

CITY OF UNALASKA
UNALASKA, ALASKA

ORDINANCE 2020-07

AN ORDINANCE AMENDING TITLE 6 OF THE UNALASKA CODE OF ORDINANCES TO ADOPT BY REFERENCE THE ALASKA REMOTE SELLERS SALES TAX CODE AND TO AMEND CHAPTER 6.40 TO ADD AND AMEND DEFINITIONS, ADOPT PROVISIONS FOR EXTENSIONS, FINAL RETURNS AND REPAYMENT PLANS, AND AMEND PENALTY AND INTEREST PROVISIONS

WHEREAS, Section 6.40.030(I) of the Unalaska City Code currently exempts from sales tax sales which the City is prohibited from taxing by the Constitution of the United States; and

WHEREAS, historically the Constitution of the United States prohibited the City from levying sales tax on mail order or internet purchases from businesses located outside the State of Alaska who did not have a physical presence within City boundaries; and

WHEREAS, the United States Supreme Court decided on June 21, 2018 in the case South Dakota v. Wayfair that the United States Constitution no longer prohibited the City from levying sales tax on mail order or internet purchases from businesses located outside the State of Alaska; and

WHEREAS, in response to the *Wayfair* decision, several Alaskan municipalities formed the Alaska Remote Sellers Sales Tax Commission (“the Commission”); and

WHEREAS, on January 6, 2020, the Commission adopted the Alaska Remote Sellers Sales Tax Code and Supplemental Definitions (“Uniform Code”); and

WHEREAS, on January 14, 2020, the Unalaska City Council adopted Ordinance 2019-16 authorizing the City of Unalaska to become a member of the Commission and authorizing the City Manager to sign the Alaska Intergovernmental Remote Seller Sales Tax Agreement (“the Agreement”) and to obtain and maintain membership in the Commission; and

WHEREAS, the Agreement requires Commission members to adopt the Uniform Code by reference or otherwise in its entirety by May 5, 2020; and

WHEREAS, some provisions of the Uniform Code differ from existing requirements of Chapter 6.40 of the Unalaska Municipal Code; and

WHEREAS, it is preferable to harmonize definitions and administrative provisions of Chapter 6.40 with the Uniform Code.

BE IT ENACTED by the City Council of the City of Unalaska:

Section 1: Form. This is a Code ordinance. Sections 3-16 amend the Unalaska Code of Ordinances.

Section 2: Legislative Findings.

(1) The inability to effectively collect city sales tax from remote sellers who deliver tangible personal property, any products transferred electronically, or services directly to the citizens of Unalaska is seriously eroding the sales tax base of Unalaska, causing revenue losses and imminent harm to this city through the loss of critical funding for services;

(2) The harms from the revenue losses are especially serious in Unalaska because sales tax revenues are essential in funding local services;

(3) The structural advantages of remote sellers, including the absence of point-of-sale tax collection, along with the general growth of online retail, make clear that further erosion of this city's sales tax base is likely soon;

(5) Remote sellers who make a substantial number of deliveries into or have large gross revenues from Alaska benefit extensively from this state's market, including the economy generally, as well as state and city infrastructure;

(6) In contrast with the expanding harms caused to the city from this exemption of sales tax collection duties for remote sellers, the costs of that collection have fallen. Given modern computing and software options, it is neither unusually difficult nor burdensome for remote sellers to collect and remit sales taxes associated with sales into Alaska generally and Unalaska specifically;

(7) The failure to tax remote sales results in the creation of incentives for businesses to avoid a physical presence in the state and its respective communities, resulting in fewer jobs and increasing the share of taxes to those consumers who buy from competitors with a physical presence in the state and its cities; and

(8) Delivery of goods and services into local municipalities rely on and burden local transportation systems, emergency and police services, waste disposal, utilities and other infrastructure and services.

Section 3: Amendment of UCO §6.40.010 DEFINITIONS. Section 6.40.010 and Subsection 6.40.010(A) of the Unalaska Code of Ordinances is hereby amended to read as follows: [deleted language is struck and new language underlined]

For the purposes of this Chapter and Chapter 6.52, unless the context otherwise requires, the following words and phrases shall have the meanings defined herein.

(A) "ALCOHOLIC BEVERAGE" means a spirituous, vinous, malt, or other fermented or distilled liquid, whatever the origin, beverage that is intended suitable 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 4. Amendment of UCO §6.40.010 DEFINITIONS. Subsection 6.40.010(H)(4) of the Unalaska Code of Ordinances is hereby amended to read as follows: [deleted language is struck]

(H) "RESALE" OR "SALE FOR RESALE" means:

(4) A sale ~~of services~~ or rental of personal property other than meals, temporary lodging, utilities, vehicle rentals, fuel and other like items to a business, the charge for which will be separately identified on an invoice from that business to a specific buyer if: (i) the sale to the buyer is subject to City sales tax, or (ii) the resale transaction meets all other requirements and the buyer is a non-profit organization registered with the City of Unalaska, or an agency of the State of Alaska or the United States government.

Section 5: Amendment of UCO §6.40.010 DEFINITIONS. Subsection 6.40.010(I) of the Unalaska Code of Ordinances is hereby amended to read as follows: [new language underlined]

(I) "RETAIL SALE OR SALE AT RETAIL OR SALE" means every sale, lease, rental, transfer or assignment of any right, title or interest in any goods, personal property of any kind and whether tangible or intangible, real property and any provision of labor or services for a consideration made to a consumer in the regular course of business for any purpose other than for resale.

Section 6: Amendment of UCO §6.40.010 DEFINITIONS. Subsection 6.40.010(K) of the Unalaska Code of Ordinances is hereby amended to read as follows: [deleted language is struck and new language underlined]

(K) "SELLER OR COLLECTOR" means every entity or person, whether acting as principal, agent, broker, or lessor, making sales ~~at retail or rental of property to a consumer~~ of property, products, or services, or a marketplace facilitator facilitating sales on behalf of a seller and who is required and responsible to collect and remit sales taxes levied by the City of Unalaska.

Section 7: Amendment of UCO §6.40.010 DEFINITIONS. Subsection 6.40.010(L) of the Unalaska Code of Ordinances is hereby amended to read as follows: [new language is underlined]

(L) "SELLING PRICE" means the total amount of consideration, whether money, credit, rights or other property, products, and services, for which property, products, or services are sold, leased, or rented, expressed in the terms of money, paid or delivered by a consumer to a seller whether received in money or otherwise. Descriptively, selling price:

(1) Shall be without any deduction on account of the cost of tangible property sold, the cost of materials used, labor costs, interest, delivery costs, installation charges, taxes or any other expenses of the seller; whatsoever paid or accrued and without any deduction on account of losses.

(2) Includes any federal or state excise tax on the sale.

(3) Does not include the value of used articles intended for resale taken in trade as a credit or part payment on the sale of a new or used article as determined by state law. This amount shall be deductible from the total sales price of the new or used article being sold and the tax paid only on the net sales price.

Section 8: Amendment of UCO §6.40.010 DEFINITIONS. Subsection 6.40.010(M) of the Unalaska Code of Ordinances is hereby amended to read as follows: [deleted language is struck and new language underlined]

(M) "TOBACCO" means cigarettes, cigars, chewing or pipe tobacco, or any other products item containing tobacco, ~~including all products the sale of which requires a state business license endorsement under AS 43.70.075~~

Section 9: Amendment of UCO §6.40.010 DEFINITIONS. Section 6.40.010 of the Unalaska Code of Ordinances is hereby amended by adding new subsections to read as follows:

(N) "Child care" means a regular service of care and education provided for compensation for any part of a day less than 24 hours to a child or children under 16 years of age whose parents work outside the home, attend an educational program or are otherwise unable to care for their children.

(O) "Church" means a fellowship of believers, congregation, society, corporation, convention, or association that is formed primarily or exclusively for religious purposes and that is not formed for the private profit of any person.

(P) "Dues" means monies paid for the purpose of membership.

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

(R) "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.

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

(T) “Internet service” means a service that enables users to access proprietary and other content, information electronic mail, and the Internet as part of a package of services sold to end-user subscribers.

(U) “Loan” means an extension of credit resulting from direct or indirect negotiations between a lender and a debtor.

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

(a) Directly or indirectly, through one or more affiliated persons in any of the following:

- (i) Transmitting or otherwise communicating the offer or acceptance between the buyer and remote seller;
- (ii) Owning or operating the infrastructure, electronic or physical, or technology that brings buyers and remote sellers together;
- (iii) Providing a virtual currency that buyers are allowed or required to use to purchase products from the remote seller; or
- (iv) Software development or research and development activities related to any of the activities described in (b) of this subsection (3), if such activities are directly related to a physical or electronic marketplace operated by the person or an affiliated person; and

(b) In any of the following activities with respect to the seller’s products:

- (i) Payment processing services;
- (ii) Fulfillment or storage services;
- (iii) Listing products for sale;
- (iv) Setting prices;
- (v) Branding sales as those of the marketplace facilitator;
- (vi) Order taking;

- (vii) Advertising or promotion; or
- (viii) Providing customer service or accepting or assisting with returns or exchanges.

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

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

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

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

(AA) “Raw Seafood” means uncooked marine and estuarine fauna or flora used as food or of a kind suitable for food and specifically includes, but is not limited to, shrimp taken for bait.

(BB) “Remote seller” means a seller or marketplace facilitator making sales of goods or services delivered within the State of Alaska, without having a physical presence in a taxing jurisdiction, or conducting business between taxing jurisdictions, when sales are made by internet, mail order, phone or other remote means. A marketplace facilitator shall be considered the remote seller for each sale facilitated through its marketplace

(CC) “Resale of services” means sales of intermediate services to a business the charge for which will be passed directly by that business to a specific buyer.

(DD) "Monthly" means occurring once per calendar month.

(EE) "Person" means an individual, trust, estate, fiduciary, partnership, limited liability company, limited liability partnership, corporation, or any other legal entity.

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

(GG) "Quarter" means trimonthly periods of a calendar year; January-March, April-June, July-September, and October-December.

Section 10: Repeal of UCO 6.40.070(B). Subsection 6.40.070 of the Unalaska Code of Ordinances REMITTANCE OF TAX COLLECTED is hereby amended by deleting subsection (B) in its entirety and re-lettering the remaining subsections.

Section 11: Repeal and Reenactment of UCO 6.40.090 COLLECTOR'S COMPENSATORY COLLECTION DISCOUNT. Section 6.40.090 of the Unalaska Code of Ordinances is hereby repealed in its entirety and reenacted to read as follows:

6.40.090 AMENDED RETURNS

A. A seller may file an amended sales tax return, with supporting documentation, and the City may accept the amended return, but only in the following circumstances:

- i. The amended return is filed within one (1) year of the original due date for the return; and
- ii. The seller provides a written justification for requesting approval of the amended return; and
- iii. The seller agrees to submit to an audit upon request of the City.

B. The City shall notify the seller in writing (by email or otherwise) whether the City accepts or rejects an amended return, including the reasons for any rejection.

C. The City may adjust a return for a seller if, after investigation, the City determines the figure included in the original returns are incorrect; and the City adjusts the return within two (2) years of the original due date for the return.

D. A seller may file a supplemental sales tax return, with supporting documentation, and the City may accept the supplemental return, but only in the following circumstances:

- i. The seller provides a written justification for requesting approval of the supplemental return; and
- ii. The seller agrees to submit to an audit upon request of the City.

Section 12: Amendment of UCO Chapter 6.40 SALES TAX. Chapter 6.40 of the Unalaska Code of Ordinances is hereby amended by adding new sections 6.40.095 and 6.04.097 to read as follows:

6.40.095. EXTENSION OF TIME TO FILE TAX RETURN

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

- A. For reasons beyond the seller's control, the seller has been unable to maintain in a current condition the books and records that contain the information required to complete the return;
- B. Such extension is a dire necessity for bookkeeping reasons and would avert undue hardship upon the seller;
- C. The seller has a plan to cure the problem that caused the seller to apply for an extension and the seller agrees to proceed with diligence to cure the problem;
- D. At the time of the application, the seller is not delinquent in filing any other sales tax return, in remitting sales tax to the City or otherwise in violation of this chapter; and
- E. No such extension shall be made retroactively to cover existing delinquencies.

6.04.097. CESSATION OR TRANSFER OF BUSINESS

- A. A seller who sells, leases, conveys, forfeits, transfers or assigns the majority of their business interest, including a creditor or secured party, shall make a final sales tax return within thirty (30) days after the date of such conveyance.
- B. At least ten (10) business days before any such sale is completed, the seller shall send to the city clerk, by approved communication (email

confirmation, certified first-class mail, postage prepaid) a notice that the seller's interest is to be conveyed and shall include the name, address and telephone number of the person or entity to whom the interest is to be conveyed.

- C. Upon notice of sale and disclosure of buyer, the City shall be authorized to disclose the status of the seller's sales tax account to the named buyer or assignee.
- D. Upon receipt of notice of a sale or transfer, the City shall send the transferee a copy of this code with this section highlighted.
- E. Neither the City's failure to give the notice nor the transferee's failure to receive the notice shall relieve the transferee of any obligations under this section.
- F. Following receipt of the notice, the City shall have sixty (60) days in which to perform a final sales tax audit and assess sales tax liability against the seller of the business. If the notice is not mailed at least ten (10) business days before the sale is completed, the City shall have twelve (12) months from the date of the completion of the sale or the City's knowledge of the completion of the sale within which to begin a final sales tax audit and assess sales tax liability against the seller of the business. The City may also initiate an estimated assessment if the requirements for such an assessment exist.
- G. A person acquiring any interest of a seller in a business required to collect the tax under this chapter assumes the liability of the seller for all taxes due the City, whether current or delinquent, whether known to the City or discovered later, and for all interest, penalties, costs and charges on such taxes.
- H. Before the effective date of the transfer, the transferee of a business shall obtain from the City an estimate of the delinquent sales tax, penalty and interest, if any, owed by the seller as of the date of the transfer, and shall withhold that amount from the consideration payable for the transfer, until the seller has produced a receipt from the City showing that all tax obligations imposed by this chapter have been paid. A transferee that fails to withhold the amount required under this subsection shall be liable to the City for the lesser of the amount of delinquent sales tax, penalty and interest due from the seller as of the date of transfer, and the amount that the transferee was required to withhold.
- I. In this section, the term "transfer" includes the following:
 - 1. A change in voting control, or in more than fifty percent (50%) of the ownership interest in a seller that is a corporation, limited liability company or partnership; or

2. A sale of all or substantially all the assets used in the business of the seller; or

3. The initiation of a lease, management agreement or other arrangement under which another person becomes entitled to the remote seller's or marketplace facilitator's gross receipts from sales, rentals or services.

J. Subsection H of this section shall not apply to any person who acquires their ownership interest in the ongoing business as a result of the foreclosure of a lien that has priority over the City's sales tax lien.

K. A seller who terminates the business without the benefit of a purchaser, successor or assign shall make a final tax return and settlement of tax obligations within thirty (30) days after such termination. If a final return and settlement are not received within thirty (30) days of the termination, the seller shall pay a penalty of one hundred dollars (\$100), plus an additional penalty of twenty-five dollars (\$25) for each additional thirty (30) day period, or part of such a period, during which the final return and settlement have not been made, for a maximum of six (6) additional periods.

Section 13: Amendment of UCO §6.40.100(A) and (B). Subsections (A) and (B) of UCO 6.40.100 PROCEDURES ON DELINQUENCIES are hereby amended to read as follows: [deleted language is struck and new language underlined]:

(A) PENALTY. A penalty equal to five percent (5%) of the delinquent tax shall be added to the tax for the first month, or any part thereof, and an additional five percent (5%) shall be added to the tax due for each month, or fraction thereof, of delinquency until a total penalty of ~~fifteen~~ twenty percent (~~15~~ 20%) of the sales tax due has accrued. The penalty shall be assessed and collected in the same manner as the tax is assessed and collected. The penalty does not bear interest.

(B) INTEREST. In addition to the penalty provided in subsection (A) above, interest assessed on delinquent tax shall accrue at the rate of ~~ten~~ fifteen percent (~~10~~ 15%) per annum. Interest shall accrue from the date of delinquency until paid in full and shall be collected in the same manner as the delinquent tax is collected.

Section 14: Amendment of UCO §6.40.100. Section 6.40.100 PROCEDURES ON DELINQUENCIES of the Unalaska Code of Ordinances is hereby amended by adding a new subsection E to read as follows:

(E) WAIVER. A penalty assessed under this section for the delinquent remittance of sales tax or failure to file a sales tax return may be waived by the City Manager, upon written application of the seller accompanied by a payment of all delinquent sales tax, interest and penalty otherwise owed by the seller,

within forty-five (45) calendar days after the date of delinquency. A seller may not be granted more than one (1) waiver of penalty under this subsection in any one calendar year. The City Manager shall report such waivers of penalty to the city council, in writing.

Section 15: Amendment of UCO Chapter 6.40. Chapter 6.40 SALES TAX of the Unalaska Code of Ordinances is hereby amended by adding a new section 6.40.105 to read as follows:

6.40.105 – REPAYMENT PLANS

A. The City may agree to enter into a repayment plan with a delinquent seller. No repayment plan shall be valid unless agreed to by both parties in writing.

B. A seller shall not be eligible to enter into a repayment plan with the City if the seller has defaulted on a repayment plan in the previous two (2) calendar years.

C. The repayment plan shall include a secured promissory note that substantially complies with the following terms:

- i. The seller agrees to pay a minimum of ten percent (10%) down payment on the tax, interest and penalty amount due. The down payment shall be applied first to penalty, then to accumulated interest, and then to the tax owed.
- ii. The seller agrees to pay the balance of the tax, penalty and interest owed in monthly installments over a period not to exceed two (2) years.
- iii. Interest at a rate of fifteen percent (15%) per annum shall accrue on the principal sum due. Interest shall not apply to penalties owed or to interest accrued at the time the repayment plan is executed or accruing during the term of the repayment plan.
- iv. If the seller is a corporation or a limited liability entity the seller agrees to provide a personal guarantee of the obligations under the repayment plan.
- v. The seller agrees to pay all future tax bills in accordance with the provisions of this chapter.
- vi. The seller agrees to provide a security interest in the form of a sales tax lien for the entire unpaid balance of the promissory note to be recorded by the City at the time the repayment plan is signed. The seller shall be responsible for the cost of recording the tax lien.

D. If a seller fails to pay two (2) or more payments as required by the repayment plan agreement, the seller shall be in default and the entire amount owed at the time of default shall become immediately due. The City 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 16: Adoption by Reference of Alaska Remote Sellers Sales Tax Code. The Unalaska Code of Ordinances is hereby amended by adopting a new Chapter 6.52 to read as follows:

Chapter 6.52

TAX ON SALES MADE BY REMOTE SELLERS

Sections

6.52.010	Scope
6.52.020	Copies on File
6.52.030	Definitions
6.52.040	Adoption of Alaska Remote Sellers Sales Tax Code
6.52.050	Delegation of Authority

6.52.010 SCOPE

This chapter applies only to sales made by remote sellers as defined herein.

6.52.020 COPIES ON FILE

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

6.52.030 DEFINITIONS

When not clearly otherwise indicated by the context, the following words and phrases, as used in this chapter, have the following meanings:

- A. "Buyer or purchaser" means a person to whom a sale of property or product is made or to whom a service is furnished.
- B. "Commission" means the Alaska Intergovernmental Remote Sales Tax Commission established by Agreement between local government taxing jurisdictions within Alaska, and delegated tax collection authority.
- C. "Delivered electronically" means delivered to the purchaser by means other than tangible storage media.
- D. "Entity-based exemption" means an exemption based on who purchases the product or who sells the product. An exemption that is available to all individuals shall not be considered an entity-based exemption.
- E. "Member" means a taxing jurisdiction that is a signatory of the Alaska Remote Sales Tax Intergovernmental Agreement, thereby members of the Commission, and who have adopted the Remote Seller Sales Tax Code.

F. "Physical presence" means a remote seller or marketplace facilitator who establishes any one or more of the following within a local taxing jurisdiction:

- (1) Has any office, distribution or sales house, warehouse, storefront, or any other place of business within the boundaries of the local taxing jurisdiction;
- (2) Solicits business or receiving orders through any employee, agent, salesman, or other representative within the boundaries of the local taxing jurisdiction or engages in activities in this state that are significantly associated with the seller's ability to establish or maintain a market for its products in this state.
- (3) Provides services or holds inventory within the boundaries of the local taxing jurisdiction.
- (4) Rents or Leases property located within the boundaries of the local taxing jurisdiction.

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

G. "Point of delivery" means the location at which property or a product is delivered or service rendered.

- (1) When the product is not received or paid for by the purchaser at a business location of a remote seller in a Taxing Jurisdiction, the sale is considered delivered to the location where receipt by the purchaser (or the purchaser's recipient, designated as such by the purchaser) occurs, including the location indicated by instructions for delivery as supplied by the purchaser (or recipient) and as known to the remote seller or marketplace facilitator.
- (2) When the product is received or paid for by a purchaser who is physically present at a business location of a Remote Seller in a Taxing Jurisdiction the sale is considered to have been made in the Taxing Jurisdiction where the purchaser is present even if delivery of the product takes place in another Taxing Jurisdiction. Such sales are reported and tax remitted directly to the Taxing Jurisdiction not to the Commission.
- (3) For products transferred electronically, or other sales where the remote seller or marketplace facilitator lacks a delivery address for the purchaser, the remote seller or marketplace facilitator shall consider the point of delivery the sale to the billing address of the buyer.

H. "Product-based exemptions" means an exemption based on the description of the product and not based on who purchases the product or how the purchaser intends to use the product.

I. "Receive or receipt" means

- (1) Taking possession of property;
- (2) Making first use of services;
- (3) 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.

- J. “Remote sales” means sales of goods or services by a remote seller.
- K. “Resale of services” means sales of intermediate services to a business the charge for which will be passed directly by that business to a specific buyer.
- L. “Services” means all services of every manner and description, which are performed or furnished for compensation, and delivered electronically or otherwise outside the taxing jurisdiction (but excluding any that are rendered physically within the taxing jurisdiction, including but not limited to:
- (1) Professional services;
 - (2) Services in which a sale of property or product may be involved, including property or products made to order;
 - (3) 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;
 - (4) The sale of transportation services;
 - (5) Services rendered for compensation by any person who furnishes any such services in the course of his trade, business, or occupation, including all services rendered for commission;
 - (6) Advertising, maintenance, recreation, amusement, and craftsman services.
- M. “Taxing jurisdiction” means a local government in Alaska that has a sales tax and is a member of the Alaska Remote Sellers Sales Tax Commission.
- N. “Transferred electronically” means obtained by the purchaser by means other than tangible storage media.

6.52.040 ADOPTION OF ALASKA REMOTE SELLERS SALES TAX CODE

The City adopts by reference the January 6, 2020 edition of all provisions of the Alaska Remote Sellers Sales Tax Code (including the definitional section included in section 6.52.030 above) and that portion of the Supplemental Definitions thereto not included in section 6.40.010.

6.52.050 DELEGATION OF AUTHORITY

The City hereby delegates the authority to administer and collect tax on sales made by remote sellers to the Commission including remote seller sales tax registration, exemption certification, collection, remittance, and audit authority.


Section 17: Effective Date. This ordinance shall be effective upon adoption. No obligation to collect tax resulting from adoption of this ordinance shall be applied retroactively.

PASSED AND ADOPTED by a duly constituted quorum of the Unalaska City Council on April 28, 2020.



Vincent M. Tutiakoff, Sr.
Mayor

ATTEST:



Marjie Veeder, CMC
City Clerk



BOYD, CHANDLER, FALCONER, & MUNSON LLP

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MEMORANDUM

TO: Marjorie Veeder
City Clerk
City of Unalaska



FROM: Brooks W. Chandler
City Attorney

RE: Taxation of Internet Sales

DATE: April 6, 2020

This memorandum summarizes the draft of the sales tax ordinance which will fulfill Unalaska's obligation to adopt the Alaska Remote Seller Sales Tax Code. This obligation flows from the City Council authorizing Unalaska to become a member of the Alaska Remote Sellers Sales Tax Commission and sign the Alaska Intergovernmental Remote Sellers Sales Tax Agreement. Article V of that Agreement requires Unalaska to adopt "by reference or otherwise, the Remote Sellers Sales Tax Code ("the Code") in its entirety" within 120 days after the Commission adopts the Code. Article V of the Agreement also requires Unalaska to delegate "remote seller sales tax registration, exemption certification, collection, remittance, and audit authority to the Commission". This delegation will only apply to internet sales. The City will continue to administer Chapter 6.40.

The draft ordinance follows a modified version of adopting the Code "by reference". The Code included extensive definitions. Some of those definitions included words or phrases already defined in Chapter 6.40. Some of those definitions included words used in Chapter 6.40 but not currently defined in Section 6.40.10. To ensure uniformity in application of definitions

to on line and “brick and mortar” sellers these categories of definitions have been adopted by amending Section 6.40.10 (and by making this section applicable the new Chapter 6.52) and by changing wording used in existing definitions to “match” the Uniform Code definitions. This is done in Sections 3-9 of the draft ordinance.

Not all definitions in the Code were applicable to Unalaska and many definitions are only relevant to internet/remote sellers. Definitions relevant only to remote sellers or not applicable to Unalaska are adopted by reference and by repetition in the proposed section 6.52.030.

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

The changes to Chapter 6.40 made in sections 10, 11, 12, 13, 14 and 15 of the draft ordinance are recommended. The Intergovernmental Agreement does not require these changes to city code. The changes are recommended because we believe it is important for the City to treat local businesses and remote businesses equally. If remote sellers were treated more harshly than local sellers there is a possible basis to challenge applying the Code to remote sellers. If remote sellers were treated more favorably than local sellers there is a possible basis to challenge applying Chapter 6.40 to local sellers. Here are the changes.

Sections 10 and 11 delete provisions allowing for filing monthly returns and providing a “collection discount” of 2% of the tax collected to monthly filers. All returns will now be due quarterly. Should local sellers choose to file monthly they will no longer be entitled to a 2% discount. This change was made because a similar discount is not offered to remote sellers in the Uniform Code.

Section 13 implements the same late filing penalty and interest rate as appear in the Uniform Code. The maximum penalty increases to 20%. The interest rate on late payments increases to 15%. This will result in local sellers being treated the same as remote sellers.

Section 14 adds a waiver provision allowing the City Manager the discretion to waive penalty if tax owed is paid in full within forty-five days of the due date. This change was made because a similar waiver provision is part of the Uniform Code.

Sections 11, 12 and 15 add provisions to Chapter 6.40 that were included in the Uniform Code. These pertain to repayment plans, amended returns, filing a final return upon sale or cessation of business and an extension of time for filing returns. It is simpler to duplicate these Uniform Code provisions in existing Chapter 6.40 than it is to amend the Uniform Code to make it apply to local sales as well as remote sales.

Marjorie Veeder
April 6, 2020
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Adoption of codes by reference is allowed under state law subject to special procedures. AS 29.25.040. At least five copies of the Code must be available to the public for a period of 15 days before the public hearing on the ordinance. The hearing notice must say where the public can review the Code. Compliance with these requirements has been included as proposed section 6.52.020.

The deadline for adoption of the Code is May 5, 2020. The Commission has been granting extensions due to Covid-19. Let me know if there are any questions about the draft ordinance.