

Mayor

David Allison

Council Members

Tom Bailer

Cathy Sherman

Kasey Kinsman

Wendy Ranney

Anne Schaefer

Kristin Carpenter

Ken Jones

City Manager

Helen Howarth

City Clerk

Susan Bourgeois

Deputy Clerk

Tina Hammer

**City Council Work Session
September 20, 2023 @ 6:00 pm
Cordova Center Community Rooms
Agenda**

A. Call to order

B. Roll call

Mayor David Allison, Council members Tom Bailer, Cathy Sherman, Kasey Kinsman, Wendy Ranney, Anne Schaefer, Kristin Carpenter, and Ken Jones

C. Work Session topics

1. Sales Tax and Property Tax Code Rewrite Presentation..... (page 1)
City Attorneys Holly Wells and Jessica Spuhler

D. Adjournment

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MEMORANDUM

TO: CORDOVA CITY COUNCIL

**FROM: HOLLY WELLS
JESSICA SPUHLER**

RE: CMC TITLE 5 “REVENUE AND FINANCE” REWRITE

CLIENT: CITY OF CORDOVA

FILE NO.: 401,777.295

DATE: SEPTEMBER 18, 2023

Introduction

The purpose of this memorandum is to provide City Council with a summary of proposed revisions to Cordova Municipal Code Title 5 “Revenue and Finance” and the proposed creation of CMC Title 7 “City Property”. Over the last decade, City Administration and members of City Council have repeatedly identified deficiencies and inefficiencies in the City’s taxation Code provisions that have made interpretation difficult and led to frustrations by members of the public. City Council and City Administration prioritized the need to address these deficiencies and inefficiencies and directed the City Attorney to propose revisions to Title 5 to make its terms clear to the public, easy to follow and administer, and to ensure that all terms were consistently defined and applied. City Council and Administration also requested substantive considerations regarding exemptions from taxation and exploration of options to incentivize housing and development within the City. Earlier this year, the City focused efforts on examining the City’s taxation and exemption structure for ways to encourage housing development in the City.

This memorandum addresses additional changes to the City’s revenue provisions, including property and sales taxation and the reasons for these proposed changes. It also presents several fundamental questions for Council’s consideration that will impact revisions to property tax exemptions and the organization and scope of the City’s sales tax provisions. Once Council has had an opportunity to consider the proposed changes and address the substantive questions, the City Attorney will present the ordinance to Council for its formal consideration.

City of Cordova, Alaska
Memo Re: Titles 5 and 7
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Analysis

The proposed changes to CMC Title 5 include both structural and substantive revisions all intended to clarify and simplify the City's sales tax regulations.

Structural Changes To Title 5

Currently, CMC Title 5 contains not only sales tax, property tax, raw fish tax, and other revenue raising provisions, it contains many of the City's provisions governing the acquisition, disposal, and disposition of City property. This makes Title 5 extremely difficult for the public to navigate. Thus, the proposed changes to Title 5 include removal of all provisions managing City property and the relocation of those provisions into a new title, namely Title 7 "City Property." Proposed Title 5 will consist only of the following provisions:

1. Special Assessment Districts for Local Improvements (5.32)
2. Property Tax (5.36)
3. Biennial Motor Vehicle Registration Tax (5.38)
4. Sales Tax (5.40)
5. Raw Fish Tax (5.41)
6. Cordova General Reserve Fund (5.44)
7. Self-Insurance Trust Fund (5.45)

The remaining nine chapters, which include Chapter 5.04 "Warrants", Chapter 5.12 "Purchases", Chapter 5.14 "Sale of City Personal Property", Chapter 5.16 "Tidelands", Chapter 5.22 "Disposal of Real Property", Chapter 5.23 "Acquisition of Real Property", Chapter 5.24 "Abandoned Property", Chapter 5.28 "Use of City Equipment", and Chapter 5.29 "Local Hire for Public Improvements", will be placed in Title 7, entitled "City Property".

This structural change will allow members of the public to quickly navigate to the City Tax Code rather than sifting through provisions regarding the management of City property, hopefully eliminating confusion that arises regarding what and how privately owned property within the City is taxed as compared to how property owned *by* the City is managed, acquired, and disposed of.

City Taxation Provisions

While all of the remaining provisions to Title 5 will be revised to ensure that the language is simple, clear, and consistent, there are some changes that require Council input before finalizing. This memorandum introduces those changes and provides Council with specific questions regarding them for Council's consideration. An introduction to each of the Title 5 chapters is included below with specific questions highlighted, where applicable.

Chapter 5.32 Special Assessment Districts for Local Improvements

Special assessments are a way for property owners and the City to work together to finance capital improvements that directly benefit property owners. They can be initiated by the City Council or by the public by a petition. Some examples of the types of property benefits that can be financed through a special assessment include roads, street lights, water or sewer or gas lines. The creation of a special assessment district allows property owners to afford costly improvements by splitting the costs between the benefited properties and, in some cases, the City itself. The City has been contemplating the inclusion of subsidy programs that authorize the City to subsidize the financing of certain capital improvements, or a portion of those improvements, and provides clear procedures for determining when such programs are in the City’s best interest. While the inclusion of these provisions will not obligate the City to roll out subsidy programs, it will make it very easy for Council to do so if it finds that such programs are needed. This is but one tool for incentivizing housing in the future. Any subsidy program adopted by the City in Title 5 will also be crafted to comply with and reflect Article VII of the Cordova Charter entitled “Local Improvements”.

Chapter 5.36 Property Tax

The City Property Tax Code has not been substantially or comprehensively revised since its adoption in approximately 1979. As a result, many of the definitions and provisions are outdated, confusing or inconsistent. Most notably, the Alaska legislature has expanded the optional property tax exemptions available to all municipalities and refined the scope of many of these exemptions. Additionally, the administration of property tax exemptions is somewhat unclear in the Code. The City Attorney’s office is working with the City Clerk to ensure that the administration of tax exemptions, including the process for requesting an exemption, is clear to the public and is easy to understand and follow.

By Alaska Statute, specific classes of property are wholly or partially exempt from taxation by any taxing authority while others *may* be exempt, if the municipality adopts a law exempting such property from taxation. While its exemptions have been updated to ensure the City is in compliance with State laws regarding mandated exemptions, the scope of these exemptions and the adoption of optional exemptions have not been updated in decades. As a result, the City has questions for Council regarding potential changes to property tax exemptions to maximize revenue, incentivize development, and promote the interests of the public and protections of vulnerable property owners such as senior citizens and disabled veterans. After consulting with Administration and reviewing the relevant options, Title 5 will be updated to ensure that all exemptions are clear and comply with law, incorporating options that reflect City Council’s stated objectives of optimizing revenue while incentivizing development and preserving protections afforded Cordova’s most vulnerable residents. However, when one option is selected over another, Council will be given notification of the choice, the reasons for it, and other options that Council may want to consider. While this process may result in an extra layer

of Council review and revisions, it ensures that the final revision reflects Council's legislative objectives.

While most questions will be incorporated and presented to Council with the draft ordinance, there are a few questions that will be presented to Council at the September 20, 2023 work session for its consideration. Specifically:

Question 1: What is the preferred scope of the senior citizen exemption?

Alaska Statute 29.45.030 requires municipalities to provide senior citizens 65 years and older and disabled veterans, and their widows and widowers who are at least 60 years of age an exemption from property tax on the first \$150,000 of the assessed value of their primary residence. Cordova's Code currently reflects this mandatory exemption.

Additionally, municipalities may, by ordinance approved by the voters, lower the age threshold for the widows and widowers of disabled veterans or expand the exemption to include widows and widowers of individuals who die from service-connected causes while serving in the military.¹ Municipalities may also, by ordinance approved by the voters, exempt from taxation assessed values exceeding \$150,000 of real property under hardship regulations.

Council should consider and then inform any further investigation by legal counsel into whether hardship exemptions or exemptions for the spouses of military members killed in action should be brought before voters for inclusion in the Code.

Question 2: What types of property should qualify for economic development exemptions in Cordova?

Cordova's Code currently reflects the following definition and criteria for "property used for economic development":

"Property used for economic development," as used in this section, means that part of real or personal property, as determined by the city assessor, that:

1. Has not previously been taxed as real or personal property by the city;
2. Is used in a trade or business that is not already in existence within the city and such use will:
 - a. Create employment in the city; and
 - b. Generate sales outside of the city of goods or services produced in the city; or

¹ AS 29.45.090(e).

c. Materially reduce the importation of goods or services from outside the city.

3. Has not been used in the same trade or business in another municipality in at least six months before the application for deferral or exemption is filed; this paragraph does not apply if the property was used in the same trade or business in an area that has been annexed to the municipality within six months before the application for deferral or exemption is filed and this paragraph does not apply to inventories.²

Cordova's code was drafted to mirror state law. However, in 2022 the State Legislature removed the criteria outlined above, in favor of a broader definition of "economic development". Economic development now means:

an action intended to result in an outcome that causes an increase in, or avoids a decrease of, economic activity, gross domestic product, or the tax base.³

This change provides municipalities significantly more leeway in defining their own economic exemption parameters. However, any ordinance adopted to create an economic development exemption still "must include specific eligibility requirements and require a written application for each exemption or deferral."⁴

The proposed property tax exemptions will include an updated "economic development exemption" that provides the City with clear criteria that is easy to administer. During the September 20, 2023 Council work session, however, the City Administration and City Attorney will be seeking guidance from counsel regarding its general objectives regarding economic development in Cordova and ways to define the economic development exemption to further those goals.

Chapter 5.38 Biennial Motor Vehicle Registration Tax

The State's motor vehicle registration tax has been modified over the last 20 years. While it remains effective and thus Cordova's Code is consistent with state law, the proposed ordinance will ensure that any needed revisions and/or updates are incorporated into Chapter 5.38.

Chapter 5.40 Sales Tax

The changes to the City sales tax Code provisions will be substantial given the ambiguity and lack of clarity in the definitions and scope of the sales tax, the clarity, or lack thereof, regarding sales tax definitions, and the lack of efficient and clear administrative

² CMC 5.36.037

³ AS 29.71.800.

⁴ AS 29.45.050(m).

procedures. While revisions to administration and updates to definitions are being appropriately addressed by the City Attorney, working with Administration, Council will be asked to review the sales tax exemptions during the ordinance review process. At that time, a list of existing exemptions, the cost of these exemptions, and options regarding such exemptions will be presented to Council. The objective will be to ensure that Council makes deliberate laws regarding sales tax and that the sales tax filing provisions and procedures are clear and easily understood and navigated by the public.

Chapter 5.41 Raw Fish Tax

The Cordova raw fish tax was passed in 2019. The tax is within the City's authority as a home rule municipality. A nexus between fish sales and Cordova exists when fish sold to a buyer is conveyed at Cordova's docks. Those who pay the tax benefit from the services and infrastructure provided by Cordova, regardless of whether they bring a vessel all the way to Cordova's dock to deliver catch or a buyer sends a tender to retrieve catch and bring it back to Cordova's dock.

The City received multiple fish tax protests in December 2021 and January 2022. The protests did not assert an over collection or other accounting mistake, but instead asserted that the tax violated Alaska law and is unconstitutional. The City Attorney assisted the City Manager in responding to these protests and identified two categories of proposed amendments.

- 1. Application:** Cordova has never intended to tax fish conveyed or delivered outside its boundaries, unless the parties to the sale made the sale agreement in Cordova (the provision regarding sales agreements addresses direct marketer sales and not the transportation of fish to a buyer by its tender). Amendments to the Code can clarify this intent.
- 2. Appeal Process:** Amendments to the appeal process would engage the fish processor who ultimately imposes and collects the tax, per Cordova Municipal Code. One challenge faced by City Administration in responding to the fish tax protests was that the protests came from sellers who made allegations about where they caught fish or contractual arrangements they had with buyers to support their protest. The fish processor, who imposes and collects the tax needs to be engaged in the appeal process and we will propose amendments to Code to ensure the City has the information necessary to respond appropriately to future protests.

Chapter 5.44 Cordova General Reserve Fund and Chapter 5.45 Self Insurance Trust Fund

The Self Insurance Trust Fund was adopted in 1989 and thus its provision reflects an outdated relationship with the "Cordova Community Hospital." This chapter will be revised to reflect the reality of City insurance practices and provisions.

The Cordova General Reserve Fund is the Cordova Permanent Fund. Generally, the provisions governing this Fund reflect the requirements imposed by Section 5-22 of City Charter. Thus, we do not anticipate making substantial, if any revisions to this chapter.

Ordinance Adoption and Consideration Procedure

The purpose of this September 20, 2023 work session is to ensure that Council and the public have an opportunity to express any comments or considerations before the Title 5 Code Rewrite is presented to Council for its consideration. While Council will be asked to consider the language of Title 5 as a whole in October, a preliminary discussion ensures that everyone is aware of the significant revisions that will be before Council in October and to provide Council with information it needs to consider its process for considering and potentially adopting the Title 5 Tax Code Rewrite.

Generally, with ordinances proposing substantial revisions like the Title 5 Code Rewrite, we recommend two public hearings, one at introduction and one at adoption. This ensures that the public has ample opportunity to consider the proposed language of the ordinance. That said, as Council knows, only a single public hearing is required, allowing for introduction of the ordinance at one meeting and hearing at an additional meeting after the introduction has occurred.

CORDOVA'S TAX CODE 2023 REWRITE
Introduction to CMC Title 5 Revisions

September 20, 2023 City Council Work Session

REVISIONS TO CORDOVA'S TAX CODE

This work session introduces City Council and the public to the 2023 Cordova Tax Code Rewrite. It addresses:

- The reasons for the Cordova Tax Code revisions
- The scope of the Cordova Tax Code revisions
- The process for considering Cordova Tax Code revisions
- Preliminary Considerations for Council

Cordova's Sales Tax Code

Clarifying Taxation for the Public & the City

Currently, Cordova's Sales Tax Code leaves many questions unanswered. The Code rewrite will:

- Clarify essential substantive definitions such as “single purchase transaction” CMC 5.40.030(C)(D) and “property” to remove ambiguity surrounding the application of these terms
- Provide Council with a list of current exemptions, the cost of these exemptions, and comparison of exemptions with similar Alaska communities
- Clarify the administration and protest procedures for challenging sales tax implementation

Alaska Property Tax Exemptions

Mandatory v. Optional Exemptions

Mandatory

- The Alaska Constitution, Article IX, Section 4, provides that, subject to conditions and exceptions provided by law, property of the state and its political subdivisions and property used for nonprofit, religious, charitable, cemetery, or educational purposes is exempt from taxation.
- AS 29.45.030 sets forth other exemptions required by law in Alaska (exemptions related to UAA property, Mental Health Trust lands, Senior Citizen and Disabled Veteran exemptions, etc.)

Optional

- Economic Development Exemptions
- Short-term exemptions for single-family dwelling improvements that increase capacity
- Low-income housing incentive exemption
- Deteriorated property exemption (to incentivize the rehabilitation of unsafe, under utilized and otherwise unattractive or nuisance properties)

Property Tax Exemptions

Current v. Proposed Exemptions

Current Title 5 Exemptions

- Economic Development Exemption
- Senior Citizen/Veteran Exemption
- Landscaping/Exterior Maintenance Incentive Exemption

Proposed Title 5 Exemptions

- Codification of mandatory charitable use exemption to clarify to applicants process and requirements
- Revision of Economic Development Exemption
- Consideration of housing policy goals and potential use of exemptions to incentivize housing

Economic Development Exemption

Cordova's Code currently reflects the following definition and criteria for "property used for economic development":

"Property used for economic development," as used in this section, means that part of real or personal property, as determined by the city assessor, that:

1. Has not previously been taxed as real or personal property by the city;
2. Is used in a trade or business that is not already in existence within the city and such use will:
 - a. Create employment in the city; and
 - b. Generate sales outside of the city of goods or services produced in the city; or
 - c. Materially reduce the importation of goods or services from outside the city.
3. Has not been used in the same trade or business in another municipality in at least six months before the application for deferral or exemption is filed; this paragraph does not apply if the property was used in the same trade or business in an area that has been annexed to the municipality within six months before the application for deferral or exemption is filed and this paragraph does not apply to inventories.

Changes to the Economic Development Exemption

- In 2022, the State legislature substantially simplified its definition of economic development. Now, “economic development” means:

an action intended to result in an outcome that causes an increase in, or avoids a decrease of, economic activity, gross domestic product, or the tax base. (AS 29.71.800)

- This change provides municipalities significantly more leeway in defining their own economic exemption parameters. However, any ordinance adopted to create an economic development exemption still “must include specific eligibility requirements and require a written application for each exemption or deferral.” AS 29.45.050(m).

WHAT DOES THIS MEAN TO CORDOVA?

During the course of the 2023 Tax Code Rewrite, City Administration and the City Attorney's office will include revisions to the economic development exemption intended to incentivize housing development. Before finalizing these revisions, City Administration and the City Attorney's office ask Council to consider:

- Does City Council want to broaden the scope of economic development exemptions?
- What are the costs of broadening the scope of the economic development exemption?

TITLE 5 REWRITE

What Comes Next?

The following process ensures that both the public and City Council have ample opportunity to participate in discussions regarding the Title 5 rewrite:

- Comments resulting from Council's September 20, 2023 work session will be incorporated into an ordinance proposing revisions to Title 5
- The ordinance will be presented to the public for introduction with an additional public hearing scheduled and substantial resources regarding the recommended changes and the potential impacts of those changes
- If introduced, the ordinance will be presented for adoption and a second public hearing will be held.

QUESTIONS

Additional questions or recommendations regarding the Title 5 Rewrite may be directed to the City Manager or City Clerk or directly to:

hwells@bhb.com or jspuhler@bhb.com