

CITY OF UNALASKA
UNALASKA, ALASKA

ORDINANCE 2022-02

AN ORDINANCE OF THE UNALASKA CITY COUNCIL AMENDING TITLE 6.40 OF THE UNALASKA CODE OF ORDINANCES TO PROVIDE A LIMITED EXEMPTION FROM SALES TAX TO FEDERALLY RECOGNIZED TRIBES

WHEREAS, federally recognized tribes were previously eligible for sales tax exemptions as non-profit organizations; and

WHEREAS, federally recognized tribes provide government services.

BE IT ENACTED by the Unalaska City Council, as follows:

Section 1: Classification. This Ordinance is a Code Ordinance.

Section 2: Section 6.40.010, DEFINITIONS, of the Unalaska Code of Ordinances is hereby amended by adding a new subsection (HH) to read as follows:

(HH) "TRIBAL GOVERNMENTAL ACTIVITY" means governmental services provided by a federally recognized tribe for the benefit of the tribe's members, or members together with the general public, including those activities necessary for administration and management of such services. Tribal governmental activity does not include any commercial business undertaking, provided that charging a fee for service shall not render such governmental service a commercial or business undertaking if the fee does not exceed the tribe's reasonable cost of furnishing such service.

Section 3: Section 6.40.030, EXEMPTIONS, is hereby amended by adding a new subsection (BB) to read as follows:

(BB) *FEDERALLY RECOGNIZED TRIBES*. A sale made to a federally recognized tribe for a tribal governmental activity is exempt.

Section 4: Subsection 6.40.040(A), EXEMPTION PROCEDURES, is hereby amended to read as follows [~~striking through~~ the deleted words and underlining the new words]:

(A) *NON-PROFITS AND FEDERALLY RECOGNIZED TRIBES*. No seller may allow an exemption under § 6.40.030(Q) or § 6.40.030(BB) unless the consumer first obtains a certificate of exemption ~~for non-profit organizations~~ and presents it to the seller at the time of the sale.

Section 5: Subsection 6.40.040(F), EXEMPTION CERTIFICATES, is hereby amended to read as follows [~~striking through~~ the deleted words and underlining the new words]:

(1) An application for an exemption certificate shall be signed by the consumer where based on the consumer's tax exempt status. The application shall contain the information reasonably required by the City Clerk.

(2) Sellers, other than non-profits, exempt from collecting tax under § 6.40.030 are not required to obtain an exemption certificate in order to be exempt from the collection and remittance of sales tax on their qualifying sales so long as they maintain a current City of Unalaska business license or are a governmental entity exempt under § 6.40.030(L) or (Z).

(3) The seller shall indicate the certificate number of the consumer on the sales slip and shall account for these sales requiring a certificate of exemption on their sales tax return.

(4) The City Clerk may require such proof as the City Clerk deems reasonable, including an audit of books and records, to determine that a certificate issued for exemption under § 6.40.030 (BB) is used solely to obtain an exemption to which the certificate holder is entitled.

(5) The City Manager or designee may permanently revoke an exemption certificate if the consumer entitled to the exemption has been found to have used the exemption certificate to obtain an exemption to which the certificate holder is not entitled or has permitted another to use the exemption certificate to obtain an exemption to which the other person is not entitled.

Section 6: Effective Date. This ordinance shall take effect upon adoption.

PASSED AND ADOPTED by a duly constituted quorum of the Unalaska City Council on _____, 2022.

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: January 25, 2022
Re: Ordinance 2022-02: Amending Title 6.40 of the Unalaska Code of Ordinances to provide a limited exemption from sales tax to federally recognized tribes

SUMMARY: The Qawalangin Tribe of Unalaska (Q-Tribe) requested that City Code be amended to exempt federally recognized tribes from Unalaska's sales tax. Council provided direction to provide a limited sales tax exemption for governmental activities only, leaving commercial or business activities taxable. The City Attorney prepared proposed Ordinance 2022-02. The City Clerk recommends adoption.

PREVIOUS COUNCIL ACTION: On December 14, 2021, City Council discussed this topic during their work session, aided by memoranda supplied by the City Attorney and the City Clerk. At that time, Council provided direction to proceed with a limited exemption from sales tax for federally recognized tribes, exempting governmental activities only, but not commercial activities.

BACKGROUND: Tribal entities are not inherently exempt from municipal sales tax, either as a buyer or a seller. Tribal governments do not qualify for any of the present exemptions allowed in Unalaska's Code of Ordinances. The Q-Tribe requested that city code be amended to provide exemption from sales tax.

DISCUSSION: This topic was thoroughly reviewed and discussed at the December 14, 2021 City Council meeting and the proposed ordinance follows the direction provided by Council.

ALTERNATIVES: Council may

1. Adopt Ordinance 2022-02 as presented, which follows the direction received from Council to provide a limited exemption for governmental activities;
2. Amend the proposed ordinance;
3. Provide a full exemption from sales tax to federally recognized tribes to include commercial activities; or
4. Vote the ordinance down, essentially doing nothing, in which case tribes will receive no exemption from sales tax.

FINANCIAL IMPLICATIONS: The City Clerk anticipates no impact on city sales tax revenue as the tribe has been availing itself of an outdated 1992 sales tax exemption as a nonprofit organization.

LEGAL: City Attorney Charles Cacciola prepared the proposed ordinance and is available by telephone for questions this evening.

STAFF RECOMMENDATION: Because the proposed ordinance complies with the direction of Council received on December 14, 2021, the City Clerk recommends adoption.

PROPOSED MOTION: I move to introduce Ordinance 2022-02 and schedule it for public hearing and second reading on February 8, 2022.

CITY MANAGER COMMENTS: This ordinance is consistent with Council direction from December. I support Staff's recommendation.