having control or supervision of sales tax funds collected, or who is charged with responsibility for the filing of returns or the payment of sales tax funds collected, shall be personally liable for any unpaid taxes, interest, administrative costs and penalties on those taxes if such officer willfully fails to pay or cause to be paid any taxes due from the corporation. In addition, regardless of willfulness, each director of the corporation shall be jointly and severally liable for unpaid amounts. The officer shall be liable only for taxes collected which became due during the period he or she had the control, supervision, responsibility or duty to act for the corporation. This section does not relieve the corporation of other tax liabilities or otherwise impair other tax collection remedies afforded by law.

- L. A remote seller or marketplace facilitator who terminates the business without the benefit of a purchaser, successor or assign shall make a final tax return and settlement of tax obligations within thirty (30) days after such termination. If a final return and settlement are not received within thirty (30) days of the termination, the remote seller or marketplace facilitator shall pay a penalty of one hundred dollars (\$100), plus an additional penalty of twenty-five dollars (\$25) for each additional thirty- (30-) day period, or part of such a period, during which the final return and settlement have not been made, for a maximum of six (6) additional periods.

XX.XX.200. – Use of Information on Tax Returns

- A. Except as otherwise provided in this chapter, all returns, reports and information required to be filed with the Commission under this Code, and all information contained therein, shall be kept confidential and shall be subject to inspection only by:
 - 1. Employees and agents of the Commission and taxing jurisdiction whose job responsibilities are directly related to such returns, reports and information;
 - 2. The person supplying such returns, reports and information; and
 - 3. Persons authorized in writing by the person supplying such returns, reports and information.
- B. The Commission will release information described in subsection A of this section pursuant to subpoena, order of a court or administrative agency of competent jurisdiction, and where otherwise required by law to do so.
- C. Notwithstanding subsection A of this section, the following information is available for public inspection:
 - 1. The name and address of sellers;
 - 2. Whether a business is registered to collect taxes under this chapter;
 - 3. The name and address of businesses that are sixty (60) days or more delinquent in filing returns or in remitting sales tax, or both filing returns and remitting sales tax; and, if so delinquent, the amount of estimated sales tax due, and the number of returns not filed.
- D. The Commission may provide the public statistical information related to sales tax collections, provided that no information identifiable to a particular remote seller or marketplace facilitator is disclosed.
- E. Nothing contained in this section shall be construed to prohibit the delivery to a person, or their duly authorized representative, of a copy of any return or report filed by them, nor to prohibit the publication of statistics so classified as to prevent the identification of particular buyers, remote sellers, or marketplace facilitators, nor to prohibit the furnishing

of information on a reciprocal basis to other agencies or political subdivisions of the state or the United States concerned with the enforcement of tax laws.

- F. Nothing contained in this section shall be construed to prohibit the disclosure through enforcement action proceedings or by public inspection or publication of the name, estimated balance due, and current status of payments, and filings of any remote seller or marketplace facilitator or agent of any remote seller or marketplace facilitator required to collect sales taxes or file returns under this chapter, who fails to file any return and/or remit in full all sales taxes due within thirty (30) days after the required date for that business. Entry into any agreement whether pursuant to the provisions of this chapter or otherwise shall not act as any prohibition to disclosure of the records of that remote seller or marketplace facilitator as otherwise provided in this chapter.
- G. A prospective lessee or purchaser of any business or business interest may inquire as to the obligation or tax status of any business upon presenting to the Commission a release of tax information request signed by the authorized agent of the business.
- H. All returns referred to in this chapter, and all data taken therefrom, shall be kept secure from public inspection, and from all private inspection.

XX.XX.210 – Violations

- A. A remote seller or marketplace facilitator that fails to file a sales tax return or remit sales tax when due, in addition to any other liability imposed by this Code, shall pay to the Commission all costs incurred by the Commission to determine the amount of the remote seller's or marketplace facilitator's liability or to collect the sales tax, including, without limitation, reviewing and auditing the remote seller's or marketplace facilitator's business records, collection agency fees, and actual reasonable attorney's fees.
- B. A person who causes or permits a corporation of which the person is an officer or director, a limited liability company of which the person is a member or manager, or a partnership of which the person is a partner, to fail to collect sales tax or to remit sales tax to the Commission as required by this Code shall be liable to the Commission for the amount that should have been collected or remitted, plus any applicable interest and penalty.
- C. Notwithstanding any other provision of law, and whether or not the Commission initiates an audit or other tax collection procedure, the Commission may bring a declaratory judgment action against a remote seller or marketplace facilitator believed to meet the criteria to establish that the obligation to remit sales tax is applicable and valid under local, state and federal law. The action shall be brought in the judicial district of the taxing jurisdiction.
- D. The Commission may cause a sales tax lien to be filed and recorded against all real and personal property of a remote seller or marketplace facilitator where the remote seller or marketplace facilitator has:
 - 1. Failed to file sales tax returns for two (2) consecutive filing periods as required by the Code; or
 - 2. Failed within sixty (60) days of the end of the filing period from which taxes were due to either (a) remit all amounts due or (b) to enter into a secured payment agreement as provided in this Code.
 - 3. Prior to filing a sales tax lien, the Commission shall cause a written notice of intent to file to be mailed to the last known address of the delinquent remote seller or marketplace facilitator.

- E. In addition to other remedies discussed in this Code, the Commission may bring a civil action to:
 1. Enjoin a violation of this Code. On application for injunctive relief and a finding of a violation or threatened violation, the superior court shall enjoin the violation.
 2. Collect delinquent sales tax, penalty, interest and costs of collection, either before or after estimating the amount of sales tax due.
 3. Foreclose a recorded sales tax lien as provided by law.
- F. All remedies hereunder are cumulative and are in addition to those existing at law or equity.

XX.XX.220 – Penalties for Violations

- A. A buyer, remote seller, or marketplace facilitator who knowingly or negligently submits false information in a document filed with the Commission pursuant to this Code is subject to a penalty of five hundred dollars (\$500).
- B. A remote seller or marketplace facilitator who knowingly or negligently falsifies or conceals information related to its business activities with the Commission or taxing jurisdiction is subject to a penalty of five hundred dollars (\$500).
- C. A person who knowingly or negligently provides false information when applying for a certificate of exemption is subject to a penalty of five hundred dollars (\$500).
- D. Any remote seller or marketplace facilitator who fails to file a return by the due date required under this chapter, regardless of whether any taxes were due for the reporting period for which the return was required, shall be subject to a penalty of twenty-five dollars (\$25) for the first sales tax return not timely filed. The filing of an incomplete return shall be treated as the filing of no return.
- E. A remote seller or marketplace facilitator who fails or refuses to produce requested records or to allow inspection of their books and records shall pay to the Commission a penalty equal to three (3) times any deficiency found or estimated by the Commission with a minimum penalty of five hundred dollars (\$500).
- F. A remote seller or marketplace facilitator who falsifies or misrepresents any record filed with the Commission is guilty of an infraction and subject to a penalty of five hundred dollars (\$500) per record.
- G. Misuse of an exemption card is a violation and subject to a penalty of fifty dollars (\$50) per incident of misuse;
- H. Nothing in this chapter shall be construed as preventing the Commission from filing and maintaining an action at law to recover any taxes, penalties, interest and/or fees due from a remote seller or marketplace facilitator. The Commission may also recover attorney’s fees in any action against a delinquent remote seller or marketplace facilitator.

XX.XX.230. –Sellers with a physical presence in the taxing jurisdiction.

- A. Sellers with a physical presence in a Taxing Jurisdiction and no remote or internet-based sales shall report, remit, and comply with standards, including audit authority, of the Taxing Jurisdiction.
- B. Sellers with a physical presence in a Taxing Jurisdiction that also have remote or internet-based sales where the Point of Delivery is in a different Taxing Jurisdictions shall (i)

report and remit the remote or internet sales to the Commission; and ii) report and remit the in-store sales to the Taxing Jurisdiction.

- C. Sellers with a physical presence in a Taxing Jurisdiction that also have remote or internet-based sales where the Point of Delivery is in the same Taxing Jurisdictions shall report and remit those remote sales to the Taxing Jurisdiction.
- D. Sellers and marketplace facilitators that do not have a physical presence in a Taxing Jurisdiction must report and remit all remote sales to the Commission.
- E. For all purchases the tax rate added to the sale price shall be as provided in the Taxing Jurisdiction's sales tax code, based on point of delivery.
- F. A marketplace facilitator is considered the remote seller for each sale facilitated through its marketplace and shall collect, report, and remit sales tax to the Commission. A marketplace facilitator is not considered to be the remote seller for each sale or rental of lodging facilitated through its marketplace, wherein the seller is considered to have a physical presence in the Taxing Jurisdiction.

XX.XX.240. – Remittance of Tax; Remote Seller Held Harmless.

- A. Any remote seller or marketplace facilitator that collects and remits sales tax to the Commission as provided by law may use an electronic database of state addresses that is certified by the Commission pursuant to subsection (C) of this section to determine the jurisdictions to which tax is owed.
- B. Any remote seller or marketplace facilitator that uses the data contained in an electronic database certified by the Commission pursuant to subsection (C) of this section to determine the jurisdictions to which tax is owed shall be held harmless for any tax, charge, or fee liability to any taxing jurisdiction that otherwise would be due solely as a result of an error or omission in the database.
- C. Any electronic database provider may apply to the Commission to be certified for use by remote sellers or marketplace facilitators pursuant to this section. Such certification shall be valid for three years. In order to be certified, an electronic database provider shall have a database that satisfies the following criteria:
 - 1. The database shall designate each address in the state, including, to the extent practicable, any multiple postal address applicable to one location and the taxing jurisdictions that have the authority to impose a tax on purchases made by purchasers at each address in the state.
 - 2. The information contained in the electronic database shall be updated as necessary and maintained in an accurate condition. In order to keep the database accurate, the database provider shall provide a convenient method for taxing jurisdictions that may be affected by the use of the database to inform the provider of apparent errors in the database. The provider shall have a process in place to promptly correct any errors brought to the provider's attention.

XX.XX.250. – Definitions

Adoption of definitions does not compel an individual municipality to exempt certain defined items. Each municipality should specifically adopt definitions necessary for consistency to implement both brick-and-mortar sales tax code and provisions related to remote sellers or marketplace facilitators. For definitions that have no applicability to brick-and-mortar sales tax code, municipality may choose either to include definitions in the definitional section of general sales tax ordinance or adopt the common definitions by reference.

“Buyer or purchaser” means a person to whom a sale of property or product is made or to whom a service is furnished.

“Commission” means the Alaska Intergovernmental Remote Sales Tax Commission established by Agreement between local government taxing jurisdictions within Alaska, and delegated tax collection authority.

“Delivered electronically” means delivered to the purchaser by means other than tangible storage media.

“Entity-based exemption” means an exemption based on who purchases the product or who sells the product. An exemption that is available to all individuals shall not be considered an entity-based exemption.

“Goods for resale” means:

- A. the sale of goods by a manufacturer, wholesaler or distributor to a retail vendor; sales to a wholesale or retail dealer who deals in the property sold, for the purpose of resale by the dealer.
- B. Sales of personal property as raw material to a person engaged in manufacturing components for sale, where the property sold is consumed in the manufacturing process of, or becomes an ingredient or component part of, a product manufactured for sale by the manufacturer.
- C. Sale of personal property as construction material to a licensed building contractor where the property sold becomes part of the permanent structure.

“Marketplace facilitator” means a person that contracts with remote sellers to facilitate for consideration, regardless of whether deducted as fees from the transaction, the sale of the remote seller’s property or services through a physical or electronic marketplace operated by the person, and engages:

- (a) Directly or indirectly, through one or more affiliated persons in any of the following:
 - (i) Transmitting or otherwise communicating the offer or acceptance between the buyer and remote seller;
 - (ii) Owning or operating the infrastructure, electronic or physical, or technology that brings buyers and remote sellers together;
 - (iii) Providing a virtual currency that buyers are allowed or required to use to purchase products from the remote seller; or
 - (iv) Software development or research and development activities related to any of the activities described in (b) of this subsection (3), if such activities are directly related to a

physical or electronic marketplace operated by the person or an affiliated person; and

(b) In any of the following activities with respect to the seller's products:

- (i) Payment processing services;
- (ii) Fulfillment or storage services;
- (iii) Listing products for sale;
- (iv) Setting prices;
- (v) Branding sales as those of the marketplace facilitator;
- (vi) Order taking;
- (vii) Advertising or promotion; or
- (viii) Providing customer service or accepting or assisting with returns or exchanges.

“Member” means a taxing jurisdiction that is a signatory of the Alaska Remote Sales Tax Intergovernmental Agreement, thereby members of the Commission, and who have adopted the Remote Seller Sales Tax Code.

“Monthly” means occurring once per calendar month.

“Nonprofit organization” means a business that has been granted tax-exempt status by the Internal Revenue Service (IRS); means an association, corporation, or other organization where no part of the net earnings of the organization inures to the benefit of any member, shareholder, or other individual, as certified by registration with the IRS.

“Person” means an individual, trust, estate, fiduciary, partnership, limited liability company, limited liability partnership, corporation, or any other legal entity.

“Physical presence” means a seller who establishes any one or more of the following within a local taxing jurisdiction:

1. Has any office, distribution or sales house, warehouse, storefront, or any other place of business within the boundaries of the local taxing jurisdiction;
2. Solicits business or receiving orders through any employee, agent, salesman, or other representative within the boundaries of the local taxing jurisdiction or engages in activities in this state that are significantly associated with the seller's ability to establish or maintain a market for its products in this state.
3. Provides services or holds inventory within the boundaries of the local taxing jurisdiction;
4. Rents or Leases property located within the boundaries of the local taxing jurisdiction.

A seller that establishes a physical presence within the local taxing jurisdiction in any calendar year will be deemed to have a physical presence within the local taxing jurisdiction for the following calendar year.

“Point of delivery” means the location at which property or a product is delivered or service rendered.

- A. When the product is not received or paid for by the purchaser at a business location of a remote seller in a Taxing Jurisdiction, the sale is considered delivered to the location where receipt by the purchaser (or the purchaser's recipient, designated as such by the

purchaser) occurs, including the location indicated by instructions for delivery as supplied by the purchaser (or recipient) and as known to the seller.

- B. When the product is received or paid for by a purchaser who is physically present at a business location of a Remote Seller in a Taxing Jurisdiction the sale is considered to have been made in the Taxing Jurisdiction where the purchaser is present even if delivery of the product takes place in another Taxing Jurisdiction. Such sales are reported and tax remitted directly to the Taxing Jurisdiction not to the Commission.
- C. For products transferred electronically, or other sales where the remote seller or marketplace facilitator lacks a delivery address for the purchaser, the remote seller or marketplace facilitator shall consider the point of delivery the sale to the billing address of the buyer.

“Product-based exemptions” means an exemption based on the description of the product and not based on who purchases the product or how the purchaser intends to use the product.

“Property” and **“product”** means both tangible property, an item that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses; and intangible property, anything that is not physical in nature (i.e.; intellectual property, brand recognition, goodwill, trade, copyright and patents).

“Quarter” means trimonthly periods of a calendar year; January-March, April-June, July-September, and October-December.

“Receive or receipt” means

- A. Taking possession of property;
- B. Making first use of services;
- C. Taking possession or making first use of digital goods, whichever comes first.

The terms “receive” and “receipt” do not include temporary possession by a shipping company on behalf of the purchaser.

“Remote sales” means sales of goods or services by a remote seller or marketplace facilitator.

“Remote seller” means a seller or marketplace facilitator making sales of goods or services delivered within the State of Alaska, without having a physical presence in a taxing jurisdiction, or conducting business between taxing jurisdictions, when sales are made by internet, mail order, phone or other remote means. A marketplace facilitator shall be considered the remote seller for each sale facilitated through its marketplace.

“Resale of services” means sales of intermediate services to a business the charge for which will be passed directly by that business to a specific buyer.

“Sale” or “retail sale” means any transfer of property for consideration for any purpose other than for resale.

“Sales or purchase price” means the total amount of consideration, including cash, credit,

property, products, and services, for which property, products, or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for the following:

- A. The seller's cost of the property or product sold;
- B. The cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;
- C. Charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;
- D. Delivery charges;
- E. Installation charges; and
- F. Credit for any trade-in, as determined by state law.

“Seller” means a person making sales of property, products, or services, or a marketplace facilitator facilitating sales on behalf of a seller.

“Services” means all services of every manner and description, which are performed or furnished for compensation, and delivered electronically or otherwise outside the taxing jurisdiction (but excluding any that are rendered physically within the taxing jurisdiction, including but not limited to:

- A. Professional services;
- B. Services in which a sale of property or product may be involved, including property or products made to order;
- C. Utilities and utility services not constituting a sale of property or products, including but not limited to sewer, water, solid waste collection or disposal, electrical, telephone services and repair, natural gas, cable or satellite television, and Internet services;
- D. The sale of transportation services;
- E. Services rendered for compensation by any person who furnishes any such services in the course of his trade, business, or occupation, including all services rendered for commission;
- F. Advertising, maintenance, recreation, amusement, and craftsman services.

“Tax cap” means a maximum taxable transaction.

“Taxing jurisdiction” means a local government in Alaska that has a sales tax and is a member of the Alaska Remote Sellers Sales Tax Commission.

“Transferred electronically” means obtained by the purchaser by means other than tangible storage media.

XX.XX.260. – Supplemental Definitions.

The Commission shall promulgate Supplemental Definitions that are incorporated into this Remote Seller Sales Tax Code. Supplemental Definitions are available at www.arsstc.org. Provisions of the Supplemental Definitions that are amended, deleted, or added prior to or after

the effective date of the latest amendment to this chapter shall be applicable for purposes of this chapter on the effective date provided for such amendments, deletions, or additions, including retroactive provisions.



MEMORANDUM

TO: Mayor Branson and City Council

FROM: Mike Tvenge, City Manager

DATE: January 21, 2020

RE: Tsunami Siren Funding Resolution

The purpose of this memo is to provide you with funding available to remove/purchase and install 12 new tsunami sirens for the City of Kodiak and to dedicate additional funding for this intended purpose.

Background: The city has applied for and received grant funding from the following sources.

National Oceanic Atmospheric Administration	\$108,000.00
State of Alaska Homeland Security Program Grant	<u>\$272,873.12</u>
Total	\$380,873.12

The estimated cost of the city's project is \$ 720,000-750,000

The fiscal year 2020 city budget contains a surplus of \$321,500 intended for supplemental funding of the tsunami siren project. Once the bids are received and the amount necessary for the project is determined, a Resolution will be necessary to dedicate the remaining funding in excess of the grant awards.

The Tsunami Siren Request for Proposals is scheduled to be released this month with an expected award in April 2020.

The Kodiak Island Borough has expressed interest to include the Borough's 9 road system tsunami sirens as an additive alternate in the RFP, meaning they may award if the Borough Assembly so wishes. Administration has asked them to provide language to include in the RFP, due by January 17.