

City of Kodiak Regular Council Meeting Agenda for March 12, 2020
7:30 p.m., at 710 Mill Bay Road, Assembly Chambers (Room 232)

- I. Call to Order/Roll Call**
Invocation/Pledge of Allegiance

- II. Previous Minutes**
Approval of Minutes of the February 27, 2020, Regular Council Meeting.....1

- III. Persons to Be Heard**
 - a. Public Comments (limited to 3 minutes) (486-3231)
 - b. Proclamation: Choose Respect8

- IV. Unfinished Business**
 - a. Second Reading and Public Hearing, Ordinance No. 1393 Amending Chapter 3.08 Sales Tax Amending Title 3 And Chapter 3.08 Sales Tax To: 1) Adopt The Alaska Remote Sellers Sales Tax Code By Reference; 2) To Add And Amend Definitions In Section 3.08.270; 3) To Extend The Time For Filing A Final Return By 15 Days In Section 3.08.140(G); 4) To Eliminate The Registration Deposit In Section 3.08.080; 5) To Add A Late Filing Penalty Of Twenty Five Dollars To Section 3.08.170; And 6) To Provide For Extensions Of Time For Filing Returns, Repayment Plans, And Amended Returns.....10
 - b. Second Reading and Public Hearing, Ordinance No. 1394, Amending Title 5 Business Licenses and Regulations, Chapter 5.24 Marijuana Regulation by Repealing Section 5.24.040 Manufacture and Sale of Marijuana Edibles Prohibited.....61

- V. New Business**
 - a. Resolution No. 2020-09 Authorizing Suits for Recovery of Delinquent Sales Tax.....66
 - b. Authorization to Purchase Radios in the Amount of \$248,314.38 With Motorola Solutions.....70

- VI. Staff Reports**
 - a. City Manager
 - b. City Clerk

- VII. Mayor’s Comments**

- VIII. Council Comments**

- IX. Audience Comments (limited to 3 minutes) (486-3231)**

- X. Executive Session**
 - a. City Manager’s Performance Evaluation.....75

- XI. Adjournment**

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DRAFT

**MINUTES OF THE REGULAR COUNCIL MEETING
OF THE CITY OF KODIAK
HELD THURSDAY, FEBRUARY 27, 2020
IN THE BOROUGH ASSEMBLY CHAMBERS**

I. MEETING CALLED TO ORDER/INVOCATION/PLEDGE OF ALLEGIANCE

Mayor Pat Branson called the meeting to order at 7:30 p.m. Councilmembers Laura B. Arboleda, Randall C. Bishop, Charles E. Davidson, Terry Haines, Richard H. Walker, and John B. Whiddon were present and constituted a quorum. Deputy City Manager Josie Bahnke, City Clerk Nova Javier, and Assistant Clerk Annika Woods were also present.

Salvation Army Major Dave Davis was not present to give the Invocation. Mayor Branson asked for a moment of silence instead and the Pledge of Allegiance was recited.

II. PREVIOUS MINUTES

Councilmember Whiddon MOVED to approve the minutes of the February 13, 2020, regular meeting as presented.

The roll call vote was Councilmembers Arboleda, Bishop, Davidson, Haines, Walker, and Whiddon in favor. The motion passed.

III. PERSONS TO BE HEARD

a. Public Comments

Pat Holmes thanked the Council for all they do and welcomed Deputy Manager Josie Bahnke. He praised the new radar signs on Mission Road and complimented the City Manager, Public Works, and Kodiak Police Department for working together on the project. He also thanked Public Works for their snow removal efforts. He remarked favorably on the quick efforts of the Fire Department regarding a recent house fire. He thanked the Clerk's Office for swift and cheerful service. He stated that he supported the Online Sales Tax ordinance and did not support the Marijuana Edible ordinance or City and Borough consolidation.

Salvation Army's Major Dave Davis said the Salvation Army took responsibility managing the local Food Bank to prevent its closure. He shared that taking on the Food Bank has impacted the Salvation Army's budget and he plans to request funds from the City's nonprofit grant program to help cover the budget gap.

Kent Cross agreed with Major Dave that the Salvation Army needs more help than before due to taking on the local Food Bank. He supported police officers earning a wage increase. He disagreed with the legalization of marijuana edibles, and the legalization of marijuana in general. He referenced the National Institute of Health and stated that the use of marijuana is unhealthy for the individual and the community.

IV. UNFINISHED BUSINESS

None.

V. NEW BUSINESS

- a. **First Reading, Ordinance No. 1393, Amending Chapter 3.08 Sales Tax Amending Title 3 And Chapter 3.08 Sales Tax To: 1) Adopt The Alaska Remote Sellers Sales Tax Code By Reference; 2) To Add And Amend Definitions In Section 3.08.270; 3) To Extend The Time For Filing A Final Return By 15 Days In Section 3.08.140(G); 4) To Eliminate The Registration Deposit In Section 3.08.080; 5) To Add A Late Filing Penalty Of Twenty Five Dollars To Section 3.08.170; And 6) To Provide For Extensions Of Time For Filing Returns, Repayment Plans, And Amended Returns**

Mayor Branson read Ordinance No. 1393 by title. The South Dakota vs. Wayfair U.S. Supreme Court case redefined sales tax across many states and local governments. On June 21, 2018, the U.S. Supreme Court upheld the state of South Dakota's right to require online sellers to collect and remit sales tax on orders delivered to that state.

On November 14, 2019, the Council adopted Resolution No. 2019–23 which authorized the City to enter into an intergovernmental agreement to form a commission for a centralized administration of collection of sales tax imposed by remote sellers. Resolution No. 2019–23 also authorized the City Manager to enter into the Alaska Intergovernmental Remote Sellers Sales Tax Agreement and per Article V of the intergovernmental agreement, the next step for the City is to delegate the remote seller sales tax registration, exemption certification, collection, remittance, and audit authority to the "Commission" by ordinance or resolution. This ordinance meets the terms of the agreement which also require adoption of certain uniform provisions by reference for collection and remittance of municipal sales tax applicable to sales made by remote sellers.

Councilmember Davidson MOVED to pass Ordinance No. 1393 in the first reading and advance to second reading and public hearing at the next regular or special Council meeting.

The roll call vote was Councilmembers Arboleda, Bishop, Davidson, Haines, Walker, and Whiddon in favor. The motion passed.

- b. **First Reading, Ordinance No. 1394, Amending Title 5 Business Licenses and Regulations, Chapter 5.24 Marijuana Regulation by Repealing Section 5.24.040 Manufacture and Sale of Marijuana Edibles Prohibited**

Mayor Branson read Ordinance No. 1394 by title. On November 4, 2014, Alaska voters passed Ballot Measure 2, An Act to Tax and Regulate the Production, Use, and Sale of Marijuana, which initiated the State and Statewide municipalities to begin to determine how to regulate marijuana on both State and municipal levels. Subsequently, the Council adopted Resolution No. 2016–16, Establishing a Marijuana Advisory Special Committee, to recommend guidelines for implementing taxation, regulation, production, sale, and use of marijuana within the Kodiak City limit. The Committee met nine times from June 2016 through April 2017 and brought forward for Council consideration regulations and policies governing marijuana establishments within the Kodiak City limit. One of the regulatory recommendations of the Committee was to prohibit the sale of edibles within the City of Kodiak and, along with the recommendation, advocated to the Council to revisit the topic again within a year. The City Council desires to get substantial public

input before lifting the prohibition and before allowing the sale of marijuana edibles within the City limits.

Councilmember Arboleda MOVED to pass Ordinance No. 1394 in the first reading and advance to second reading and public hearing at the next regular or special Council meeting.

Councilmember Whiddon stated his intent to vote to pass the ordinance to the second reading and public hearing; however, he also wanted to state his concern with minors having access to marijuana edibles. He stated he researched and visited local marijuana stores along with one in Juneau and didn't see packaging that resembled brands that could appear like candy, however he wanted to make sure the community did everything possible to educate youth on the potential safety and health hazards of underage marijuana consumption.

Councilmember Haines stated that we as a community shouldn't hold marijuana to a higher standard than anything else that is legal, such as alcohol or prescription drugs. He stated edibles made by retail stores are tested and regulated whereas the ones that consumers make at home are not. He said it is the responsibility of parents to keep marijuana out of the reach of their children.

Councilmember Davidson stated that the majority of the people of Alaska voted in favor of marijuana, and said that it is heavily regulated by the State. He echoed Councilmember Haines by saying parents have to be responsible, drawing the comparison that parents don't leave their liquor or pills out within children's' reach.

The roll call vote was Councilmembers Arboleda, Bishop, Davidson, Haines, Walker, and Whiddon in favor. The motion passed.

c. Resolution No. 2020-10, Approving the City Council's Budget Goals for FY2021

Mayor Branson read Resolution No. 2020-10 by title. The Council reviewed and discussed the proposed budget goals for FY2021 at the annual planning meeting on January 25, 2020. The goals are similar to those of FY2020 with some changes to the following sections: enterprise funds and economic development. Staff will use the approved goals during the development of the FY2021 City budget and future operations.

Councilmember Walker MOVED to adopt Resolution No. 2020-10.

The roll call vote was Councilmembers Arboleda, Bishop, Davidson, Haines, Walker, and Whiddon in favor. The motion passed.

d. Authorization to Award a Light Rescue Vehicle Purchase for the City of Kodiak Fire Department to Braun Northwest

The Fire Department budgeted for one vehicle in fiscal year 2020 and issued a request for sealed bids for a 2020 model or newer Light Rescue Vehicle. Bids were due on Friday, February 14 and one sealed bid was received. Staff recommends the Light Rescue Vehicle for Kodiak Fire Department be awarded to Braun Northwest as the qualifying bidder in Bid No. 2020-004.

Councilmember Davidson MOVED to authorize the award for the purchase of a Light Rescue Vehicle in an amount not to exceed \$210,568.00 with funds coming from the Fire Department Machinery and Equipment Greater than \$5000 account and authorize the City Manager to execute documents on behalf of the City.

The roll call vote was Councilmembers Arboleda, Bishop, Davidson, Haines, Walker, and Whiddon in favor. The motion passed.

e. Authorization of Payment to Highmark Marine Fabrication, LLC for the Operation of the Marine Travelift for the Kodiak Shipyard

On May 22, 2019, the City of Kodiak entered into a technical service agreement with Highmark Marine Fabrication, LLC for the operation of the marine travelift for the Kodiak shipyard. The term and duration of the agreement began May 22, 2019 and ended on December 31, 2019. The scope of services in the service agreement as exhibit A.

During the term of the agreement, the invoice received from Highmark Marine Fabrication, LLC amounted to \$51,762.50 which exceeded the manager's authority of \$35,000. Since the nature of the agreement with Highmark Marine Fabrication, LLC is that of a professional service agreement, it is exempt from the bidding requirements in the City code.

Councilmember Walker MOVED to authorize the payment of the invoice for the operation of the marine travelift for the Kodiak shipyard to Highmark Marine Fabrication, LLC in the amount of \$51,762.50 with funds coming from the Shipyard Administration Professional Services.

Councilmember Whiddon acknowledged and complimented Highmark Marine for stepping in and providing a dedicated and professional service to the City.

Councilmember Haines commended the City and stated the travelift is open for business and there will be professional contractors.

The roll call vote was Councilmembers Arboleda, Bishop, Davidson, Haines, Walker, and Whiddon in favor. The motion passed.

f. Authorization of a Professional Services Agreement with ECI Alaska Architecture for Design Work on Project #9018 Baranof Park Improvements

The Baranof Park Ice Rink enclosure project has been the No. 1 priority for the Parks and Recreation Advisory Board and the department. The ice rink improvements include enclosing the building, new bathrooms, adding changing rooms, office space, storage and skate rental space, and a ground level three lane walking area. To further advance this project, ECI Alaska Architecture has provided the City with a fee proposal (attachment A) that will detail out cost estimates, generate marketing images (for fundraising efforts), and bring the project to a 35% design. During this design work, ECI will also perform a structural and basic geotech analysis.

Councilmember Davidson MOVED to authorize the professional services agreement award with ECI Alaska Architecture for Design Work on Project #9018 Baranof Park Improvements agreement in the amount of \$66,288 with funds coming from the Baranof Park Improvements account

line item, professional services account and authorize the City Manager to execute the documents on behalf of the City.

Councilmember Whiddon stated the Council has heard nothing but strong support of this project from the community due to the growth of the local hockey league and the desire of an indoor walking track. Hockey League and Friends of Baranof Park are working to find matching funds for the project. He stated this motion will help determine the actual cost of the project and how to take steps to complete it.

Councilmember Davidson supported the project and said it would greatly benefit the community.

Haines stated the Council heard overwhelming support of the project, and that he is also excited about the indoor walking track.

The roll call vote was Councilmembers Arboleda, Bishop, Davidson, Haines, Walker, and Whiddon in favor. The motion passed.

VI. STAFF REPORTS

a. City Manager

Deputy City Manager Bahnke shared the WWTP UV Disinfection Mandatory Pre-Bid Conference was held today and six general contractors attended. She stated the Tsunami Siren RFP is also out, and the City included the Borough's as an added alternative; however, they are two separate projects. A mandatory pre-bid conference for the Tsunami Siren RFP will be held March 12. She shared that since arriving eight months ago on the F/V Kennecott, she has found Kodiak to be a special place to live, and sensed an incredible amount of community pride. She said is refreshing to work with a Mayor and Council that have a strong sense of purpose and deep obligation to Kodiak. She thanked the Council for their dedicated service to the people of Kodiak.

Councilmember Whiddon stated a good portion of the funding for the sirens came from grant funding, and wanted to inform the public that the Council is taking the replacement of the tsunami sirens seriously and is prioritizing the safety of the community. He thanked Deputy Manager Bahnke for her steadfast efforts on their replacement.

b. City Clerk

City Clerk Javier informed the public of the next scheduled Council work session and regular meeting. The next City Council Work Session is Tuesday March 10, 2020 at 7:30 P.M. at the Public Library, and the next Regular Meeting is Thursday March 12, 2020 at 7:30 P.M. in the Borough Assembly Chambers.

VII. MAYOR'S COMMENTS

Mayor Branson thanked Deputy Mayor Whiddon for stepping in for her while she traveled. She said she thought the Council's trip to Juneau for Alaska Municipal League was very successful, and they were able to advocate for several issues, including the Ferry system and online sales tax. She thanked AML for their assistance with both.

She also said the Council met with Admiral Bell and that went well. They also met with Governor Dunleavy and again invited him to visit Kodiak. She said she listened to the Alaska Marine Highway Reshaping Work Group and talked about the members of the committee and their areas of state residency. She thanked City Staff, especially Public Works for their snow removal efforts, and encouraged the public to be patient when sharing the road with snowblowers. She also thanked City staff that assisted with the FY2021 budget.

She gave condolences to the families of Dr. Bob and Joe Floyd, and said they were both Kodiak legends who made the community better.

VIII. COUNCIL COMMENTS

Councilmember Arboleda echoed Mayor Branson's statements of Dr. Bob and Joe Floyd, agreeing they were indeed Kodiak legends who shaped the community. She also thanked Medevac staff for their professionalism and care. She shared that she is excited for upcoming City projects, especially the new Fire Station and the Baranof Park renovations. She thanked Deputy Manager Bahnke for her comments. She stated she reciprocates Deputy Manager Bahnke's feelings of the City and complimented City department heads and their staff.

Councilmember Whiddon expressed condolences to the Johnson and Floyd families. He talked about both legacies left behind that showed long dedication to the community. He reiterated his stance on edibles, and that adults imbibing recreationally was not his concern, however minors were another issue. Especially small children that may not know what they're eating. He stated his primary concern is how to mitigate the risk.

Councilmember Davidson stated Floyd and Bob contributed greatly to the community and that they would both be greatly missed. He cautioned the community to drive carefully on the road.

Councilmember Bishop expressed condolences to the families. He thanked Public Works, Parks and Recreation, and the Police Chief for a job well done.

Councilmember Walker said his prayers are with the grieving families and the departed will be missed. He thanked the rest of the Council and staff for their hard work for the State of Alaska, acknowledging that they often travel to represent Kodiak in Juneau. He thanked Parks and Recreation for their service to the community by providing services to kids and adults. He also commended the Fire Department and Police Department for responding to an abundance of calls.

Councilmember Haines congratulated Assistant Clerk Annika Woods for earning a scholarship to pay for additional training. He elaborated on his stance on the Marijuana Edible ordinance and talked about the importance of looking at the risks of marijuana as well as the benefits. He said he felt Coach Floyd and Dr. Bob represented the best of Kodiak. He said it was an honor to know both of them.

Mayor Branson echoed Councilmember Haines and congratulated Assistant Clerk Annika Woods. She stated the scholarship was well deserved and reflected the quality of work the City Clerk's office produces.

Councilmember Whiddon commended Mayor Branson for her dedication to Kodiak and how much time she puts in to representing and working for Kodiak. He stated she is a voice for Kodiak in the state and in D.C.

Mayor Branson thanked Councilmember Whiddon. She said the accomplishments of the City is a team effort from the Council and City staff.

Councilmember Davidson thanked the citizens of Kodiak for being supportive of City projects during his 27 years as a Councilmember. He felt proud to be a Kodiak resident and stated Kodiak is a community of people working together.

IX. AUDIENCE COMMENTS

None.

X. ADJOURNMENT

Councilmember Davidson MOVED to adjourn the meeting.

The roll call vote was Councilmembers Arboleda, Bishop, Davidson, Haines, Walker, and Whiddon in favor. The motion passed.

The meeting adjourned at 8:26 p.m.

CITY OF KODIAK

MAYOR

ATTEST:

CITY CLERK

Minutes Approved:

PERSONS TO BE HEARD

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MEMORANDUM TO COUNCIL

Date: March 12, 2020

Agenda Item: III. b. Proclamation: Choose Respect

SUMMARY: This proclamation encourages all citizens to stand up against sexual assault, domestic violence, and child sexual abuse.

ATTACHMENTS:

Attachment A: Proclamation: Choose Respect

PROCLAMATION

“CHOOSE RESPECT”

WHEREAS, every Alaskan is precious and has the right to freedom, safety, and dignity; and

WHEREAS, the Choose Respect initiative is a call to action to break the silence and stand up against sexual assault, domestic violence, and child sexual abuse; and

WHEREAS, the rates of sexual assault, domestic violence, and child sexual abuse in our state are staggering and unacceptable; and

WHEREAS, domestic violence not only devastates the primary victims; it harms children exposed to these crimes as well; and

WHEREAS, the Choose Respect initiative promotes respect for ourselves and others and encourages Alaskans to speak out when witnessing acts of or the results of domestic and sexual violence; and

WHEREAS, through focused education and prevention efforts, increased law enforcement and criminal penalties, and enhanced service provider networks, we will better protect victims and hold offenders accountable for their actions; and

WHEREAS, together we can send a strong message of hope and healing to victims and survivors and prevent future suffering and create a safer, stronger Alaska.

NOW, THEREFORE, I, Pat Branson, Mayor of the City of Kodiak, do hereby proclaim March 25, 2020, as

Choose Respect Day

in Kodiak and ask all residents to join with me in standing up against sexual assault, domestic violence, and child sexual abuse.

Dated this 12th day of March 2020.

City of Kodiak

Pat Branson, Mayor

UNFINISHED BUSINESS

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MEMORANDUM TO COUNCIL

To: Mayor Branson and City Councilmembers
From: Mike Tvenge, City Manager *mt*
Date: March 12, 2020

Agenda Item: IV. a. Second Reading and Public Hearing, Ordinance No. 1393, Amending Chapter 3.08 Sales Tax Amending Title 3 And Chapter 3.08 Sales Tax To: 1) Adopt The Alaska Remote Sellers Sales Tax Code By Reference; 2) To Add And Amend Definitions In Section 3.08.270; 3) To Extend The Time For Filing A Final Return By 15 Days In Section 3.08.140(G); 4) To Eliminate The Registration Deposit In Section 3.08.080; 5) To Add A Late Filing Penalty Of Twenty Five Dollars To Section 3.08.170; And 6) To Provide For Extensions Of Time For Filing Returns, Repayment Plans, And Amended Returns

SUMMARY: The South Dakota vs. Wayfair U.S. Supreme Court case redefined sales tax across many states and local governments. On June 21, 2018, the U.S. Supreme Court upheld the state of South Dakota's right to require online sellers to collect and remit sales tax on orders delivered to that state.

On November 14, 2019, the Council adopted Resolution No. 2019–23 which authorized the City to enter into an intergovernmental agreement to form a commission for a centralized administration of collection of sales tax imposed by remote sellers. Resolution No. 2019–23 also authorized the City Manager to enter into the Alaska Intergovernmental Remote Sellers Sales Tax Agreement and per Article V of the intergovernmental agreement, the next step for the City is to delegate the remote seller sales tax registration, exemption certification, collection, remittance, and audit authority to the "Commission" by ordinance or resolution. This ordinance meets the terms of the agreement which also require adoption of certain uniform provisions by reference for collection and remittance of municipal sales tax applicable to sales made by remote sellers.

PREVIOUS COUNCIL ACTION:

- On January 8, 2019, Council discussed online sales tax research efforts by the Alaska Municipal League and contributing \$5,000 to research efforts for a streamlined approach for the administration of sales tax collected and remitted by remote sellers;
- On February 26, 2019, Council discussed online sales tax with the City Attorney, Brooks Chandler, and reviewed draft ordinances for changes to the City Code;
- On March 12, 2019, Council discussed the draft ordinances prepared by the City Attorney and authorized a contribution to the Alaska Municipal League for a contribution to research online sales tax;

- On March 26, 2019, Council discussed and authorized the City Manager and Finance Director to participate in conference calls with Alaska Municipal League to further the discussions of online sales tax and research for implementation;
- On April 23, 2019, the Finance Director provided an update memo to the Council regarding the conference call with Alaska Municipal League, forward direction, and attendance at the June 6 meeting in Anchorage;
- On August 20, 2019, the Finance Director provided an update to the Council regarding the formation of the Commission, the intergovernmental agreement, centralized administration, timelines for implementation, and committee activities for the Finance Director and City Manager;
- On September 24, 2019, the Finance Director provided an update to the Council on the draft documents and committee activities for the Finance Director and City Manager.
- On November 14, 2019, work session – Council adopted Resolution No. 2019-23 Authorizing the City of Kodiak to Join the Alaska Remote Seller Sales Tax Commission for the Purpose of Developing, Implementing, and Enforcing a Remote Sellers Sale Tax Code, Authorizing the Manager to Execute Documents on Behalf of the city, and Designating a City Representative (Finance Director) to the Commission
- January 7, 2020, work session – verbal update/discussed online sales tax code update
- February 11, 2020, work session – a status update was given by the manager on Alaska Remote Sales Commission. Manager advised Council that an ordinance is forthcoming.
- February 27, 2020, regular meeting – Council passed Ordinance No. 1393 in first reading to advance to second reading and public hearing at the next regular or special Council meeting.

ALTERNATIVES:

- 1) Adopt Ordinance No. 1393 after the public hearing.
- 2) Postpone Ordinance No. 1393 and/or make amendments.
- 2) Do not adopt Ordinance No. 1393.

FINANCIAL IMPLICATIONS: Administrative fees for sales taxes collected and administered by the Commission under the Agreement would be funded through collections of sales tax from remote sellers at the Commission level. The City potentially could increase sales tax revenue from remote sellers through this single-level approach.

LEGAL: Kodiak City Code allows for the collection of sales tax, federal law taxation of remote sellers is now allowable, therefore collection of this tax revenue is not prohibited under city code. The City attorney drafted the ordinance and attachment B is a memo explaining the ordinance.

CITY MANAGER’S COMMENTS: The South Dakota vs Wayfair decision changes the sales tax collection and remittance by remote sellers. In order to accomplish the city’s collection of online sale tax would be laborious without the services of “MuniRevs”. The fee for this service is deducted from the total

sales tax remitted from remote sellers and therefore is cost effective. Without this service by Alaska Municipal League and contracted agents, the collection of remote sales tax would be marginal and subject to the undue burden language.

ATTACHMENTS:

- Attachment A: Ordinance No. 1393
- Attachment B: Remote Sellers Sales Tax Memo from City Attorney
- Attachment C: Alaska Remote Sellers Sales Tax Code
- Attachment D: Alaska Intergovernmental Remote Sellers Sales Tax Agreement
- Attachment E: Resolution No. 2019-23

PROPOSED MOTION:

Move to adopt Ordinance No. 1393.

**CITY OF KODIAK
ORDINANCE NUMBER 1393**

AN ORDINANCE OF THE COUNCIL OF THE CITY OF KODIAK AMENDING TITLE 3 AND CHAPTER 3.08 SALES TAX TO: 1) ADOPT THE ALASKA REMOTE SELLERS SALES TAX CODE BY REFERENCE; 2) TO ADD AND AMEND DEFINITIONS IN SECTION 3.08.270; 3) TO EXTEND THE TIME FOR FILING A FINAL RETURN BY 15 DAYS IN SECTION 3.08.140(G); 4) TO ELIMINATE THE REGISTRATION DEPOSIT IN SECTION 3.08.080; 5) TO ADD A LATE FILING PENALTY OF TWENTY FIVE DOLLARS TO SECTION 3.08.170; AND 6) TO PROVIDE FOR EXTENSIONS OF TIME FOR FILING RETURNS, REPAYMENT PLANS, AND AMENDED RETURNS

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 City of Kodiak 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, BE IT ORDAINED by the Council of the city of Kodiak, Alaska that the following is enacted as follows:

Section 1: Amendment of Subsection 3.08.010(c). Section 3.08.010(c). of the City of Kodiak Code of Ordinances is hereby amended to read as follows: [new language is underlined, deleted language is overstruck]

(c) For the purposes of the tax levied by this section, a sale of tangible personal property is made within the city if:

(1) The sale is made by a business located within the city and delivery occurs within the city;

(2) The sale is made by a business located within the city, the order is received or solicited within the city or payment is received within the city, and delivery is made to a purchaser within the Kodiak Island Borough; or

(3) The sale is made by a business located outside of the city as a result of solicitation inside of the city and payment or delivery occurs within the city. Or

(4) The sale is made by a remote seller or marketplace facilitator required to register with the Commission and delivery occurs within the city.

Section 2: Amendment of Subsections 3.08.040(b) and 3.08.040(j). Sections 3.08.040(b) and 3.08.040 (j) of the City of Kodiak Code of Ordinances are hereby amended to read as follows: [new language is underlined, deleted language is overstruck]

(b) Medical services ~~performed by licensed medical doctors, dentists, osteopaths, optometrists, psychiatrists, psychologists, and chiropractors; sales of medicinal preparations and drugs prescribed by medical doctors; and hospital services;~~

(j) Funeral fees charges;

Section 3: Amendment of Subsections 3.08.080(a) and 3.08.080(b). Sections 3.08.080(a) and 3.08.080 (b) of the City of Kodiak Code of Ordinances are hereby amended to read as follows: [deleted language is overstruck]

(a) All persons engaged in selling or renting property or rendering services subject to the tax imposed by this chapter shall file an application for a certificate of registration not later than the date of commencing business in the city or opening a place of business within the city. ~~An application for a new business not previously registered to collect sales taxes shall be accompanied by a \$100.00 deposit, or, in the case of a person who does not maintain a permanent place of business within the city or who is not a local resident residing within the Kodiak Island Borough, a \$200.00 deposit which the registrant may recover by a deduction from the remittance submitted with the first quarterly return filed or, if that return is insufficient, the balance shall be refunded. If applicant has established credit with the city, the finance director may waive the required deposit.~~

(b) Upon receipt of a properly executed application, on a form provided by the city clerk, ~~accompanied by the required deposit,~~ the city clerk shall issue the applicant a certificate of registration, stating the address of the place of business to which it is applicable and authorizing such person to collect the sales tax. The certificate shall be prominently displayed at the place of business named on the certificate or, if there is no regular place of business, the certificate shall be attached to the stand, truck, or other merchandising or service device.

Section 4: Amendment of Subsection 3.08.140(g). Section 3.08.140(g) of the City of Kodiak Code of Ordinances are hereby amended to read as follows: [new language is underlined, deleted language is overstruck]

(g) A final sales tax return shall be filed and the tax due remitted within ~~15~~ 30 days after the date of selling or terminating a business. The purchaser of the business shall withhold a portion of the purchase money sufficient to pay any sales tax, penalties, and interest that may be due until

seller displays a receipt from the city evidencing total payment of the tax, interest, and penalties due. If the purchaser fails to withhold the required sum from the payment due to the seller, the purchaser shall also be liable for the taxes, penalties, and interest owed by the seller to the city.

Section 5: Amendment of Section 3.08.170. Section 3.08.170 of the City of Kodiak Code of Ordinances is hereby amended by adding new subsections (d) and (e) to read as follows:

(d) A late filing fee of twenty-five dollars (\$25) per quarter shall be added to all late-filed sales tax reports in addition to interest and penalties.

(e) 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 city manager, upon written application of the seller accompanied by a payment of all delinquent sales tax, interest and penalty otherwise owed by the seller, within forty-five (45) calendar days after the date of delinquency. A seller may not be granted more than one (1) waiver of penalty under this subsection in any one calendar year. The city manager shall report such waivers of penalty to the city council, in writing.

Section 6: Amendment of Chapter 3.08. Chapter 3.08 of the City of Kodiak Code of Ordinances is hereby amended by adding sections 3.08.160 , 3.08.162 and 3.08.165 to read as follows:

3.08.160. – Amended Returns

(a) A seller 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 seller provides a written justification for requesting approval of the amended return; and
- iii. The seller agrees to submit to an audit upon request of the Commission.

(b) The Commission shall notify the seller 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 seller 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 seller 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 seller provides a written justification for requesting approval of the supplemental return; and
- ii. The seller agrees to submit to an audit upon request of the Commission.

3.08.162 – Extension of Time to File Tax Return

Upon written application of a seller other than a seller, stating the reasons therefor, the city clerk may extend the time to file a sales tax return but only if the city clerk finds each of the following:

1. For reasons beyond the seller's control, the seller 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 seller;
3. The seller has a plan to cure the problem that caused the seller to apply for an extension and the seller agrees to proceed with diligence to cure the problem;
4. At the time of the application, the seller is not delinquent in filing any other sales tax return, in remitting sales tax or otherwise in violation of this chapter;
5. No such extension shall be made retroactively to cover existing delinquencies.

3.08.165 – Repayment Plans

- (a) The City may agree to enter into a repayment plan with a delinquent seller. No repayment plan shall be valid unless agreed to by both parties in writing.
- (b) A seller shall not be eligible to enter into a repayment plan with the City if the seller 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 seller 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 seller 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 seller is a corporation or a limited liability entity the seller agrees to provide a personal guarantee of the obligations under the repayment plan.
 - v. The seller agrees to pay all future tax bills in accordance with the provisions of this chapter.
 - vi. The seller 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 City at the time the repayment plan is signed. The seller shall be responsible for the cost of recording the tax lien.
- (d) If a seller fails to pay two (2) or more payments as required by the repayment plan agreement, the seller shall be in default and the entire amount owed at the time of default shall become immediately due. The city clerk will send the seller a notice of default. The City may immediately foreclose on the sales tax lien or take any other remedy available under the law.

Section 7: Amendment of Subsection 3.08.280. Section 3.08.280 of the City of Kodiak Code of Ordinances are hereby amended to read as follows: [new language is underlined, deleted language is overstruck]

As used in this chapter and chapter 3.10 the following definitions shall apply:

Bargain purchase option. A “bargain purchase option” exists with respect to leased property when the lessee can buy the property some time during the term of the lease at an amount substantially less than its estimated fair value at the time the option is exercised. If there is reasonable assurance at the inception of the lease that the purchase option will be exercised, the option shall be considered a bargain purchase option.

“Buyer” or “purchaser” means a person to whom a sale of property or product is made or to whom a service is furnished. ~~who acquires an interest in real or personal property, or the right to use real or personal property, or who acquires services for consideration.~~

“Capital lease” means a lease which is in substance a purchase and wherein substantially all of the risks and benefits of ownership are assumed by a lessee. A lease which meets any one or more of the following criteria shall be considered a capital lease:

(1) The lease transfers ownership of the leased property to the lessee by the end of the lease term.

(2) The lease contains a bargain purchase option.

(3) The lease term is equal to 75 percent or more of the estimated economic life of the leased property. However, if the beginning of the lease term falls within the last 25 percent of the total estimated economic life of the leased property, including earlier years of use, this criterion shall not be used for purposes of classifying the lease.

(4) The present value at the beginning of the lease term of the minimum lease payments, excluding that portion of the payments representing executory costs, to be paid by the lessor, including any profit thereon, equals or exceeds 90 percent of the excess of the fair value of the leased property to the lessor at the inception of the lease over any related investment tax credit retained by the lessor and expected to be realized by the lessor. However, if the beginning of the lease term falls within the last 25 percent of the total estimated economic life of the leased property, including earlier years of use, this criterion shall not be used for purposes of classifying the lease.

“Charitable organization” means an organization having as its primary purpose relief of the poor and distressed or of the underprivileged.

“Food” means any food or food product for home consumption except alcoholic beverages, tobacco, and prepared food. Food or food products includes property, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value.

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

“Hotel-motel” means a structure or portion of a structure which is occupied or intended for occupancy by transients for dwelling, lodging, or sleeping purposes and includes any hotel, motel, inn, or similar structure.

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

“Legal holiday” means a holiday on which the city finance offices are closed to business, which holidays are enumerated in the city’s personnel rules and regulations.

“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.

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

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

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

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

“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.

“Rental” means permitting the use or occupancy of real or personal property for consideration other than by means of a capital lease.

“Residential unit” means one or more rooms and a single kitchen in a dwelling designed as a unit for occupancy by not more than one family for living or sleeping purposes.

“Residential uses” means for use within a residential unit.

“Sale” or “Retail Sale” means any transfer of property for consideration for any purpose other than for resale or exchange of any property of every kind and description, or the right to use or occupy such property, for consideration.

“Sales or purchase price” or “charge” 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.

~~consideration, whether money, credit, or other property or interest in property, without deduction for delivery costs, taxes, or any other expense. The receipt of property or an interest in property as consideration, the “sales price” or “charge” shall be based on the fair market value of the property or interest in property.~~

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

~~whether acting as a principal, agent, or broker, who sells, leases, or rents real or personal property or provides services to another for consideration.~~

“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.

“Transient” means a person who occupies or rents and has available for the person’s own occupancy or occupancy by any other person a suite, room, or rooms in a hotel-motel for fewer than 30 consecutive days. An employee who occupies or has available for fewer than 30 days a suite, room, or rooms rented or leased for more than 30 consecutive days by an employer for use on a rotating basis by employees is not a transient.

Section 8: Adoption by Reference of Alaska Remote Sellers Sales Tax Code. Title 3 of the City of Kodiak Code of Ordinances is hereby amended by adopting a new Chapter 3.10 to read as follows:

**Chapter 3.10
SALES MADE BY REMOTE SELLERS**

Sections

- 3.10.010 Scope**
- 3.10.020 Adoption of Alaska Remote Sellers Sales Tax Code**

- 3.10.030** **Delegation of Authority**
- 3.10.040** **Copies on file**
- 3.10.010** **Scope**

This chapter applies only to sales made by remote sellers as defined herein and in Section 3.08.280.

3.10.020 Adoption of Alaska Remote Sellers Sales Tax Code

The City adopts by reference the January 6, 2020 edition of all provisions of the Alaska Remote Sellers Sales Tax Code (including the definitional section and definitions included in section 3.08.280) and that portion of the Supplemental Definitions thereto not included in section 3.08.280.

3.10.030 Delegation of Authority

The City hereby delegates the authority to administer and collect tax on sales made by remote sellers to the Commission including remote seller sales tax registration, exemption certification, collection, remittance, and audit authority. This delegation of authority does not include administration of applications for certificates of exemption which shall be administered by the City as provided in sections 3.08.060 and 3.08.070.

3.10.040 Copies on file

(a) At least five copies of the Alaska Remote Sellers Sales Tax Code shall be made available for public inspection at least fifteen days prior to the public hearing for adoption of this Chapter at the time and place set out in the notice published for the hearing of the ordinance. Copies shall be available for public review at the following locations: one copy at the office of the city clerk; one copy at the city finance department; one copy at the city manager’s office; and, two copies at the city library. A person may request, and the city clerk shall provide, a copy of the code at no more than cost.

(b) After adoption, at least five copies of the Remote Sellers Sales Tax Code and the Supplemental Definitions adopted by reference in KCC 3.10.020 shall be kept at the finance department office. The finance director shall provide for sale of copies of all codes adopted pursuant to KCC 3.10.020 to those interested.

Section 9: Effective Date. This ordinance shall be effective one month after final passage and publication. No obligation to collect tax resulting from adoption of this ordinance shall be applied retroactively.

ENACTED THIS ___ DAY OF _____, 2020.

CITY OF KODIAK

MAYOR

ATTEST:

CITY CLERK

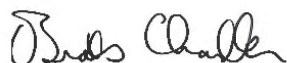
First Reading:
Second Reading:
Effective Date:

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MEMORANDUM

TO: Mike Tvenge
City Manager
City of Kodiak



FROM: Brooks W. Chandler
City Attorney

RE: Taxation of Internet Sales

DATE: February 14, 2020

This memorandum summarizes the draft of the sales tax ordinance which will fulfill Kodiak's obligation to adopt the Alaska Remote Seller Sales Tax Code. This obligation flows from the City Council authorizing Kodiak to become a member of the Alaska Remote Sellers Sales Tax Commission and sign the Alaska Intergovernmental Remote Sellers Sales Tax Agreement. Article V of that Agreement requires Kodiak to adopt "by reference or otherwise, the Remote Sellers Sales Tax Code ("the Code") in its entirety" within 120 days after the Commission adopts the Code. Article V of the Agreement also requires Kodiak to delegate "remote seller sales tax registration, exemption certification, collection, remittance, and audit authority to the Commission". This delegation will only apply to internet sales. The City will continue to administer Chapter 3.08.

The draft ordinance follows a modified version of adopting the Code "by reference". The Code included extensive definitions. Some of those definitions included words or phrases already defined in Chapter 3.08. Some of those definitions included words used in Chapter 3.08 but not currently defined in Section 3.08.280. Some Uniform Code definitions required

adjustment to existing exemptions. To ensure uniformity in application of definitions to on line and “brick and mortar” sellers these categories of definitions have been adopted by amending Section 3.08.280 (and by making this section applicable the new Chapter 3.10) and by changing wording used in existing exemptions to “match” the Uniform Code definitions. This is done in Sections 2 and 7 of the draft ordinance.

Not all definitions in the Code were applicable to Kodiak and many definitions are only relevant to internet/remote sellers. Definitions relevant only to remote sellers or not applicable to Kodiak are adopted by reference in the proposed section 3.10.020 with the exception of the fundamental definitions of “remote seller” and “marketplace facilitator” which are incorporated into existing section 3.08.280.

The alternative to the “adoption by reference” format is to set out all the provisions of the Code in the body of the proposed ordinance. We choose not to do this because the City will not be administering the Code and the merchants to which it applies will have easy access to the Code through the Commission. But if you prefer the provisions could easily be included in the draft ordinance.

The changes to Chapter 3.08 made in sections 1, 3, 4, 5 and 6 of the draft ordinance are recommended. The Intergovernmental Agreement does not require these changes to city code. The changes are recommended because we believe it is important for the City to treat local businesses and remote businesses equally. If remote sellers were treated more harshly than local sellers there is a possible basis to challenge applying the Code to remote sellers. Here are the changes.

Inclusion of remote sellers and marketplace facilitators in the scope of sales “made within the city” (Section 1). The Commission chose the point of delivery as the defining element of taxability.

Elimination of the \$100 and \$200 registration deposit. A similar deposit is not required for remote sellers. Local sellers should be treated identically and not required to make the deposit. Section 3.

Changing the due date for a final return after the sale of a business from 15 to 30 days. This matches the time allowed remote sellers to file a final return. So this change will result in sellers subject to Chapter 3.08 (local sellers) being treated the same as sellers subject to Chapter 3.10 (remote sellers). Section 4.

Section 5 implements the same late filing fee as appears in the Uniform Code and adds the possibility of waiving this penalty for a seller who is less than forty-five days late in remitting tax. Again this will result in local sellers being treated the same as remote sellers.

Section 6 adds provisions to Chapter 3.08 that were included in the Uniform Code. These pertain to repayment plans, amended returns and an extension of time for filing returns. It is simpler to duplicate these Uniform Code provisions in existing Chapter 3.08 than it is to amend the Uniform Code to make it apply to local sales as well as remote sales.

Adoption of codes by reference is allowed under state law subject to special procedures. AS 29.25.040 and authorized by KCC 2.04.060. Although the state law procedures do not apply to home rule municipalities they have been included to avoid disputes. At least five copies of the Code must be available to the public for a period of 15 days before the public hearing on the ordinance. The hearing notice must say where the public can review the Code. Compliance with these requirements has been included as proposed section 3.10.040. This section is modeled on KCC 14.04.020 enacted when Kodiak adopted uniform building codes.

The deadline for adoption of the Code is May 5, 2020. Let me know if there are any questions about the draft ordinance.

**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.

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.

**CITY OF KODIAK
RESOLUTION NUMBER 2019-23**

A RESOLUTION OF THE COUNCIL OF THE CITY OF KODIAK AUTHORIZING THE CITY OF KODIAK TO JOIN THE ALASKA REMOTE SELLER SALES TAX COMMISSION FOR THE PURPOSE OF DEVELOPING, IMPLEMENTING, AND ENFORCING A REMOTE SELLERS SALE TAX CODE, AUTHORIZING THE MANAGER TO EXECUTE DOCUMENTS ON BEHALF OF THE CITY, AND DESIGNATING A CITY REPRESENTATIVE TO THE COMMISSION

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 City of Kodiak, but do have a taxable connection with the state of Alaska and City of Kodiak; 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 City of Kodiak 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 Council of the City of Kodiak, Alaska 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, the City of Kodiak Charter Article XII-1, *Cooperation with other units of government-transfer of powers and functions*, states that "Agreements, including those for cooperative or joint administration of any function or power, may be made by the Council with any other local government, with the State, or with the United States unless otherwise provided by law or by the Charter". Based on this provision of the Charter, the Council has authority to enter into intergovernmental agreements.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF KODIAK:

Section 1. Authorization. The Council authorizes the Manager 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 Council designates the Finance Director as the City of Kodiak'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.

CITY OF KODIAK



MAYOR

ATTEST:



CITY CLERK

Adopted: November 14, 2019



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MEMORANDUM TO COUNCIL

To: Mayor Branson and City Councilmembers
From: Mike Tvenge, City Manager and Nova M. Javier, City Clerk
Date: March 12, 2020

Agenda Item: IV. b. Second Reading and Public Hearing, Ordinance No. 1394 Amending Title 5 Business Licenses and Regulations, Chapter 5.24 Marijuana Regulations by Repealing Section 5.24.040 Manufacture and Sale of Marijuana Edibles Prohibited

SUMMARY: On November 4, 2014, Alaska voters passed Ballot Measure 2, An Act to Tax and Regulate the Production, Use, and Sale of Marijuana, which initiated the State and Statewide municipalities to begin to determine how to regulate marijuana on both State and municipal levels. Subsequently, the Council adopted Resolution No. 2016–16, Establishing a Marijuana Advisory Special Committee, to recommend guidelines for implementing taxation, regulation, production, sale, and use of marijuana within the Kodiak City limit. The Committee met nine times from June 2016 through April 2017 and brought forward for Council consideration regulations and policies governing marijuana establishments within the Kodiak City limit. One of the regulatory recommendations of the Committee was to prohibit the sale of edibles within the City of Kodiak and, along with the recommendation, advocated to the Council to revisit the topic again within a year. The City Council desires to get substantial public input before lifting the prohibition and before allowing the sale of marijuana edibles within the City limits.

PREVIOUS COUNCIL ACTION:

- January 27, 2016, joint work session – Cynthia Franklin, Director of the Marijuana Control Board presented information about marijuana laws to the Council and Assembly.
- April 12, 2016, City work session – City attorney Holly Wells presented marijuana information to the Council.
- April 26, 2016, City work session – the Council voiced a consensus and directed staff to prepare an ordinance to opt out of marijuana establishments within the Kodiak City limit for not more than six months and directed that a resolution be brought forth to establish a marijuana advisory committee appointed by the Council to be comprised of two Councilmembers, two Kodiak business owners, and two City resident at-large members to review and recommend regulations and policies for establishing marijuana establishments within the Kodiak City limit.
- May 10, 2016, City work session – the Council reviewed applications from City business owners and City resident at large members for appointment to the Marijuana Advisory Special Committee.
- May 12, 2016, regular meeting – the Council adopted Resolution No. 2016–16, Establishing a Marijuana Advisory Special Committee.

- May 26, 2016, regular meeting – the Council adopted Ordinance No. 1350, Enacting Kodiak City Code Chapter 5.52 Prohibiting Marijuana Establishments in the City.
- November 10, 2016, work session – Councilmembers Bishop and Arboleda presented the Marijuana Committee’s recommendations to the Council.
- September 28, 2017, regular meeting – the Council adopted Ordinance No. 1365, Amending Kodiak Municipal Code Title 7 Entitled "Health and Sanitation" to Adopt Chapter 7.40 Entitled "Marijuana Regulation," and Designating the Kodiak City Council as the City's Local Regulatory Authority on Marijuana.
- September 28, 2017, regular meeting – the Council adopted Ordinance No. 1366, Amending Kodiak Municipal Code Title 8 Entitled "Public Peace, Safety, And Morals" to Adopt Kodiak City Code 8.40, "Prohibited Acts Regarding Marijuana," to Prohibit the Extraction of Tetrahydrocannabinol ("The") or any Cannabinoid by Use of Materials or Methods Deemed Dangerous to Public Health and Safety, Unless Otherwise Permitted By Law.
- October 12, 2017, regular meeting – the Council accepted the recommendations from the City Marijuana Advisory Special Committee.
- May 8, 2018, work session – the Council reviewed a draft ordinance to implement recommendations of the City Marijuana Advisory Special Committee.
- May 24, 2018, regular meeting – the Council passed Ordinance No. 1378 in the first reading and moved to second reading and public hearing at the next regular or special Council meeting.
- June 14, 2018, work session – the City Council adopted Ordinance No. 1378 adding new Sections in the City Code to reflect Alaska Marijuana Law and Ordinance No. 1378 included Section 5.24.040 which prohibited sale of marijuana edibles
- February 11, 2020, work session – along with public comments received during the work session, considerable public comments and emails were submitted to the Kodiak City Council encouraging the deletion of Section 5.24.040
- February 27, 2020, regular meeting – the Council passed Ordinance No. 1394 in first reading to advance it to public hearing at the next regular or special meeting of the Council.

ALTERNATIVES:

- 1) Adopt Ordinance No. 1394 after public hearing.
- 2) Postpone Ordinance No. 1394 to allow for amendments or to allow for more public input.
- 3) Do not adopt Ordinance No. 1394.

FINANCIAL IMPLICATIONS: N/A

LEGAL: Article I-4 Powers of the City; The City of Kodiak, Alaska shall have all the powers, functions, rights, privileges, franchises and immunities of every name and nature whatever which home-rule city may have under the constitutions and laws of the State of Alaska. The City may exercise all legislative powers not prohibited by law or by this charter. The City attorney reviewed and approved Ordinance No. 1394 as written.

ATTACHMENTS:

Attachment A: Ordinance No. 1394

PROPOSED MOTION:

Move to adopt Ordinance No. 1394.

**CITY OF KODIAK
ORDINANCE NUMBER 1394**

**AN ORDINANCE OF THE COUNCIL OF THE CITY OF KODIAK AMENDING
TITLE 5 BUSINESS LICENSES AND REGULATIONS, CHAPTER 5.24 MARIJUANA
REGULATION BY REPEALING SECTION 5.24.040 MANUFACTURE AND SALE OF
MARIJUANA EDIBLES PROHIBITED**

WHEREAS, in 2018, the Marijuana Advisory Committee, formed by Council resolution, made a regulatory recommendation to prohibit the sale of edibles within the City of Kodiak and, along with the recommendation, advocated to the Council to revisit the topic again within a year; and

WHEREAS, on June 14, 2018, the City Council adopted Ordinance No. 1378 Adding New Sections in the City Code to reflect Alaska Marijuana Law and Ordinance No. 1378 included Section 5.24.040 which prohibited sale of marijuana edibles; and

WHEREAS, considerable public comments and emails were submitted to the Kodiak City Council encouraging the deletion of Section 5.24.040; and

WHEREAS, the City Council desires to get substantial public input before lifting the prohibition on the sale of marijuana edibles within the City limits;

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

Section 1: This ordinance is of a permanent and general nature and shall be included in the Kodiak City Code.

Section 2: Section 5.24.040 of the Kodiak City Code is hereby repealed.

Section 3: Section 5.24.005 of the Kodiak City Code is hereby amended to read as follows [**Bold and underlined added; deleted language stricken through**]:

5.24.005 Definitions

As used in this chapter the following definitions shall apply:

~~“Edible marijuana product” means a marijuana product that is intended to be consumed orally, whether as food or drink.~~

“Licensed premises” means any or all designated portions of a building or structure, or rooms or enclosures in the building or structure, at the specific address for which a marijuana establishment license is issued, and used, controlled, or operated by the marijuana establishment to carry out the business for which it is licensed.

“School ground” means any facility operated by a school board or private school, as defined by AS 14.45.200, to provide educational, athletic, or recreational activities for persons under 18 years of age and shall include facilities providing post-secondary education and child care facilities licensed under AS 47.32.010.

Section 4: This ordinance shall be effective one month after final passage and publication.

CITY OF KODIAK

MAYOR

ATTEST:

CITY CLERK

First Reading: February 27, 2020

Second Reading:

Effective Date:

NEW BUSINESS

MEMORANDUM TO COUNCIL

To: Mayor Branson and City Councilmembers
From: Mike Tvenge, City Manager *MT*
Thru: Kelly Mayes, Finance Director
Date: March 12, 2020

Agenda Item: V. a. Resolution No. 2020-09, Authorizing Suits for Recovery of Delinquent Sales Tax

SUMMARY: Kodiak City Code Chapter 3.08 establishes criteria for all aspects of levying, collecting, filing, and remitting sales tax and sales tax returns. For delinquent filers, the finance department will provide mail correspondence, certified mail correspondence, phone calls and other collection avenues to ensure that sales tax compliance is adhered to for all persons engaged in selling or renting property or rendering services subject to the tax imposed by Chapter 3.08.

Kodiak City Code 3.08.230 provides that the City may recover sales taxes in an action against the person selling or renting the property or services. Kodiak City Code 3.08.270, *Prohibited Acts – penalties – remedies*, states the following:

Kodiak City Code 3.08.270 –

(a) No person may:

- (1) Fail or refuse to file a completed tax return required by this chapter [KCC 3.08] or falsify any material statement in that return.*
- (2) Fail or refuse to collect taxes levied by this chapter [KCC 3.08] or to remit those taxes to the City, as required.*
- (3) Conduct any business in the city relating to sales, rentals, or services subject to taxation under this chapter without first applying and obtaining a certificate of registration to collect the taxes imposed on sales, rental, and services.*
- (4) Cause or permit 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 violate any provision of subsections (a)(1) through (3) of this section.*

Subsection (c) of this chapter also stipulates that the City may institute civil action against a person who violates the provisions of subsection (a) noted above.

The finance department has determined that the sellers listed on the resolution are delinquent in the remittance of city sales tax in accordance with Kodiak City Code 3.08.220(b). The Finance Director has

worked with the City Attorney to prepare Resolution No. 2020–09 in efforts to collect delinquent sales tax. Staff recommends that Council adopt this resolution.

PREVIOUS COUNCIL ACTION: N/A

ALTERNATIVES:

- 1) Adopt Resolution No. 2020–09
- 2) Postpone Resolution No. 2020–09 and/or make amendments.
- 2) Do not adopt Resolution No. 2020–09.

FINANCIAL IMPLICATIONS: Compliance with timely filing and remitting sales tax returns are required by City Code and critical to the financial stability of City operations.

LEGAL: Kodiak City Code allows for the collection of sales tax. Refer to KCC 3.08.230 and KCC 3.08.270. The resolution was drafted by the City Attorney.

CITY MANAGER’S COMMENTS: These businesses are not in compliance with KCC and it is unfair to those businesses that collect and remit sales tax. It is also unfair to those paying the sales tax to these businesses. After multiple letters and phone call attempts to reach these delinquent businesses this is the next fair resort.

ATTACHMENTS:

Attachment A: Resolution No. 2020–09

PROPOSED MOTION:

Move to adopt Resolution No. 2020–09.

**CITY OF KODIAK
RESOLUTION NUMBER 2020-09**

A RESOLUTION OF THE COUNCIL OF THE CITY OF KODIAK AUTHORIZING SUITS FOR RECOVERY OF DELINQUENT SALES TAX

WHEREAS, Kodiak City Code §3.08.230 provides that the City may recover sales taxes in an action against the person selling or renting the property or services; and

WHEREAS, the finance department has determined that the sellers listed below are delinquent in the remittance of city sales tax; and

WHEREAS, Kodiak City Code §3.08.270 provides that the City take action against an officer, director, member, manager, or partner in a business entity who causes or permits the business entity to fail to file sales tax returns or to fail to collect and remit sales taxes;

NOW THEREFORE BE IT RESOLVED that the city attorney is authorized to bring suit, and pursue any other collection remedy authorized by the Kodiak City code, for recovery of delinquent sales taxes from the following:

- Jessica Aure-DeGuzman a/k/a Jessica Aure-Fisher
- Brianna Brown d/b/a Serenity Salon
- Fitzgerald Law Office, LLC
- David Folger d/b/a North Pacific Refrigeration
- Island Freeze, LLC
- Josie Llamas d/b/a Llamas Duplex
- Michael R. Martin d/b/a Michael Martin Apartment Rentals
- Rosemary Martin d/b/a R&R Rentals
- Orion Industrial Services, Inc.
- Phyllis Perry d/b/a Perry's Salon & Spa
- Kelli Romero d/b/a Nails By Kelli
- Amy Sundheim d/b/a Sundheim Rentals
- Eric Sundheim d/b/a Sundheim Rentals

BE IT FURTHER RESOLVED that the city attorney is authorized to bring suit against any officer, director, member, manager, or partner of any business entity against which suit is hereby authorized if, in the judgment of the city attorney, such person may be liable upon any basis set forth in Kodiak City Code §3.08.230 and §3.08.270.

CITY OF KODIAK


MAYOR

ATTEST:

CITY CLERK

Adopted:

MEMORANDUM TO COUNCIL

To: Mayor Branson and City Councilmembers
From: Mike Tvenge, City Manager 
Thru: Jim Mullican, Fire Chief
Date: March 12, 2020

Agenda Item: V. b. Authorization to Purchase Radios in the Amount of \$248,314.38 With Motorola Solutions

SUMMARY: The City of Kodiak operates VHF portable radios utilizing Motorola equipment which was purchased as early as 2005. These portable radios are carried by Police Officers, Firefighters, Harbor Officers, and Public Works Employees while conducting their day-to-day job assignments. These radios also play a pivotal role in communications during large-scale community wide emergencies. Current portable radios are obsolete and are not capable of meeting future FCC mandates and State of Alaska ALMR requirements. The City applied for and received State of Alaska grant funding to cover the entire cost of this purchase.

PREVIOUS COUNCIL ACTION: Council adopted Resolution No. 2019–21, Accepting a 2019 State of Alaska Homeland Security Program Grant From the State of Alaska Division of Homeland Security And Emergency Management For ALMR Compliant Capability Radios, Replacement Tsunami Sirens, and Emergency Shelter Bedding.

BACKGROUND/DISCUSSION: The City of Kodiak was notified in early 2019 by PROCOM, our communications supplier that our current MX 5000 portable radios were obsolete and no longer supported by Motorola. In response, the City applied for a State of Alaska Homeland Security Grant (SHSP) to cover the cost of replacing these obsolete radios. On September 20, 2019, the City received notification from the State of Alaska that we had been awarded \$250,690 toward the replacement of our obsolete portable radios. In November 2019, the City Council approved a resolution accepting the SHSP Grant award. This proposal includes equipment and programming services, and it is anticipated that this project will take approximately 4 months to complete and the cost is \$248,314.38. It will take time to order, program, and replace existing equipment.

Equipment purchases with this proposal are through Motorola Solutions purchasing agreement with the Houston-Galveston Area Council of Governments (H-GAC) and the purchase complies with KCC 3.12.070(c). In other words, pricing for supplies, materials, and equipment contained in the proposal have already been determined through a competitive bid process.

ALTERNATIVES:

- 1) Authorize a purchase agreement with Motorola Solutions to replace current portable radios for Fire, Harbor, Public Works, and Kodiak Police Departments, which is staff’s recommendation. Current radio components are obsolete and are not capable of meeting future FCC mandates.
- 2) Do not authorize this agreement with Motorola Solutions. The current portable radios will continue to deteriorate. The portable radios are the primary method for communication and coordination by the City Police Department, Fire Department, Public Works Department, and Harbor Master’s Office. Staff does not recommend this alternative.

FINANCIAL IMPLICATIONS: This grant is on a cost reimbursement bases. Initial costs will be applied to General Capital projects – subscriber radio replacement – machinery & equipment
Acct# 300.300.460.470.126 Machinery & Equipment Greater than \$5k.

LEGAL: KCC 3.12.070(c) Contracts for property or services where other units of government, through their formal bidding process, have established the lowest responsible bidder and where the property or service meets or exceeds the city’s specifications, when the best interests of the city would be served thereby and the same is in accordance with the city and state law.

STAFF RECOMMENDATION: Staff recommends authorizing an agreement with Motorola Solutions to purchase the City of Kodiak’s portable radios. This recommendation ensures our City continues to have a reliable communication network.

CITY MANAGER’S COMMENTS: This is an identified replacement to the City’s radio communications identified in the Long Term Capital Improvement Plan identified for FY2020. This one time funding request would transfer funds from the General Fund to the project. Again the city staff is looking at efficiencies in procurement to benefit the local taxpayers and provide the dedicated services to our community.

NOTES/ATTACHMENTS:

- Attachment A: Quote from Motorola Solutions for Portable Radios and associated equipment
- Attachment B: State of Alaska review and approval of proposed purchase

PROPOSED MOTION:

Move to authorize the purchase of radios in the amount of \$248,314.38 with Motorola Solutions from the account Subscriber Radio Replacement PN 4060 machinery & equipment and authorize the City Manager to execute documents on behalf of the City.



Quote Number: QUOTE-943431

KODIAK, CITY OF

Billing Address:
KODIAK, CITY OF
217 LOWER MILL BAY
KODIAK AK, 99615

Shipping Address:
KODIAK, CITY OF
217 LOWER MILL BAY
KODIAK AK, 99615

Quote Date: 2019-12-03
Expiration Date: 2020-03-31
Quote Created By:
Angela Parker
aparker@procommak.com

Customer:
KODIAK, CITY OF
Frank Dorner

Contract:
19860 - NASPO

All subscribers/radios contained herein are ALMR/Trunking capable

Line #	Item Number	Description	Quantity	Unit List Price	Ext. List Price	Discount %	Discount \$	Unit Sale Price	Ext. Sale Price	APC
	APX™ 6000 Series	Kodiak Fire Department								
1	H98KGD9PW5BN	APX6000 VHF MHZ MODEL 1.5 PORTABLE	27	\$2,705.00	\$73,035.00	27.00%	\$730.35	\$1,974.65	\$53,315.55	0481
1a	H869BZ	ENH: MULTIKEY	27	\$330.00	\$8,910.00	27.00%	\$89.10	\$240.90	\$6,504.30	0481
1b	QA02006AA	ENH: APX6000XE RUGGED RADIO	27	\$800.00	\$21,600.00	27.00%	\$216.00	\$584.00	\$15,768.00	0481
1c	Q58AL	ADD: 3Y ESSENTIAL SERVICE	27	\$110.00	\$2,970.00	0.00%	\$0.00	\$110.00	\$2,970.00	0185
1d	H35BU	ADD: CONVENTIONAL OPERATION	27	\$500.00	\$13,500.00	27.00%	\$135.00	\$365.00	\$9,855.00	0481
1e	QA01427AB	ALT: IMPACT GREEN HOUSING	27	\$25.00	\$675.00	27.00%	\$6.75	\$18.25	\$492.75	0481
1f	Q806BM	ADD: ASTRO DIGITAL CAI OPERATION	27	\$515.00	\$13,905.00	27.00%	\$139.05	\$375.95	\$10,150.65	0481
1g	Q629AK	ENH: AES ENCRYPTION	27	\$475.00	\$12,825.00	27.00%	\$128.25	\$346.75	\$9,362.25	0481
2	RLN6486A	FIREMAN'S RADIO STRAP	27	\$37.00	\$999.00	27.00%	\$9.99	\$27.01	\$729.27	0271
3	NNTN8860A	CHARGER, SINGLE-UNIT, IMPRES 2, 3A, 115VAC, US/NA	27	\$165.00	\$4,455.00	27.00%	\$44.55	\$120.45	\$3,252.15	0785
4	RLN6488A	ANTI-SWAY STRAP	27	\$15.00	\$405.00	27.00%	\$4.05	\$10.95	\$295.65	0271
5	PMNN4547A	BATT IMPRES 2 LIION TIA4950 R IP68 3100T	27	\$169.00	\$4,563.00	27.00%	\$45.63	\$123.37	\$3,330.99	0453
	Standalone Items									
6	PMMN4106D	AUDIO ACCESSORY-REMOTE SPEAKER MICROPHONE,AUDIO ACCESSORY-AUDIO ADAPTER,APX XE500 REMOTE SPEAKER MIC, HIGH IMPACT GREEN	27	\$616.00	\$16,632.00	27.00%	\$449.68	\$166.32	\$4,490.64	0372
7	PMLN5877A	APX6000XE CC 2.75 SWL BL 4200MAH	27	\$65.00	\$1,755.00	27.00%	\$17.55	\$47.45	\$1,281.15	0271
	APX™ 6000 Series	Kodiak Police Department								
8	H98KGD9PW5BN	APX6000 VHF MHZ MODEL 1.5 PORTABLE	12	\$2,705.00	\$32,460.00	27.00%	\$730.35	\$1,974.65	\$23,695.80	0481
8a	QA01648AA	ADD: HW KEY SUPPLEMENTAL DATA	12	\$5.00	\$60.00	27.00%	\$1.35	\$3.65	\$43.80	0481
8b	Q498AY	ENH: ASTRO 25 OTAR W/ MULTIKEY	12	\$740.00	\$8,880.00	27.00%	\$199.80	\$540.20	\$6,482.40	0481
8c	Q361AR	ADD: P25 9600 BAUD TRUNKING	12	\$300.00	\$3,600.00	27.00%	\$81.00	\$219.00	\$2,628.00	0481
8d	Q58AL	ADD: 3Y ESSENTIAL SERVICE	12	\$110.00	\$1,320.00	0.00%	\$0.00	\$110.00	\$1,320.00	0185
8e	H38BT	ADD: SMARTZONE OPERATION	12	\$1,200.00	\$14,400.00	27.00%	\$324.00	\$876.00	\$10,512.00	0481
8f	Q806BM	ADD: ASTRO DIGITAL CAI OPERATION	12	\$515.00	\$6,180.00	27.00%	\$139.05	\$375.95	\$4,511.40	0481
8g	Q629AK	ENH: AES ENCRYPTION	12	\$475.00	\$5,700.00	27.00%	\$128.25	\$346.75	\$4,161.00	0481
9	RLN4941A	REC ONLY EARPIECE W/TRANSLUCET TUBE	12	\$71.07	\$852.84	27.00%	\$19.19	\$51.88	\$622.56	0742

10	NNTN8860A	CHARGER, SINGLE-UNIT, IMPRES 2, 3A, 115VAC, US/NA	12	\$165.00	\$1,980.00	27.00%	\$44.55	\$120.45	\$1,445.40	0785
11	PMNN4485A	BATT IMPRES 2 LIION R IP68 2550T	12	\$146.00	\$1,752.00	27.00%	\$39.42	\$106.58	\$1,278.96	0453
	Standalone Items									
12	PMMN4069AL	MICROPHONE,IMPRES RSM, 3.5MM JACK, IP55	12	\$121.00	\$1,452.00	27.00%	\$32.67	\$88.33	\$1,059.96	0372
13	NNTN8844A	CHARGER, MULTI-UNIT, IMPRES 2, 6-DISP, NA/LA-PLUG, ACC USB CHGR	1	\$1,375.00	\$1,375.00	27.00%	\$371.25	\$1,003.75	\$1,003.75	0785
	APX™ 1000	Kodiak Public Works								
14	H84KDD9PW5AN	APX 1000 VHF MODEL 1.5 PORTABLE	40	\$1,391.00	\$55,640.00	27.00%	\$375.57	\$1,015.43	\$40,617.20	0837
14a	QA04097AA	ENH: P25 CONVENTIONAL	40	\$350.00	\$14,000.00	27.00%	\$94.50	\$255.50	\$10,220.00	0837
14b	H885BK	ADD: 3Y ESSENTIAL SERVICE	40	\$90.00	\$3,600.00	0.00%	\$0.00	\$90.00	\$3,600.00	0185
15	PMPN4174A	CHGR DESKTOP SINGLE UNIT IMPRES, US/NA	40	\$76.00	\$3,040.00	27.00%	\$20.52	\$55.48	\$2,219.20	0785
16	NNTN81288R	BATT IMPRES LIION 2000T	40	\$117.00	\$4,680.00	27.00%	\$31.59	\$85.41	\$3,416.40	0453
	Standalone Items									
17	PMMN4069AL	MICROPHONE,IMPRES RSM, 3.5MM JACK, IP55	40	\$121.00	\$4,840.00	27.00%	\$32.67	\$88.33	\$3,533.20	0372
18	SVC03SVC0115D	SUBSCRIBER PROGRAMMING	4145	\$1.00	\$4,145.00	0.00%	\$0.00	\$1.00	\$4,145.00	

Net Total \$248,314.38
Estimated Tax \$0.00
Estimated Freight \$0.00
Grand Total \$248,314.38

Procurement Method Report Pre-Bid Contract

Use this form for Procurements (purchases/orders) that are from a Pre-Bid contract (i.e., GSA, NASPO or local equivalent).

Subrecipients shall accomplish **three (3)** requirements with this form: (1) identification of procurement method, (2) SAMS check, and (3) certification signature on third page. (Project Manager's signature is adequate certification that competition was done, and that the Subrecipient is complying with the most stringent procurement procedures-whether federal, state, or local).

Reminder: Procurements must be conducted applying the most stringent of applicable procurement requirements (whether federal, state or local). Jurisdictions must adhere to their local requirements for all procurements if they are more stringent than those listed below.

Sub recipient: City of Kodiak

Grant Award/Disaster Number: 20SHSP-GY19 PBD/PW/PJ: 1

Procurement Method (per each Purchase/Order)

This may include multiple invoices for each purchase or order.

NOTE: DHS&EM will no longer approve (nor reimburse) this type of procurement after the purchase is made. E-mail to mva.grants@alaska.gov for approval

Pre-Bid Contract	
Pre-Bid Contract Type:	NASPO
Contract Vendor:	Motorola Solutions
Contract Number:	19860
Purchase Amount:	\$248,314.38
Justification for Vendor Selection. Please include any written supporting documents providing justification for vendor selection. NASPO agreements are competitively solicited and meet City procurement guidelines set forth in KCC 3.12	
Send to DHS&EM for approval prior to purchase	

System for Award Management (SAMS) report is required for selected vendor

SAMS Report is a Mandatory Subrecipient Action	
<input checked="" type="checkbox"/>	1. Check System for Award Management (SAM) for debarment/suspension.
<input checked="" type="checkbox"/>	2. Print SAMS report page and attach to this form.

Certification

I certify the above information is true and accurate. Documents related to this procurement are on file and available upon request.

 2/20/2020
Subrecipient Project Manager's Signature Date

James R Mullican Jr. Fire Chief
Printed Name and Title

E-mail signed for to mva.grants@alaska.gov for approval

DIVISION OF HOMELAND SECURITY AND EMERGENCY MANAGEMENT			
<input checked="" type="checkbox"/> Approved	<input type="checkbox"/> Disapproved	<input type="checkbox"/> Returned for Further Justification	Date
SAA/GAR Point of Contact or Authorized Representative <u>Bill Dennis / Bill</u>			Date <u>2-21-20</u>

EXECUTIVE SESSION

MEMORANDUM TO COUNCIL

To: Mayor Branson and City Councilmembers

From: Mike Tvenge, City Manager *mt*

Date: March 12, 2020

Agenda Item: X. a. City Manager's Annual Performance Review

SUMMARY: Annually, the City Council reviews the performance of the City Manager. In accordance with the Open Meetings Act, the City Manager does not object to the evaluation being done in executive session.

PROPOSED MOTION:

Move to enter into executive session, as authorized by Kodiak City Code Section 2.04.100(b)(2), to conduct the City Manager's annual performance evaluation.

MARCH 12, 2020
Agenda Item X. a. Memo Page 1 of 1