

**CITY OF CORDOVA, ALASKA
ORDINANCE 1198**

AN ORDINANCE OF THE COUNCIL OF THE CITY OF CORDOVA, ALASKA, REPEALING CHAPTER 5.42 “ALASKA REMOTE SELLER SALES TAX CODE” AND AMENDING CMC 5.40.010 TO CLARIFY WHEN SALES TAX IS LEVIED ON REMOTE AND LOCAL SALES, REPEALING AND REENACTING CMC 5.40.011 TO ADOPT BY REFERENCE THE ALASKA UNIFORM REMOTE SELLER SALES TAX CODE (“UNIFORM CODE”) AND AMENDING CMC 5.40.020 TO REVISE AND ADD DEFINITIONS TO ENSURE CONSISTENCY WITH THAT CODE, AMENDING CMC 5.40.130 TO REVISE LATE FILING AND PAYMENT PENALTIES AND INTEREST TO MIRROR THOSE IMPOSED IN THE UNIFORM CODE, ADDING CMC 5.40.135 TO PERMIT REPAYMENT PLANS FOR DELINQUENT TAXES IN THE SAME MANNER AS THE UNIFORM CODE, REPEALING AND REENACTING CMC 5.40.110 TO MIRROR THE AUDIT PROCESS AND LIABILITY FOR FAILURE TO SUBMIT RETURNS ADOPTED IN THE UNIFORM CODE AND ADOPTING AN AUDIT PROTEST APPEAL PROCESS FOR SELLERS

WHEREAS, pursuant to Resolution 12-19-59 of the City Council of the City of Cordova, Alaska, (the ‘City’) the City agreed to join the Alaska Remote Seller Sales Tax Commission (the ‘Commission’), a multi-governmental agency formed for purpose of collecting and remitting City sales tax from remote sellers; and

WHEREAS, the terms of the Agreement require adoption of certain uniform provisions, known as the Alaska Uniform Remote Seller Sales Tax Code (the ‘Uniform Code’) for collection and remittance of municipal sales tax applicable to sales made by remote sellers, which was adopted by the City by Ordinance Number 1183; and

WHEREAS, the Agreement further requires member jurisdictions who have adopted the Uniform Code to adopt updates made to the Uniform Code within 120 days of their adoption by the Commission; and

WHEREAS, on February 24, 2021, the Commission updated the Uniform Code to incorporate changes to the Uniform Code that eliminated the risk of discrimination between local and remote sellers; and

WHEREAS, these revisions to the Uniform Code permit the City to incorporate the Uniform Code into the City Code easily and lawfully by reference; and

WHEREAS, the incorporation of the Uniform Code by reference provides clarity and promotes a user-friendly Code for both remote and local sellers; and

WHEREAS, the Uniform Code adopts several tax procedures and processes that should and may be applied uniformly to local sellers and it is in the City’s best interest to incorporate these processes and procedures into the Cordova Municipal Code.

NOW, THEREFORE, it is ordained as follows:

Section 1. Cordova Municipal Code Chapter 5.42 is repealed.

Section 2. Cordova Municipal Code Section 5.40.010 is amended to read as follows:

5.40.010 – ~~Levied~~ **Sales tax-levy and application.**

A. A tax equal to six percent of the sales price shall be levied on all local sales within the City equal to or more than 20 Cents.

B. A tax equal to six percent of the sales price shall be levied on all remote sales within the City subject to the Alaska Uniform Remote Sellers Sales Tax Code as adopted and incorporated into this Code via CMC 5.40.011. ~~There is levied on all sales equal to or more than 20twenty 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.~~

Section 3. Cordova Municipal Code Section 5.40.011 is repealed and reenacted as follows:

5.40.011 – Alaska Uniform Remote Seller Sales Tax Code-adopted.

The City adopts by reference the Alaska Uniform Remote Seller Sales Tax Code of the Alaska Remote Seller Sales Tax Commission, as that code currently exists, and as it may hereafter be amended. The Alaska Uniform Remote Seller Sales Tax Code may be referred to as the “Uniform Code” throughout this Title.

Section 4. Cordova Municipal Code Section 5.40.020 is amended to read as follows:

5.40.020 - Definitions.

A. For purposes of this chapter, the following definitions shall apply:

"Alcoholic beverage" shall have the meaning given in CMC 6.12.010.

"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 CMC 5.40.010. The giving or supplying of services as an employee and the furnishing of property, services, substances or things, by persons who do not hold themselves out as regularly engaging in such transactions, does not constitute business within the meaning of this Chapter.

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

"Casual, occasional or isolated sales or services" means a sale made or service provided by a person who is not engaged in a business. Sales or services meeting the Threshold Criteria for taxation under the Uniform Code does not fall within the definition of “casual, occasional or isolated sales or services.”

"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.

"Delivered Electronically" means delivered to the purchaser by means other than tangible storage media.

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

"Goods" means "property" as defined in this Section.

"Goods for resale" means:

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

"Local Sale" or "local sales" means a sale or sales by a seller with a physical presence in a taxing jurisdiction where the point of delivery is a location within the same taxing jurisdiction.

"Marijuana" shall have the meaning given in CMC 8.40.020.

"Marijuana concentrate" shall have the meaning given in CMC 8.40.020.

"Marijuana products" shall have the meaning given in CMC 8.40.020.

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

- A. Directly or indirectly, through one or more affiliated persons in any of the following:**
 - 1. Transmitting or otherwise communicating the offer or acceptance between the buyer and remote seller;**
 - 2. Owning or operating the infrastructure, electronic or physical, or technology that brings buyers and remote sellers together;**
 - 3. Providing a virtual currency that buyers are allowed or required to use to purchase products from the remote seller; or**
 - 4. Software development or research and development activities related to any of the activities described in Subsection B of this definition, if such activities are directly related to a physical or electronic marketplace operated by the person or an affiliated person; and**

B. In any of the following activities with respect to the seller's products:

- 1. Payment processing services;**
- 2. Fulfillment or storage services;**
- 3. Listing products for sale;**
- 4. Setting prices;**
- 5. Branding sales as those of the marketplace facilitator;**
- 6. Order taking;**
- 7. Advertising or promotion; or**
- 8. Providing customer service or accepting or assisting with returns or exchanges.**

"Physical presence in Cordova" means a seller who establishes any one or more of the following within the boundaries of Cordova:

- A. Has any office, distribution or sales house, warehouse, storefront or any other place of business within the boundaries of Cordova;**
- B. Solicits business or receiving orders through any employee, agent, salesman, or other representative within the boundaries of Cordova or engages in activities in Cordova that are significantly associated with the seller's ability to establish or maintain a market for products in Cordova;**
- C. Provides services or holds inventory within the boundaries of Cordova; and/or**
- D. Rents or leases property located within the boundaries of Cordova.**

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

"Point of delivery" means the location at which property or product is delivered or service rendered. For products transferred electronically, or other sales where the delivery of the purchase address is unknown, the point of delivery shall be the billing address of the buyer.

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

"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 30 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.

"Receive or receipt" means

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

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

"Remote Sales" means sales of goods or services by a remote seller or marketplace facilitator.

"Remote seller" means a seller or marketplace facilitator making sales of goods or services for delivery within the State of Alaska but without having a physical presence in Cordova.

A. "Sale" means **any transfer of property for consideration for any purpose other than for resale.**

~~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, 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. "Sale 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.

“Sales price” or “Purchase Price” means the total amount of consideration, including cash, credit, property, products, and services, for which property, products, or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for the following:

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

~~C.~~ **“Seller” means a person making sales of property, products or services or a marketplace facilitator facilitating sales on behalf of a seller,** 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~~ **excluding** of services rendered **by an employee for his or her employer** as a salaried employee or wage earner, but including services for remuneration for which an Alaska Business License and/or ~~C~~eity business license is required.

“Services” means all services of every manner and description, which are performed or furnished for compensation, and delivered in-person, electronically or otherwise within the boundaries of Cordova, including but not limited to:

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

~~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.~~

~~J. "Marijuana" shall have the meaning given in Section 8.40.020.~~

~~K. "Marijuana concentrate" shall have the meaning given in Section 8.40.020.~~

~~L. "Marijuana products" shall have the meaning given in Section 8.40.020.~~

~~M. "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.~~

~~N. "Tobacco product" means~~

~~1. A. A cigar;~~

~~2. B. A cheroot;~~

~~3. C. A stogie;~~

~~4. D. A perique;~~

~~5. E. Snuff and snuff flour;~~

~~6. F. Smoking tobacco, including granulated, plug-cut, crimp-cut, ready-rubbed, and any form of tobacco suitable for smoking in a pipe or cigarette;~~

~~7. G. Chewing tobacco, including cavendish, twist, plug, scrap, and tobacco suitable for chewing;
or~~

~~8. H. An article or product made of tobacco or a tobacco substitute, but not including a cigarette as defined in ~~Section CMC~~ 5.40.020.M.~~

~~O. "Alcoholic beverage" shall have the meaning given in Section 6.12.010.A.~~

“Uniform Code” means the Alaska Uniform Remote Sellers Sales Tax Code as adopted and amended by The Alaska Remote Seller Sales Tax Commission.

B. Except as otherwise required to comply with federal or state law, the definitions adopted in Section 270 of the Uniform Code apply to all remote sales under CMC 5.40.010(B).

Section 5. CMC 5.40.130 entitled “Penalty for violations” is amended to read as follows:

5.40.130 - Penalty for violations.

A. **Late filing penalty.** A seller who has made sales in the Ceity, and who thereafter fails to file a sales tax return, as required by this Cehapter, shall incur a civil penalty of ~~twenty-five~~ **25 D**ollars **for each**

month, or fraction thereof, that the return is late. Fees under this Subsection shall not exceed \$100 per return. 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. **Late payment penalty.** 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 of delinquency** 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 ~~20~~**twenty** percent of the amount of the taxes due to be transmitted.

C. **Interest on delinquent taxes.** In addition to the amount of civil penalty as provided for violation of each ~~Subsection in this Chapter applicable herein,~~ interest shall accrue at the rate of ~~15~~**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. Fees, penalties and interest shall be assessed and collected in the same manner as the tax is assessed and collected, and applied first to fees, penalties, and interest, second to past due sales tax.

E. The filing of an incomplete return, or the failure to remit all tax, shall be treated as the filing of no return.

F. A penalty assessed under this section for the delinquent remittance of sales tax or failure to file a sales tax return may be waived by the City Manager upon written application of the taxpayer accompanied by a payment of all delinquent sales tax, interest and penalty otherwise owed to the City, within 45 calendar days after the date of delinquency.

~~G.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 ~~100~~**one hundred** percent of the taxes not paid in addition to payment of the unpaid taxes. Further, the exemption card shall be permanently revoked.

Section 6. CMC Chapter 5.40 is amended to add CMC 5.40.135 entitled “Repayment plans” to read as follows:

5.40.135 Repayment plans.

- A. **The City may agree to enter into a repayment plan with a delinquent seller. No repayment plan shall be valid unless agreed to by both parties in writing.**
- B. **A seller shall not be eligible to enter into a repayment plan with the City if the seller has defaulted on a repayment plan in the previous two (2) calendar years.**
- C. **The repayment plan shall include a secured promissory note that substantially complies with the following terms:**
 - 1. **The seller agrees to pay a minimum of ten percent down payment on the tax, interest and penalty amount due. The down payment shall be applied first to penalty, then to accumulated interest, and then to the tax owed.**

2. The seller agrees to pay the balance of the tax, penalty, and interest owed in monthly installments over a period not to exceed two years.
 3. Interest at a rate of 15 percent per year shall accrue on the principal sum due. Interest shall not apply to penalties owed or to interest accrued at the time the repayment plan is executed or accruing during the term of the repayment plan.
 4. If the seller is a corporation or a limited liability entity, the seller agrees to provide a personal guarantee of the obligations under the repayment plan.
 5. The seller agrees to pay all future tax bills in accordance with the provisions of this Chapter.
 6. The seller agrees to provide a security interest in the form of a sales tax lien for the entire unpaid balance of the promissory note to be recorded by the City at the time the repayment plan is signed. The seller shall be responsible for the cost of recording the tax lien.
- D. If a seller fails to pay two or more payments in accordance with the terms of the repayment plan agreement, the seller shall be in default and the entire amount owed at the time of default shall become immediately due. The City will send the seller a notice of default. The City may immediately foreclose on the sales tax lien or take any other remedy available under the law.

Section 7. CMC 5.40.110 entitled “Estimated tax” is repealed and reenacted to read as follows:

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.~~

- A. In the event the City is unable to ascertain taxes due under this Chapter due to the failure of the seller to keep accurate books, allow inspection or file a return, the City may make an estimate of the tax due based on any evidence in its possession.
- B. Sales taxes may also be estimated, based on any information available, whenever the City has reasonable cause to believe that any information on a sales tax return is not accurate.
- C. A seller’s tax liability under this Chapter may be determined and assessed for a period of three years after the date the return was filed or due to be filed with the City. No civil action for the collection of such tax may be commenced after the expiration of the three-year period except an action for taxes, penalties and interest due from those filing periods that are the subject of a written demand or assessment made within the three-year period, unless the seller waives the protection of this section.
- D. The City shall notify the seller, in writing, that the City has estimated the amount of sales

tax that is due from the seller. The City shall serve the notice on the seller by delivering the notice to the seller's place of business, or by mailing the notice by certified mail, return receipt requested, to the seller's last known mailing address. A seller who refuses the certified mail will be considered to have accepted the certified mail for purposes of service.

- E. The City's estimate of the amount of sales tax that is due from a seller shall become a final determination of the amount that is due unless the seller, within 30 calendar days after service of notice of the estimated tax:**
- 1. Files a complete and accurate sales tax return for the delinquent periods supported by satisfactory records and accompanied by a full remittance of all taxes, interest, penalties, costs, and other charges due; or**
 - 2. Files a written notice with the City appealing the estimated tax amount.**
- F. Arguments or reasons for failure to timely file a return and remit taxes collected shall not be considered a valid basis or grounds for granting an appeal. The basis and grounds for granting an appeal of an assessment issued by the City are:**
- 1. The identity of the seller is in error;**
 - 2. The amount of the debt is erroneous due to a clerical error (and the nature and extent of the error is specified in the request for appeal); or**
 - 3. The seller disputes the denial of exemption(s) for certain sales.**
- G. The amount of sales tax finally determined to be due under this Section shall bear interest and penalty from the date that the sales tax originally was due, plus an additional civil penalty of 50 Dollars for each calendar month or partial month for which the amount of sales tax that is due has been determined.**

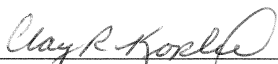
Section 8. This ordinance shall be effective thirty (30) days after its passage and publication. This ordinance shall be enacted in accordance with Section 2.13 of the Charter of the City of Cordova, Alaska, within ten (10) days after its passage.

1st reading: June 2, 2021


2nd reading and public hearing: June 16, 2021

PASSED AND APPROVED THIS 16th DAY OF JUNE 2021.




Clay R. Koplín, Mayor

ATTEST:


Susan Bourgeois, CMC, City Clerk