

**Mayor**

Clay Koplin

**Council Members**

James Burton

Tim Joyce

Tom Bailer

Robert Beedle

Josh Hallquist

David Allison

James Wiese

**City Manager**

Alan Lanning

**City Clerk**

Susan Bourgeois

**Deputy Clerk**

Tina Hammer

**Student Council**

Corinne Pegau

**Special City Council Meeting  
January 05, 2017 @ 6:00 pm  
Cordova Center Community Rooms A & B  
Agenda**

**A. Call to order**

**B. Roll call**

Mayor Clay Koplin, Council members James Burton, Tim Joyce, Tom Bailer, Robert Beedle, Josh Hallquist, David Allison and James Wiese

**C. Approval of agenda..... (voice vote)**

**D. Disclosures of conflicts of interest**

**E. Communications by and petitions from visitors**

**1. Audience Comments regarding agenda items**

**F. New Business**

**2. Revenue items referred from the December 21, 2016 regular meeting**

- a. Draft Ordinance 1150 re seasonal sales tax..... (page 1)
- b. Draft Ordinance re surtax on Alcohol and Marijuana..... (page 2)
- c. Draft Ordinance re excise tax on Tobacco..... (page 14)
- d. Cordova Municipal Code re sales tax exemptions..... (page 25)

**3. Strategic planning**

**G. Audience participation**

**H. Council comments**

**I. Adjournment**

**Executive Sessions: Subjects which may be discussed are:** (1) Matters the immediate knowledge of which would clearly have an adverse effect upon the finances of the government; (2) Subjects that tend to prejudice the reputation and character of any person; provided that the person may request a public discussion; (3) Matters which by law, municipal charter or code are required to be confidential; (4) Matters involving consideration of governmental records that by law are not subject to public disclosure.

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**CITY OF CORDOVA, ALASKA  
ORDINANCE 1150**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CORDOVA, ALASKA,  
AMENDING CHAPTER 5.40.010 TO ADOPT A ONE PERCENT INCREASE TO THE  
GENERAL SALES TAX IMPOSED BY THE CITY OF CORDOVA FROM APRIL 1  
THROUGH SEPTEMBER 30**

**WHEREAS**, the City of Cordova (“City”) is currently facing financial challenges and budgeting concerns; and

**WHEREAS**, it is in the City’s best interest to generate revenue to support the valuable services the City provides its citizens, residents, and visitors; and

**WHEREAS**, the implementation of a seasonal sales tax is in the City’s best interest as it provides the City additional revenues to meet the needs of its population and visitors.

**NOW, THEREFORE, BE IT ORDAINED** by the Council of the City of Cordova, Alaska that:

Section 1. Cordova City Code Title 5.40.010 Levied, is amended to read as follows:

**5.40.010 - Levied.**

(A) There is levied on all sales equal to or more than twenty cents, services provided and rents collected within the city, except sales, services and rents that are exempt from taxation under this chapter, a tax equal to six percent of the sale price, charge for services or rents collected.

**(B) Beginning on April 1 and ending September 30 of each year, sales tax under subsection (A) of this section shall be increased by one percent.**

Section 2. This ordinance shall be effective thirty (30) days after its passage and publication. This ordinance shall be enacted in accordance with Section 2.13 of the Charter of the City of Cordova, Alaska, and published within ten (10) days after its passage.

1st reading: December 21, 2016  
2nd reading and public hearing: \_\_\_\_\_

**PASSED AND APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2017.**

\_\_\_\_\_  
Clay R. Koplín, Mayor

ATTEST:

\_\_\_\_\_  
Susan Bourgeois, CMC, City Clerk

CITY OF CORDOVA, ALASKA  
ORDINANCE xxxx

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CORDOVA, ALASKA,  
AMENDING CORDOVA MUNICIPAL CODE CHAPTER 5.40 TO ADOPT A TEN PERCENT  
SURTAX ON RETAIL SALES OF ALCOHOLIC BEVERAGES AND MARIJUANA WITHIN  
THE CITY, REDUCE THE MAXIMUM INTEREST PAYMENT TO FIFTEEN PERCENT, AND  
TO UPDATE THE MAXIMUM AMOUNT TAXED TO BE CONSISTENT THROUGHOUT THE  
CHAPTER**

**NOW, THEREFORE, BE IT ORDAINED** by the City Council of the City of Cordova, that:

Section 1. Cordova Municipal Code Chapter 5.40, entitled "Sales Tax" is amended to read as follows:

5.40.005 - Purpose and intent.

It is the purpose of the taxes levied under this chapter to raise revenues. To that end, the scope of the taxes levied shall be broadly interpreted, and exemptions shall be allowed only when falling clearly within an exemption as defined in this chapter.

5.40.010 - Levied.

(A) There is levied on all sales equal to or more than twenty cents, services provided and rents collected within the city, except sales, services and rents that are exempt from taxation under this chapter, a tax equal to six percent of the sale price, charge for services or rents collected.

5.40.011 - Goods or services delivered outside the city.

Sales of goods delivered or services delivered or rendered outside of the city shall be taxable if the sales or services are contracted for or agreed to be made within the city. Such taxable services shall include the contractual services of water craft vessels and personnel for services not directly related to commercial fishing, examples of which would include contractual services for oil spill response charters (not including training sessions) and charter boat services.

5.40.012 - Surtax levied on certain sales, services and rents.

A. Effective August 1, 1999, in addition to any and all other taxes and charges, there shall be levied a surtax equal to one hundred percent of the tax levied under Section 5.40.010 on the following sales, services and rents:

~~A1.~~ A1. Public accommodation services; and

~~B2.~~ B2. Motor vehicle rentals, excluding watercraft.

**5.40.013 Marijuana and Alcoholic Beverage Surtax**

**There is levied on all retail sales of alcoholic beverages and marijuana an additional tax in an amount equal to 10 percent of the sales price on all retail sales of marijuana and retail sales of alcoholic beverages made within the corporate limits of the city.**

5.40.020 - Definitions.

For the purpose of this chapter, the following terms shall be defined as follows:

**"Alcoholic beverage" includes but is not limited to whiskey, brandy, rum, gin, wine, ale, porter, beer, and all other spirituous, vinous, malt and other fermented or distilled liquors intended for human consumption as a beverage and containing more than one percent alcohol by volume, whether produced commercially or privately.**

**"Business" means and includes all activities or acts, personal, professional or corporate, engaged in or caused to be engaged in, including but not limited to receipts from advertising services,**

**construction, process or manufacturing and the sale of any goods or services upon which sales tax is required to be paid under Section 5.40.010. The giving or supplying of services as an employee and the furnishing of property, services, substances or things, by a person who does not hold himself out as regularly engaging in such transactions, does not constitute business within the meaning of this chapter.**

**"Buyer" means the person who, in the ordinary meaning of the term, takes title to, takes possession of, or rents property, or receives services for a consideration.**

**"Casual, occasional or isolated sales or services" means a sale made or service provided by a person who is not engaged in a business.**

**"Marijuana" has the meaning given in AS 17.38.900.**

**"Public accommodation services" means providing, for consideration, members of the public with temporary or transient sleeping accommodations and related services for a period of less than thirty consecutive days in any facility, including hotels, motels, lodges, tourist homes, houses or courts, lodging houses, resorts, campgrounds, inns, rooming houses, boarding houses, bunkhouses, bed and breakfasts, trailer houses or motels, apartment hotels, and any other facility in which rooms, beds or sleeping facilities or space are furnished for consideration.**

**"Retail sales of marijuana" means the transfer of any marijuana from a marijuana retail establishment to any person or entity, for any consideration. If state law is amended to allow other marijuana establishments to conduct sales of marijuana directly to buyers who are not licensed marijuana establishments, such sales will also be considered retail sales subject to taxation under this chapter.**

A- "Sale" means the transfer of or contract to transfer rights in property from a seller to a buyer or consumer for a consideration and includes the sale of goods, **including but not limited to alcoholic beverages and marijuana**, renting of property, and sale of services which either commence or terminate within the city, or which are in any part rendered, supplied or provided within the city, including the following by means of example:

1. Local transportation for hire of persons by common carriers, including motor transportation, taxicab companies, and all other means of transportation for hire;
2. Printing or printed matter of all types, kind and character, and other service of printing;
3. The service of renting personal or real property;
4. Foods, confections and all liquors, beverages and drinks sold and dispensed by retail stores, restaurants or other dispensers, and sold for immediate consumption upon the premises or delivered or carried away from the premises for consumption elsewhere;
5. Advertising of all kinds, type and character originating in the city;
6. Gross proceeds derived from the operation of pinball machines, jukeboxes, merchandise vending machines or amusement devices of any kind;
7. The sale of tickets or admissions to places of amusement, to athletic entertainment, recreational events or dues or fees for privilege of having access to or the use of amusement, entertainment, athletic or recreational facilities;
8. The retail sale of all gas and petroleum products;
9. The provision of electrical, telephone, water, garbage or sewer utility services including installation and connection charges and fees;
10. Commissions or fees by brokers or agents in such transactions as real estate sales;
11. Services and rentals performed partially within the city;
12. Sales, services or rentals provided by a peddler, itinerant merchant or street vendor; or
13. Sales or services made by a seller at a special annual public event.

~~B. "Sales price" means the total consideration in money, credit, rights or other property or value expressed in terms of money, paid or delivered by a buyer to a seller, all without deduction on account of costs of labor, interest, discount, delivery, taxes or other seller's expense paid or accrued. The sales price includes any federal or state excise tax. Sales price does not include the "trade-in" value of a used vehicle intended for resale taken in trade as a credit or part payment on the sale of a new or used article.~~

~~C. "Seller" means every person, firm or corporation selling to buyer or consumer as agent, broker or principal and every person, firm or corporation performing compensated services, exclusive of services rendered as a salaried employee or wage earner, but including services for remuneration for which an Alaska Business License and/or city business license is required.~~

~~D. "Services" means all services of every manner and description that are performed or furnished for consideration, whether in connection with the sales of goods or not, but does not include the services rendered by an employee to an employer.~~

~~E. Business means and includes all activities or acts, personal, professional or corporate, engaged in or caused to be engaged in, including but not limited to receipts from advertising services, construction, process or manufacturing and the sale of any goods or services upon which sales tax is required to be paid under Section 5.40.010. The giving or supplying of services as an employee and the furnishing of property, services, substances or things, by a person who does not hold himself out as regularly engaging in such transactions, does not constitute business within the meaning of this chapter.~~

~~F. "Buyer" means the person who, in the ordinary meaning of the term, takes title to, takes possession of, or rents property, or receives services for a consideration.~~

~~G. "Casual, occasional or isolated sales or services" means a sale made or service provided by a person who is not engaged in a business.~~

~~H. "Special annual public events" means those events which are annually scheduled and open to the public, such as the Shorebird Festival and the Bidarki Christmas Bazaar.~~

~~I. "Public accommodation services" means providing, for consideration, members of the public with temporary or transient sleeping accommodations and related services for a period of less than thirty consecutive days in any facility, including hotels, motels, lodges, tourist homes, houses or courts, lodging houses, resorts, campgrounds, inns, rooming houses, boarding houses, bunkhouses, bed and breakfasts, trailer houses or motels, apartment hotels, and any other facility in which rooms, beds or sleeping facilities or space are furnished for consideration.~~

#### 5.40.030 - Exemptions.

The following sales and services are exempt transactions and are not subject to taxation by the city:

A. Proceeds from casual, occasional or isolated sales which are easily identified as the sale of personal goods or property at such private functions as moving, garage, yard, food and bake sales, sale of private vehicles when the seller is not a dealer in used vehicles, or services such as babysitting or house-sitting. A city license is not required under this subsection A;

B. Sales of insurance and bonds of guaranty and fidelity;

C. Fees for sales and services in excess of three thousand dollars per single purchase transaction. This exemption does not apply to accumulative purchases and billed as a lump sum in excess of three thousand dollars except as provided in subsection (D) relating to sales of construction materials and services.

In the event of an oil spill that requires mobilization of the oil spill response vessels, this exemption is automatically suspended for ninety days on all fees for sales and services commencing on the day of the oil spill;

D. Sales of construction materials and services exceeding three thousand dollars for use in each construction project paid for by any one purchaser during any twelve consecutive month period; provided, that the purchaser has obtained a building permit from the city prior to the start of the project and all receipts for construction materials and services clearly show the building permit number. Construction materials are those items becoming a permanent part of the structure. Purchaser may pay all sales tax on such materials and services and may apply for a refund as set out in [Section 5.40.042] or may pre-pay applicable city sales tax in advance and receive an exemption card;

E. Gross receipts or proceeds derived from servicing, freezing, storing, handling or wharfing of fisheries commodities awaiting shipment or in the process of being shipped;

F. Gross receipts or proceeds derived from sales or services which the municipality is prohibited from taxing under the laws of the state, or under the laws and the Constitution of the United States, including but not limited to:

1. Sales by the U.S. Postal Service,
2. Sales of any items purchased with food coupons, food stamps or other type of certificate issued under 7 U.S.C. Sections 2011-2025 (Food Stamp Act),
3. Purchases made under the authority of or made with any type of certificate issued pursuant to 42 U.S.C. Sections 1771-1789 (Child Nutrition Act of 1966),
4. Interstate sales,
5. Air transportation including that portion of any chartered fishing or hunting expedition which covers the cost of air transportation,
6. Gross receipts or proceeds derived from sales to the United States, state, city or any political department thereof;

G. Gross receipts or proceeds from the transportation (including freight and shipping charges), loading, unloading or storing of cargo from marine vessels or aircraft in foreign, interstate or intrastate commerce;

H. Services of a person licensed or certified by the state of Alaska as a doctor of medicine and surgery, a doctor of osteopathy and surgery, a doctor of veterinary medicine, a chiropractor, a dentist, a naturopath, an optometrist, an audiologist, a hospital, an occupational therapist, a physical therapist, a massage therapist or a licensed or practical nurse; provided, that the service is within the scope of the state license or certificate;

I. Services of a person licensed or certified by the state of Alaska as a psychologist or psychological associate, a clinical social worker, an alcohol and drug counselor, or a marital and family therapist;

J. Fees for supplies, equipment and services provided by a hospital, medical clinic or dental clinic for patient treatment including laboratory and x-ray services;

K. Gross receipts or proceeds of the retail sale of prescription drugs;

L. Sale of cemetery plots, caskets, funeral and burial related items and the services by a funeral home;

M. Commissions received by travel agencies for their services that are not set by and billed by the travel agencies. Service charges set by and billed by the travel agencies are not exempt from taxation under this chapter;

N. Dues or fees to clubs, labor unions or fraternal organizations;

O. Fees and charges for extracurricular activities or events promoted or undertaken by educational or student organizations;

- P. Sales by any student organization, parent/teacher organization or booster club recognized by the school or educational organization in which it operates, which proceeds are utilized to further the purposes for which the organization was formed;
- Q. Sales and services by schools or other educational organizations made in the course of their regular functions and activities, which proceeds are utilized to further the purposes for which such organization was formed;
- R. Sales of food at educational and hospital cafeterias and lunchrooms which are operated primarily for staff and/or students, and which are not operated for the purpose of sale to the general public for profit;
- S. Sales, services and rentals by or to religious organizations which have obtained a 501(c)(3) or 501(c)(4) exemption certificate from the Internal Revenue Service and which are made in the normal conduct of religious activity; provided, the income from the exempt transaction is also exempt from federal income taxation;
- T. Sales, services and rentals by or to scouting, 4H or similar youth organizations which have obtained a 501(c)(3) or 501(c)(4) exemption certificate from the Internal Revenue Service and which are made in the normal conduct of activity; provided, the income from the exempt transaction is also exempt from federal income taxation;
- U. Sales, services and rentals by or to benevolent or civic organizations which have obtained a 501(c)(3) or 501(c)(4) exemption certificate from the Internal Revenue Service and which are made in the normal conduct of activity; provided, the income from the exempt transaction is also exempt from federal income taxation and the income is donated to a charity. Such organizations shall pay the sales taxes at the time of purchase and shall apply to the city for a refund as provided in Section 5.40.040;
- V. Proceeds from contract services provided by a state-licensed child care contractor;
- W. Proceeds from contract services provided by a person for the purpose of taking temporary care of minors for another person;
- X. Proceeds from products sold as wholesale sales to businesses designated by the state of Alaska as wholesalers. These include the sales of goods, wares, or merchandise to a retail dealer, manufacturer, or contractor, for resale within the city as is or incorporated into a product or commodity to be sold by the dealer, manufacturer or contractor within the city, if the subsequent sale is subject to the city sales tax. In this connection a retailer must stock that merchandise for resale, display the same to the public and hold himself out as regularly engaged in the business of selling such products;
- Y. Proceeds from products sold for resale:
1. Sales of goods, wares or merchandise to a retail dealer, manufacturer or contractor, for resale within the city as is or incorporated into a product or commodity to be sold by the dealer, manufacturer or contractor within the city, if the subsequent sale is subject to the city sales tax. The product must be an item that is sold as part of the reseller's primary business and must be of such nature that it can be purchased by the general public in a transaction that is not dependent upon the purchase of another product or service,
  2. Goods, wares or merchandise that can be purchased only as part of a package purchase of services, such as a bed-and-breakfast or a fishing or hunting charter and not by the general public as separate and individual items are not exempt under this chapter,
  3. Food products that are purchased for resale must be purchased and sold as is or prepared in a kitchen that is DEC-certified in order to qualify for sales tax exemption. Proof of certification must be available upon request;

Z. Proceeds from services for resale: Services that are provided by a subcontractor to a contractor for a third party is considered services for resale and is exempt from taxation;

AA. Sales of real property. Rentals of real property are not exempt from taxation by the city.

AB. Commissions or fees in excess of three thousand~~two thousand five hundred~~ dollars earned by brokers or agents in real estate sales transactions.

AC. Home heating oil purchased for use in a dwelling, as defined in [Section 18.08.190], for use at that location conditioned on the following:

1. That no more than fifty percent of the floorspace of the building(s) considered as dwellings be used as nonresidential use, including business activities.
2. That the dwelling be operated in compliance with all other regulations and laws.
3. If a fuel tank is used to supply more than one structure or area then no more than fifty percent of the floorspace and area supplied shall be nondwelling and nonresidential including business activities.

5.40.031 - Exemption application and exemption authorization card.

Any person, corporation, or other organization claiming an exemption under Section 5.40.030 shall apply to the city for an exemption authorization card within one month of operating or conducting business or sales or performing services within the city in the first year in which sales are made, and thereafter shall apply by December 15th of each year for the following calendar year. Numbered exemption authorization cards will be issued by the city. The exemption authorization card must be shown to all sellers or the number must be recorded on a list provided by City Hall for all sales and must be recorded at the time of sale by the seller. The exemption is valid only for those items that are purchased for resale as described under Section

5.40.030(Y) or are purchased by agencies and organizations that are exempted by city, state or federal law. Any person that believes an attempt to purchase unauthorized items as tax exempt is being made at his place of business may refuse to accept the exemption card.

5.40.032 - Revocation of exemption status.

A. The city manager or his designee may revoke any exemption authorization, card or other authority to obtain an exemption if the person holding the exemption has been found to have used the exemption authorization card to obtain an exemption to which the holder or any other person is not entitled. The burden of proving an exemption shall be on the person claiming an exemption.

B. Upon a determination by the city manager or his designee that an exemption holder has misused or permitted another to misuse the sales tax exemption authorization issued to the holder, the city manager or his designee may revoke the sales tax exemption authorization of such person by sending written notice via certified mail to the exemption holder. Before such action, the city manager or his designee shall send written notice via certified mail to the exemption holder advising the holder of the violation and that the holder has the right to request a meeting with the city manager or his designee to discuss and resolve the issue without revocation of the sales tax exemption authorization. Should the holder not respond within five business days of receipt of the certified letter, the city manager or his designee may revoke the sales tax exemption authorization of the holder.

C. The revocation shall be permanent unless the city manager or his designee provides for a shorter period in the revocation order.

D. The order and period of revocation may be appealed to the city council if an appeal is filed in writing with the city clerk within ten days of the receipt of the written order. The decision of the city manager or his designee is final and may be appealed only to the city council.

5.40.040 - Refunds.



A. A claim for refund of payment of sales tax or a protest of assessment of sales tax which is made more than six months from the date on which the tax was paid or became due and payable is forever barred, except for a refund for construction materials and services as set forth in Section 5.40.042 and a refund for taxes paid by a benevolent and civic organization as set forth in Section 5.40.043.

B. A claim for refund of payment or a protest of assessment shall be made by filing with the city manager or his designee a statement of claim, specifying the date the tax was imposed, the amount of protest or refund claimed and the basis upon which the protest or claim for refund is made. The city manager or his designee shall respond in writing within thirty days. If the city manager or his designee does not respond within thirty days, the claim of refund or protest shall be deemed to be approved. The decision of the city manager or his designee shall be the final decision of the city.

C. Any appeal of the city's decision must be filed in the superior court for the state of Alaska in Cordova within thirty days of the final decision of the city manager or his designee in accordance with the Alaska Rules of Appellate Procedure. Failure to file an appeal within the time period waives any claims to a sales tax refund.

#### 5.40.041 - Protest of tax by buyer.

A. If a seller adds the tax levied under this chapter to the selling price, service charge or rent in a transaction that the buyer believes is exempt from taxation under this chapter, the buyer may remit the tax to the seller with a statement that the tax is paid under protest, and requesting that the seller mark any receipt, invoice or other evidence of the sale to indicate that the tax is paid under protest. A buyer who fails to remit the tax at the time of the sale with a statement that the tax is paid under protest waives the right to protest the tax or otherwise to challenge the imposition of the tax. The seller shall include with the seller's sales tax return for the tax reporting period in which the protested tax was paid a copy of the receipt, invoice or other evidence of the sale marked to reflect the payment of the tax under protest. The seller shall pay the protested tax to the city with any other sales tax that is due for the reporting period.

B. A buyer who has remitted sales tax under protest in accordance with subsection A of this section shall file with the finance director a statement of protest on a form provided by the finance director accompanied by a copy of the receipt or invoice for the sale within ten days after the date of the sale. The buyer shall state on the form the terms of the sale, the amount of the sale, the goods, rental or services purchased, the location from which the seller fulfilled the order, and all other information necessary to support the exemption of the transaction from taxation. A buyer who fails to make a timely filing of a completed statement of protest waives the right to protest the tax or otherwise to challenge the imposition of the tax.

C. A buyer who files a statement of protest under subsection B of this section bears the burden of proving that a transaction is exempt from taxation. In addition, the finance director or designee may investigate the facts related to the claim of exemption, and seek the advice of the city attorney on the claim. The finance director or designee shall issue a written decision within thirty days after the filing, stating the reasons for granting or denying the protest. The ruling will be mailed to the buyer and the seller at the addresses given on the protest.

D. If a protest is granted, the city shall refund the protested tax amount to the buyer upon receipt of protested tax from the seller.

E. If a protest is denied, the buyer may appeal the denial by filing an appeal to the city manager, and providing a copy of the appeal to the finance director, within twenty days after the date of mailing of the notice of denial. The decision of the city manager shall be the final decision of the city on the protest.

#### 5.40.042 - Refund for construction materials and services.

A purchaser seeking a refund for construction materials and services shall submit to the city manager or his designee, no later than February 1st of each year, a completed sales tax refund form for the previous year. The purchaser shall attach a copy of the building permit issued for the project for which the refund is sought, and receipts for all purchases of construction materials and services within the city for each project for which the purchaser seeks a refund. If a project is not completed within one year, the purchaser shall submit an affidavit with the sales tax refund form stating that the work on the same project is continuing in order to obtain a refund for the following year. The total time period for sales tax refunds on any one project cannot exceed four years. The project may be reviewed annually by the municipal assessor or the city manager or his designee. Subsections 5.40.040 (B) and 5.40.040 (C) of this chapter shall apply to refunds for construction materials and services.

5.40.043 - Refund for taxes paid by benevolent or civic organizations.

A benevolent or civic organization seeking a refund for taxes paid on sales and services shall submit to the city manager or his designee, no later than February 1st of each year, a completed sales tax refund form for the previous year. The organization shall attach a copy of the receipts for all purchases of sales and services within the city for the taxes for which the organization seeks a refund and proof that the proceeds were donated to charity.

5.40.044 - Rebate of tax on sales of home heating oil.

A. The city shall rebate to the buyer sales tax on purchases of home heating oil delivered to a dwelling, as defined in Section 18.08.190, occupied by the buyer for use at that location, subject to the remainder of this section. To be eligible to receive the rebate, a buyer must be a member of a household with adjusted gross income for federal income tax purposes that is not greater than specified under the Federal Health and Human Services Poverty Guidelines for 2008 as follows:

People in Household	Income Level
1	\$13,000
2	17,500
3	22,000
4	26,500
5	31,000
6	35,500
7	40,000
<u>8</u>	44,500
Add \$4,500 for each additional member of the household.	

B. The buyer shall apply for a rebate under this section to the city manager or designee on a form approved by the city manager. The application shall be accompanied by a receipt showing payment of the sales tax for which the rebate is sought, and a copy of the buyer's most recent federal income tax form 1040 as proof that the income of the buyer's household does not exceed the maximum specified in this section. The buyer must submit the application within thirty days after the date of the purchase of the home heating oil.

C. The rebate authorized by subsection A of this section shall apply only to home heating oil purchases occurring before July 1, 2009 unless extended by resolution of the city council.

5.40.050 - Bracket collection schedule.

Sellers shall add the tax levied under this chapter to the selling price, service charge or rent collected in accordance with a schedule prepared by the manager in such a manner as to provide an effective tax collection equal to the applicable rate levied by Section 5.40.010.

5.40.060 - Payment and collection.

Taxes imposed by this chapter shall be due and paid by the buyer to the seller at the time of sale, or with respect to credit transactions, at the time of collection. It shall be the duty of each seller making sales taxable under this chapter to collect the taxes imposed by this chapter from the buyer at the time of each sale, or with respect to a credit transaction, at the time of collection of sales, and to hold those taxes in trust for the city. Failure by the seller to collect the tax shall not affect the seller's responsibility for payment therefor to the city.

5.40.070 - Disposition of proceeds.

A. The revenue received by the city under this chapter shall be first applied by the city treasurer in accordance with the provisions of any outstanding bond or other evidence of indebtedness secured by a pledge of such revenue and consistent with the ordinances creating the same.

B. Sales tax revenue received by the city which is not obligated as security for the payment of bonded indebtedness of the city shall be deposited in the general fund of the city.

5.40.080 - Tax return—Payment to city.

A. On or before the last day of the month succeeding the end of each quarter year ending March 31st, June 30th, September 30th and December 31st every seller who has made any retail sales and every person who has performed any services during the preceding quarter shall complete and deliver to the city a sales tax return for that preceding quarter upon forms to be provided by the city manager or his designee, setting forth the amount of all gross sales and services, the amount of such sales and services claimed exempt, the amount of sales tax credits accruing as a result of uncollectible accounts receivable and the amount of all taxable sales and services for such preceding quarter, and the amount of the tax thereon and such other information as may be required, and shall sign and transmit the same to the city treasurer. Every person holding a city business license must file a sales tax return form even if there is no reported gross revenue for that period of time.

The preparer of the sales tax return form shall keep and maintain all documentation supporting any and all claims of exempted sales and purchases, and to produce the documentation if requested. Documentation will include for exempted sales the number of the city exemption authorization card presented by the buyer at the time of the purchase. Failure to provide such documentation will invalidate only that portion of the claim of exemption for which no documentation is provided.

B. The seller shall sign and transmit the same to the city manager or his designee. The amount of tax due shall be paid by the seller to the city manager or his designee at the time of transmitting the return.

C. The city manager or his designee may require that a seller or any person performing services make out a return on a monthly basis and file the return on the last day of each calendar month if the seller has been in business for less than twelve consecutive calendar months, or if a seller has been late in filing sales tax returns or transmitting sales taxes collected two or more times within the preceding two-year period.

5.40.090 - Compensatory collection discount.

All sellers required to submit returns to the city shall be allowed to compensate themselves for costs incurred in the collection, recordkeeping, remittance and accounting for the tax imposed by taking two percent of the tax due, but not to exceed two hundred dollars, within any one quarter as a tax collection discount to reduce the tax remittance; provided, that returns are filed and paid on a timely basis and there is no sales tax penalty or interest due for any previous reporting period.

5.40.100 - Record keeping and investigation.

A. It shall be the duty of every seller engaged or continuing in business in the city to 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 for collection of which the seller is liable herein, including records of the gross daily sales, together with invoices of purchases and sales, bills of lading, bills of sale or other pertinent records and documents as will substantiate and prove the accuracy of a tax return. In the event the seller allows an exemption pursuant to Section 5.40.030(C), the seller shall reserve a copy of the bill of sale therefor. It shall be the duty of every such seller to keep and preserve for a period of three years from the date of filing any return, all such books, invoices and other records as may be necessary, all of which shall be subject to examination by the city treasurer or any authorized employee or agent thereof who is engaged in checking or auditing the records of any seller required to make a return under the provisions of this chapter.

B. For the purpose of ascertaining the correctness of a return, or for the purpose of determining the amount of tax collected or which should have been collected, the city treasurer, or his or her duly authorized agent, may hold investigations and hearings concerning any matters covered by this chapter, and may examine any relevant books, papers, records or memoranda of any seller, or may require the attendance of any seller, or officer or employee of seller. The city council shall have the power to issue subpoenas to compel attendance or to require production of relevant books, papers, records or memoranda.

5.40.110 - Estimated tax.

In the event the city manager or his designee is unable to ascertain the tax due from a seller by reason of the failure of the seller to keep accurate books, allow inspection, or file a return, or by reason of the seller filing a false or inaccurate return, the city manager or his designee may make an estimate of the tax due based on any evidence in his or her possession. Notice of the estimate of taxes due shall be furnished to the seller and shall become final for the purpose of determining liability of the seller to the city thirty days thereafter, unless the seller earlier files an accurate return.

5.40.120 - Recovery of taxes—Delinquency date.

A. Taxes due but not paid may be recovered by the city by an action at law against the buyer. Taxes collected by the seller but not transmitted to the city or which should have been collected by the seller but were not may be recovered by an action at law against the seller, and sales tax returns shall be prima facie proof of tax collected but not transmitted.

B. Taxes shall be considered delinquent if not received by the city manager or his designee by the due date for transmission of the seller's tax return for each quarter as required by Section 5.40.080.

5.40.125 - Lien.

The tax, penalty and interest, as imposed by this chapter, together with all administrative and legal costs incurred, shall constitute a lien in favor of the city upon all the seller's real and personal property. The lien arises upon delinquency, and continues until the liability for the amount is satisfied, or the property is sold at a foreclosure sale. The lien has priority as allowed by AS 29.45.650(e).

5.40.130 - Penalty for violations.

A. A seller who has made sales in the city, and who thereafter fails to file a sales tax return, as required by this chapter, shall incur a civil penalty of twenty-five dollars for the first sales tax return not timely filed, and fifty dollars for each next sales tax return not timely filed within a one-year period thereafter.

B. A seller who has collected taxes and who thereafter fails to transmit the collected taxes, as required by this chapter, shall incur a civil penalty of ten percent of the taxes for the first month of delinquency, or any fraction thereof, and five percent of the taxes for each month thereafter, or any fraction thereof, from the time between the date the taxes should have been transmitted and the date they were transmitted, but not to exceed a total of ~~fifteen~~**twenty** percent of the amount of the taxes due to be transmitted.

C. In addition to the amount of civil penalty as provided for violation of each subsection applicable herein, interest shall accrue at the rate of fifteen percent per year on the unpaid tax from the date of delinquency until paid for sellers, and from the date of sale for buyers.

D. A buyer who purchased items as exempted purchases and who thereafter is found to have used the exemption card fraudulently shall incur a civil penalty of one hundred percent of the taxes not paid in addition to payment of the unpaid taxes. Further, the exemption card shall be permanently revoked.

5.40.140 - Additional regulations enacted when.

The council may promulgate by resolution such additional regulations as may be found necessary from time to time to carry out the purpose of this chapter.

5.40.150 - Delinquent sales tax roll confidentiality.

A. During the third week of June of each year, the city manager or his designee shall publish, in a newspaper of general circulation in the city, a notice with the names of those sales tax accounts that are delinquent for the quarter ending March 31st; and successively in September, those sales tax accounts that are delinquent for the second quarter ending June 30th; in December, those sales tax accounts that are delinquent for the third quarter ending September 30th; in March, those sales tax accounts that have become due and delinquent for the fourth quarter ending December 31st. The manager or his designee shall include in the notice the names of those sales tax accounts which remain delinquent from any preceding quarter. For the purposes of determining delinquency for publication, an account shall be considered delinquent if the account is delinquent as defined by Section 5.40.120 (B) and no agreement has been reached by the seller with the city for other means of payment. The publication of such delinquent sales tax accounts shall not be considered a disclosure within the provisions of this section.

B.

1. All returns filed with the city for the purpose of complying with the terms of this chapter, all data obtained for such returns, and all books, papers, record or memoranda obtained under the provisions of this section are declared to be confidential, and shall be exempt from inspection of all persons except the city treasurer, city manager and city attorney, or any authorized employee thereof; provided, however, the city manager may present to the city council in executive session any return or data obtained therefrom; provided, the purpose of such presentation is informational or concerning legal action against the person whose return or tax remittance is in question.

2. All returns referred to in this chapter, and all data taken therefrom, shall be kept secure from public inspection, and from all private inspection, except as provided otherwise in this section; provided, however, nothing in this section shall be construed to prohibit the delivery to a person, or his duly authorized representative, of a copy of any return or report filed by him or her, nor to prohibit the publication of notices provided for in this section.

C. The use of tax returns in a criminal or civil action brought to enforce the terms of this chapter against any person shall not be deemed a violation of this section, and the city, in the prosecution of any such action, may allege, prove and produce any return theretofore filed by and on behalf of any such defendant, including any data obtained from any such return or returns, other provisions of this chapter to the contrary notwithstanding.

**Section 2.** This ordinance shall be effective thirty (30) days after its passage and publication. This ordinance shall be enacted in accordance with Section 2.13 of the Charter of the City of Cordova, Alaska, within ten (10) days after its passage.

1st reading: \_\_\_\_\_

2nd reading and public hearing: \_\_\_\_\_

PASSED AND APPROVED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2017

\_\_\_\_\_  
Clay Koplin, Mayor

ATTEST:

\_\_\_\_\_  
Susan Bourgeois, CMC, City Clerk

DRAFT

**CITY OF CORDOVA, ALASKA  
ORDINANCE xxxx**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CORDOVA, ALASKA,  
AMENDING TITLE 5 OF THE CORDOVA MUNICIPAL CODE TO ADD CORDOVA  
MUNICIPAL CODE CHAPTER 5.42 TO LEVY AN EXCISE TAX ON TOBACCO BROUGHT  
INTO THE CITY ON OR AFTER MARCH 1, 2017 AT 110 MILS PER CIGARETTE AND 55%  
OF TOBACCO PRODUCTS AND AUTHORIZE THE CITY TO ADMINISTER AND ENFORCE  
AN EXCISE TAX.**

**WHEREAS**, the City of Cordova (“City”) is currently facing financial challenges and budgeting concerns; and

**WHEREAS**, it is in the City’s best interest to generate revenue to support the valuable services the City provides its citizens, residents, and visitors; and

**WHEREAS**, the use of tobacco and tobacco products has been proven to cause significant health risks; and

**WHEREAS**, the implementation of a tobacco excise tax is in the City’s best interest as it provides the City additional revenues to meet the needs of its population while de-incentivizing the distribution of tobacco products within the City.

**NOW, THEREFORE, BE IT ORDAINED** by the Council of the City of Cordova, Alaska that:

**Section 1.** Cordova City Code Title 5, Revenue and Finance, is amended to adopt Cordova City Code Chapter 5.42, entitled “Excise Tax on Cigarettes and Tobacco Products” to read as follows:

Chapter 5.42 Excise Tax on Cigarettes and Tobacco Products

Sections:

- 5.42.010 Applicability of chapter
- 5.42.020 Tax on cigarettes
- 5.42.030 Tax on other tobacco products
- 5.42.040 Intent and purpose of chapter and taxpayer
- 5.42.050 Exemptions
- 5.42.060 Exemption cards
- 5.42.070 License required for dealers in cigarettes or tobacco products; issuance
- 5.42.080 License fee
- 5.42.090 Expiration and renewal of licenses
- 5.42.100 Transfer of license
- 5.42.110 Refund of tax or license fee
- 5.42.120 Display of license; surrender of license; suspension or revocation of license
- 5.42.125 Tax returns
- 5.42.130 Involuntary returns
- 5.42.135 Amended tax returns
- 5.42.140 Application of payments
- 5.42.145 Prohibited acts and penalties
- 5.42.150 Civil fraud
- 5.42.155 Tax lien
- 5.42.160 Interest on unpaid tax

- 5.42.165 Taxpayer, licensee, cardholder, or other person remedies
- 5.42.170 Reports by manufacturers
- 5.42.175 Inspection and maintenance of documents and records
- 5.42.180 Administrative regulations
- 5.42.185 Confidentiality of records
- 5.42.190 Definitions

**5.42.010 Applicability of chapter.**

Unless provided otherwise, this chapter shall apply area wide to the taxation of all cigarettes and tobacco products brought into or acquired in the City.

**5.42.020 Tax on cigarettes.**

(A) The city hereby levies an excise tax of 110 mils, adjusted annually as provided in subsection (B) of this section, on each cigarette brought into the City on or after March 1, 2017. Cigarettes upon which the tax is imposed are not again subject to the tax when acquired by another person.

**5.42.030 Tax on Other tobacco products.**

(A) An excise tax of 55 percent of the wholesale price is levied on tobacco products, other than cigarettes, brought into the City. The tax is levied effective on or after March 1, 2017. Tobacco products upon which this tax is imposed are not again subject to this tax when acquired by another person.

**5.42.040 Intent and Purpose of Chapter and Taxpayer.**

(A) It is the intent and purpose of this chapter to collect the tax from the person who:

- (1) first acquires the cigarettes or other tobacco products within the City;
- (2) brings or causes cigarettes or other tobacco products to be brought into the City;
- (3) makes, manufactures, or fabricates cigarettes or other tobacco products in the City; or
- (4) ships or transports cigarettes or other tobacco products into the City.

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

**5.42.050 Exemptions.**

(A) The tax imposed under this chapter does not apply to cigarettes and other tobacco products if the United States Constitution or other federal laws prohibit the levying of this tax on such products by the City.

(B) Provided all persons otherwise subject to this chapter comply with its requirements, the tax imposed under this chapter does not apply to cigarettes and other tobacco products:

- (1) brought into or acquired in the City;
- (2) transported outside of the City; and
- (3) which are for resale outside the City by a merchant with an Alaska State business license carrying an Alaska State tobacco endorsement thereon.

**5.42.060 Exemption cards.**

(A) Except as otherwise provided in this chapter, no person may acquire cigarettes or other tobacco products in the City exempt of the tax unless that person has been issued an exemption card in accordance with this chapter. No licensee shall claim any exemption under this chapter unless cigarettes or other tobacco products for which an exemption is claimed have been sold or transferred to a person presenting a valid and current exemption card issued by the city in accordance with this chapter prior to such sale or transfer.

- (1) Any person with an active physical business presence within the City, including a licensee, may apply for an exemption card under this section as an agent for merchants whose principal places of business are located outside of the City, and who acquire from an agent cigarettes or other tobacco



products exempt from the tax imposed under this chapter, provided each merchant has a valid Alaska State business license with a tobacco endorsement and the line of business code or equivalent.

(2) A merchant acquiring cigarettes and other tobacco products through an agent under this section shall be considered an exemption cardholder for all purposes under this chapter.

(3) A person or licensee issued an exemption card as an agent under this section shall comply with all provisions of this chapter except the agent shall not be required to maintain records to prove that cigarettes and other tobacco products for which an exemption is claimed under the agent's exemption card have been resold outside of the City by the merchant. Violation of any provision of this chapter relating to exemption cardholders by a licensee as agent for a merchant shall be grounds for revocation of the licensee's license issued under this chapter.

(4) Notwithstanding anything to the contrary contained in or implied by other provisions of this chapter, the licensee shall be and remain the taxpayer liable for the payment of taxes due under this chapter.

(B) Application for an exemption card is restricted to persons with an active physical business presence within the City acting as an agent for merchants whose principal places of business are located outside of the City, shall be on a form provided by the City, and shall include the following information and such other information as the City may require:

(1) the applicant's name and address;

(2) a copy of the applicant's current Alaska State business license, including a tobacco endorsement and the line of business code or equivalent;

(3) the merchant names and locations where cigarettes and tobacco products will be sold; and

(4) a fee of \$50 for each application.

(C) All exemption card holders must maintain a valid, current business license, with a tobacco endorsement and line of business code or equivalent, issued by the state of Alaska.

(D) Each exemption card, unless suspended or revoked by the City, is valid from its date of issue until the end of that calendar year and may be renewed each year upon application and payment of the fee to the City.

(E) The City may suspend, revoke, or refuse to issue an exemption card under this section for any violation of or failure to comply with the requirements of this chapter by agent or cardholder, including any act or omission by such person which withholds, misstates, or provides false or misleading information required by the City.

#### **5.42.070 License required for dealers in cigarettes or tobacco products; issuance.**

(A) No person may sell, purchase, possess, or acquire cigarettes or tobacco products in the City as a manufacturer, distributor, direct-buying retailer, vending machine operator, or buyer without a license issued under this chapter.

(B) The City, upon application and payment of the fee, shall issue a license to each manufacturer, distributor, direct-buying retailer, vending machine operator, or buyer. A copy of the applicant's current City business license is required and must accompany the application. The application must include the following information:

(1) the applicant's name and address;

(2) the name under which the cigarette or tobacco products business will be conducted;

(3) the applicant's cigarette or tobacco products business categories as a manufacturer, distributor, direct-buying retailer, vending machine operator, or buyer;

(4) in the case of vending machine operator, the number of vending machines which will be operated; and

(5) other information required on the City's application form.

(C) The City may refuse to issue a license if there is reasonable cause to believe that the applicant has willfully withheld information requested to determine the applicant's eligibility to receive a license, or if there is reasonable cause to believe that information submitted in the application is false or misleading and is not made in good faith.

(D) A license required by this chapter is in addition to any other license required by law.

(E) A license issued under this chapter shall include:

- (1) the name and address of the licensee;
- (2) the type of business to be conducted;
- (3) the address at which the business is conducted; and
- (4) the years for which the license is issued.

**5.42.080 License fee.**

(A) For each license issued under this chapter, and for each renewal, the fee is \$100 per year except for calendar year 2005, for which the fee is \$50.

**5.42.090 Expiration and renewal of licenses.**

(A) A license issued under this chapter expires on December 31 of each respective year. A licensee, on application to the City accompanied by the renewal fee, may, before the expiration of the license, renew the license for two years from the expiration date of the license. If the licensee moves the business to another location within the City, the licensee shall, upon application to the City, be reissued a license for the new location for the balance of the unexpired term. A person whose license is lost, stolen, or defaced shall immediately file an application with the City for reissuance of the license for the balance of the unexpired term.

**5.42.100 Transfer of license.**

(A) A license issued under this chapter is not assignable or transferable. However, in the case of death, bankruptcy, receivership or incompetency of the licensee, or if the business of the licensee is transferred to another person by operation of law, the City may in its discretion extend the license for a limited time to the executor, administrator, trustee, or receiver, or the transferee of the licensee.

**5.42.110 Refund of tax or license fee.**

(A) The City shall not refund the license fee paid pursuant to this chapter upon the surrender or revocation of a license after the beginning of the license year. Upon application, the City will refund a license fee that is paid or collected in error.

(B) If a remittance by a licensee exceeds the amount due, and the City, on audit of the account in question, is satisfied that this is the case, the City shall, upon written request of the licensee, refund the excess to the licensee without interest.

(C) Any claim for refund filed more than one year after the due date of the tax is forever barred.

**5.42.120 Display of license; surrender of license; suspension or revocation of license.**

(A) A license issued under this chapter must be prominently displayed at the licensee's place of business.

(B) A licensee shall surrender a license within ten days after:

- (1) a revocation of a license;
- (2) a cessation of business;
- (3) a change of ownership of; or
- (4) a change of a place of business.

(C) The City may suspend or revoke a license issued under this chapter:

- (1) for violation of this chapter or a regulation of the City adopted pursuant to this chapter; or

(2) if a licensee ceases to act in the capacity for which the license was issued.

(D) No person whose license is suspended or revoked shall sell cigarettes or tobacco products or permit cigarettes or tobacco products to be sold during the period of the suspension or revocation on the premises occupied or controlled by that person. No disciplinary proceeding or action is barred or abated by the expiration, transfer, surrender, renewal, or extension of a license issued under this chapter.

#### **5.42.125 Tax returns.**

(A) On or before the last day of each calendar month a licensee shall submit to the City a tax return, upon forms provided by the City, for each license, and submit payment for the taxes due.

(1) The return shall be signed under penalty of perjury by the licensee or his agent and must include:

- (a) the name and address of the licensee;
- (b) the name and address of the person filing the return, if different from the licensee;
- (c) the number of the license issued under this chapter;
- (d) the name under which the cigarette or tobacco business is being conducted;
- (e) the number of cigarettes manufactured, brought into or acquired in the City during the preceding month from any source whatsoever;
- (f) the wholesale price of all tobacco products brought into or acquired in the City during the preceding month from any source whatsoever;
- (g) the names of persons from whom cigarettes and other tobacco products were brought into or acquired in the City during the preceding month from any source whatsoever;
- (h) the number of cigarettes brought into or acquired in the City from each person named in subparagraph (g) of this section;
- (i) deductions claimed for the number of cigarettes and the wholesale price of other tobacco products for which exemptions are claimed under this chapter;
- (j) deductions claimed for the number of cigarettes and the wholesale price of other tobacco products, specified in the return in response to subparagraphs (e) and (f) of this section, for which the tax has been paid previously by another person;
- (k) the amount of tax due on the nonexempt cigarettes manufactured, brought into or acquired in the City during the preceding month; and the amount of tax due based on the wholesale price of nonexempt other tobacco products manufactured, brought into or acquired in the City during the preceding month; and
- (l) other information and supporting documentation which may be required by the City with the return.

(B) Each licensee shall report the cigarette and other tobacco product sales for which an exemption is claimed as a deduction on its monthly tax return to the City and shall provide a copy of an invoice or other document satisfactory to the City supporting each sale to a cardholder.

(C) A tax return must be filed even if there were no cigarettes or tobacco products manufactured, brought into or acquired in the City during the preceding month.

(D) The taxes imposed under this chapter and the return required by this section must be received by the City or postmarked on or before the last day of each calendar month following the month covered by the return.

#### **5.42.130 Involuntary returns.**

(A) If a licensee fails to file a return as required by this chapter, or when the City finds that a return is not supported by the records to be maintained pursuant to this chapter, the City may prepare and file a return on behalf of the licensee. Involuntary returns filed under this section may be premised upon any information that is available to the City, including, among other things, comparative data for similar businesses. A

licensee for whom an involuntary return is filed under this section shall be subject to liability for the tax stated in the return, as well as subject to the penalties and interest provided for in this chapter. A return prepared by the City is, prima facie, good and sufficient for all legal purposes. However, nothing prevents the licensee from presenting evidence on an appeal to rebut the presumed sufficiency of a return prepared by the City, nor does the presumption of sufficiency alter the parties' respective burdens of proof once the licensee has presented evidence to rebut that presumption.

**5.42.135 Amended tax returns.**

(A) Any tax return filed hereunder may be amended by the licensee within one year after the due date of the tax return being amended. No amendment by the licensee shall be allowed after this one-year period.

(B) Any tax return prepared and filed by the City on behalf of the licensee may be amended by the licensee within one year of the date filed by the City. No amendment by the licensee shall be allowed after this one-year period.

**5.42.140 Application of payments.**

(A) Any payment submitted to the City for any taxes, penalties, interest, or cost due under any provision of this chapter or any return or any finding or determination by the City under this chapter shall be credited to the monthly tax period for which remitted, first to the payment of costs and then to penalties, interest, and taxes in that order.

**5.42.145 Prohibited acts and penalties.**

(A) No person may:

- (1) import cigarettes or other tobacco products into the City;
- (2) sell, transfer or acquire cigarettes or other tobacco products in the City; or
- (3) participate in the importation into the City or in the sale, transfer, or acquisition within the City of cigarettes or other tobacco products in violation of or without complying with the provisions of this chapter.

(B) A penalty of six percent of the taxes due shall be incurred automatically when a person fails to pay the full amount of the tax due under this chapter within seven calendar days following its due date. An additional penalty of six percent of the taxes due shall be incurred automatically when a person fails to file a tax return or report within seven calendar days following its due date under this chapter. If a person fails to pay the full amount of the tax due and/or file a tax return or report required under this chapter within 16 calendar days after its due date, the six percent penalties incurred above shall be increased automatically to 15 percent.

- (1) The penalty shall be computed on the unpaid balance of the tax liability as determined by the City.
- (2) Notice of the penalties incurred and to be incurred shall be given to the person responsible for payment of the taxes or for filing the return or report when such tax payment or return or report is delinquent for seven calendar days after its due date.
- (3) The penalties provided for in this section shall be in addition to all other penalties and interest provided for under this chapter.

(C) If a properly filed amended return reduces the total tax liability or the tax required to be paid, or the City reduces the tax liability, the related penalty will be reduced accordingly.

(D) All penalties and remedies enumerated in this chapter are cumulative.

(E) Unless otherwise provided in this section, any person who violates or fails to comply with the provisions of this chapter shall be personally liable for all costs, interest, penalties and taxes due under this chapter plus a penalty equal to 30 percent of the tax due. For good cause shown, the chief fiscal officer may waive or reduce all or part of any penalty imposed under this subsection.

#### **5.42.150 Civil fraud.**

(A) A civil fraud penalty may be assessed against a person in addition to a penalty for failure to file or failure to pay.

(B) If it is determined by the City that a tax deficiency or part of a tax deficiency is due to fraud, then a penalty will be added to the tax. The penalty is 50 percent of the deficiency due or \$500, whichever is greater. The penalty is computed on the total amount of the deficiency due.

(C) Fraud is the intentional misrepresentation of a material fact with the intent to evade payment of tax which the person believed to owe. The person must have had knowledge of its falsity and intended that it be acted upon or accepted as the truth.

(D) To establish civil fraud, the City must prove by clear and convincing evidence that:

- (1) the tax liability was understated; and
- (2) the understatement was the result of an intent to evade tax.

(E) An intent to evade tax may be demonstrated by any relevant evidence, including but not limited to the following:

- (1) the person has provided false explanations regarding understated or omitted acquisitions of cigarettes or tobacco products;
- (2) the person has provided falsified or incomplete source documents;
- (3) the person has not justified an omission or understatement of a significant amount of acquisitions of cigarettes or tobacco products; or
- (4) the person has substantially overstated a deduction and has failed to justify the overstatement.

#### **5.42.155 Tax lien.**

(A) If any person who is liable to pay a tax or license fee under this chapter neglects or refuses to pay the tax or licensee fee after demand, the amount, including interest, additional amounts, or assessable penalty together with costs, is a lien in favor of the City upon all property and rights to property, real or personal, belonging to that person.

(B) The lien imposed by this section arises upon delinquency and continues until the amount is paid or a judgment against the person arising out of the liability is satisfied.

(C) A lien arising out of a tax due under this chapter, including the penalties and interest on the tax, is, subject to A.S. 29.45.300, a lien prior, paramount, and superior to all other liens, mortgages, hypothecation, conveyances, and assignments, upon all real and personal property of the person liable for the tax and upon all the real and personal property used with the permission of the owner to carry on the business which is subject to the tax.

(D) The lien on personal and real property may be enforced as provided in A.S. 29.45.300 – 29.45.480 for enforcement of real and person property tax liens.

#### **5.42.160 Interest on unpaid tax.**

(A) In addition to any penalties imposed by this chapter, interest at the rate of 12 percent per annum shall be charged on the unpaid balance of delinquent taxes.

#### **5.42.165 Taxpayer, licensee, cardholder, or other person remedies.**

(A) Any person aggrieved by any action of the City in issuing, suspending, revoking, or refusing to issue any license or exemption card under this chapter or in fixing the amount of taxes, penalties, interest, or costs under this chapter may apply to the City and request a hearing within 30 days from the date the City mails the notice of the City's action. Upon timely application under this subsection for a hearing, the chief fiscal officer (the hearing officer) shall hold a hearing to determine whether a correction is warranted. Hearings before the chief fiscal officer under this subsection may, at the option of the chief fiscal officer, be conducted by an administrative hearing officer designated by the chief fiscal officer. If the chief fiscal officer elects to refer the matter to an administrative hearing officer, the hearing officer shall conduct the hearing and

prepare findings and conclusions. These findings and conclusions must be forwarded to the chief fiscal officer for adoption, rejection, or modification and issuance of a final order or decision by the chief fiscal officer. An application for a hearing must notify the City of the specific action complained of and amount of tax, interest, cost, or penalty contested and the reason it is contested. After receipt of a written decision by the City, a person may appeal to the Superior Court of the Third Judicial District in accordance with the Alaska Appellate Court Rules. The person shall be given access to the City's file in the matter for preparation of the appeal.

(B) A request for appeal is filed on the date it is personally delivered, or if delivered to the City by the United States Postal Service, the date of the postmark stamped on the properly addressed cover in which the request is mailed. If the due date falls on a Saturday, Sunday, or holiday, the due date is the next working day. A current mailing address must be provided to the City with the request for appeal, and any change in mailing address after the request for appeal is filed must be reported to the City.

(C) If the notice to the person pursuant to subsection (A) of this section shows an amount due the City, the uncontested portion of the amount due must be paid within 30 days after the date of the notice. If the uncontested amount is not paid within 30 days, collection action will be taken on that amount even if the person has filed a request for appeal. Payment of the total amount due may be made at any time before the hearing. If the City has reason to believe that collection of the total amount due might be jeopardized by delay, immediate payment of the total amount will be demanded and the City may pursue any collection remedies provided by law. Payment in full does not affect the person's right to a hearing.

(D) If a person requests a hearing and fails to appear at the hearing, the hearing officer may issue a decision without taking evidence from that person, unless that person shows reasonable cause for failure to appear within seven days after the date scheduled for the hearing.

(E) Taxes, license fees, penalties and interest declared to be due in the final administrative decision must be paid within 30 days after the date of the decision, or a bond must be filed with the court in accordance with Alaska Court Rules of Appellate Procedures.

#### **5.42.170 Reports by manufacturers.**

- (A) No later than the end of each calendar month, a manufacturer shall submit a report to the City stating:
- (1) a list of the tobacco products, the quantity and their wholesale price and the number of cigarettes which were brought into the City from the manufacturer during the preceding month;
  - (2) the name and address of those persons bringing cigarettes and tobacco products into the City from the manufacturer during the preceding month; and
  - (3) a list of the quantity of tobacco products, the wholesale price, and the number of cigarettes brought from the manufacturer into the City by each person named in paragraph (2) of this section.

#### **5.42.175 Inspection and maintenance of documents and records.**

(A) Every person subject to this chapter shall keep a complete and accurate record of all cigarettes and other tobacco products manufactured, purchased, sold, brought into, transported outside of, or acquired in the City by such person.

- (1) Except in the case of a manufacturer, the records shall include a statement containing the name and address of the person from whom cigarettes or other tobacco products were purchased or acquired, the date of delivery, the quantity of cigarettes and other tobacco products, the trade name and brand, and the price paid for other tobacco products purchased.
- (2) Each invoice or other documentation of the sale of cigarettes or other tobacco products within the City shall state whether the tax imposed under this chapter has been paid.
- (3) Persons subject to this chapter shall keep such other documents and records as the City prescribes.

(4) All documents and records required by this section shall be preserved by persons subject to this chapter for three years. All records and documents required by this chapter to be kept or retained are subject to inspection within the City upon demand by the City.

(B) A licensee transferring or selling cigarettes or other tobacco products to a cardholder must keep a record of cigarettes and other tobacco products transferred or sold to such person, including the serial number of the exemption card.

(C) The chief fiscal officer may, during business hours, enter the business premises of a licensee or cardholder where cigarettes or other tobacco products are kept or stored, so far as it may be necessary for the purpose of examining such products and the related business records.

#### **5.42.180 Administrative regulations.**

(A) The chief fiscal officer, or their designee, may adopt regulations providing for the application and interpretation of this chapter and providing methods and forms for reporting and collecting the tax imposed by this chapter.

#### **5.42.185 Confidentiality of records.**

(A) All tax returns, documents, records, and/or reports filed with the City pursuant to the provisions of this chapter and all data obtained from such tax returns, documents, records, and/or reports are confidential and may not be released for inspection by any person except the mayor, chief fiscal officer, City attorney, internal auditor, or the assembly; provided, however, that such data may be released upon court order.

(B) It is the duty of the chief fiscal officer to safely keep tax returns, documents, records, and/or reports and all data taken thereof secure from public and private inspection except as provided by this chapter.

(C) This section does not prohibit the City from compiling and publishing statistical evidence concerning the data submitted; provided, that no identification of particular tax returns, documents, records, and/or reports is made. Nothing in this section shall be deemed to prohibit the internal auditor from examining the tax returns, documents, records, and/or reports; provided, that no information obtained from specific or identifiable tax returns shall be made available to persons other than those authorized to review them under subsection (A) of this section.

#### **5.42.185 Definitions.**

(A) The following words, terms, and phrases, when used in this chapter, shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

“Buyer” means a person who brings into or acquires in the City cigarettes or other tobacco products for his own consumption from any source other than a manufacturer, distributor, direct-buying retailer or retailer.

“Cardholder or exemption cardholder” means a person in whose name a valid and current exemption card has been issued by the City.

“Chief fiscal officer” means the finance director of the City or their designee.

“Cigarette” means a roll for smoking of any size or shape, made wholly or partly of tobacco, whether the tobacco is flavored, adulterated, or mixed with another ingredient, if the wrapper or cover of the roll is made of paper or a material other than tobacco.

“Direct-buying retailer” means a person who is engaged in the sale of the cigarettes or other tobacco products at retail in the City, and who brings or causes them to be brought into the City.

“Distributor” means a person who brings cigarettes or other tobacco products or causes them to be brought into the City, and who sells or distributes them to others for resale in the City.

“Exemption card” means a municipal cigarette and tobacco products exemption card issued under this chapter.

“Inventory count” means the effective date and details of a count by description, including the trade name and brand, purchase price and total quantity on-hand of all cigarettes and other tobacco products. Detail must be subtotaled and distinguished between cigarettes and other tobacco products which are taxable and cigarettes and other tobacco products which were acquired exempt of the City excise tax under this chapter.

“Licensee” means a person licensed under this chapter.

“Manufacturer” means a person who makes, fashions, or produces cigarettes, or other tobacco products for sale to distributors or other persons within the City.

“Other tobacco product” means:

- (a) A cigar;
- (b) A cheroot;
- (c) A stogie;
- (d) A perique;
- (e) Snuff and snuff flour;
- (f) Smoking tobacco, including granulated, plug-cut, crimp-cut, ready-rubbed, and any form of tobacco suitable for smoking in a pipe or cigarette;
- (g) Chewing tobacco, including Cavendish, twist, plug, and tobacco suitable for chewing;
- (h) An article or product made wholly or in part of tobacco or a tobacco substitute or otherwise containing nicotine that is expected or intended for human consumption, but not including a tobacco substitute prescribed by a licensed physician or a product that has been approved by the United States Food and Drug Administration for sale as a tobacco use cessation or harm reduction product or for other medical purposes and which is being marketed and sold solely for that approved purpose; or
- (i) Any noncombustible device that provides a vapor of liquid nicotine to the user or relies on vaporization of any liquid or solid nicotine, including devices manufactured as e-cigarettes, e-cigars, e-pipes, or any other product name.

“Person” includes an individual, company, partnership, joint venture, joint agreement, association (mutual or otherwise), corporation, estate, trust, business trust, receiver or trustee, syndicate, or political subdivision of this state, or combination acting as a unit including individuals who are employees or officers of any of the such entities who are under a duty to perform an act concerning which a violation of this chapter could occur. It is the intent of this chapter that such persons be personally liable for unremitted taxes.

“Place of business” means a place where cigarettes or other tobacco products are sold, or where they are brought or kept for the purpose of sale or consumption, including a vessel, vehicle, airplane, or train.

“Purchase” means the acquisition of ownership or possession of cigarettes or other tobacco products from any source.

“Record” means a group of logically related fields of information concerning events affecting an organization, which is an integral part of an accounting information system, where separate, identifiable transaction data is entered as historical data.

“Retail” means a sale to a consumer or to any person for any purpose other than for resale.

“Retailer” means a person in the City who is engaged in the business of selling cigarettes or other tobacco products at retail.

“Sale” includes a sale, barter, exchange, and every other manner of transferring the ownership of personal property.

“Tax” means the cigarette and other tobacco products excise tax assessed pursuant to this chapter.

“Tax return” means the monthly report to be submitted to the City as required by this chapter.



“Vending machine operator” means a person who brings or causes cigarettes or tobacco products to be brought into the City and who owns or operates a vending machine that dispenses cigarettes, whether the vending machine is installed on the person’s own premises or installed elsewhere.

“Wholesale price” means the established price for which a manufacturer sells a tobacco product to a distributor or other person, after deduction of a discount or other reduction received by the distributor for quantity or cash.

**Section 2.** This ordinance shall be effective thirty (30) days after its passage and publication. This ordinance shall be enacted in accordance with Section 2.13 of the Charter of the City of Cordova, Alaska, within ten (10) days after its passage.

1st reading: \_\_\_\_\_

2nd reading and public hearing: \_\_\_\_\_

**PASSED AND APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2017.**

\_\_\_\_\_  
Clay R. Koplín, Mayor

ATTEST:

\_\_\_\_\_  
Susan Bourgeois, CMC, City Clerk

#### 5.40.030 - Exemptions.

The following sales and services are exempt transactions and are not subject to taxation by the city:

- A. Proceeds from casual, occasional or isolated sales which are easily identified as the sale of personal goods or property at such private functions as moving, garage, yard, food and bake sales, sale of private vehicles when the seller is not a dealer in used vehicles, or services such as babysitting or house-sitting. A city license is not required under this subsection A;
- B. Sales of insurance and bonds of guaranty and fidelity;
- C. Fees for sales and services in excess of three thousand dollars per single purchase transaction. This exemption does not apply to accumulative purchases and billed as a lump sum in excess of three thousand dollars except as provided in subsection (D) relating to sales of construction materials and services.

In the event of an oil spill that requires mobilization of the oil spill response vessels, this exemption is automatically suspended for ninety days on all fees for sales and services commencing on the day of the oil spill;

- D. Sales of construction materials and services exceeding three thousand dollars for use in each construction project paid for by any one purchaser during any twelve consecutive month period; provided, that the purchaser has obtained a building permit from the city prior to the start of the project and all receipts for construction materials and services clearly show the building permit number. Construction materials are those items becoming a permanent part of the structure. Purchaser may pay all sales tax on such materials and services and may apply for a refund as set out in [Section 5.40.042] or may pre-pay applicable city sales tax in advance and receive an exemption card;
- E. Gross receipts or proceeds derived from servicing, freezing, storing, handling or wharfing of fisheries commodities awaiting shipment or in the process of being shipped;
- F. Gross receipts or proceeds derived from sales or services which the municipality is prohibited from taxing under the laws of the state, or under the laws and the Constitution of the United States, including but not limited to:
  - 1. Sales by the U.S. Postal Service,
  - 2. Sales of any items purchased with food coupons, food stamps or other type of certificate issued under 7 U.S.C. Sections 2011-2025 (Food Stamp Act),
  - 3. Purchases made under the authority of or made with any type of certificate issued pursuant to 42 U.S.C. Sections 1771-1789 (Child Nutrition Act of 1966),
  - 4. Interstate sales,
  - 5. Air transportation including that portion of any chartered fishing or hunting expedition which covers the cost of air transportation,
  - 6. Gross receipts or proceeds derived from sales to the United States, state, city or any political department thereof;
- G. Gross receipts or proceeds from the transportation (including freight and shipping charges), loading, unloading or storing of cargo from marine vessels or aircraft in foreign, interstate or intrastate commerce;
- H. Services of a person licensed or certified by the state of Alaska as a doctor of medicine and surgery, a doctor of osteopathy and surgery, a doctor of veterinary medicine, a chiropractor, a dentist, a naturopath, an optometrist, an audiologist, a hospital, an occupational therapist, a physical therapist, a massage therapist or a licensed or practical nurse; provided, that the service is within the scope of the state license or certificate;

- I. Services of a person licensed or certified by the state of Alaska as a psychologist or psychological associate, a clinical social worker, an alcohol and drug counselor, or a marital and family therapist;
- J. Fees for supplies, equipment and services provided by a hospital, medical clinic or dental clinic for patient treatment including laboratory and x-ray services;
- K. Gross receipts or proceeds of the retail sale of prescription drugs;
- L. Sale of cemetery plots, caskets, funeral and burial related items and the services by a funeral home;
- M. Commissions received by travel agencies for their services that are not set by and billed by the travel agencies. Service charges set by and billed by the travel agencies are not exempt from taxation under this chapter;
- N. Dues or fees to clubs, labor unions or fraternal organizations;
- O. Fees and charges for extracurricular activities or events promoted or undertaken by educational or student organizations;
- P. Sales by any student organization, parent/teacher organization or booster club recognized by the school or educational organization in which it operates, which proceeds are utilized to further the purposes for which the organization was formed;
- Q. Sales and services by schools or other educational organizations made in the course of their regular functions and activities, which proceeds are utilized to further the purposes for which such organization was formed;
- R. Sales of food at educational and hospital cafeterias and lunchrooms which are operated primarily for staff and/or students, and which are not operated for the purpose of sale to the general public for profit;
- S. Sales, services and rentals by or to religious organizations which have obtained a 501(c)(3) or 501(c)(4) exemption certificate from the Internal Revenue Service and which are made in the normal conduct of religious activity; provided, the income from the exempt transaction is also exempt from federal income taxation;
- T. Sales, services and rentals by or to scouting, 4H or similar youth organizations which have obtained a 501(c)(3) or 501(c)(4) exemption certificate from the Internal Revenue Service and which are made in the normal conduct of activity; provided, the income from the exempt transaction is also exempt from federal income taxation;
- U. Sales, services and rentals by or to benevolent or civic organizations which have obtained a 501(c)(3) or 501(c)(4) exemption certificate from the Internal Revenue Service and which are made in the normal conduct of activity; provided, the income from the exempt transaction is also exempt from federal income taxation and the income is donated to a charity. Such organizations shall pay the sales taxes at the time of purchase and shall apply to the city for a refund as provided in Section 5.40.040;
- V. Proceeds from contract services provided by a state-licensed child care contractor;
- W. Proceeds from contract services provided by a person for the purpose of taking temporary care of minors for another person;
- X. Proceeds from products sold as wholesale sales to businesses designated by the state of Alaska as wholesalers. These include the sales of goods, wares, or merchandise to a retail dealer, manufacturer, or contractor, for resale within the city as is or incorporated into a product or commodity to be sold by the dealer, manufacturer or contractor within the city, if the subsequent sale is subject to the city sales tax. In this connection a retailer must stock that merchandise for resale, display the same to the public and hold himself out as regularly engaged in the business of selling such products;
- Y. Proceeds from products sold for resale:

1. Sales of goods, wares or merchandise to a retail dealer, manufacturer or contractor, for resale within the city as is or incorporated into a product or commodity to be sold by the dealer, manufacturer or contractor within the city, if the subsequent sale is subject to the city sales tax. The product must be an item that is sold as part of the reseller's primary business and must be of such nature that it can be purchased by the general public in a transaction that is not dependent upon the purchase of another product or service,
  2. Goods, wares or merchandise that can be purchased only as part of a package purchase of services, such as a bed-and-breakfast or a fishing or hunting charter and not by the general public as separate and individual items are not exempt under this chapter,
  3. Food products that are purchased for resale must be purchased and sold as is or prepared in a kitchen that is DEC-certified in order to qualify for sales tax exemption. Proof of certification must be available upon request;
- Z. Proceeds from services for resale: Services that are provided by a subcontractor to a contractor for a third party is considered services for resale and is exempt from taxation;
- AA. Sales of real property. Rentals of real property are not exempt from taxation by the city.
- AB. Commissions or fees in excess of two thousand five hundred dollars earned by brokers or agents in real estate sales transactions.
- AC. Home heating oil purchased for use in a dwelling, as defined in [Section 18.08.190], for use at that location conditioned on the following:
1. That no more than fifty percent of the floorspace of the building(s) considered as dwellings be used as nonresidential use, including business activities.
  2. That the dwelling be operated in compliance with all other regulations and laws.
  3. If a fuel tank is used to supply more than one structure or area then no more than fifty percent of the floorspace and area supplied shall be nondwelling and nonresidential including business activities.

(Ord. 1037 § 1, 2008; Ord. 865 (part), 2000).

(Ord. No. 1049, § 1, 6-10-2009; Ord. No. 1067, § 1, 3-2-2010; Ord. No. 1129, § 1, 6-3-2015)