

KODIAK CITY COUNCIL

WORK SESSION AGENDA

Tuesday, February 11, 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. Audit Presentation by Altman, Rogers & Co.....1
3. Future Fire Hall Update13
4. Discussion on the Sale of Marijuana Edibles23
5. Discover Kodiak Presentation.....28
6. Discuss the State Revolving Fund Loan and Funding Source for the Wastewater Treatment Plant Upgrades
7. Update on the Aviation Facilities (Municipal and Trident Basin)
8. Status Update on Alaska Remote Seller Sales Commission.....30
9. Manager’s Report and Clerk’s Report
10. February 13, 2020, Agenda Packet Review

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**City of Kodiak
FY19 Audit Presentation**

**Grant Todd, CPA
Altman, Rogers & Co.**

Why does the City get an Audit?

- Required by City Code (Section V-21)
- State statute requires a financial audit as well
- Federal expenditure threshold triggers a single audit
 - Federal and State thresholds are \$750,000. In FY19, the City did not meet the State threshold (Fish taxes, revenue sharing, electric and telephone co-op tax, and PERS on-behalf revenue are excluded from calculation)
- We perform 2 separate audits (financial and federal single audit) and offer separate opinions on each.

Audit Approach

- Uniform Guidance (dictates federal single audit requirements) require we test your internal controls related to cash disbursements and payroll.
- We also choose to test your internal controls over cash receipts and harbor and utility billings.
- We look at all material checks/EFT's and journal entries. Materiality is different for each opinion unit, General Fund was \$120,000.
- If we find no errors we can place reliance on your internal controls and reduce our substantive procedures.

Risk Based Auditing

- Audits are risk based
 - Knowledge of client operations and prior year findings determine our risk assessment of each audit area. We discuss any changes with management prior to the audit.
 - Revenue is always considered a high risk / fraud risk area due to the threat of improper revenue recognition.
 - ✦ Based on this we perform extended audit procedures over revenues (testing of IC's, vouching subsequent receipts, confirmations, etc.)
- ✦ If an area is not considered high risk we perform basic audit procedures.

Financial Statements

- Independent Auditor's Report (2nd tab)
 - ✦ Management is responsible for the preparation and fair presentation of the financial statement.
 - ✦ Auditors responsibility is to express opinions on the financials based on audit.
 - ✦ Unmodified opinion – best available opinion

- Management Discuss and Analysis (MD&A) pg 5.
 - ✦ Financial information presented in word form.

Financial Statements

- Government-wide financial statements – focus on the City as a whole and is meant to show a more long-term view of the City. Includes all long-term activity (capital assets, debt, net pension and OPEB liabilities, etc.)
 - ✦ Statement of Net Position (pg 18)
 - ✦ Statement of Activities (pg 19)
- ✦ Unrestricted net position is \$11.9 million for governmental activities (increase of \$4.7 million) and \$31.4 million for business-type activities (enterprise funds), which was an increase of \$3.3 million.
- ✦ Net position increased by \$3.2 million for gov. activities, increased \$635,000 for business-type activities.

Fund Financial Statements

- Balance sheet (pg 20).
 - Assets and deferred outflows exceed liabilities and deferred inflows by \$21.9 million.
 - General Fund unassigned FB is nearly \$10.97 million, or 70% of current year expenditures or 8+ months worth of reserves.
- Statement of Revenues, Expenditures and Changes in Fund Balances (pg. 22)
 - ✦ Overall a increase of \$3.25 million. General Fund had an increase of \$1.54 million, Other Governmental Funds increased \$1.7 million.

Proprietary Funds

- **Statement of Net Position (pg 24).**
 - Assets and deferred outflows exceed liabilities and deferred inflows by \$133.24 million
 - Unrestricted net position is \$34.45 million across all funds.
- **Statement of Revenues, Expenses, and Changes in Net Position (pg. 25)**
 - ✦ Increase of \$652,000 across all Ent. Funds.

Additional Information

- Footnotes provide additional detail to financial data.
- Required Supplementary Information (RSI):
 - General Fund budget to actual schedules
 - Net Pension and OPEB Liabilities and Contribution schedules.
- 9 ○ Combining Schedules for non-major SRF, CPF's, and Enterprise Funds. Also includes detail schedules for each fund.
- Schedule of Expenditures of Federal Awards
- Statistical Section

Federal Single Audit

- Major Program selection is risk based.
 - ✦ If audited in the prior 2 years and no findings the program is considered low risk.
 - ✦ If not audited in prior 2 years or the program has had any findings it is high risk.
 - ✦ “A” program > \$750,000
 - ✦ “B” program < \$750,000 - \$187,500

Compliance Reports

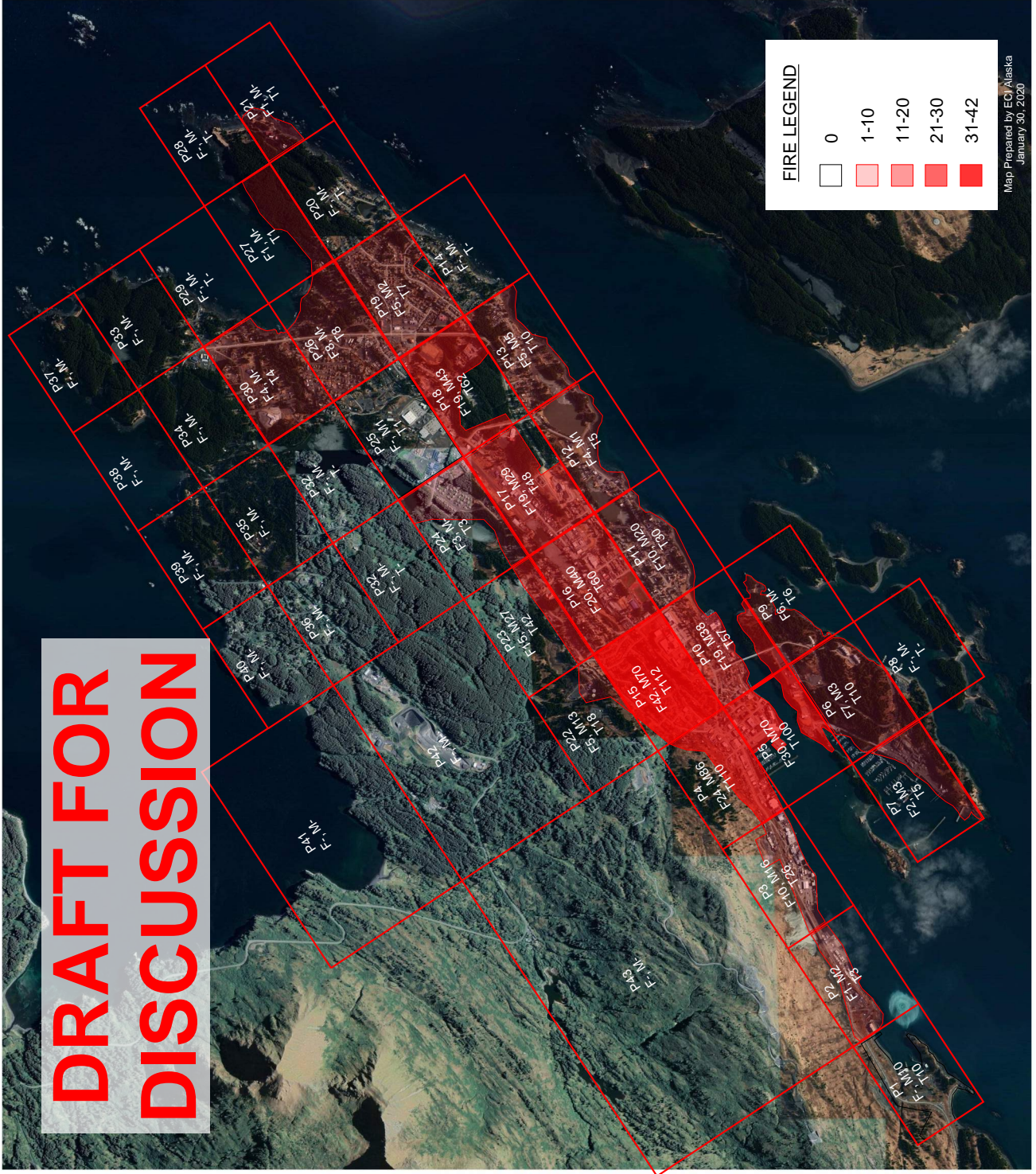
- Unmodified Opinions over the financial statements and federal compliance (pg 142)
- No findings to report.

Letter to the Governing Board

- Required communication for every audit
 - Management Estimates:
 - ✦ AR
 - ✦ Capital assets
 - ✦ Pension and OPEB liabilities
 - ✦ PERS forfeitures
 - ✦ Corrected Misstatements - none

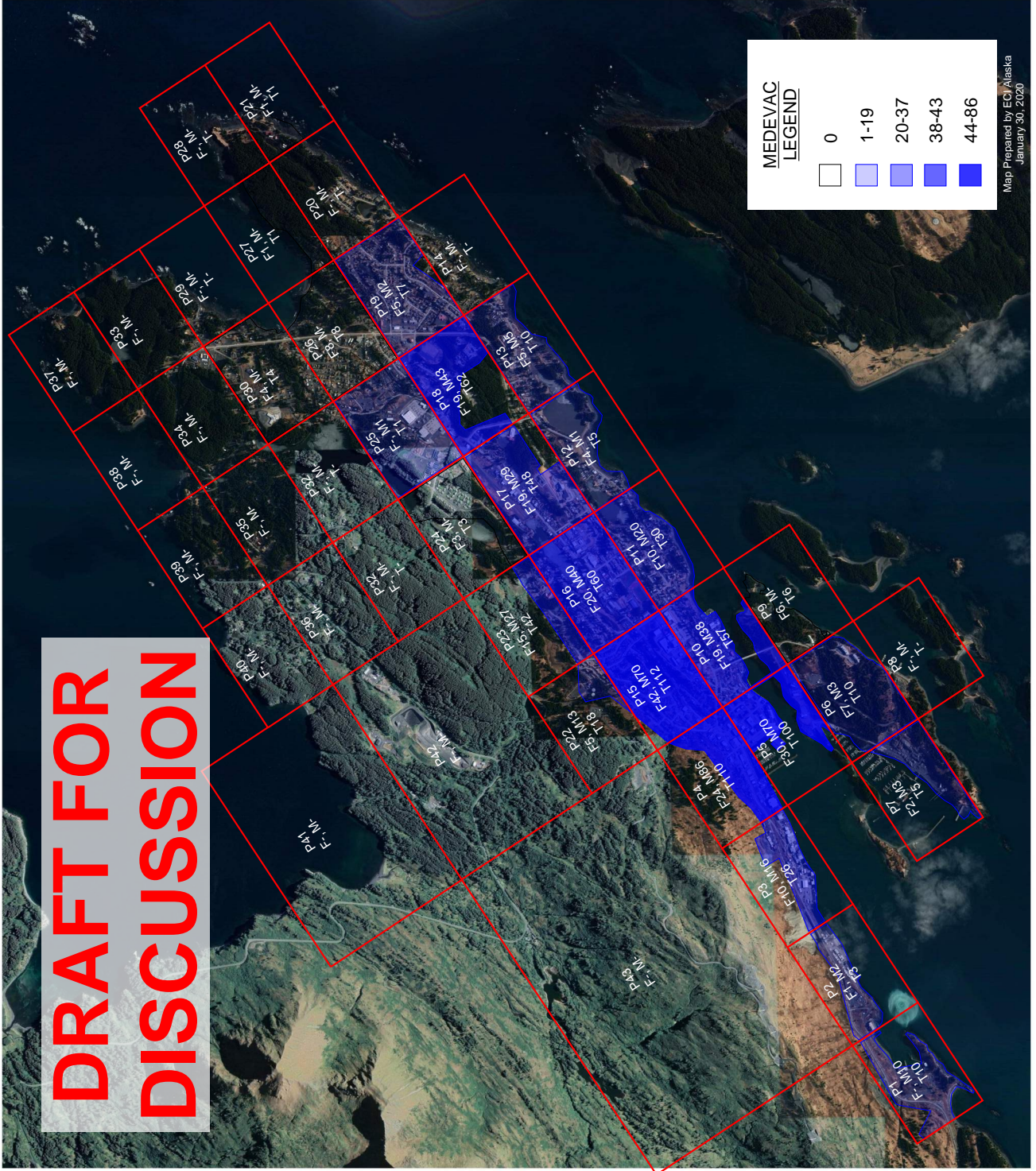
Kodiak Fire Station **DRAFT**
2018 FIRE Instance Mapping

**DRAFT FOR
DISCUSSION**



Kodiak Fire Station **DRAFT**
2018 MEDVAC Instance Mapping

**DRAFT FOR
DISCUSSION**



Map Prepared by ECI Alaska
January 30, 2020

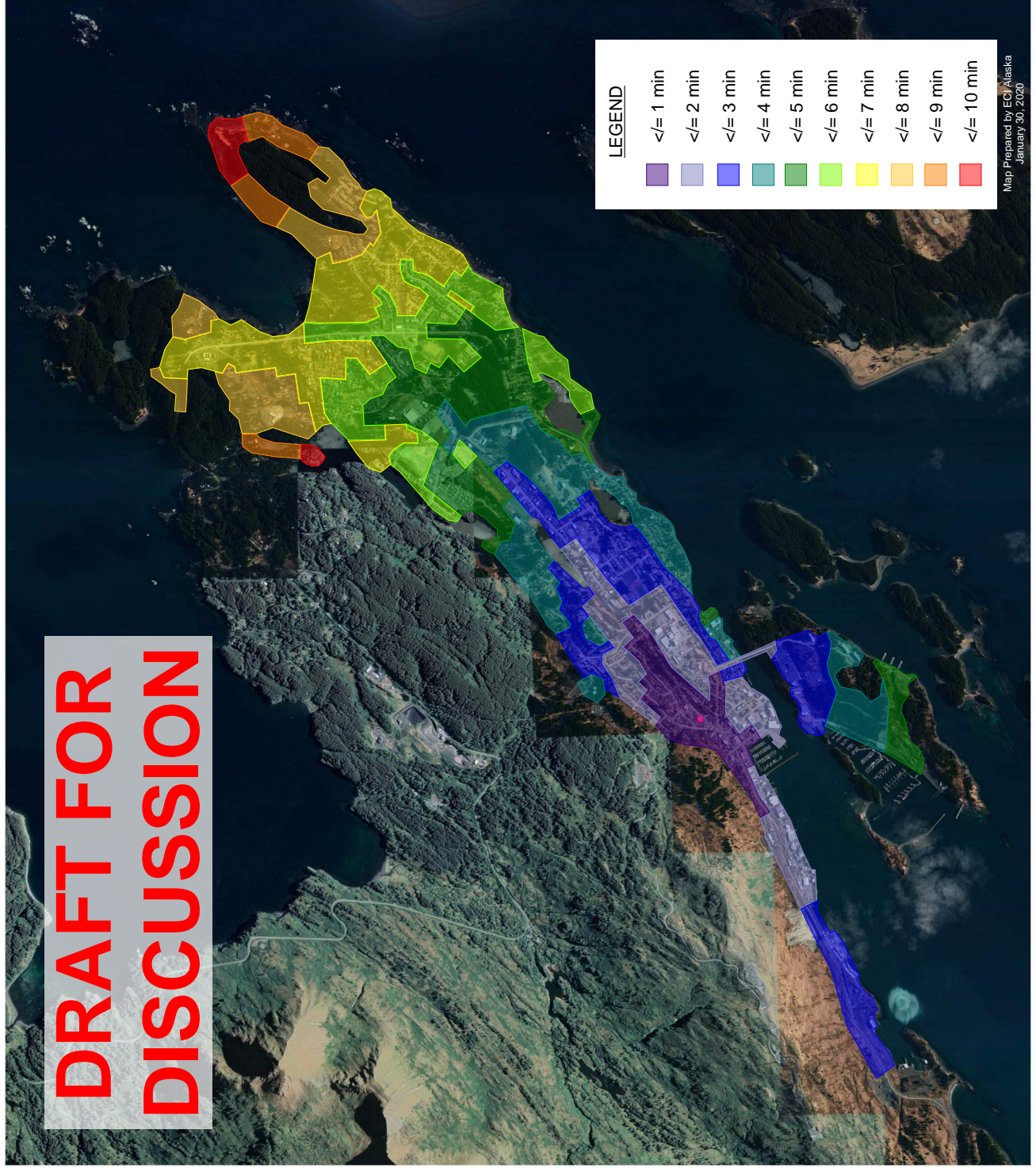
Kodiak Fire Station **DRAFT**
Proposed Site Locations - Travel Time Mapping Key

**DRAFT FOR
DISCUSSION**



Kodiak Fire Station **DRAFT**
(0) 219 Lower Mill Bay Rd Travel Time Mapping

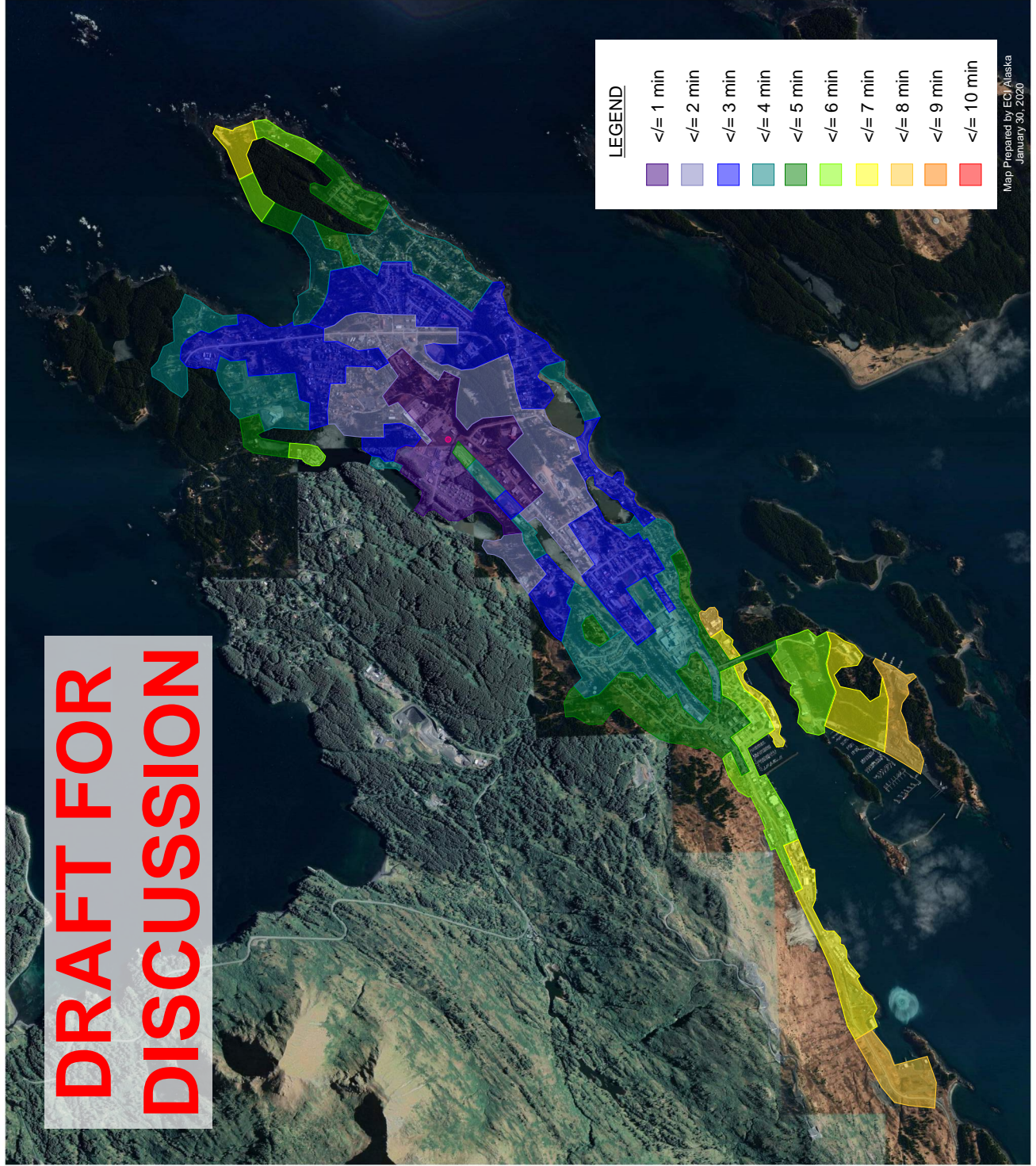
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DISCUSSION**



Disclaimer: Travel times were sourced from Google Maps for all sites. This information may vary from actual conditions.

Kodiak Fire Station **DRAFT**
(1) 170 Von Scheele Way Travel Time Mapping

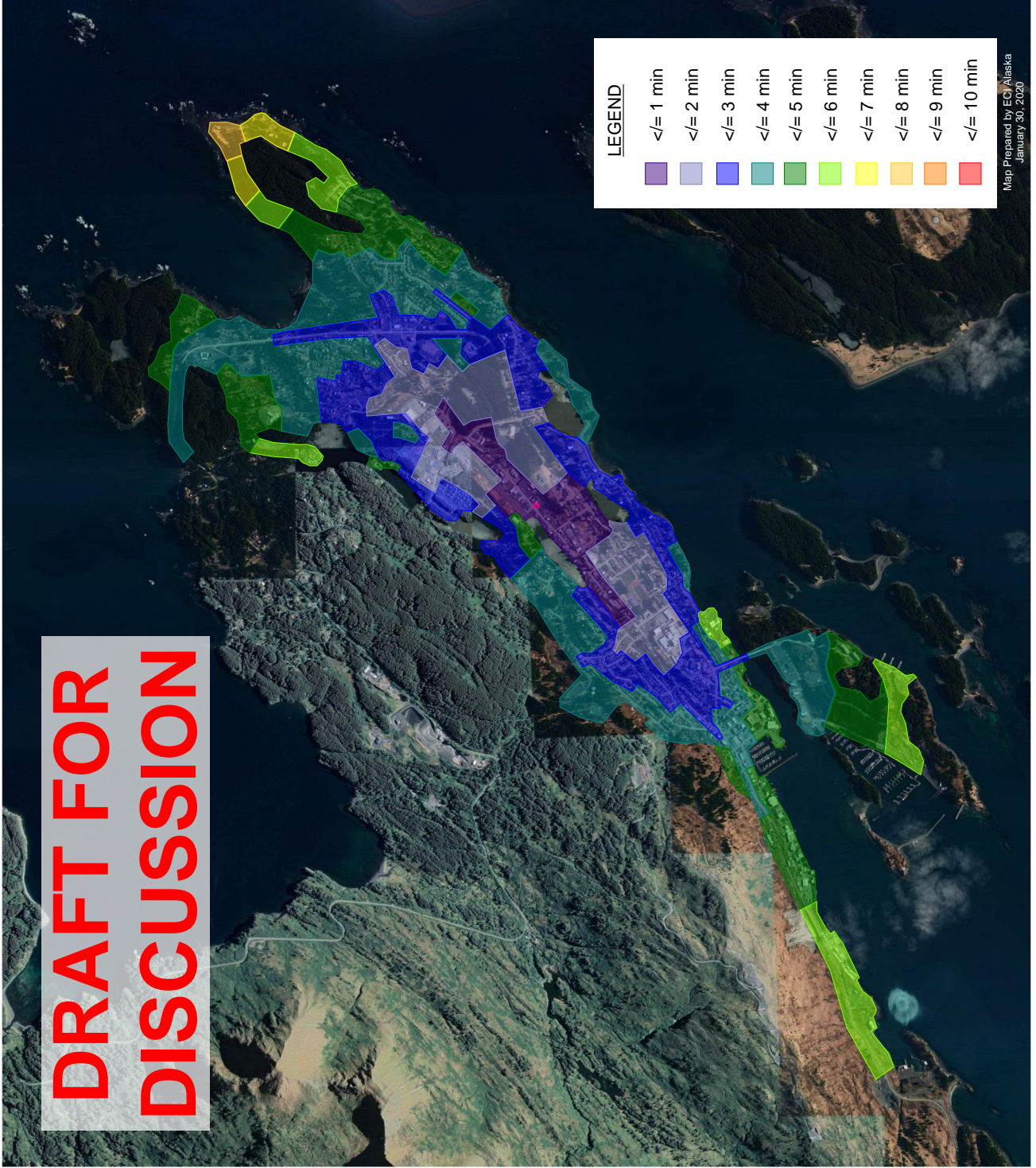
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Disclaimer: Travel times were sourced from Google Maps for all sites. This information may vary from actual conditions.

Kodiak Fire Station **DRAFT**
(2) 1950 & 1918 Mill Bay Rd Travel Time Mapping

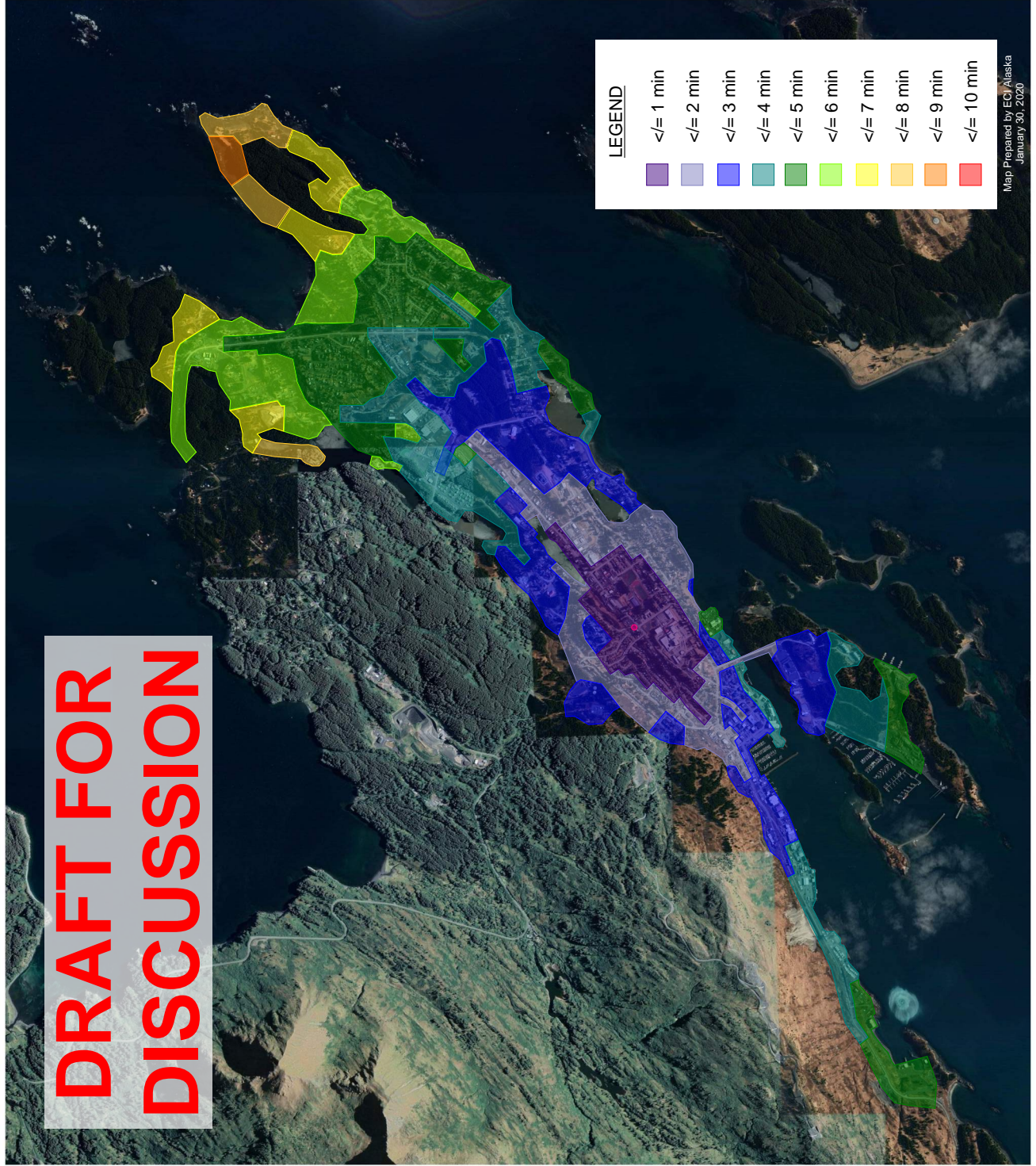
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DISCUSSION**



Disclaimer: Travel times were sourced from Google Maps for all sites. This information may vary from actual conditions.

Kodiak Fire Station **DRAFT**
(4) Mill Bay Rd & Powell Ave Travel Time Mapping

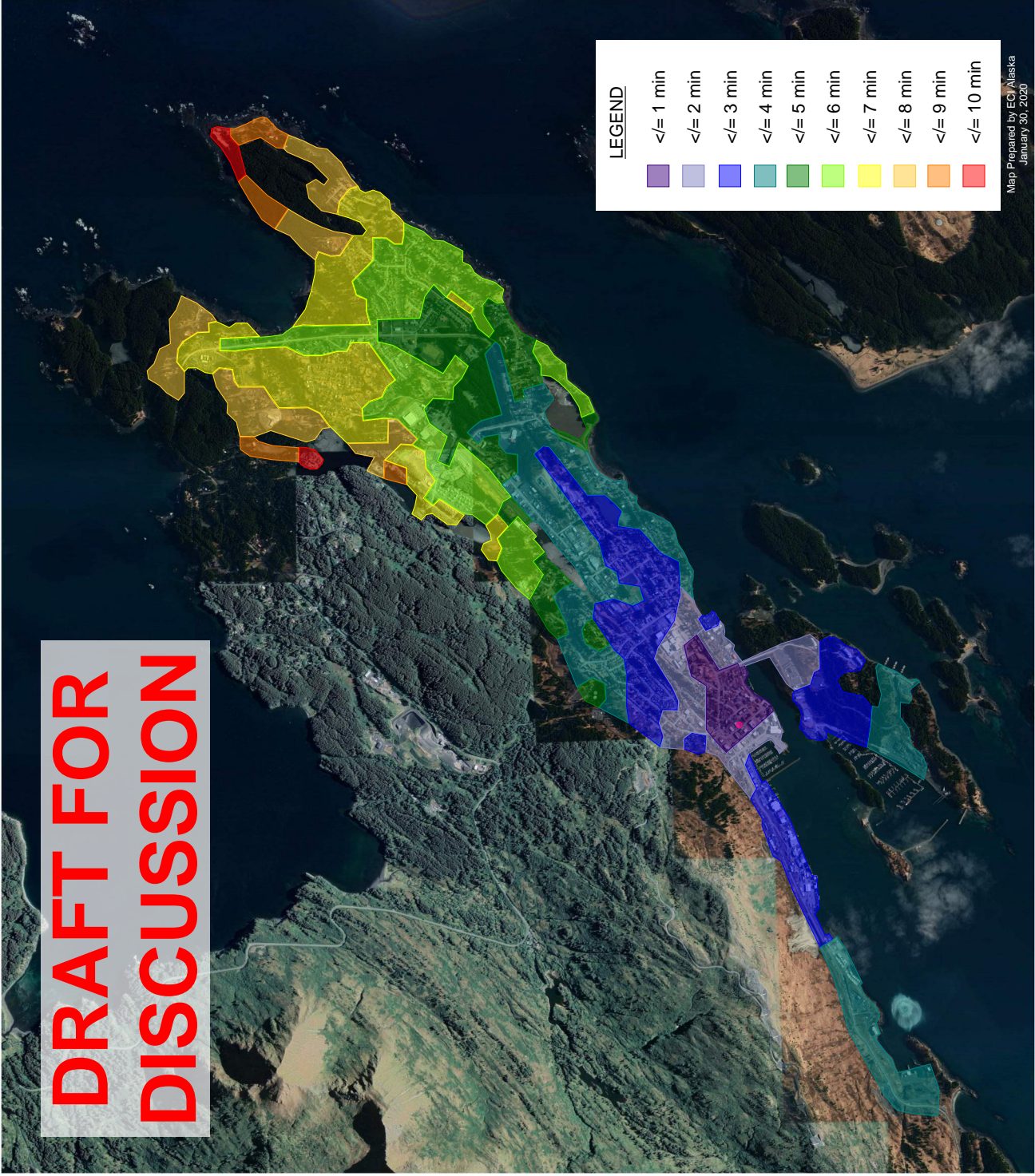
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DISCUSSION**



Disclaimer: Travel times were sourced from Google Maps for all sites. This information may vary from actual conditions.

Kodiak Fire Station **DRAFT**
(5) Mill Bay Rd & Center St Travel Time Mapping

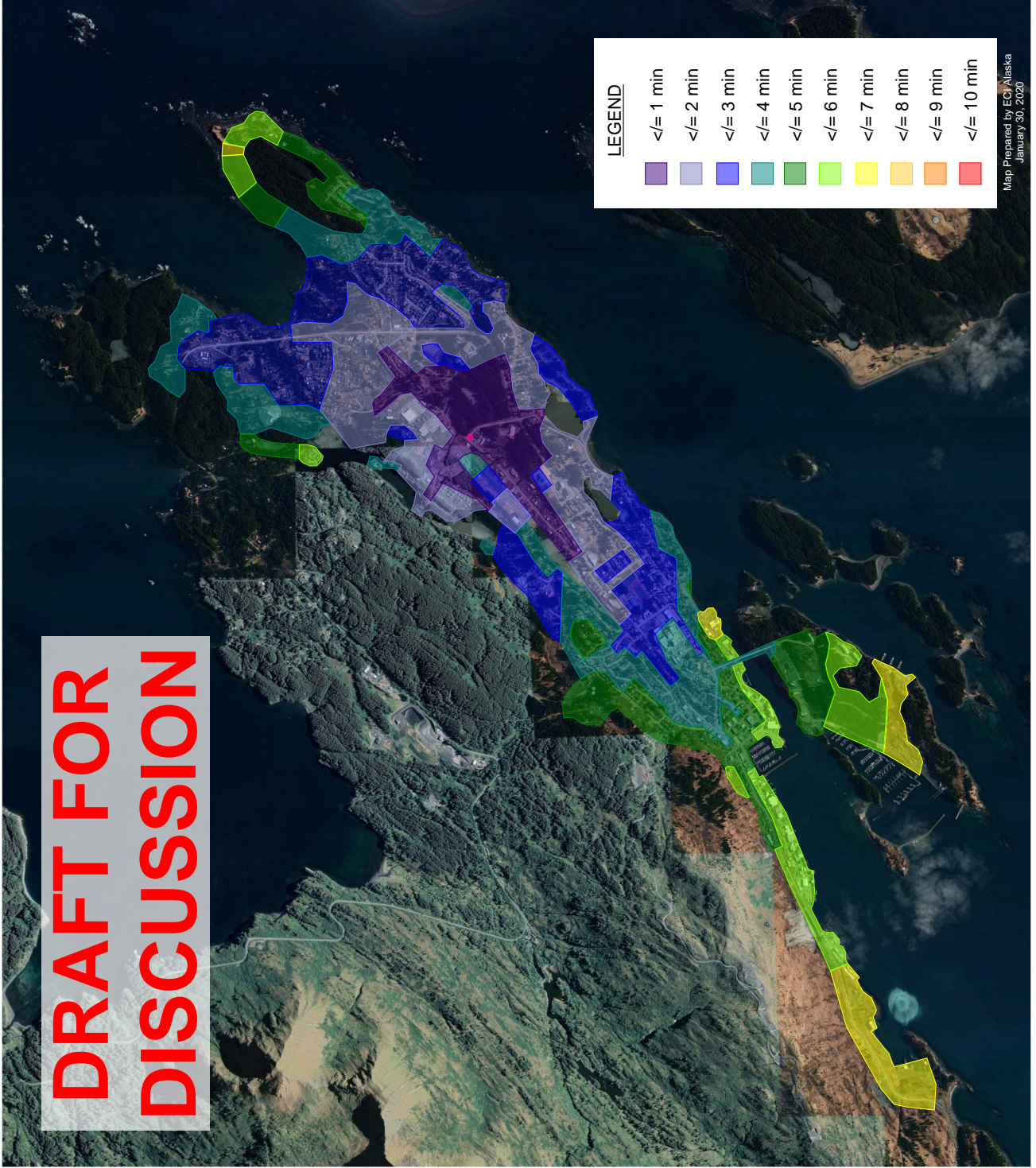
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Kodiak Fire Station **DRAFT**
(7) Mill Bay Rd & Benny Benson Dr Travel Time Mapping

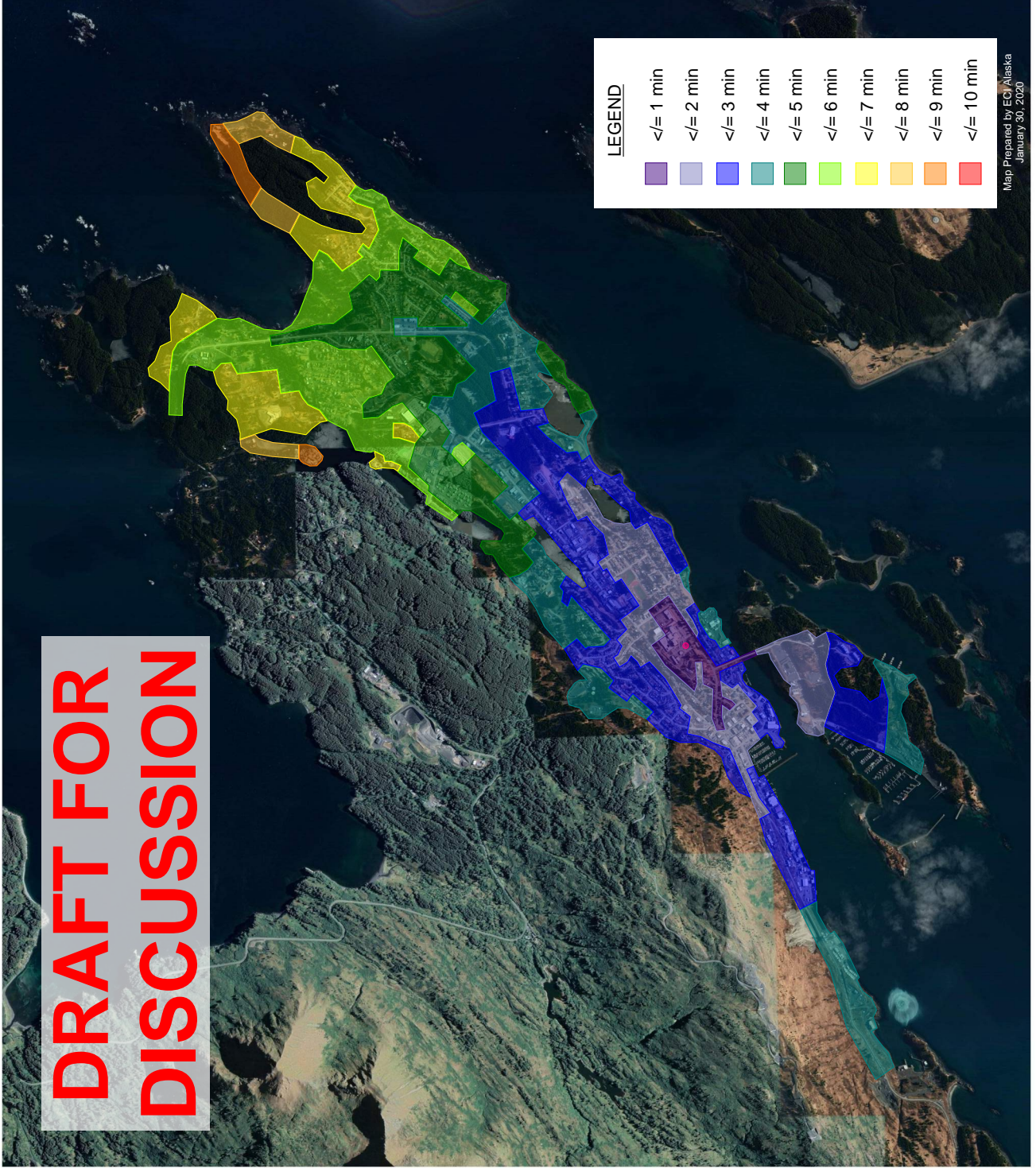
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DISCUSSION**



Disclaimer: Travel times were sourced from Google Maps for all sites. This information may vary from actual conditions.

Kodiak Fire Station **DRAFT**
(8) E Rezanof Dr & Egan Way Travel Time Mapping

**DRAFT FOR
DISCUSSION**



Disclaimer: Travel times were sourced from Google Maps for all sites. This information may vary from actual conditions.

**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:

- > Marijuana Edibles Safety Q&A
 - > 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	



Quarterly Report - FY2020 Quarter 2

- Executive Director –
 - Member of -
 - Kodiak Chamber of Commerce Board of Directors
 - Kodiak Chamber of Commerce Strategic Planning Committee
 - Kodiak Chamber of Commerce Small Business Forum (Chair)
 - Kodiak Chamber of Commerce Crab Festival Committee
 - Local Emergency Planning Committee
 - Local Non-profit Network
 - Noon Rotary
 - Alaska Tourism Industry Association Membership Committee
 - Alaska Tourism Industry Foundation Board
 - Threshold Recycling Services, Inc Board of Directors
 - Alaska Aerospace Spaceport Planning Advisory Group
- Board of Directors –
 - Attended regular board meetings on November 21st and December 11th
- Visitor Guide –
 - Submitted the required documents to the graphic designer
 - Approved the 2020 proofs with Journal Graphics for the visitor guide to be printed
 - 2020 Visitor Guide link -
<http://www.journalgraphicsdigitalpublications.com/epubs/KVG/Kodiak2020OfficialVisitorGuide/>
- Cruise Ship –
 - There are 19 cruise ships scheduled for the 2020 season. The date range is May 5th – October 11th.
 - Total passenger count for the season will be about 17,500.
- Visitor Center –
 - Approximately 570 people came into the visitor center during this quarter.
 - We are planning on replacing the carpet in the visitor center with new vinyl plank flooring.
- Social Media
 - Facebook currently has 38,274 likes – up from 38,148 last quarter.
 - Instagram currently has 3,235 followers – up from 3,006 last quarter.
 - We use a mix of Discover Kodiak staff, Discover Kodiak member, and Kodiak visitor material on both of these platforms.

- Advertising
 - Adventure Outdoors, Lovin' Life After 50, Travel Alaska Website, Alaska Trip Planning Guide, Milepost, Fish Alaska, Hunt Alaska, Outdoor Magazine
 - Trailbound Alaska documentary will be filmed over the next 18 months
- Conventions
 - A Lions convention that will be held here in Kodiak during the second quarter this year. This brought in about 75 people into the Kodiak area.

MEMORANDUM OF AGREEMENT

Provision of Professional Services for the Alaska Remote Seller Sales Tax Commission

Section 1. Purpose. This Memorandum of Agreement (this “MOA”) is effective as of the 21st day of January, 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, and/or as directed by the Board of Directors (the “Services”):

1. Support Commission Board, Subcommittee, and Member meetings, activities, and communications, including the following tasks:
 - a. Make meeting arrangements, and provide for notice in conformance with Commission Bylaws
 - b. Provide agenda support
 - c. Prepare meeting minutes
 - d. Provide compliance oversight
2. Support member meetings, activities, and communications, including the following tasks:
 - a. Maintain Commission member list
 - b. Administer annual member meeting
 - c. Conduct annual rate, boundary, and member Code review
 - d. Send monthly emails with updates on compliance, reporting, and software development
 - e. Establish a Commission website with information available to members, taxpayers, and prospective members
 - f. AML will provide or organize the provision of legal support, at the direction of the Commission, when legal services are needed for code enforcement actions or on behalf of the Commission.
3. 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 may 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, terminate or change the contract.
 - a. MUNIRevs Support – as required by contract attached as Exhibit A
 - b. TTR Support – as required by contract attached as Exhibit B
4. Coordinate Commission decision-making and operational activities through AML’s Executive Director

- a. Communicate staffing roles and responsibilities
5. Manage day-to-day operations of the Commission, including the following tasks:
 - a. Conduct outreach to online retailers and national contacts
 - b. Conduct outreach to Alaska businesses
 - c. Establish and manage separate accounting.
 - i. Reconcile accounts on a daily basis
 - ii. Remit net revenue to members on an agreed-upon and consistent date
 - iii. Report – review in partnership with members
 - d. Follow the policies and procedures as set out by the board
 - e. Manage and respond to legal or other questions from or directed to the Commission
 - f. Seller Compliance – review in partnership with members
 - g. Contract for a compliance audit and prepare required materials for audit
 - i. Make available the auditor to present to the board, and provide to the board the audit and oversight documents
 - h. 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
 - i. 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 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 MOA, the Commission Bylaws, and the Intergovernmental MOA. The Commission acknowledges the legal status of the Alaska Municipal League. The Commission has the following duties and authority:

- Review and work with AML to develop a budget consistent with the administrative needs of the Commission; and approve as determined by the Board
- Review and approve annual staffing plan (recognizing the Commission has no direct authority over AML staff), consistent with the budget, in support of necessary Commission functions
- Approve contracts valued over \$10,000
- Direct all Board and Commission inquiries and requests through the Executive Director of AML or designee
- Establish administrative policies and procedures for the operations of the Commission
- Review and approve a marketing and communication plans and strategies
- Approve implementation and amendment process of the MOA 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 initial term of this MOA shall be one year from the Effective Date. After the initial term, the parties will review the MOA and may amend the MOA as mutually desired and renew. After the initial term, the MOA (amended or not) will renew for two additional years, unless sooner amended or terminated as provided below in this MOA.

Section 7. Amendment. This MOA may be amended at any time by mutual written agreement of the parties.

Section 8. Renewal. AML and the Commission may mutually agree to renew this MOA for successive terms after the first three years of this MOA.

Section 9. Termination for Convenience. This MOA may be terminated by either party upon 120 days' advance written notice. In the event that this MOA is terminated, all finished or unfinished documents, data compilations, reports, and/or other materials prepared by AML under this Agreement are the property of the Commission and AML hereby agrees to peaceably return all such items to the Commission by or upon the effective date of termination and as may be further instructed by the City. AML shall be entitled to receive compensation for invoiced work performed to the effective date of the termination.

Section 10. Remediation. If the Commission determines that AML has failed to fulfill in a timely and proper manner the obligations of this MOA, the Commission will notify AML in writing of these deficiencies, work with AML to take action to address deficiencies within thirty (30) days, with expected remediation within ninety (90) days.

Section 11. Termination for Cause. If, through any cause, AML shall fail to fulfill in a timely and proper manner the obligations under this MOA, unresolved within ninety (90) days and determined to be significantly detrimental to the governance or fiduciary oversight of the Commission, then the Commission shall thereafter have the right to immediately terminate this MOA, upon a vote of the Board of Directors, by giving written notice to AML and specifying the effective date thereof. The Commission reserves the right to terminate for cause within thirty (30) if Board determines that circumstances necessitate. In either event, all finished or unfinished deliverable items under this MOA 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 prior to the effective date of termination. 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 MOA, 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.

Section 12. 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 annual revenues are determined by the Commission's fiscal year.

- 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). The Commission recognizes the a \$100,000 up front payment made by AML, to be repaid to AML as a \$1,000 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, as determined by the Board through the budget process. TTR’s fees are 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 monthly, applied as an annual, board-approved percent of revenue to gross sales tax collected, consistent with the budget. The total percent collected from fees (between MUNIREvs, TTR and AML) should be limited to not more than 20% in any one month, with the maximum preferred limit at 15% (and the intent to work toward lowering fees as quickly as possible). The Commission as a whole may approve a higher percentage if circumstances demand.

D. AML Expenses

AML will submit monthly reports of expenses to the Board, and the Commission will pay AML’s direct expenses and 8% overhead expenses upon approval by the board or designee. Overhead will be applied to direct expenses as compensation for rent, computers and electronic equipment, telecommunication equipment and services, and indirect staff time in proportion to the Commission’s share of each line item as approved in the budget. Direct and indirect expenses will be evaluated annually to ensure appropriate allocation. Cost beyond costs approved in the budget are not a reimbursable direct expense and must be approved by the board of directors. AML’s direct expenses include, and as provided for in the annual budget are:

1. Staff who are directly responsible for Commission programs. Costs include salary and benefits.
2. Contracts, insurance, and miscellaneous costs directly related to AML’s performance of the Services

3. Any Commission-approved loan or 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 agreed upon interest.
4. AML expenses paid by the Commission may not exceed the approved budget in any fiscal year, unless a prior request to amend and increase the budget has been received and approved by the Board of Directors.

Section 13. Insurance.

AML will maintain general (currently \$2,000,000) and professional liability insurance coverages at all times during this MOA 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 (minimum \$1,000,000) in any aspect of the performance of services under this MOA. 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 (with minimum limits of \$100,000 per accident). 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 14. 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 MOA, including without limitation any failure of AML to assume responsibility for any of the Services in a timely manner in accordance with this MOA except to the extent that such breach, nonfulfillment, or failure is caused by the actions of any Commission Indemnified Party; (b) any negligent acts or omissions or willful misconduct related to this MOA; or (c) any successful enforcement of this indemnity.

- B. The Commission's Obligation to Indemnify. To the extent allowed by law and subject to availability and appropriation of funds by Members, 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: (a) 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 MOA except to the extent that such breach, nonfulfillment, or failure is caused by the actions of any AML Indemnified Party; (b) any negligent acts or omissions or willful misconduct related to this MOA; or (c) any successful enforcement of this indemnity.

Section 15. Miscellaneous. This MOA does not create, and shall not be construed as creating, any rights enforceable by any person or entity not a party to this MOA. Nothing in this MOA 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 MOA may not be assigned without the prior written consent of the other party, which may not be unreasonably withheld. This MOA represents the entire agreement and understanding between the parties with respect to the subject matter of this MOA and supersedes all prior or contemporaneous, express or implied, written or oral MOAs, representations, and conditions between the parties with respect to the subject matter of this MOA. This MOA 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 MOA. This MOA may only be modified upon mutual MOA in writing by both parties. The failure of the Commission to enforce a provision of this MOA shall in no way constitute a waiver of the provisions of this MOA or a waiver of any subsequent breach of the same or similar condition or provision of this MOA, nor shall it in any way affect the validity of this MOA. If any section or clause of this MOA is held invalid by a court of competent jurisdiction, or is otherwise invalid under the law, it is the intent of the parties that the remainder of this MOA shall remain in full force and effect.

Section 16. Contract Administration. The Commission Board President, or the President's designee, shall be the representative for administering this MOA on behalf of the Commission. The Executive Director of AML shall be the representative for administering this MOA on behalf of the Commission.

[SIGNATURE PAGE FOLLOWS]

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

The Commission:

ALASKA REMOTE SELLER
SALES TAX COMMISSION

By: _____

Its: _____

AML:

ALASKA MUNICIPAL LEAGUE

By: _____

Its: _____



ALASKA
MUNICIPAL
LEAGUE

Online Sales Tax

A Win-Win for Local
Governments and Businesses

Background

Impacts of a Supreme Court Case

- *Wayfair vs South Dakota* removed the requirement of physical “nexus” and opened up the opportunity for sales tax collection – of current sales taxes – on online sales
- The Supreme Court gave broad guidelines for how that should occur, namely that collection should not create a burden on inter-state commerce
- The Court further suggested that streamlined, statewide, single-level administration, with a clearly defined economic nexus, would meet this test
- States have been updating their sales tax codes across the nation, taking into account economic nexus, the role of a marketplace facilitator, and a system of collection



Background

Implications for Alaska

- Alaska is the only state in the nation that doesn't have a statewide sales tax but gives local governments the ability to collect
- AML has spent the last year researching this issue and developing a well-vetted and reasonable path forward
 - 17 local governments contributed funding and the time of their staff toward this effort, which represents strong collaboration
- Local governments in Alaska have both taxing authority and the ability to enter into intergovernmental agreement under the State Constitution
- Together, there has been consensus to work together to follow the Supreme Court decision



Working Together

June 6th in-person meeting

- More than 40 managers, attorneys and finance officers met to discuss how to proceed, agreeing to economic nexus and centralized administration

Drafting Committee

- Comprised of sales tax administrators, finance officers and attorneys, this group met weekly to discuss and finalize common definitions

Governance Committee

- Comprised of managers, attorneys and finance officers, this group met regularly and developed an intergovernmental agreement, draft bylaws and draft remote sales tax code



Working Together – Thanks!

Drafting and Governance Committee Participation

- Kenai Peninsula Borough
- City and Borough of Juneau
- Ketchikan Gateway Borough
- City of Palmer
- City of Wasilla
- City of Nome
- City of Palmer
- City and Borough of Wrangell
- City of Kodiak
- City of Sand Point
- City of Kotzebue
- City of Soldotna
- City of Unalaska
- City of Adak
- Landye Bennett Blumstein LLP
- Boyd, Chandler, Falconer LLP

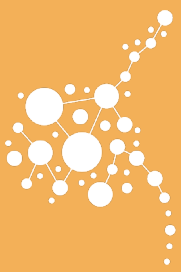


Governance

Intergovernmental
Agreement

Bylaws

Remote Seller
Sales Tax Code



Online Sales Tax Collection

Intergovernmental Agreement

Establishes a Commission

Agrees to:

- Designate a representative to the Commission
- Adopt the online sales tax code; delegation of tax collection
- Economic nexus
- AML administration



Online Sales Tax Collection

Governing documents of Commission

Membership and meetings

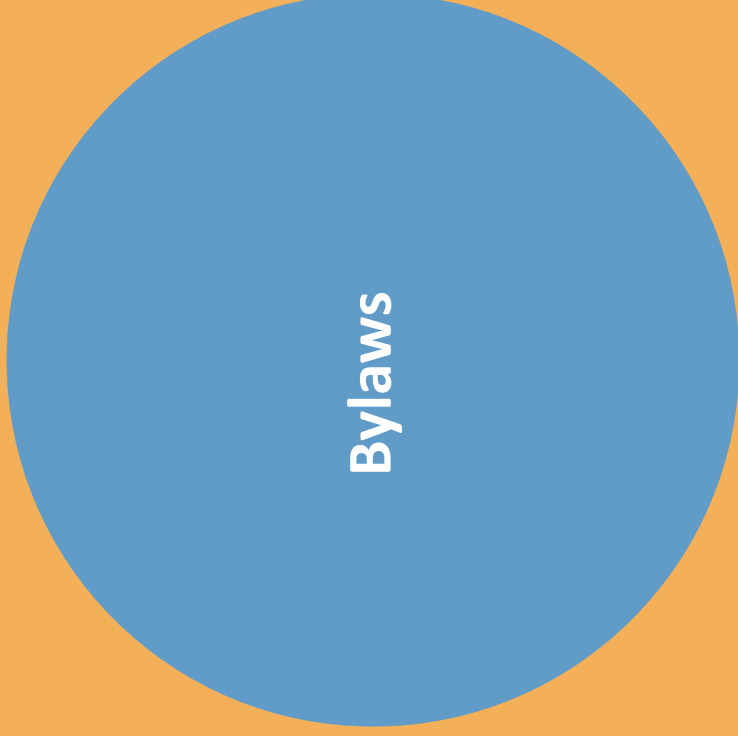
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Board of directors, elections

Oversight of collection and remittance

Budget

Policies and procedures



To be approved by members at first meeting



Online Sales Tax Collection

Implements the ability for collection of online sales tax, based on point of delivery, applicable to local governments that have signed the Agreement and passed the Code

Individual tax rates and exemptions

Common definitions

Centralized administration:

- Collection and Remittance
- Address software
- Audit and compliance
- Vendor registration
- Filing deadlines and penalties

Remote Seller
Sales Tax Code



Centralized Administration

Standard software

- AML has contracted with a software development company to collect, remit and manage online sales tax – vetted to be the most affordable and effective option for members
- Software fees as a % of overall revenue collected

AML to provide staff support

- Software management, remittance and reporting, compliance
- Board and member support and communications
- AML fees based on direct costs to implement

Role of Members

- Ensure updates to tax rates and codes, exemptions
- Review monthly or quarterly filings for accuracy
- Work with AML on compliance and audit



Ensuring Success

Why this makes sense for local governments

- Maintain taxing authority
- Maintain rate and exemptions
- Delegated administration to AML saves \$
- Opt-in = you take advantage of Wayfair
- Opt-out = residents don't pay sales tax
- Levels the playing field for local business
- Increased revenue for education, public safety, roads and public works
- Increases ability to respond to State cost-shifting



Ensuring Success

Why this makes sense for Alaska

- Levels the playing field – increases local purchase potential
- These aren't new taxes
- Keeps tax rates stable
- Protects residents outside boundaries
- Maintains current local exemptions
- Local revenues improve communities
- On par with other states
- Strengthens local governments
- Local taxpayers, local budgets



Next Steps

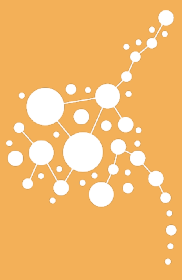
Pass the Draft
Resolution,
committing to
Agreement

Participate in
Commission meetings;
approve Bylaws and
Remote Seller Sales
Tax Code

Bring the Code to
your
Council/Assembly

Send AML your
current rate,
exemptions and
boundaries

Expect collection to
begin within 30 days





ALASKA
MUNICIPAL
LEAGUE

Online Sales Tax

A Win-Win for Local
Governments and Businesses

Celebrating Signatories

Wrangell

Wasilla

Seldovia

Juneau

Kenai Peninsula Borough

Ketchikan Gateway Borough

Seward

Homer

Soldotna

Haines Borough

Kenai

Palmer

Toksook Bay

Kodiak

Adak



Presented by:
Introduced:
Drafted by:

MODEL RESOLUTION

Serial No. XXXX

A Resolution Authorizing the [Taxing Jurisdiction] to Join the Alaska Remote Seller Sales Tax Commission for the Purpose of Developing, Implementing, and Enforcing a Remote Sellers Sale Tax Code

WHEREAS, the inability to effectively collect sales tax on sales of property, products or services transferred or delivered into Alaska in response to orders placed electronically by consumers with remote sellers, 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 broad-based tax, and sales tax revenues are essential in funding the provision of services by local governments; and

WHEREAS, the failure to collect tax on remote sales creates market distortions by creating tax shelters for businesses that limit their physical presence in the state or cities and boroughs but still sell their goods and services to their consumers, something that becomes easier and more prevalent as technology continues to advance; 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 is a growing problem that is likely to only worsen in the near future; 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 generally, as well as local infrastructure; 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, the recent decision by the United States Supreme Court in *South Dakota v. Wayfair* allows for the amendment of the sales tax code to account for remote sellers who do not have a

physical presence in either the state of Alaska or within the [taxing jurisdiction], but do have a taxable connection with the state of Alaska and [the taxing jurisdiction]; and

WHEREAS, the decision in *South Dakota v. Wayfair* provided guidance that included the defensibility of a single-level statewide administration of remote sales tax collection and remittance; and

WHEREAS, in order to implement a single-level statewide sales tax administration, it is the intent of local taxing jurisdictions within Alaska to establish an intergovernmental entity known as the Alaska Remote Seller Sales Tax Commission (the “Commission”); and

WHEREAS, the function and powers of the Commission will be set forth under the Alaska Intergovernmental Remote Seller Sales Tax Agreement (the “Agreement”), a cooperative agreement between Commission members; and

WHEREAS, under the terms of the Agreement, in order to maintain membership in the Commission, the [taxing jurisdiction] will be required to adopt certain uniform code provisions for the collection and remittance of municipal sales tax applicable to sales made by remote seller; and

WHEREAS, the uniform remote sales tax code will be presented to the [taxing jurisdiction’s governing body] for consideration once adopted by the Commission; and

WHEREAS, once adopted, the administration of remote sales tax collection and remittance will be delegated to the Commission; and

WHEREAS, the intent of the Agreement is to enable Alaska’s taxing jurisdictions to levy their municipal sales tax to the maximum limit of federal and state constitutional doctrines; and

WHEREAS, [authority of taxing jurisdiction to enter into intergovernmental agreements. Many local governments in Alaska have charter provisions that read something like “(charter section) provides that the municipality may exercise any of its powers or perform any of its functions any may participate in the financing thereof, jointly or in cooperation, by agreement with any one or more local governments, the State, or the United States, or any agency or instrumentality of these governments.”]

NOW, THEREFORE, BE IT RESOLVED BY THE [GOVERNING BODY]:

Section 1. Authorization. The [Governing Body] authorizes the Manager/Mayor to negotiate, execute, and submit all necessary documents to obtain and maintain membership in the Alaska Remote Seller Sales Tax Commission.

Section 2. Representation. The [Governing Body] designates the Manager/Mayor/Finance Director/STO as the [Taxing Jurisdiction’s] representative on the Commission.

Section 3. Scope of Agreement. The Alaska Intergovernmental Remote Seller Sales Tax Agreement is included as Attachment A.

Section 4. Effective Date. This resolution shall be effective immediately after its adoption.

Adopted this _____ day of _____, 2019.

Authorized signatory

Attest:

Municipal Clerk

**Bylaws of the
Alaska Remote Seller Sales Tax Commission**

ARTICLE I - OFFICES

Section 1. Registered Office.

A registered office will be maintained by the Commission in the State of Alaska at One Sealaska Plaza, Suite 200, Juneau, AK 99801, or at such location as the Board of Directors designates.

Section 2. Other Offices.

The Commission also may have offices at such other places as the Board of Directors determines or the business of the Commission may require.

ARTICLE II – MEMBERSHIP

Section 1. Qualifications.

To obtain and retain full membership, the legislative body of an Alaska municipality must submit either an Ordinance or Resolution authorizing the Alaska Intergovernmental Remote Sellers Sales Tax Agreement.

- A. To retain full membership status, a member must adopt, by reference or otherwise, the Remote Seller Sales Tax Code in its entirety as it pertains to collection of sales tax from remote sellers.

Section 2. Privileges.

- A. Voting. Members may vote.
- B. Holding Office. Individual representatives of members may hold office.
- C. Committees. Members may serve on a committee.

Section 3. Dues or fees.

- A. Annual dues or fees for all members, if adopted, shall be fixed by the Board.
- B. Membership belongs to the individual municipality and may not be transferred.

Section 4. Revocation of Membership.

- A. Membership shall be revoked immediately upon the resignation of a member, or non-payment of dues, if any.
- B. If after 120 days a member has not passed the Code, or adopted by reference, membership may be revoked.

ARTICLE III - MEETINGS

Section 1. Annual Meetings.

Each year, the Commission shall hold an annual meeting of members on such date and on such time as shall be determined by the Board of Directors, at which meeting the members shall

elect a Board of Directors and transact any other business as may properly be brought before the meeting.

Section 2. Location of Meetings.

Meetings of members shall be held at such place as determined by the Board of Directors. Meetings may be rotated annually between member jurisdictions, as possible and for the convenience of the members.

Section 3. Special Meetings.

Special meetings of the members may be called at any time by the President or the Board of Directors, or members holding not less than ten percent (10%) of all the votes entitled to be cast at such meeting. Business transacted at any special meeting shall be confined to the purpose or purposes set forth in the notice of the special meeting.

Section 4. Notice of Meetings.

Whenever members are required to or permitted to take action at a meeting, a written notice of the meeting shall be provided to each member. The written notice shall state the place, date, and hour of the meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called. Unless otherwise provided for by law, written notice of any meeting shall be given not less than ten (10) nor more than fifty (50) days before the date of the meeting to each.

Section 5. Written Notice Defined.

Written notice shall be accomplished via first class mail or via email sent to the address or email address last provided by the member.

Section 6. Quorums and Adjournments.

Members may take action on a matter at a meeting only if a quorum exists with respect to that matter. Except as otherwise provided by law, a majority of the members of the Commission in attendance (physically or telephonically) constitute a quorum at a meeting of the members, and a majority of the board of directors constitutes a quorum for board meetings. Once a member or board member is represented at a member or board meeting (other than solely to object to the holding of the meeting), the member is deemed present for quorum purposes for the remainder of the meeting and the members present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of sufficient members to leave less than a quorum. The holders of a majority of the members represented at a meeting, whether or not a quorum is present, may adjourn the meeting from time to time.

Section 7. Voting.

If a quorum exists, action on a matter (other than the election of directors) is approved if the votes cast favoring the action exceed the votes cast opposing the action. Directors shall be elected by a plurality of the votes cast by the members (provided a quorum exists). Unless otherwise provided by law, each member shall be entitled to one vote on each matter.

Section 8. List of Members.

The Secretary of the Board of Directors shall prepare and make, at least ten (10) days before any meeting of the members, a complete list of the members, arranged alphabetically, and showing the address of each member. The list shall be open to the examination of any member for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten (10) days before the meeting, either at a place in the city where the meeting is to be held, which place must be specified in the notice of the meeting, or at the principal offices of the Board of Directors. The list shall also be produced and kept available at the time and place of the meeting, for the entire duration of the meeting, and may be inspected by any member present at the meeting.

Section 9. Meeting by Conference Call or Electronic Media.

One or more members may participate in a meeting of the members or board by means of a conference telephone, videoconferencing, or similar communications equipment by means of which all persons participating in the meeting can hear (and potentially see) each other. Participation in this manner shall constitute presence in person at such meeting.

A. For meetings held exclusively via conference call or electronic media, the following procedure must be followed: (1) notice to members of the time and locations where the meeting will be held by electronic media has been given in the same manner as if the meeting were held in a single location; (2) members in attendance can hear and have the same right to participate in the meeting as if the meeting were conducted in person; and (3) copies of pertinent reference materials, statutes, regulations and audio-visual materials are reasonably available to the members. A meeting by electronic media as provided in this Section 7 has the same legal effect as a meeting in person.

Section 10. Alaska Open Meetings Law.

All annual and special meetings of the members of the Commission, all regular and special meetings of the Board of Directors and all meetings of committees of the Board of Directors, if any, will be conducted in accordance with the Alaska open meetings law found at AS 44.62.310.

ARTICLE IV - DIRECTORS

Section 1. Powers.

The business and affairs of the Commission will be managed under the direction of, the Board of Directors of the Commission, which may exercise all such powers of the Commission and do all lawful acts and things, subject to any limitations set forth in these Bylaws or under Alaska Statutes.

Section 2. Number. Qualifications and Election.

The number of directors shall be set at seven (7). Each director shall be at least 21 years of age. Board members must be an employee, agent of, or elected official of a member entity with an active membership. The directors shall be elected by the members at the annual meeting

by the vote of the members. Each director shall be elected for a term of two (2) years, except within the initial term where three members have one (1) year, and until his or her successor shall be elected and shall qualify or until his or her earlier resignation or removal.

- A. Initial Election - Term. All members eligible to vote shall vote for the Board of Directors by seat. The first four (4) seats will serve two-year terms. The next three (3) seats will serve one-year terms. Thereafter, all vacancies shall be for a two (2) year term.

Section 3. Nomination of Directors.

The Board of Directors may nominate candidates to stand for election as directors. Other candidates may also be nominated by any member of the Commission provided such nomination is submitted in writing to the Commission's Secretary at least thirty (30) calendar days prior to the annual meeting, except for the provisional board selection.

Section 4. Vacancies.

Except as otherwise provided by law, any vacancy in the Board of Directors occurring by reason of an increase in an authorized number of directors or by reason of death, withdrawal, removal, disqualification, inability to act, or resignation of a director shall be filled by a designee of the member municipality. In the case of a successor, the successor shall serve until the next election.

- A. Process for Filling Vacancy.

1. The Secretary shall prepare a notice of vacancy for the next election, stating that a vacancy has occurred and advising interested members as to the procedure for the filling of the vacancy.
2. Eligible members will have thirty (30) calendar days to submit nominations. Nominations shall include a letter of interest describing the nominee's interest to serve on the Board.
3. A board member elected to fill a vacancy shall serve for the remainder of the vacant term.

Section 5. Compensation.

There shall be no compensation for board participation. Expenses of attendance including travel may be allowed for attendance at each regular and special meeting of the Board and reimbursed to the respective Director's municipality.

Section 6. Removal of Directors.

Any director of the Board of Directors may be removed, with or without cause, by a majority of the members eligible to vote.

Section 7. Resignation.

Any director may resign at any time by giving notice to the Board or the Secretary. Any such resignation will take effect upon receipt of such notice or at any later time specified in the notice. The acceptance of such resignation will not be necessary to make it effective, provided that the Board of Directors may reject any postdated resignation by notice in writing to the resigning director.

ARTICLE V - OFFICERS

Section 1. Positions.

The officers of the Board of Directors shall be a President, a Vice President, a Secretary, and a Treasurer, and such other officers as the Board may from time to time appoint, and such other officers it deems advisable. Each such officer shall exercise such powers and perform such duties as shall be set forth herein and such other powers and duties as may be specified from time to time by the Board of Directors. The officers of the Board of Directors shall be elected by the Board members. Each of the President and/or the Vice President may execute bonds, mortgages, and other documents under the seal of the Commission, except where required or permitted by law to be otherwise executed and except where execution thereof shall be expressly delegated by the Board to some other officer or agent of the Commission.

Section 2. President. The President shall:

- A. Preside at all meetings;
- B. Be chair of the Board of Directors;
- C. Be an ex-officio member of all committees;
- D. In the event of a vacancy in a committee chairmanship, have the power to appoint a chairperson from among the members of the committee in which the vacancy occurs or from the General membership, after approval from the Board of Directors;
- E. Appoint, subject to the approval of the Board of Directors, committee members to fill vacancies during the year;
- F. Call meetings of the Board of Directors;
- G. Have the general powers and duties of management and supervision usually vested in the office of President of a corporation.
- H. Perform all other duties as are incident to the office or are properly required of the President by the Board of Directors.

Section 3. Vice President. The Vice President shall:

- A. Assist the president throughout the year;
- B. Assume the duties of the president in the latter's absence;
- C. Succeed to the office of president in the event of a temporary vacancy in the office or the president's inability to perform the duties of office;
- D. Be available to the president upon the request for assistance.

Section 4. Secretary. The Secretary shall:

- A. Keep the minutes of all regular and special meetings of the general membership and the Board of Directors;
- B. Record all the votes of the Commission and the minutes of all its transactions in a book to be kept for that purpose;
- C. Provide the president with a copy of the minutes within ten (10) business days after the meeting;
- D. Conduct such correspondence as shall be requested by the president, Board of Directors or the general membership;
- E. Be custodian of all records except financial records and committee reports;

- F. Give, or cause to be given, notice of all meetings of the members and special meetings of the Board of Directors
- G. Maintain the list of all eligible voting members and make the list available upon reasonable request.

Section 5. Treasurer. The Treasurer shall oversee the custody of the funds and securities of the Commission. The Treasurer shall:

- A. Maintain oversight of all monies of the Commission and the due payment of all authorized obligations;
- B. Arrange for the annual audit, performed by a CPA
- C. Ensure the filing of any necessary tax documents;
- D. Submit and review an annual treasurer's report to the Board and general membership at the annual meeting;
- E. Submit other treasurer's reports as requested by the Board of Directors;
- F. Prepare an annual budget for upcoming year and present it at an annual conference meeting;
- G. Be custodian of all financial records;

ARTICLE VI – COMMITTEES

Section 1. There may be standing and special committees.

Section 2. The standing committees may include Conferences/Meetings, Membership, Code, and Budget and Finance.

Section 3. Special committees are appointed by the President for a special function or task and will remain active until their function is completed and/or they are dissolved upon the completion of their responsibility.

Section 4. The chairman of the standing committees shall be appointed by the President for a one-year term with approval of the Board of Directors. Any active member is eligible to serve.

Section 5. Membership in the committee is open to any person employed by an active member.

ARTICLE VII – FINANCES

Section 1. Duty of Care.

The assets and reporting to be administered through the Administration, its officers, Directors, employees and agents will be done with the same care, skill, prudence and diligence under the circumstances then prevailing that a tax authority would use in the conduct of an enterprise of a like character and with like aims.

Section 2. Budget.

The Budget and Finance Committee shall prepare a budget for the ensuing year for approval by the Board of Directors. The budget as approved by the Board shall be provided to the General Membership for its information.

Section 3. Fiscal Year.

The fiscal year for the Commission shall be from July 1 to June 30.

Section 4. Checks, Drafts.

All checks, drafts or other orders for payment of money, notes or other evidences of indebtedness, issued in the name of or payable to the Commission, will be signed or endorsed by such person or persons and in such manner as determined by resolution of the Board of Directors.

Section 5. Annual Audit.

The board shall have annually audited the financial statements of the Commission by a CPA.

ARTICLE VIII - BOOKS AND RECORDS

Section 1. Correct and Complete, Inspection.

- A. The Commission will keep correct and complete books and records of account and will keep minutes of the proceedings of its members, the Board of Directors, and committees appointed by the board, if any.
- B. All books and records of the Commission may be inspected by any member or its agent or attorney for any proper purpose at any time during normal business hours at the registered office of the Commission.

ARTICLE IX - ADMINISTRATIVE STRUCTURE

Section 1. Staffing.

- A. The day-to-day operations of the Commission will be carried out by such contracted support as necessary, and during the first three years by the Alaska Municipal League, under the supervision of the Board of Directors.
- B. The Commission will enter into agreements with its administrative contractor and as adopted by the Board of Directors setting forth the terms and conditions for the implementation of and compliance with the provisions of (A) of this Section 1.
- C. This provision will be revisited within three years of legal formation of the Commission.

ARTICLE X – GENERAL PROVISIONS

Section 1. Indemnification.

The Commission will defend, indemnify and hold harmless each director, officer and employee of the Commission for expenses, including attorney's fees, and the amount of any judgment, money decree, fine, penalty or settlement for which he or she may become liable by reason of his or her being or having been a director, officer or employee of the Commission or who exercises powers or performs duties for the Commission.

Notwithstanding the foregoing, no indemnification shall be made by the Commission if judgment or other final determination establishes that the potential indemnitee's acts were committed in bad faith or were the result of active or deliberate fraud or dishonesty or clear and gross negligence.

Section 2. Insurance.

The Commission shall purchase and maintain insurance in a reasonable amount on behalf of any person who is or was a director, officer, agent, or employee of the Commission against liability asserted against or incurred by such person in such capacity or arising from such person's status as such.

Section 3. Roberts Rules.

The rules contained in Robert's Rules of Order, Newly Revised shall govern the Commission in all cases to which they are applicable.

Section 4. Headings.

The headings contained in these Bylaws are for convenience only and will not in any way affect the meaning or interpretation of these Bylaws.

ARTICLE XI – AMENDMENTS TO BYLAWS

Section 1.

These Bylaws may be amended by five (5) affirmative votes of the Board of Directors, or at any meeting of the General Membership of those present to vote by a majority vote, provided that the proposed amendments shall have been submitted in writing to the voting members at least thirty (30) calendar days prior to the meeting of the General Membership at which they will be considered.

Section 2.

These Bylaws may be amended at the annual meeting of the General Membership without previous vote, by the unanimous vote of the voting body.

Section 3. Recordation

Whenever action is taken to amend or alter the Bylaws or adopt a new Bylaw, a copy of the amendment, alteration or new Bylaw will be filed and kept in the minute book with the original Bylaws. If any Bylaw is repealed, the fact of such repeal and the date on which it occurred will be recorded in the minute book, and a copy of it will be placed next to the original Bylaws.

ARTICLE XII - DISSOLUTION

Section 1.

In the event of dissolution of the Commission, upon payment of all outstanding obligations, all of the assets shall be distributed evenly among those members who were active, in good standing and qualified to vote at the last General Membership meeting.

Section 2.

It shall be the responsibility of the President and the Treasurer to complete all necessary federal and state forms upon dissolution.

I, the undersigned being the Secretary of the Alaska Remote Sales Tax Commission hereby certify the foregoing to be the Bylaws of the Commission, as adopted by the membership, on the 18th day of November 2019.

Alaska Intergovernmental Remote Seller Sales Tax Agreement

FINAL

October 11, 2019

Alaska Intergovernmental Remote Seller Sales Tax Agreement

This Agreement is made and entered into by the signatories representing Alaska's cities and boroughs to enable them to implement single-level, statewide administration of remote sales tax collection and remittance. The provisions of the Agreement do not apply to administration and collection of sales taxes for the sales of goods and services originating from within the boundaries of a member municipality nor does this Agreement restrict how a member municipality administers and collects sales tax on such sales, nor on sales made by those retailers with a physical presence in the municipality. The authority to set rates and exemptions is maintained by the member municipality.

Article I. Background Principles.

1. The signatories wish to enable local governments to benefit from opportunities for collection of existing sales tax on sales made by remote sellers. Remote sellers are sellers who sell, often through the internet, products or services in a taxing jurisdiction without having a physical presence in the taxing jurisdiction.
2. The collection of remote sales tax provides a level playing field for local businesses and strengthens the ability of local governments to provide public services and infrastructure.
3. The signatories are particularly mindful of the specific holding in, and implications of, the Supreme Court's *South Dakota v. Wayfair* decision, which provides guidance relative to nexus and the legal defensibility of a single-level statewide administration that reduces or removes potential burdens to interstate commerce.
4. Alaska's local governments have the authority to enter into intergovernmental agreements and applicable taxing authority has been delegated to organized boroughs and cities.
5. The signatories desire to establish an intergovernmental entity to enable cooperative centralized administration of sales tax collection, remittance, and enforcement on sales made by remote sellers.

Article II. Purpose.

The purpose of this Agreement is to:

1. Enable cooperative centralized administration of sales tax collection, remittance, and enforcement on sales made by remote sellers using a single statewide intergovernmental entity;
2. Provide for and promote reasonable uniformity and compatibility in significant components of local sales tax levy and collection on sales made by remote sellers and marketplace facilitators in order to facilitate streamlined joint administration; and
3. Facilitate taxpayer and tax collector convenience and compliance in the filing of tax returns, the payment of tax, and in other phases of tax administration of sales made and services provided by remote sellers and marketplace facilitators.

Article III. Definitions.

As used in this Agreement:

1. “Commission” means the Alaska Remote Seller Sales Tax Commission established pursuant to this Agreement.
2. “Local Government” means any home rule, first class, or second class borough, or any home rule, first class, or second class city, or unified municipality in Alaska.
3. “Member” means a Local Government signatory to this Agreement.
4. “Remote seller” means any corporation, partnership, firm, association, governmental unit or agency, or person acting as a business entity that sells property or products or performs services in the State of Alaska or a taxing municipality in the state, using the internet, mail order, or telephone, without having a physical presence in the state or taxing municipality.
5. “Sales tax” means a tax imposed with respect to the transfer for a consideration of ownership, possession, or custody of property or the rendering of services measured by the price of the property transferred or services provided.
6. “Marketplace facilitator” means a person that provides for sellers a platform to facilitate for consideration, regardless of whether deducted as fees from the transaction, the sale of the seller’s products or services (excluding lodging and rentals) 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 seller;
 - ii. Owning or operating the infrastructure, electronic or physical, or technology that brings buyers and sellers together;
 - iii. Providing a virtual currency that buyers are allowed or required to use to purchase products from the seller; or
 - iv. Software development or research and development activities related to any of the activities described in (b) of this subsection (6), if such activities are directly related to a physical or electronic marketplace operated by the person or an affiliated person;
 - 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.

Article IV. The Commission.

1. Organization and Management.

- a. The Alaska Remote Seller Sales Tax Commission (the “Commission”) is hereby established as an intergovernmental entity in the state of Alaska. It will be comprised of one designated representative from each Member, who shall have the authority to act on the Member’s behalf.
- b. Each Member will be entitled to one vote.
- c. To assist conducting business when the full Commission is not meeting, the Commission will annually elect a Board of Directors of seven members, including officers. The Board of Directors will act subject to the provisions of this Agreement and as provided in the bylaws of the Commission, as ratified by the members.
- d. No action will be binding unless approved by a majority of the Directors present at a meeting.
- e. The Commission will adopt an official logo.
- f. The Commission will hold an annual meeting rotating the location of the meeting each year, with telephonic participation provided for, in addition to scheduled regular meetings and special meetings as provided by its bylaws. Notices of special meetings must include the reasons for the meeting and the items to be considered.
- g. The Commission will elect annually, from among its members, a Chairman, a Vice Chairman, and a Secretary/Treasurer. The bylaws of the Commission shall provide for nomination and election of officers.
- h. The Commission will contract at formation for support and administrative

functions with the Alaska Municipal League (AML). The Executive Director of the AML will serve as a liaison between the Commission and AML and may appoint necessary staff support. This provision will be revisited within three years of legal formation of the Commission.

- i. The Commission may contract for supplies and professional services, and delegates to AML the same ability on its behalf.
- j. To carry out any purpose or function, the Commission may accept and utilize donations and grants of money, equipment, supplies, materials and services, conditional or otherwise, from any Member or governmental entity.
- k. The Commission may establish one or more offices for the transacting of its business. Upon formation, its registered office and place of business will be the Alaska Municipal League at One Sealaska Plaza, Suite 200, Juneau, AK 99801.
- l. The Members will adopt the initial bylaws of the Commission. The Commission will make its bylaws easily accessible for Members and prospective members. The power to adopt, alter, amend or repeal bylaws is vested in the Board of Directors unless it is reserved to the Members per the bylaws. The bylaws shall contain provisions for the regulation and management of the affairs of the Commission not inconsistent with this Agreement.
- m. The Commission will provide annual reports to its members covering its activities for the preceding fiscal year. The Commission may make additional reports.

2. Committees.

- a. In furtherance of its activities, the Commission may establish advisory and technical committees by a majority vote of the membership body. Membership on a technical committee, may include private persons and public officials. Committees may consider any matter of concern to the Commission, including issues of special interest to any member and issues pertaining to collection of sales tax on behalf of members.
- b. The Commission may establish additional committees by a majority vote of the membership or Board of Directors as its bylaws may provide.
- c. Committees may not take any action but may recommend action to the Board of Directors for consideration.

3. Powers.

In addition to powers conferred elsewhere in this Agreement and in the bylaws, the Commission may:

- a. Study federal, state and local sales tax systems, and particular types of state and local taxes.

- b. Develop and recommend proposals to promote uniformity and compatibility of local sales tax laws with a view toward encouraging the simplification and improvement of local tax law and administration.
- c. Compile and publish information to support and assist members in implementing the Agreement or assist taxpayers in complying with local government sales tax laws.
- d. Do all things necessary and incidental to the administration of its functions pursuant to this Agreement, including:
 - i. Sue and be sued.
 - ii. Administer provisions of uniform sales tax ordinances pursuant to authority delegated by Members
- f. The Commission may create and adopt policies and procedures for any phase of the administration of sales tax collection and remittance in accordance with this Agreement and the Commission's bylaws, including delegated authority to administer taxation or prescribing uniform tax forms. Prior to the adoption of any policy, the Commission will:
 - 1. As provided in its bylaws, hold at least one meeting after due notice to all members and to all taxpayers and other persons who have made timely requests to the Commission for advance notice of its policy-making proceedings.
 - 2. Afford all affected members and interested persons an opportunity to submit relevant written comments, which will be considered fully by the Commission.
- g. The Commission will submit any policy adopted by it to the designated representative of all Members to which they might apply. Each such Member will in turn consider any such policy for adoption in accordance with its own laws and procedures.
- h. Amend this Agreement by majority vote of the Members.

4. Finance.

- a. At least 90 days prior to the start of a new fiscal year, the Board of Directors will adopt a budget of its estimated expenditures for the upcoming fiscal year and submit to Members.
- b. The Commission will follow a July 1 to June 30 fiscal year.
- c. The Commission's budgets must contain specific recommendations for service fees built into statewide administration. Service fees will account for direct staff and software costs, and indirect costs, as justifiable to the Board of Directors.

- d. The Commission will not pledge the credit of any member. The Commission may meet any of its obligations in whole or in part with funds available to it, provided that it takes specific action to set aside such funds prior to incurring any obligation to be met in whole or in part in such manner. Except where the Commission makes use of funds available to it, the Commission may not incur any obligation prior to the allocation and commitment of funds adequate to meet the same.
- e. The Commission must keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Commission will be subject to the audit and accounting procedures established under its bylaws. All receipts and disbursements of funds handled by the Commission will be audited annually by a certified public accountant and the report of the audit will be included in and become part of the annual report of the Commission to Members.
- f. The accounts of the Commission will be open at any reasonable time for inspection by duly constituted officers of the Members, the State of Alaska, and by any persons authorized by the Commission.
- g. Nothing contained in this Article may be construed to prevent Commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the Commission.

Article V. Membership Requirements; Remote Seller Sales Tax Code.

1. To obtain and retain full membership, the Local Government must submit either an Ordinance or Resolution authorizing entry into the Agreement, including to:
 - a. Designate the individual at the municipality that may execute initial binding documents on behalf of the municipality and who will be the Member's representative on the Commission.
2. Once the Commission adopts its bylaws and adopts a uniform Remote Sellers Sales Tax Code, members must submit an Ordinance or Resolution that:
 - a. Delegates remote seller sales tax registration, exemption certification, collection, remittance, and audit authority to the Commission.
 - b. Within one hundred twenty (120) days, adopts, by reference or otherwise, the Remote Seller Sales Tax Code in its entirety as it pertains to collection of sales tax from remote sellers and marketplace facilitators. The Remote Seller Sales Tax Code is provided as "Addendum A".
3. To retain full membership status, changes made to the Agreement or Code should be ratified by the Member within one hundred twenty (120) days of the date the Commission adopts the change.
4. The Member must provide notice of tax or boundary changes to the Commission and must

assure the Commission of the accuracy of rates and exemptions. Rate and exemption changes will take effect within thirty (30) days of the date the Commission receives notice of the tax or boundary change.

Article VI. Sales Tax Collection and Administration.

1. Collection; Registration; Remittance.

- a. Every remote seller and marketplace facilitator meeting the Threshold Criteria of one hundred thousand (\$100,000) in annual sales or 100 annual transactions occurring in Alaska during the current or previous calendar year, shall collect sales taxes from the buyer at the time of sale or service and shall transmit the sales taxes collected to the Commission on a monthly or quarterly basis.
- b. The Commission will remit and report to Members by the last business day of the month.
- c. 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 adoption of this Remote Seller Sales Tax Code and/or within thirty (30) calendar days of meeting the threshold, whichever occurs later. Registration shall be to the Commission on forms prescribed by the Commission as set out in the remote seller sales tax code.
- d. Upon receipt of a properly executed application, the Commission shall issue the applicant a certificate of registration, stating the legal name of the seller, the primary address, and the primary sales tax contact name and corresponding title. A list of registered sellers in good standing shall be distributed to Members, made public and available on the Commission's webpage.

2. Returns; Confidentiality.

- a. The Commission will provide all sales tax return information to the taxing jurisdiction, consistent with local tax codes.
- b. 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:
 - i. Employees and agents of the Commission and taxing jurisdiction whose job responsibilities are directly related to such returns, reports and information;
 - ii. The person supplying such returns, reports and information; or
 - iii. Persons authorized in writing by the person supplying such returns, reports and information.

3. Title; Penalty and Interest; Overpayment.

- a. Upon collection by the seller, title to the sales tax vests in the Commission and the member on whose behalf the original tax arose. The Commission shall act as a third-party trustee and remit taxes collected on behalf of the member no later than thirty (30) days after each filing deadline.
- b. The Remote Sellers Sales Tax Code shall establish the per annum interest rate and any applicable penalties for late or non-compliant remote sellers.
- c. Upon request from a buyer or remote seller 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 shall process the refund and amend any returns accordingly.

4. Audit; Compliance and Enforcement.

- a. The Commission shall have sole audit authority and will make final determinations regarding: (1) whether a remote seller or marketplace facilitator meets Threshold criteria; (2) the accuracy of returns filed by a remote seller or marketplace facilitator with the Commission; and (3) whether a remote seller or marketplace facilitator filing returns with the Commission is in compliance with collection and remittance obligations.
- b. The Commission shall have authority to enforce issues relating to the Remote Sellers Sales Tax Code including, but not limited to, the collection of late fees and penalties, and filing of civil suits and injunctions.

Article VII. Entry into Force and Withdrawal.

1. This Agreement will be in force and effective when formally approved by any seven signatories and will terminate if membership falls below seven.
2. Any Member may withdraw from this Agreement through ordinance or resolution rescinding signatory action and giving notice to the Commission of the effective date of the ordinance, with a minimum of 30 days' notice. Withdrawal will not affect any liability already incurred by or chargeable to a Member prior to the effective date of such withdrawal. The obligations of the Commission to remit and report remain until no longer necessary.

Article VIII. Effect on Other Laws and Jurisdiction.

Nothing in this Agreement may be construed to:

1. Affect the power of any local government to fix rates or tax exemptions, except that all members must adopt and implement the Commission's common definitions and tax code

changes or demonstrate parity or non-applicability.

2. Withdraw or limit the authority of local government with respect to any person, corporation, or other entity or subject matter, except to the extent that such authority is expressly conferred by or pursuant to this Agreement upon another agency or body.
3. Supersede or limit the jurisdiction of any court of the State of Alaska.

Article IX. Construction and Severability.

This Agreement shall be liberally construed so as to effectuate its purposes. The provisions of this Agreement shall be severable and if any phrase, clause, sentence, or provision is declared or held invalid by a court of competent jurisdiction, the validity of the remainder of this Agreement and its applicability to any government, agency, person or circumstance will not be affected. If any provision of this Agreement is held contrary to the charter of any member, the Agreement will remain in full force and effect as to the remaining members and in full force and effect as to the Member affected in all other provisions not contrary to charter.

**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

SECTION 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.

SECTION 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.

SECTION 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.

SECTION 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.

SECTION 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.

SECTION 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.

SECTION 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.

SECTION 080 – 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.

SECTION 090 – 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.

SECTION 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.

SECTION 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.

SECTION 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.

SECTION 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.

SECTION 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.

SECTION 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.

SECTION 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.

SECTION 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.

SECTION 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.

SECTION 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.

SECTION 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.

SECTION 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.

SECTION 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.

SECTION 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.

SECTION 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.

SECTION 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.

SECTION 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.