

CITY OF UNALASKA
UNALASKA, ALASKA

ORDINANCE 2021-05

AN ORDINANCE AMENDING CHAPTER 6.52 OF THE UNALASKA CODE OF ORDINANCES TO ADOPT BY REFERENCE THE 2021 ALASKA REMOTE SELLERS SALES TAX CODE; TO AMEND CHAPTER 6.40 TO AMEND DEFINITIONS, ELIMINATE INTERST ON TAX REFUNDS AND ESTABLISH A PENALTY FOR LATE FILING OF SALES TAX RETURNS; AND AMEND CHAPTER 9.04.030 TO ADOPT A NEW EXEMPTION FROM THE BUSINESS LICENSE ORDINANCE FOR REMOTE SELLERS WHO REGISTER WITH THE ALASKA REMOTE SELLERS SALES TAX COMMISSION

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

WHEREAS, the Agreement required Commission members to adopt the Alaska Remote Sellers Sales Tax Code and Supplemental Definitions (“Uniform Code”) by reference or otherwise in its entirety by May 5, 2020; and to adopt revisions to the Uniform Code within one-hundred-twenty days after those revisions are approved by the Commission; and

WHEREAS, on April 28, 2020 the Unalaska City Council adopted Ordinance 2020-07 which adopted the Uniform Code; and

WHEREAS, on February 24, 2021, the Commission adopted updates to the Uniform Code; and

WHEREAS, some provisions of the Uniform Code updates differ from existing requirements of Chapters 6.40, 6.52 and 9.04.030 of the Unalaska Municipal Code; and

WHEREAS, it is in the public interest for the City of Unalaska to remain a member of the Commission and to comply with its obligations under the Agreement.

NOW THEREFORE, BE IT ENACTED by the City Council of the City of Unalaska:

Section 1: Form. This is a Code ordinance. Sections 2-8 amend the Unalaska Code of Ordinances.

Section 2: Amendment of UCO §6.40.010(V). Subsection 6.40.010(V) of the Unalaska Code of Ordinances is hereby amended to read as follows: [deleted language is struck and new language underlined]

(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, 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:
- (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.

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

(BB) "REMOTE SELLER" means a seller or marketplace facilitator making sales of goods or services for delivery delivered within the State of Alaska, without having a physical presence in a taxing the member jurisdiction, in which delivery is being made. ~~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.~~

Section 4: Amendment of UCO §6.52.030. Section 6.52.030 of the Unalaska Code of Ordinances is hereby amended to read as follows: [deleted language is struck and new language underlined]

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 Seller 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) “DELIVERY CHARGES” means charges by the seller of personal property or services for preparation and delivery to a location designated by the purchaser of personal property or services including, but not limited to, transportation, shipping, postage, handling, crating and packing.

~~(DE)~~ “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.

(F) “LEASE” or “RENTAL” means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. A lease or rental may include future options to purchase or extend.

(G) “LOCAL SALE” means a sale by a seller with a physical presence in a taxing jurisdiction, where the point of delivery is a location within the same taxing jurisdiction.

(H) “MARKETPLACE” means a physical or electronic place, platform or forum, including a store, booth, internet website, catalog, or dedicated sales software application, where products or services are offered for sale.

(I) “MARKETPLACE SELLER” means a person that makes retail sales through any physical or electronic marketplace that is operated by a marketplace facilitator.

~~(E)J~~ “MEMBER JURISDICTION” means a taxing jurisdiction that is a signatory of the Alaska Remote Seller Sales Tax Intergovernmental Agreement, thereby members of the Commission, and who have adopted the Alaska Remote Seller Uniform Sales Tax Code.

~~(FK)~~ “PHYSICAL PRESENCE” for purposes of section .040 of the Alaska Remote Sellers Uniform Sales Tax Code means a remote seller or marketplace facilitator who establishes any one or more of the following within a ~~local taxing~~ member jurisdiction:

(1) Has any office, distribution or sales house, warehouse, storefront, or any other place of business within the boundaries of the ~~local taxing~~ member jurisdiction;

(2) Solicits business or receiving orders through any employee, agent, salesman, or other representative within the boundaries of the ~~local taxing~~ member 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~~ member jurisdiction.

(4) Rents or Leases property located within the boundaries of the ~~local taxing~~ member 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.

(GL) "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 Member~~ 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 Member~~ Jurisdiction the sale is considered to have been made in the ~~Taxing Member~~ Jurisdiction where the purchaser is present even if delivery of the product takes place in another ~~Taxing Member~~ Jurisdiction. Such sales are reported and tax remitted directly to the ~~Taxing Member~~ Jurisdiction not to the Commission.

(3) When the service is not received by the purchaser at a business location of a remote seller, the service is considered delivered to the location where the purchaser receives the service.

(34) For products or services 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 of the sale to be the billing address of the buyer.

(HM) "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.

(N) "PROFESSIONAL SERVICES" means services performed by architects, attorneys-at-law, certified public accountants, dentists, engineers, land surveyors, surgeons, veterinarians, and practitioners of the healing arts (the arts and sciences dealing with the prevention, diagnosis, treatment and cure or alleviation of human physical or mental ailments, conditions, diseases, pain or infirmities) and such occupations that require a professional license under Alaska Statute.

(IQ) "RECEIVE OR RECEIPT" for purposes of section .030 and the definition of "Point of Delivery" means

- (1) Taking possession of property or product;
- (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.

(~~JP~~) “REMOTE SALES” means sales of goods or services by a remote seller.

(~~JQ~~) “RESALE OF SERVICES” means sales of intermediate services to a business where the charge for which will be passed directly by that business to a specific buyer.

(~~KR~~) “SERVICES” means all services of every manner and description, which are performed or furnished for compensation, and delivered electronically or otherwise into a member jurisdiction (~~but excluding any that are rendered physically within the taxing jurisdiction outside 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.

(~~MS~~) “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.~~

(~~NT~~) “TRANSFERRED ELECTRONICALLY” means obtained by the purchaser by means other than tangible storage media.

Section 5: Amendment of UCO §6.52.040. Section 6.52.040 is hereby amended to read as follows: [deleted language is struck and new language underlined]

6.52.040 Adoption of Alaska Remote Sellers Sales Tax Code

The City adopts by reference the ~~January 6, 2020~~ February 24, 2021 edition of all provisions of the Alaska Remote Sellers Uniform 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.

Section 6. Amendment of UCO §9.04.030. Section 9.04.030 of the Unalaska Code of Ordinances is hereby amended by adopting a new subsection G to read as follows:

(G) A remote seller (as defined in Chapter 6.40) who does not have a physical presence in the City and who has obtained a sales tax certificate from the Alaska Remote Seller Sales Tax Commission.

Section 7: Amendment of UCO §6.40.050. Subsection 6.40.050(B) of the Unalaska Code of Ordinances is hereby amended to read as follows: [deleted language is struck and new language underlined]

(B) COLLECTOR: OVER PAYMENT REFUND. If a collector has remitted sales tax in excess of what is due to the City, the collector may apply to the City for a refund within one (1) year of the date the overpayment was made. The City shall audit the collector's account and may request any additional information the City requires to determine that a refund is due. If the City determines that a refund is due, the collector may take a credit on the next sales tax report, or the City shall pay the refund of the tax paid ~~with interest at three and one-half percent (3.5%) per annum beginning thirty (30) days from the date of payment of the tax to the City.~~ A claim for refund not filed within one (1) year of the date the tax was remitted to the City is forever barred. A collector may claim a refund only where the collector has filed a timely sales tax return and therewith remitted the sales taxes due under that return. This section does not apply to claims for exemptions for sale for resale for which any refund claim should be made pursuant to § 6.40.050(A). Interest will not be paid on any tax refund.

Section 8: Amendment of UCO §6.40.100. Section 6.40.100 is hereby amended by adoption of a new subsection C to read as follows:

(C) PENALTY. A late filing fee of twenty-five dollars (\$25) per month, or fraction thereof, shall be added to all late-filed sales tax reports, until a total of one-hundred dollars (\$100) has been reached. An incomplete return shall be treated as the filing of no return.

Section 9: 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 May 25, 2021.

Vincent M. Tutiakoff, Sr.
Mayor

ATTEST:

Marjie Veeder, CMC
City Clerk

MEMORANDUM TO COUNCIL

To: Mayor and City Council Members
From: Marjie Veeder, City Clerk
Through: Erin Reinders, City Manager
Date: May 11, 2021
Re: Ordinance 2021-05, Amending UCO 6.52 to adopt by reference the 2021 Alaska Remote Sellers Sales Tax Code; UCO 6.40 to amend definitions, eliminate interest on tax refunds, and establish a penalty for late filing of sales tax returns; and UCO 9.04.030 to adopt a new exemption from the business license ordinance for remote sellers who register with the ARSSTC

SUMMARY: The City joined the Alaska Remote Seller Sales Tax Commission (ARSSTC) and adopted their tax code by reference. The City's agreement with ARSSTC obligates the City to adopt updates to the ARSSTC sales tax code. Ordinance 2021-05 accomplishes this objective, and also amends Unalaska's sales tax code so that local sellers and remote sellers are treated substantially the same; and also adds an exemption from obtaining a business license for remote sellers, which is in line with the ARSSTC code. Staff recommends adoption of Ordinance 2021-05.

PREVIOUS COUNCIL ACTION:

On March 26, 2019 by Ordinance 2019-03, Council amended the sales tax code to require certain out of town and internet retailers to collect and remit city sales tax.

On January 14, 2020, by Ordinance 2019-16, Council authorized the city to join the Alaska Remote Seller Sales Tax Commission for the purpose of developing, implementing and enforcing a remote seller sales tax code.

On April 29, 2020, by Ordinance 2020-07, Council adopted by reference the Alaska Remote Seller Sales Tax Code; added and amended various definitions in Unalaska's code to ensure uniformity between the city's sales tax code and the remote seller sales tax code; adopted provisions for extensions, final returns and repayment plans; and amended penalty and interest provisions in Unalaska's sales tax code.

DISCUSSION: Ordinance 2021-05 includes amendments in Sections 2-8:

- **Sections 2-4** adopt changes in definitions
- **Section 5** adopts the updated version of the uniform code ([attached is a summary of the changes to the uniform code provided by ARSSTC](#))
- **Section 6** adds an exemption from acquiring a local business license for sellers registered with ARSSTC
- **Section 7** adopts a policy of no interest paid on tax refunds to be consistent between local and remote sellers
- **Section 8** adopts a late filing penalty for late filed returns to be consistent between local and remote sellers.

ALTERNATIVES: The City is obligated to adopt changes to the uniform code by terms of the Alaska Intergovernmental Remote Sellers Sales Tax Agreement if the City wishes to remain a member of ARSSTC.

FINANCIAL: After payment of fees, the City is receiving on average \$9,500 per month in revenue from ARSSTC. We expect this revenue to increase as remote sellers register with ARSSTC and begin collecting and remitting Unalaska's sales tax.

LEGAL: City attorney Brooks Chandler was involved with and commented on the changes proposed by ARSSTC; and he prepared the ordinance and [attached memo](#) regarding adoption of the ARSSTC tax code update and related amendments to Unalaska's code. The City Attorney perceives no significant downside for Unalaska in the changes adopted by ARSSTIC.

STAFF RECOMMENDATION: Staff recommends adoption of Ordinance 2021-05.

PROPOSED MOTION: I move to schedule Ordinance 2021-05 for public hearing and second reading on May 25, 2021.

CITY MANAGER COMMENTS: I support Staff's Recommendation.

ATTACHMENTS:

- [Summary of changes to the uniform code](#)
- [City Attorney Memo](#)



To: ARSSTC Members

From: Clinton Singletary, Statewide Municipal Sales Tax Director

Re: Uniform Code Updates – March 2021

Over the months of December & January, Commission staff met weekly with representatives from member jurisdictions to discuss and work through numerous code updates that Commission staff have been accumulating over the last year. Many of these needed updates are more clerical in nature, but several are more substantive and will have a clear impact on the Commission and/or member jurisdictions.

Following is a breakdown of the more substantive updates that were agreed upon by the Code Update Working Group, including a brief justification / background of why the update is being recommended.

At its February 24, 2021 meeting, the ARSSTC Board of Directors formally approved the proposed updates to the Uniform Code.

Code Section	Description	Justification / Background
Section 040(A)	Threshold calculation updated to include current year, not just previous calendar year.	Not as limiting a timeframe since there are now two time windows to be examined in determining threshold.
Section 050	Was the old Section 230; renamed section to more accurate description; included language for local sale.	No change to the original intent of this section. Section title better describes goal of section and inclusion of “local sale” better describes the type of transaction. “Local Sale” was also added as a new definition.
Section 080 A & B	Remove registration requirement for marketplace sellers who only sell on marketplaces.	Tax would already be collected by the marketplace, the seller would have nothing to report. Versions of this can be found in other states. Added affidavit requirement.
Section 080 (H)	Member jurisdiction business license clarification	Add language explaining that registration as remote seller satisfies jurisdiction business license requirements, but only if seller does not have physical presence in jurisdiction. Common question from sellers.
Section 090 (B)	Allow for annual filing frequency, dependent on member jurisdiction code allowances.	Will be modifying filing frequency change policy to only grant annual if no taxable sales.
Section 110 (A)	Clarifies rounding language	Specifies that only gross sales and exempt sales should be rounded.
Section 120 (C)	Interest on refund requests	Specifies that the Commission will not pay interest on refund requests.



Section 170 (A)	Late Filing fee language	Update late filing fee to max out at 4 months, same as penalty in C.
Section 170 (F)	Penalty Waivers	The code specifies the timeframe in which a waiver can be requested and limits the waiver to one a year. Waiver policy will be developed to fine-tune the number of waivers allowed and the circumstances that will qualify for a waiver.
Section 180	Remote Reseller Certificate	Codifies the existence of the remote reseller certificate
Section 240	Penalty cleanup / clarification	Paragraph A was added to defer to member jurisdiction penalties if the member penalty is different. Removed old paragraph E on late filing fees since that is a duplicate of Section 170.
Section 260	Savings Clause	Provides discrimination protection.
Section 270 – Definitions		
	Local sale	Used in Section 050
	Marketplace	Used in conjunction with definition of marketplace seller, for purposes of Section 080
	Marketplace Seller	For purposes of Section 080
	Point of Delivery	Added paragraph C specific to POD for services
	Remote Seller	Cleaned up definition to focus on a seller making sales into jurisdiction where the seller does not have physical presence. Applies to both in-state & out of state sellers.
	Services	Updated definition to specify any service provided which is delivered into a member jurisdiction.

Other Changes throughout the Uniform Code

- Throughout the code the use of the term jurisdiction was updated to focus on either taxing jurisdiction or member jurisdiction. These definitions were updated such that taxing jurisdiction is just a jurisdiction in Alaska with a sales tax. Member jurisdiction is a taxing jurisdiction that has adopted the Uniform Code.
- Sections 100(C), 130(C), 150(E), and 200 were all standardized for a 3-year timeframe, instead of the varying years.

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MEMORANDUM

TO: Marjorie Veeder
City Clerk
City of Unalaska



FROM: Brooks W. Chandler
City Attorney

RE: Adoption of Updates to Alaska Remote Sellers Sales Tax Code

DATE: March 18, 2021

This memorandum summarizes the draft of the sales tax ordinance which will fulfill Unalaska's obligation to update the Alaska Remote Seller Sales Tax Code ("Uniform Code") adopted in 2020. The City is obligated to adopt these updates by the terms of the Alaska Intergovernmental Remote Sellers Sales Tax Agreement if the City wishes to remain a member of the Commission.

The draft ordinance adopts the updated version of the Uniform Code by changing UCO 6.52.040 to reference the 2021 version. Section 4 of the ordinance makes this change.

Some definitions included in UCO 6.52.030 were changed by the 2021 version of the Remote Sellers Sales Tax Code. The changes to these definitions are made in Section 3 of the ordinance.

Council may recall that to ensure uniformity in application of definitions to on line and "brick and mortar" sellers many Uniform Code definitions were incorporated into UCO 6.40.010

last year. Two of those definitions were changed by the Commission in 2021. Sections 2 and 3 of the draft ordinance make those changes.

The 2021 version of the Uniform Code also included an exemption from acquiring a local business license for remote sellers who register with the Commission. Implementing this policy requires adding an additional business license exemption category to Unalaska's business license ordinance. This is done in Section 6 of the draft ordinance.

The 2021 version of the Uniform Code adopted a "no interest on tax refunds" policy. To ensure consistency between refunds between internet and in person sales a similar no interest policy is proposed to be added to Chapter 6.40. This is done in Section 7 of the ordinance.

The 2021 version also adopted a late filing penalty for late filed returns. To ensure consistency between penalties applied to local sellers and remote sellers an identical penalty should be added to Chapter 6.40. This is done in Section 8 of the ordinance.

The "meat" of the changes in the Remote Sellers Sales Tax Code are reflected in the redlined version of that code not in this ordinance. Many of these are relatively minor wording changes. The Commission has prepared an explanation of the changes. There is no need to repeat that explanation in this memorandum. I was involved in reviewing and commenting on drafts of the proposed changes before they were enacted. I did not perceive any significant downside in the changes for Unalaska.

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 that is being adopted by reference.

The deadline for adoption of the latest version of the Uniform Remote Sellers Sales Tax Code is June 4, 2021. Let me know if there are any questions about the draft ordinance.