

Mayor

Clay Koplin

Council Members

James Burton

Kenneth Jones

Jeff Guard

Melina Meyer

Anne Schaefer

David Allison

James Wiese

City Manager

Alan Lanning

City Clerk

Susan Bourgeois

Deputy Clerk

Tina Hammer

Student Council

Olivia Carroll

**City Council Work Session
February 20, 2018 @ 6:00 pm
Cordova Center Community Rooms
Agenda**

A. Call to order

B. Roll call

Mayor Clay Koplin, Council members James Burton, Kenneth Jones, Jeff Guard, Melina Meyer, Anne Schaefer, David Allison and James Wiese

C. Work Session topics

1. Tax Options, including options for implementation..... (page 1)
of the .5% fish tax on March 5 ballot
2. PWS Borough discussion..... (page 20)
draft resolutions included

D. Adjournment

If you have a disability that makes it difficult to attend city-sponsored functions, you may contact 424-6200 for assistance.

Full City Council agendas and packets available online at www.cityofcordova.net

MEMORANDUM

**TO: CORDOVA CITY COUNCIL
CORDOVA CITY CLERK
CORDOVA CITY MANAGER**

FROM: L. ANMEI GOLDSMITH

**RE: INFORMATIONAL MEMO ON TAX OPTIONS TO GENERATE
REVENUE FOR THE CITY OF CORDOVA**

CLIENT: CITY OF CORDOVA

FILE NO.: 401777.254

DATE: FEBRUARY 13, 2019

Introduction:

The purpose of this memorandum is to provide the City of Cordova, Alaska (the “City”) with an updated overview of the options available for implementing revenue generating taxes. The discussion below includes a background section that explains the legal framework under which municipalities can implement taxes. There is also a section that discusses the various categories of taxes that the City may wish to consider adopting.

Constitutional and Statutory Authority:

The Alaska Constitution permits delegation of the state’s taxation power to local governments, but limits delegation of that power to only organized cities and boroughs. The constitutional limitation that “no tax shall be levied...except for a public purpose...” applies to both state and municipal taxation. Cordova, as a home rule municipality, is granted broad governmental powers by the Alaska Constitution; however the constitution also provides that the “...standard for appraisal of all property assessed by the state or its political subdivision shall be prescribed by law...” Additionally, based on Article X, Section I of the Alaska Constitution, “...a liberal construction shall be given to the power of a local government...” Therefore, although not expressly stated, it is assumed that all real and personal property is taxable unless it is specifically exempt from property taxation.

AS 29.45.010 authorizes cities, boroughs, and unified municipalities to levy a property tax. AS 29.45.650 through 710 authorize the levy of sales and use taxes at the

municipal level. The statutes give broad authority to municipalities to levy taxes on sales, rents and services provided within the municipality. If a tax is levied on real or personal property, it must be assessed, levied and collected as provided in AS 29.45.

1. Taxation limitations on municipalities:

Cordova, as a home rule municipality, has all of the legislative powers not prohibited by law or charter. AS 29.10.200 lists all of the sections that act as limitations on a home rule municipality's legislative powers. In the taxation realm, these limitations include:

- AS 29.35.170(b) Assessment and collection of tax – This law requires a borough to assess and collect taxes, even if a tax is levied by a city. This law does not apply to Cordova.
- AS 29.45.010 - 560 Property tax – These laws allow a city outside a borough to levy a property tax only as provided by AS 29.45.010 - 29.45.500. These provisions are too lengthy to include in this memorandum.
- AS 29.45.650(c)-(f),(i)-(k) Borough sales and use tax – Applies to municipalities in boroughs.
- AS 29.45.700(d) Power of levy – Prohibits a city from levying a sales tax on a purchase made with food coupons, food stamps, or other types of allotments under the Food Stamp Program; or food instruments, food vouchers, or other types of certificates issued under the Special Supplemental Food Program for Women, Infants, and Children.

Under AS 29.45.090, municipality may not levy an ad valorem tax exceeding 3 percent (30 mills) of the assessed value of property within the municipality during the year, nor may a municipality, levy taxes exceeding \$1,500 per resident of the geographical area in a year. AS 29.45.090 further prohibits a municipality, or a combination of municipalities occupying the same geographic area, from levying taxes upon value that, when combined with the value of property otherwise taxable by the municipality, exceeds the product of a sliding scale percentage of the average per-capita assessed value as determined under AS 43.56.010(c), multiplied by the number of residents of the taxing municipality. This limitation is commonly referred to as the "225 percent formula." The sliding scale percentage varies according to the following:

<u>If the tax rate is determined under AS 43.56.010(b) is:</u>	<u>The percentage is:</u>
• Not more than 18.0 mills	375 percent
• More than 18.0 mills but not more than 19.0 mills	300 percent
• More than 19.0 mills	225 percent

This variation of the formula's percentages allows municipalities the ability to apply a larger portion of the total revenues to their operating budget as overall millage rates decrease. Conversely, as overall millage rates increase, total available funding for the

operating budget will decrease. However, the statutory tax limit of 30 mills for operating budgets is maintained under both scenarios.

It is also important to keep in mind that a municipal tax ordinance may be subject to the notice provisions in AS 29.45 on municipal taxation.

2. Cordova City Charter and Code

Under Cordova’s City Charter, the city has all of the powers of taxation that are afforded to home rule cities under the state constitution and law.¹ Cordova’s ordinances currently implement and assess the following categories of taxes:

Tax	Ordinance Chapter	Rate	Notes
Property Tax	CMC 5.36	The council shall thereupon by resolution annually before June 15th fix a rate of tax levy and designate the number of mills upon each dollar of value of assessed taxable real property that shall be levied. ²	
Biennial Motor Vehicle Registration Tax	CMC 5.38	The rate is assessed by type and age of vehicle in AS 28.10.431.	The biennial tax is levied upon motor vehicles subject to the registration fee under AS 28.10.411 and AS 28.10.421.
Motor Fuel Tax	CMC 5.39 (repealed)	An excise tax is levied on all motor fuel dispensed into vehicles and watercraft from any fueling facility within the city other than a fueling facility located on property for which the city receives rent calculated based on the number of gallons of fuel sold from the fueling facility. The tax is 4 cents per gallon.	The ordinance adopting this tax was repealed by an initiative petition as of May 24, 2018. An initiated ordinance may not itself be repealed for two years. ³

¹ Charter of the City of Cordova, Section 5-7.

² CMC 5.36.240.

³ Charter of the City of Cordova, Section 11-4.

Sales Tax	CMC 5.40.010	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.	Sales tax cap was lowered from \$7,500 to \$3,000 on May 24, 2018.
Sales Surtax	CMC 5.40.012	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: 1) public accommodation services, and 2) motor vehicle rentals, excluding watercraft.	
Raw Fish Tax	TBD	A tax of one-half percent (0.5%) on the value of raw fish landed in the City, with the proceeds of the tax to be dedicated to paying the cost of City harbor facility improvements, repair and maintenance, including without limitation payment of debt service on bonds issued by the City for harbor and related capital improvements.	This will not become an ordinance unless it is ratified by voters at the March 5, 2019 regular election.

3. Additional tax options for Cordova

As stated above, all real and personal property is taxable unless it is exempt. AS 29.45.030 lists the numerous exemptions, but examples include household furniture and personal effects of members of a household, natural resources in place, and

property used exclusively for nonprofit, religious, charitable, cemetery, hospital, or educational purposes. Property owned by Alaska Native Claims Settlement Act (ANCSA) Native corporations is also exempt from municipal property tax unless the property is leased or developed.

In addition to the more common sales and use taxes, municipalities often use excise taxes as a revenue raising option. Generally speaking, an “excise tax” is a “tax on the enjoyment of a privilege or tax on the manufacture, sale or consumption of a commodity.” It can also be thought of as a tax on the performance of an act rather than the mere sale of goods. Excise taxes may be implemented without voter approval and do not have many of the limitations placed on sales taxes regarding the uniformity of the rate or limitations on what may be taxed. Tobacco is a product that is often taxed as an excise tax. An excise tax on tobacco products is treated as a tax on the commodity (the cigarette or cigar), and regardless of how many times it is sold, it is taxed as a commodity only once. See *Fannon v. Matanuska-Susitna Borough*, 192 P.3d 982, 989 (Alaska 2008).

In addition to more general excise taxes, it is worth noting that some municipalities within Alaska impose severance taxes. Severance taxes are a type of excise tax that is imposed on harvesting or extracting natural resources. The Northwest Arctic Borough,⁴ the Denali Borough,⁵ and the Kodiak Island Borough⁶ all impose a severance tax on natural resources within borough borders. This can be an important source of revenue in an area rich in natural resources such as heavy metals, oil and gas, or even gravel. The City’s raw fish tax that is up for voter approval in March 2019 is a type of severance tax.

Examples of other taxes that Cordova does not currently impose but may consider implementing in the future are:

- aircraft registration tax
- real estate transfer tax
- personal property tax
- marine passenger tax
- excise tax on tobacco
- excise tax on marijuana
- residential boat tax
- passenger transportation business tax
- use tax on goods brought into the City

Other revenue generating options could include increasing the existing general sales tax rate, eliminating certain exemptions from the existing general sales tax, assessing a severance tax on other natural resources such as gravel, or imposing a surtax on additional types of sales such as alcoholic beverages, tobacco sales, or

⁴ Northwest Arctic Borough Code Chapter 7.10.

⁵ Denali Borough Code Chapter 3.30.

⁶ Kodiak Island Borough Code Chapter 3.45.

marijuana sales.⁷

As a home rule municipality, Cordova has a number of tax options available for implementation. Please contact me with any questions or to further explore any of the options presented in this memo.

⁷ Although if tobacco products or marijuana products are subject to an excise tax they cannot also be subject to a sales tax.

**CITY OF CORDOVA, ALASKA
ORDINANCE XXXX**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CORDOVA,
ALASKA, AMENDING CHAPTER 5.40.010 TO ADOPT A ONE (1) PERCENT
INCREASE TO THE GENERAL SALES TAX**

WHEREAS, the City of Cordova, Alaska (“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 minimal sales tax increase of one percent, from six percent to seven percent, 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 ~~seven~~**seven** six of the sale price, charge for services or rents collected.

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 _____, 2019.

ATTEST:

Clay Koplin, Mayor

Susan Bourgeois, CMC, City Clerk

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**CITY OF CORDOVA, ALASKA
ORDINANCE XXXX**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CORDOVA,
ALASKA, AMENDING CHAPTER 5.40.010 TO ADOPT A USE TAX**

WHEREAS, the City of Cordova, Alaska (“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 use tax on tangible personal property acquired outside the City and brought into the City, 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 of the sale price, charge for services or rents collected.

(B) There is levied on every person in the city a use tax for the privilege of using within this city as a consumer any article of tangible personal property, as listed in Section 5.40.010(B)(2), acquired outside the city and brought into the city in any manner for the purpose of using the property in the city, including tangible personal property acquired at a casual or isolated sale.

(1) The use tax is levied and must be collected in an amount equal to the value of the article used, multiplied by the applicable rate in effect for the sales tax under Section 5.40.010(A).

(2) The tax imposed by this section 5.40.010(B) applies to:

(i) motor vehicle use; and

(ii) use of tangible personal property acquired in a single transaction in an amount exceeding \$1,000.00.

Section 2. Cordova City Code Title 5.40.012(A) is amended to read as follows:

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(A) on the following sales, services and rents:

[Deleted text is ~~struck out~~; added text is **bold and underlined**]

Commented [AG1]: I have placed the use tax in the same section as the sales tax. It is important to keep in mind that these are separate and distinct taxes.

Commented [AG2]: This is suggested language. If the City goes forward with this type of tax additional drafting may be necessary to achieve the desired goal.

Commented [AG3]: These are just suggestions for the types of uses you may want to consider taxing.

Section 3. 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 _____, 2019.

ATTEST:

Clay Koplín, Mayor

Susan Bourgeois, CMC, City Clerk

DRAFT

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**CITY OF CORDOVA, ALASKA
ORDINANCE XXXX**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CORDOVA,
ALASKA, AMENDING CHAPTER 5.40.012 TO ADD ALCOHOLIC BEVERAGES TO
THE LIST OF SALES SUBJECT TO SURTAX**

WHEREAS, the City of Cordova, Alaska (“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 surtax on alcoholic beverages 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 Municipal Code section 5.40.012 - Surtax levied on certain sales, services and rents, is amended to read as follows:

A. ~~Effective August 1, 1999, in~~ **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:

~~**1B.**~~ **Public accommodation services; and**

~~**2C.**~~ **Motor vehicle rentals, excluding watercraft; and-**

3. Alcoholic beverage sales.

Section 2. Cordova Municipal Code section 5.40.020 – Definitions, is amended by adding a new paragraph to read as follows:

J. “Alcoholic beverage” means a spirituous, vinous, malt, or other fermented or distilled liquid, whatever the origin, that is intended for human consumption as a beverage and that contains one-half of one percent or more of alcohol by volume, whether produced commercially or privately.

Section 3. 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.

[Deleted text is ~~struck out~~; added text is **bold and underlined**]

1st reading: _____

2nd reading and public hearing: _____

PASSED AND APPROVED THIS _____ DAY OF _____, 2019.

ATTEST:

Clay Koplin, Mayor

Susan Bourgeois, CMC, City Clerk

DRAFT

[Deleted text is ~~struck out~~; added text is **bold and underlined**]

**CITY OF CORDOVA, ALASKA
ORDINANCE XXXX**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CORDOVA,
ALASKA, ADDING CHAPTER 5.42 – REAL ESTATE TRANSFER TAX TO THE
CORDOVA MUNICIPAL CODE**

WHEREAS, the City of Cordova, Alaska (“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 real estate transfer tax of one percent on the value of any real estate conveyed within the City’s boundaries 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 Municipal Code is amended by adding a new Chapter 5.42 as follows:

Chapter 5.42 – REAL ESTATE TRANSFER TAX

Commented [AG1]: This chapter was copied from the ordinances of Snowmass Village, CO, and adapted. Many municipalities across the USA have real estate transfer taxes whose ordinances could also be used as models for Cordova.

5.42.010 - Imposition of tax.

There is hereby imposed a tax on all transfers, whether by deeds, instruments, writings, or any other documents or otherwise, by which any lands, tenements or other interests in real property located in the City are sold, granted, assigned, transferred, exchanged or otherwise conveyed to or vested in a purchaser thereof or any other person, except as may be specifically exempted by Section 5.42.050 below. Said tax shall be due and payable at the time of transfer and contemporaneously therewith.

5.42.020 - Persons liable for tax.

Each buyer and any other person to whom a transfer is made, which is subject to the tax imposed under Section 5.42.010 above, shall be jointly and severally liable for payment of the tax. The buyer, or person to whom a transfer is made, shall remit the tax to the City Manager.

5.42.030 - Definitions.

The following defined words and terms shall have the indicated meanings for the purpose of this Chapter:

[Deleted text is ~~struck out~~; added text is **bold and underlined**]

Buyer means any person to whom a transfer of real property is made.

Consideration means the gross consideration paid for the real property affected by the transfer and shall include actual cash paid, the fair market value of real and personal property delivered or conveyed in exchange for the transfer, or contracted to be so paid, delivered or conveyed in return for the transfer, and shall include the amount of any lien, mortgage, contract indebtedness or other encumbrance or debt, either given to secure the purchase price, or any part thereof, or remaining unpaid on the property at the time of the transfer. The term *consideration* does not include as an addition to gross consideration the amount of any outstanding lien or encumbrance in favor of the United States, the State or a municipal or quasi-municipal corporation or district for taxes or assessments for special or local benefits or improvements.

Conveyance of ownership or title to real property, means and includes the transfer of more than fifty percent (50%) of the authorized and issued shares of a corporation which has as its principal asset real property situated in the City of Cordova.

Real estate transfer tax means the tax imposed by this Chapter on the transfer of real property.

Real property means land and improvements to land, such as buildings, structures, fixtures of any kind thereon.

Transfer means and includes, unless exempt as provided in Section 5.42.050 below, any grant, assignment, transfer, exchange, conveyance or consummated sale of any ownership or title to real property situated in the City of Cordova.

5.42.040 - Amount of tax.

The amount of tax payable in each case shall be as follows:

(1) Where there is no consideration or when the consideration is five hundred dollars (\$500.00) or less, no real estate transfer tax shall be payable.

(2) Where the consideration exceeds five hundred dollars (\$500.00), the real estate transfer tax payable is one percent (1%) of the consideration.

5.42.050 - Exemptions.

The real estate transfer tax imposed by this Chapter shall not apply to:

(1) Any transfer wherein the United States or any agency or instrumentality thereof, the State, any municipality, or other political subdivision of the State, is either the grantor or grantee;

[Deleted text is ~~struck out~~; added text is **bold and underlined**]

(2) Any transfer by gift of real property, where there is no consideration other than love and affection or charitable donation;

(3) Any transfer by document, decree or agreement partitioning, terminating or evidencing termination of a joint tenancy, tenancy in common or other co-ownership in property; however, if additional consideration of value is paid in connection with such partition or termination, the tax shall apply and be based upon such additional consideration;

(4) Any transfer of title or change of interest in real property by reason of death, pursuant to a will, the law of descent and distribution or otherwise;

(5) Transfers made pursuant to reorganization, merger or consolidation of corporations, or by a subsidiary to a parent corporation for no consideration other than cancellation or surrender of the subsidiary's stock, or transfers made to or from a corporation, partnership, limited partnership, joint venture, business trust or other association or organization if that association or organization is owned by the persons by or to whom such transfer was made, and if such persons will have the same relative interests either in the association or organization or in the real property immediately before and after said transfer, and if there is no consideration other than their respective interests in the new association or organization or in the property;

(6) Transfers to make effective any plan confirmed or ordered by a court of competent jurisdiction under the U.S. Bankruptcy Code or in any equity receivership proceeding;

(7) Any transfer made and delivered without consideration for the purpose of confirming, correcting, modifying or supplementing a transfer previously made; making minor boundary adjustments; removing clouds on titles; or granting easements, rights-of-way or licenses;

(8) Any decree or order of a court of record quieting, determining or resting title, except for a decree of foreclosure, including a final order awarding title pursuant to a condemnation proceeding;

(9) Any transfer of cemetery lots;

(10) Any mineral transfer or royalty transfer;

(11) Transfers to secure a debt or other obligation, or the release of real property which is security for a debt or other obligation;

(12) Any transfer:

(a) By deed in lieu of foreclosure, on the condition that:

(i) Such transfer shall be exempt only if the grantee in such deed is the same person or entity which is the holder, payee or beneficiary (as determined at the time

[Deleted text is ~~struck out~~; added text is **bold and underlined**]

of the transfer by deed) of the debt or instrument which is being canceled, in whole or in part, in exchange for the transfer; and

(ii) Such transfer shall be exempt only to the extent of the current amount of the debt which is being canceled in exchange for the transfer.

(b) By clerk's deed, trustee's deed or other conveyance of real property in connection with an execution sale, foreclosure sale by the public trustee under a power of sale, court decree foreclosing a mortgage, deed of trust or other security instrument or court decree of lien foreclosure, on the condition that:

(i) Such transfer shall be exempt only if the grantee in such deed is the same person or entity which is the holder, payee or beneficiary (as determined at the time of the commencement of foreclosure or execution) of the debt or instrument which is the basis of the proceeding, or such person or entity is a junior lienor exercising redemption rights pursuant to a lien that was recorded prior to commencement of the foreclosure or execution; and

(ii) Such transfer shall be exempt only to the extent of the current amount of the obligation satisfied at the execution or foreclosure sale, plus any obligations to prior lien holders paid from the sale; and

(iii) The certificate of purchase or other evidence of purchase issued by the person or entity conducting the sale shall, if the above described conditions are met, be exempt from the within transfer tax. If the conditions are not so satisfied, there shall be a tax imposed as provided herein, at the time of the issuance of the certificate of purchase or other evidence of purchase issued by the person or entity conducting the sale, which payment shall be made to the City of Cordova in escrow. If no redemption is made by the owner, the tax shall become absolute to the City of Cordova upon expiration of the owner's redemption periods. If redemption is made by the owner, the tax shall be refunded to the person who paid it to the City of Cordova. A transfer of the certificate of purchase or other evidence of purchase issued by the person or entity conducting the sale shall be subject to a transfer tax. The deed issued by the person or entity conducting the sale is not a transfer subject to the transfer tax;

(13) Any executory contract for the sale of real property, of less than three (3) years' duration, under which the vendee is entitled to or does take possession thereof without acquiring title thereto, or any assignment or cancellation of any such contract;

(14) Any transfer that is made pursuant to a valid and legally enforceable contract for sale entered into prior to the effective date of the ordinance codified herein, provided that an application for exemption is made with the City Manager prior to the effective date of the ordinance codified herein upon such forms and in such a manner as may be prescribed.

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(15) Any transfer for the purpose of raising investment/equity funds or capital (e.g., sale of partnership interests or stock) to facilitate development or redevelopment of real estate wherein the transferor retains a significant interest in the real estate to be developed or redeveloped or in the entity to which the real estate is so transferred;

(16) Any transfer to a straw man or intermediary for the purpose of obtaining nonrecognition of gain or loss as contemplated by Section 1031 of the Internal Revenue Code of 1986, or otherwise, where vesting of title in the straw man or intermediary is transitory and the straw man or intermediary receives no consideration or only a nominal fee for participation in the transaction. Should the Internal Revenue Service determine that the transaction does not meet the requirements of Section 1031 for purposes of nonrecognition of gain or loss, then this exemption shall be inapplicable.

5.42.060 - Application for exemption.

(a) In the event of any transfer claimed to be exempt from the land transfer tax herein imposed, the grantor or purchaser shall apply for and obtain from the City Manager a certificate of exemption, which may be affixed to the deed or instrument of transfer. The burden of proving any exemption shall in all cases be upon the one claiming it. The exemptions provided in Section 5.42.050 above shall be allowed only with a certificate of exemption issued by the City Manager prior to the date the land transfer tax is payable to the City of Cordova.

(b) Any person whose claim of exemption duly applied for under the provisions of this Section is denied by the City Manager may immediately appeal to the City Council for a determination of such exemption, and such appeal shall be considered by the City Council within thirty (30) days of receipt of the same. In the event of a determination by the City Council favorable to the appellant, any amount previously deposited, or so much thereof as may be allowed by the City Council, shall be promptly refunded to the person paying or depositing the same. If a decision is not made by the City Council within thirty (30) days of the receipt of the appeal, the decision will be deemed favorable to the appellant, unless the appellant has obtained a continuance of the matter, in which case the City Council shall make its decision within six (6) months after receipt of the appeal.

(c) In case of an application for an exemption which is not granted before the transfer takes place, the land transfer tax shall be paid as required by this Chapter. Thereafter if the exemption shall be allowed, upon application to the City Manager, the person who has paid said tax shall be entitled to a refund thereof, or so much of said tax as shall qualify for refunding pursuant to the exemption granted.

5.42.070 - Lands affected.

When a transfer subject to this Chapter includes real property located within the City of Cordova as well as real property located elsewhere, the tax imposed under the authority of this Article shall be computed only with respect to real property located within the City of Cordova,

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and the tax shall be imposed based on that part of the consideration fairly attributable to such real property located within the City of Cordova.

5.42.080 - City Manager to enforce.

(a) The City Manager is charged with the enforcement of the provisions of this Chapter.

(b) At the time of any transfer upon which a tax is imposed under this Chapter, there shall be made a report to the City, setting forth the true, complete and actual consideration for the transfer, the names of the parties thereto, the description and location of the real property transferred, and such other information as the City Manager may require.

(c) For the purpose of collection of the tax imposed by this Chapter, all banks, title companies, escrow companies, building and loan institutions, attorneys, real estate agencies, or other closing agents or agencies, permitted as such to do business under the laws of the State may collect the real estate transfer tax (holding said funds in trust for the City of Cordova) and remit the same to the City of Cordova for and on behalf of the purchaser, forthwith. Said funds shall not be held in escrow for the benefit of the City of Cordova.

5.42.090 - Due dates, delinquencies, penalties, interest, evasion.

(a) The real estate transfer tax imposed under this Chapter is due and payable at the time of the transfer of real property and is delinquent if it remains unpaid for thirty (30) days thereafter. In the event that the tax is not paid prior to becoming delinquent, a delinquency penalty of ten percent (10%) of the amount of tax due shall accrue. In the event a portion of the tax is paid prior to becoming delinquent, the penalty shall only accrue as to the portion which is delinquent. Interest shall accrue at the rate of one and one-half percent (1½%) per month, or fraction thereof, or at such other interest rate as the City Council may from time to time establish by ordinance, on the amount of the tax, exclusive of penalties, from the date the tax becomes delinquent to the date of payment. Interest and penalty accrued shall become a part of the tax.

(b) Any person liable for the real estate transfer tax who shall cause the deed, instrument of conveyance, or document evidencing said transfer to be recorded in the office of the Recorder for the Cordova Recording District, or attempts to so record the document, until and unless the real estate transfer tax and all penalties and interest thereon have been paid in full, shall be in violation of this Chapter.

(c) Notwithstanding the provisions of Section 5.42.050, if an artifice or device is employed in connection with the transfer of real property, which term *artifice or device* means a transaction or transactions a substantial purpose of which is to evade the provisions of this Chapter and the imposition of the tax hereunder, then such transfer will nevertheless be subject to the real estate transfer tax. *Artifice or device* includes, but is not limited to, (1) a transfer to a corporation, partnership, limited partnership, joint venture, business trust or other association or organization followed within three (3) years by an assignment of the controlling interest in such association or

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organization, and (2) such a transfer plus the intent at the time of transfer to ultimately assign the controlling interest in such association or organization.

5.42.100. - Lien.

(a) The tax imposed by this Chapter, and any penalty and interest due thereon, if not paid when due, and all costs of collection of said tax, penalty and interest, shall constitute a perpetual lien on the real property transferred in the amount applicable to each lot or parcel of real property transferred and shall have priority over all other liens except general tax liens and special or local improvement district assessment liens. Except as aforesaid, the lien for said tax shall be and until paid shall remain a first and prior lien superior to all other liens upon said property and shall take precedence on such property over other liens or claims of whatsoever kind or nature. Said lien shall continue until the amount thereof is paid or until its discharge of record by foreclosure or otherwise.

(b) The recording of the ordinance codified herein in the office of the State Recorder in the Cordova Recording District shall constitute notice to all persons interested in the transfer of real property of the existence of and the lien imposed by the real estate transfer tax on such transfers.

(c) If the real estate transfer tax is unpaid and delinquent, the City Manager shall give written notification to the purchaser or person to whom the transfer is made at the address shown on any deed or instrument evidencing the transfer, or his or her last known address, of said delinquency. Said notification shall be mailed certified mail, postage prepaid, return receipt requested, and shall be effective on the date of mailing. If the tax, penalty and interest are not paid within thirty (30) days of the effective date of the notification, the City Manager shall commence foreclosure of the lien for said tax in the same manner as the foreclosure of a mortgage in accordance with state law.

(d) The amount of the tax, penalty and interest imposed under the provisions of this Chapter shall be deemed a personal debt owed by the purchaser to the City of Cordova. Any person owing money to the City of Cordova under the provisions of this Chapter shall be liable to an action brought in the name of the City of Cordova for the recovery of such amount.

(e) Any person who shall fail or refuse to pay any tax due hereunder may be punished as set forth in Section 1.28.080 of this Code.

(f) Any remedies provided for herein shall be cumulative and not exclusive and shall be in addition to any other remedies provided by law.

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: _____

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2nd reading and public hearing: _____

PASSED AND APPROVED THIS _____ DAY OF _____, 2019.

ATTEST:

Clay Koplin, Mayor

Susan Bourgeois, CMC, City Clerk

DRAFT

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AGENDA ITEM # 2

City Council Meeting Date: 2/20/19

CITY COUNCIL COMMUNICATION FORM

FROM: Planning Staff

DATE: 2/13/19

ITEM: Borough Update

NEXT STEP: None

INFORMATION
 MOTION
 RESOLUTION
 ORDINANCE

I. REQUEST OR ISSUE:

Attached is a letter from Girdwood Governance Association indicating that they are putting a pause on efforts to pursue borough formation in order to focus on their local city incorporation.

Phase 1 of the feasibility study demonstrated that a Prince William Sound borough is economically feasible. The study and calculator also show that there would be a significant reduction in city costs and likely an overall reduction in tax burden for Cordova residents. While the economics of a borough are favorable, the political and other intangible impacts of a borough are much more complicated and nuanced.

Staff recommend taking no action at this time as nothing is being requested from the city in furtherance of borough formation. While the Phase 1 results were illuminating, many misconceptions remain in the community about what PWS borough formation would mean for Cordova. The community is best served when it keeps an open mind and considers all options when confronted with challenges.



PO Box 777 Girdwood, Anchorage AK 99587

www.Girdwood.US

To: Cordova, Whittier and Interested parties of the PWS Borough feasibility study

Dear interested parties:

Girdwood Governance Association (GGA) would like to thank all of you for your participation in the conversations regarding the feasibility of formation of a Prince William Sound Borough.

The numbers that were researched and presented by Information Insights are encouraging. However, Girdwood Governance Association, as a group and at this time, is not willing to invest time or money in proceeding to phase 2 of a formation of a Prince William Sound Borough. We are concentrating our efforts locally, on a feasibility study for The City of Girdwood.

We would like to extend an open invitation to our neighboring communities for future conversations on this topic and are grateful to those of you that have supported the first phase of the economic study. Please visit our website, to see our progress on our own feasibility study and to stay up to date on our fundraising events.

Sincerely,

Girdwood Governance, Inc.

**CITY OF CORDOVA, ALASKA
RESOLUTION **XX-19-XX****

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CORDOVA, ALASKA OPPOSING THE INCORPORATION OF THE PRINCE WILLIAM SOUND BOROUGH AS PROPOSED AND DISCUSSED AMONG INTERESTED PARTIES IN 2018-2019, AND STAYING THE DUTIES OF THE PWS BOROUGH ADVISORY COMMITTEE PENDING THE FILING OF A PETITION TO INCORPORATE THE PROPOSED BOROUGH

WHEREAS, The City of Cordova has participated in a feasibility study regarding the incorporation and formation of a home rule borough called “the Prince William Sound Borough (“PWS Borough”)” which could include any combination of or all the following cities: Cordova, Girdwood, Valdez, Chenega, Tatitlek and Whittier; and

WHEREAS, City Council created the Cordova PWS Borough Advisory Committee to participate in and provide recommendations regarding the formation of the PWS Borough as proposed and discussed among interested parties in 2018-2019; and

WHEREAS, the PWS Borough Advisory Committee found that the Borough may be feasible and have benefits for the City but could not definitively determine that the Borough would have such benefits without answers to several outstanding questions, including but not limited to identification of the cities that would be included in the PWS Borough and the proposed tax structure for the proposed borough; and

WHEREAS, it is in the City’s best interest to preserve City resources until PWS Borough sponsors have an opportunity to address the City’s outstanding questions.

NOW, THEREFORE BE IT RESOLVED THAT:

Section 1

A. The City shall not expend any additional resources to participate in or fund any effort by any association or group to promote, develop or support the formation and incorporation of the PWS Borough as proposed and discussed among interested parties in 2018-2019

B. Cordova City Council acknowledges that both Council and the administration oppose the formation and incorporation of the PWS Borough as proposed by and discussed among interested parties in 2018-2019; and

C. The duties of the PWS Borough Advisory Committee are stayed pending the filing of a petition for incorporation of a PWS Borough. The PWS Borough Advisory Committee shall resume its duties under Resolution 09-18-26 no more than 30 days after the City receives official notice that a petition application has been filed with the Local Boundary Commission.

Section 2

Resolution 09-18-26 is repealed to the extent it contradicts this resolution.

PASSED AND APPROVED THIS ____ DAY OF _____, 2019.

**Cordova City Council
Draft Resolution
On the Proposed Creation of a Borough Government
In Prince William Sound**

Whereas: A group from outside the Prince William Sound region has proposed creation of a new Prince William Sound Borough that would include the City of Cordova;

Whereas: Under the proposal by the small group, calling itself the Girdwood Governance Association (GGA), the community of Girdwood would detach itself from the Municipality of Anchorage and join a new borough its plans to create;

Whereas, the Girdwood community's own elected representatives, the Girdwood Board of Supervisors, do not support the GGA proposal;

Whereas: The boundaries of the new borough the GGA proposes to form would include most of the cities and communities in the Prince William Sound Region;

Whereas: Most of the communities impacted by the GGA proposal do not support formation of the new borough;

Whereas: letters opposing the GGA proposal to form a new borough have been sent to the LBC by the Chenega Corporation, the Chenega IRA Council, Tatitlek Corporation, the Tatitlek Village IRA Council, the Eyak Corporation, and Chugachmiut, a nonprofit representing all the Native communities in the Chugach region.

Whereas: The Prince William Sound Economic Development District, representing the communities of Prince William Sound, also voted in November 2018 to oppose the GGA's borough formation effort.

Whereas: the Chugach Alaska Corporation, Alaska Native regional corporation representing the entire Prince William Sound region, stands in opposition to creation of this proposed Borough;

Whereas: Article X, Section 3 of the Alaska State Constitution requires that "[e]ach borough shall embrace an area and population with common interests to the maximum degree possible.";

Whereas: State law (AS 29.05.031(a)) includes the following among the requirements for creation of a borough:

- (a)** An area that meets the following standards may incorporate as a home rule, first class, or second class borough, or as a unified municipality:

- (1) the population of the area is interrelated and integrated as to its social, cultural, and economic activities, and is large and stable enough to support borough government;
- (2) the boundaries of the proposed borough or unified municipality conform generally to natural geography and include all areas necessary for full development of municipal services; . . .

Whereas: Girdwood is not in the Prince William Sound region, has almost nothing in common with the small coastal communities of the Sound, and does not meet the requirements for borough creation under the State Constitution or under State law;

Whereas: Girdwood is an affluent, well populated, suburban Anchorage community, situated inland and on a major highway;

Whereas: Girdwood is a commuter neighborhood for Anchorage; and is connected to that Municipality by geography, demography, culture, politics, and business;

Whereas: Girdwood has no economic, political, cultural, geographic, or business connections with the coastal communities on Prince William Sound;

Whereas: Many of the communities along Prince William Sound that would be subsumed into the new borough under the proposal are small, isolated, coastal fishing communities with distinct traditions, cultural identities, and ways of life that deserve respect and preservation;

Whereas: None of these communities of the Prince William Sound region have anything whatsoever to do with the inland, urbanized area off Cook Inlet, in which Anchorage and Girdwood are both located;

Whereas: Rural, isolated communities on Prince William Sound are at risk of losing local control if thrust into a large, gerrymandered borough whose government would be heavily skewed toward a far-flung community like Girdwood with a large population, a larger budget, and different economic, cultural, and regional objectives.

Now therefore be it resolved by the Cordova City Council that the creation of the Prince William Sound Borough, as proposed by the Girdwood Governance Association, is not in the best interests of the City of Cordova;

Be it further resolved that the City of Cordova requests to be excluded from the boundaries of the Girdwood Governance Association's proposal to create a new home rule, first class, or second class Prince William Sound Borough;

Be it further resolved that funding of any economic feasibility studies or other work in support of creation of a Prince William Sound Borough be terminated immediately.