



<b>TRANSMITTAL MEMORANDUM</b>
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TO: The Honorable Mayor and City Council

FROM: Karl R. Amylon, City Manager

DATE: August 7, 2020

RE: **Ordinance No. 20-1918 – Adopting The Alaska Remote Seller Sales Tax Code; Authorizing The Alaska Remote Seller Sales Tax Commission To Collect Taxes On Remote Sales For The City By Adopting A New Chapter 3.05 Entitled “Remote Seller Sales Tax Code” To The Ketchikan Municipal Code; Adding A Definition of “Physical Presence” To Ketchikan Municipal Code Section 3.04.010; Adding A New Section 3.04.230 Entitled “Remote Sales Tax Code Applicable” To The Ketchikan Municipal Code; And Establishing An Effective Date**

The attached ordinance was approved in first reading at the City Council meeting of August 6, 2020. If adopted in second reading, prepared Ordinance No. 20-1918 provides for amending the Ketchikan Municipal Code to incorporate the provisions of the Alaska Remote Sales Tax Commission’s Sales Tax Code. When in place, these provisions will allow the City to collect sales tax on sales made by remote sellers that do not have a physical presence in Ketchikan. The rationale for the ordinance is detailed in Mr. Newell’s transmittal memorandum and requires no elaboration on the part of my office. I concur with the Finance Director’s recommendation.

At the City Council meeting of August 6, 2020, Councilmember Coose asked whether locally enacted senior citizen sales tax exemptions would be preserved by incorporating the provisions of the Alaska Remote Sales Tax Commission’s Sales Tax Code into the Ketchikan Municipal Code. Attached is a separate memorandum from the Finance Director, which responds to Councilmember Coose’s question.

Mr. Newell will attend the City Council meeting of August 20, 2020, in order to address any questions and/or concerns that Councilmembers may have.

A motion has been prepared for City Council consideration.

## **RECOMMENDATION**

It is recommended the City Council adopt the motion approving in second reading Ordinance No. 20-1918 adopting the Alaska Remote Seller Sales Tax Code; authorizing the Alaska Remote Seller Sales Tax Commission to collect taxes on remote sales for the City by adopting a new Chapter 3.05 entitled "Remote Seller Sales Tax Code" to the Ketchikan Municipal Code; adding a definition of "Physical Presence" to Ketchikan Municipal Code Section 3.04.010; adding a new Section 3.04.230 entitled "Remote Sales Tax Code Applicable" to the Ketchikan Municipal Code; and establishing an effective date.

**Recommended Motion:** I move the City Council approve in second reading Ordinance No. 20-1918 adopting the Alaska Remote Seller Sales Tax Code; authorizing the Alaska Remote Seller Sales Tax Commission to collect taxes on remote sales for the City by adopting a new Chapter 3.05 entitled "Remote Seller Sales Tax Code" to the Ketchikan Municipal Code; adding a definition of "Physical Presence" to Ketchikan Municipal Code Section 3.04.010; adding a new Section 3.04.230 entitled "Remote Sales Tax Code Applicable" to the Ketchikan Municipal Code; and establishing an effective date.

**MEMORANDUM**  
**CITY OF KETCHIKAN, ALASKA**  
**Finance Department**  
*Office of the Finance Director*

*Bob Newell, Finance Director*  
*Camille Nelson, Financial Analyst*  
*Phone: (907) 228-5621*  
*Facsimile: (907) 228-5617*

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TO: Karl R. Amylon, City Manager/KPU General Manager

FROM: Bob Newell, Finance Director

DATE: August 11, 2020

**SUBJECT: Request for Additional Information - Impact of Remote Seller Sales Tax on The Senior Citizen Tax-Exemption**

At the City Council's regular meeting of August 6, 2020, Councilmember Dick Coose asked how the Remote Seller Sales Tax Code would impact the senior citizen tax-exemption. Staff response was that all the exemptions including the senior citizen tax-exemption would remain in place but it was unclear as to how the senior citizen tax-exemption would be applied in the case of an online sales transaction.

Since the Borough administers and oversees the senior citizen tax-exemption program in our community, I reached out to them for comments. The current plan is to upload a list of senior citizens with tax-exempt cards to the Alaska Sales Tax Commission's database. It is the Borough's understanding that most remote, or online, sellers will be able to honor the exemption at the point of sale as if the customer was physically present. If a remote seller is unable to honor the exemption, the Borough is working on procedures that will enable senior citizens and other citizens that may have been overcharged to seek a refund of the taxes paid directly from the Borough. When those procedures become available, I will share them with your office and the City Council.

It will be an inconvenience for the taxpayer to file for a refund but hopefully refunds will be a rare exception. I also think it is helpful that the taxpayer will be able to file for refunds directly with the Borough and not the remote seller. This will ensure that the process will take place locally and should make it much easier to resolve any issues that might arise.

Please let me know if you have any questions.

**Resolution No. 20-2786 – Appointing the Election Workers for the Regular Municipal Election to be Held on October 6, 2020; Approving the Appointment of Members of the Canvass Board as Authorized by the City Clerk**

Moved by Kiffer, seconded by Bergeron the City Council approve Resolution No. 20-2786 appointing the election workers for the regular municipal election to be held on October 6, 2020; approving the appointment of members of the canvass board as authorized by the city clerk; and establishing an effective date.

Motion passed with Gage, Zenge, Chapel, Flora, Bergeron, Coose and Kiffer voting yea.

**Appointments to Boards and Commissions – Mayor Sivertsen**

Mayor Sivertsen submitted the names of Christa Bruce and Kristina Hill to the Historic Commission, and the name of Jodi Russell to the Library Advisory Board; no objections were heard.

**Award of Contract No. 20-16 – Ketchikan Police Department Re-Siding – Island Contractors, Inc.**

Moved by Kiffer, seconded by Bergeron the City Council accept the bid of Island Contractors, Inc. in the amount of \$184,800 for Contract No. 20-16, Police Department Re-Siding; establish a ten percent contingency in the amount of \$18,480, bringing the total project cost to \$203,280; authorize funding from the Police Department's 2020 Building Re-Siding Project Capital Account; and direct the City Manager to execute the contract documents on behalf of the City Council.

Motion passed with Gage, Zenge, Chapel, Flora, Bergeron, Coose and Kiffer voting yea.

**Ordinance No. 20-1918 – Adopting the Alaska Remote Seller Sales Tax Code; Authorizing the Alaska Remote Seller Sales Tax Commission to Collect Taxes on Remote Sales for the City by Adopting a New Chapter 3.05 Entitled "Remote Seller Sales Tax Code" to the Ketchikan Municipal Code; Adding a Definition of "Physical Presence" to Ketchikan Municipal Code Section 3.04.010; Adding a New Section 3.04.230 Entitled "Remote Sales Tax Code Applicable" to the Ketchikan Municipal Code – First Reading**

Copies of Ordinance No. 20-1918 were available for all present.

Moved by Kiffer, seconded by Bergeron the City Council approve in first reading Ordinance No. 20-1918 adopting the Alaska Remote Seller Sales Tax Code; authorizing the Alaska Remote Seller Sales Tax Commission to collect taxes on remote sales for the city by adopting a new Chapter 3.05 entitled "Remote Seller Sales Tax Code" to the Ketchikan Municipal Code; adding a definition of "Physical Presence" to Ketchikan Municipal Code Section 3.04.010; adding a new Section 3.04.230 entitled "Remote Sales Tax Code Applicable" to the Ketchikan Municipal Code; and establishing an effective date.

Councilmember Coose asked how the senior sales tax exemption would be handled if this ordinance is approved.



# "UNAPPROVED" August 6, 2020

In response to Councilmember Coose, Finance Director Newell said he was not sure how the Ketchikan Gateway Borough is going to handle it, though it was his understanding that all of the exemptions currently in place will still be available. He stated he would follow up with additional information at the next Council meeting.

Motion passed with Gage, Zenge, Chapel, Flora, Bergeron, Coose and Kiffer voting yea.

## Ordinance No. 20-1917 – Approving an Initial Ten Year Term for the Prince Rupert Port Authority, City West Cable & Telephone Corp. and City of Ketchikan Consent to Sublicense Agreement; Providing for the Filing of Referendum Petitions – First Reading

Copies of Ordinance No. 20-1917 were available for all present.

Moved by Kiffer, seconded by Bergeron pursuant to Section 5-17 of the City Charter, the City Council approve in first reading Ordinance No. 20-1917 approving an initial ten year term for the Print Rupert Port Authority, City West Cable & Telephone Corp. and City of Ketchikan Consent to Sublicense Agreement; providing for the filing of referendum petitions; and establishing an effective date.

Motion passed with Gage, Zenge, Chapel, Flora, Bergeron, Coose and Kiffer voting yea.

Moved by Kiffer, seconded by Bergeron the City Council authorize funding for license fees associated with the Consent to Sublicense Agreement from the Telecommunications Division's 2020 Internet Expansion Capital Account.

Motion passed with Gage, Zenge, Chapel, Flora, Bergeron, Coose and Kiffer voting yea.

## Reimbursement to City West Cable & Telephone Corp. for Canadian Land Tenure

Moved by Kiffer, seconded by Bergeron pursuant to Section 3.12.030 of the Ketchikan Municipal Code, the City Council authorize the General Manager to make payment to City West Cable and Telephone Corp. in the amount of \$73,170.75 Canadian Dollars for reimbursement of the cost of Canadian Land Tenure in connection with KPU's subsea fiber cable project and approve funding from the Telecommunications Division's 2020 Internet Expansion Capital Account.

Motion passed with Gage, Zenge, Chapel, Flora, Bergeron, Coose and Kiffer voting yea.

## Amendment No. 1 to Contract No. 19-45 – Schoenbar Road Raw Water Transmission Main Design – DOWL

Moved by Kiffer, seconded by Bergeron the City Council approve Amendment No. 1 to Contract No. 19-45, Schoenbar Road Raw Water Transmission Main Design, between the City of Ketchikan d/b/a Ketchikan Public Utilities and DOWL in the amount of \$126,300 for design of the alternative water main alignment approved by the City Council on July 2, 2020, bringing the total project cost to \$497,550; authorize funding from the Water Division's Schoenbar Road Phase I Capital Account; and direct the general manager to execute the amendment on behalf of the City Council.

Motion passed with Gage, Zenge, Chapel, Flora, Bergeron, Coose and Kiffer voting yea.

**MEMORANDUM**  
**CITY OF KETCHIKAN, ALASKA**  
**Finance Department**  
*Office of the Finance Director*

*Bob Newell, Finance Director*  
*Camille Nelson, Financial Analyst*  
*Phone: (907) 228-5621*  
*Facsimile: (907) 228-5617*

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TO: Karl R. Amylon, City Manager/KPU General Manager

FROM: Bob Newell, Finance Director

DATE: July 29, 2020

**SUBJECT: Ordinance No. 20-1918, Adopting The Alaska Remote Sellers Sales Tax Code; Authorizing The Alaska Remote Seller Sales Tax Commission To Collect Taxes On Remote Sales For The City By Adopting A New Chapter 3.05 Entitled "Remote Seller Sales Tax Code" To The Ketchikan Municipal Code; Adding A Definition Of "Physical Presence" To The Ketchikan Municipal Code Section 3.04.010; Adding A New Section 3.04.230 Entitled "Remote Sales Tax Code Applicable" To The Ketchikan Municipal Code; And Establishing An Effective Date**

As you are aware, in 2018 the United States Supreme Court issued its *Wayfair vs. South Dakota* decision which allowed for the collection of local and state sales tax from remote sellers that do not have a physical presence in the either a local or state taxing jurisdiction. This decision has provided the City with an opportunity to collect its local sales tax from online sellers that sell their goods and services in our community. In a state that has a state sales tax, making the transition to collect local and state sales taxes was a relatively simple process because the tax collection functions were already centralized at the state level. Alaska, however, is one of the five states in the US that does not have a state sales tax. Instead, there are approximately 106 local jurisdictions in Alaska that assess and collect a local sales tax. Each jurisdiction has their own sales tax code, sales tax rates, and reporting requirements, which makes it very cumbersome and costly for remote sellers to collect and report the sales tax collected.

The Alaska Municipal League has solved this problem by creating an intergovernmental entity known as the Alaska Remote Seller Sales Tax Commission (the "Commission"). The purpose of the Commission is to provide for a centralized administration of sales tax collection, remittance and enforcement on sales made by remote sellers. Any local government in the State of Alaska can become a member of the Commission. From the remote sellers' perspective, the creation of the Commission means they will only have to collect taxes and remit them to one entity if they do retail business in the State of Alaska instead of collecting and reporting on behalf of 106 individual jurisdictions. As of today, over 39 local governments representing about 90% of the sales tax collected in Alaska have joined the Commission. Of the 39 local governments, about 29 have adopted the Remote Sellers Sales Tax Code.

In order to participate in the Commission and begin collecting local sales tax from remote sellers, each local government is required to do the following:

- Adopt a resolution authorizing the local government to join the Alaska Remote Sales Tax Commission.
- Amend the local government's sales tax code to incorporate the provisions of the Alaska Remote Sales Tax Commission's Sales Tax Code.

At its meeting of May 7, 2020, the City Council adopted Resolution No. 20-2775, authorizing the City's participation in the Alaska Remote Sales Tax Commission. Ordinance No. 20-1918 is being presented to the City Council for consideration at its meeting of August 6, 2020 to satisfy the requirement to adopt Alaska Sales Tax Commission's sales tax code.

Ordinance No. 20-1918 has been prepared by the City Attorney and was reviewed by my office. It is important to note that the ordinance does not change the City's local sales tax rate of 4.0%, existing exemptions or local control over the City's sales tax policies. The key purposes of Ordinance No. 20-1918 are to amend the City's Sales Tax Code to define the term "physical presence" and to add a new section that contains the policies for assessing, collecting and reporting sales taxes that remote sellers are required to follow and the administrative procedures that the Commission must follow in collecting the sales tax from remote sellers. It is important to add "physical presence" to the City's Sales Tax Code in order to make it abundantly clear that a physical presence is no longer a requirement for assessing and collecting sales taxes.

I recommend that the City Council approve Ordinance No. 20-1918. Based on the latest information available from Alaska Municipal League, the amount of annual sales tax revenue that the City may realize is between \$600,000 and \$1,500,000. As we have discussed previously with the City Council, this estimate is a best guess based on limited remote sellers' sales data from other taxing jurisdictions around the country. Up until the establishment of the Commission there has been no mechanism in place to track sales data for remote sales in the State of Alaska. This additional sales tax revenue could play a significant role in the City's efforts to balance its 2021 General Government Operating and Capital Budget.

If the ordinance is approved by the City Council in first reading on August 6 and second reading on August 20, it will become effective on or about September 20. Under the Commission's current rules, the collection of sales tax could not begin until November 1. After discussing the City's ordinance process with the executive director of AML, Nils Andreassen, AML has agreed to allow the collection of sales taxes to begin on October 1. AML will start the clock during the 30-day period for filing a referendum petition instead of waiting until after the referendum period expires as long as the ordinance is legally effective on October 1, 2020.

**Recommended Motion:**

I move the City Council approve in first reading Ordinance No. 20-1918, adopting the Alaska Remote Sellers Sales Tax Code; authorizing the Alaska Remote Seller Sales Tax Commission to collect taxes on remote sales for the City by adopting a new Chapter 3.05 Entitled "Remote Seller Sales Tax Code" to the Ketchikan Municipal Code; adding a definition of "Physical Presence" to the Ketchikan Municipal Code Section 3.04.010; adding a new Section 3.04.230 entitled "Remote Sales Tax Code Applicable" to the Ketchikan Municipal Code; and Establishing an Effective Date.

## THE CITY OF KETCHIKAN, ALASKA

### ORDINANCE NO. 20-1918

**AN ORDINANCE OF THE COUNCIL OF THE CITY OF KETCHIKAN, ALASKA; ADOPTING THE ALASKA REMOTE SELLER SALES TAX CODE; AUTHORIZING THE ALASKA REMOTE SELLER SALES TAX COMMISSION TO COLLECT TAXES ON REMOTE SALES FOR THE CITY BY ADOPTING A NEW CHAPTER 3.05 ENTITLED "REMOTE SELLER SALES TAX CODE" TO THE KETCHIKAN MUNICIPAL CODE; ADDING A DEFINITION OF "PHYSICAL PRESENCE" TO KETCHIKAN MUNICIPAL CODE SECTION 3.04.010; ADDING A NEW SECTION 3.04.230 ENTITLED "REMOTE SALES TAX CODE APPLICABLE" TO THE KETCHIKAN MUNICIPAL CODE; AND ESTABLISHING AN EFFECTIVE DATE.**

#### RECITALS

- A. WHEREAS**, the inability to effectively collect sales tax on sales of property, products or services transferred or delivered into Alaska is seriously eroding the sales tax base of communities, causing revenue losses and imminent harm to residents through the loss of critical funding for local public services and infrastructure; and
- B. WHEREAS**, the harm from the loss of revenue is especially serious in Alaska because the State has no income tax, and sales tax revenues are one of the primary sources of funding for services provided by local governments; and
- C. WHEREAS**, the failure to collect sales tax on remote sales creates market distortions by creating an unfair tax advantage for businesses that limit their physical presence in the taxing jurisdictions but still sell goods and services to consumers, which becomes easier and more prevalent as technology advances; and
- D. WHEREAS**, 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
- E. WHEREAS**, the structural advantages for remote sellers, including the absence of point-of-sale tax collection, along with the general growth of online retail, make clear that erosion of the sales tax base is and has been occurring; and



- F. **WHEREAS**, remote sellers who make a substantial number of deliveries into or have large gross revenues from Alaska benefit extensively from the Alaska market, affecting the economy as well as burdening local infrastructure and services; and
- G. **WHEREAS**, 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; and,
- H. **WHEREAS**, 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 taxing jurisdictions; and
- I. **WHEREAS**, due to a recent decision by the United States Supreme Court and the lack of a state sales tax it is appropriate for the municipalities to collectively amend their sales tax codes to account for remote sellers who do not have a physical presence either in the State of Alaska or in a specific taxing jurisdiction, but do have a taxable connection with the State of Alaska or taxing jurisdiction; and
- J. **WHEREAS**, this ordinance is not retroactive in its application; and
- K. **WHEREAS**, this ordinance provides a safe harbor to those who transact limited sales in Alaska; and
- L. **WHEREAS**, amending local sales tax codes reflects the 2018 Supreme Court "*Wayfair*" decision to allow for the application of the taxing jurisdiction's sales tax code requirements to sellers without a physical presence in the State of Alaska or taxing jurisdiction; and
- M. **WHEREAS**, the intent is to levy municipal sales tax to the maximum limit of federal and state constitutional doctrines; and
- N. **WHEREAS**, the City of Ketchikan has entered into a cooperative agreement with other local governments called the Alaska Remote Seller Sales Tax Agreement ("the Agreement"); and
- O. **WHEREAS**, the Agreement authorized the formation of the Alaska Remote Seller Sales Tax Commission (the "Commission") which was established to provide an efficient single point of collection and enforcement for local sales taxes levied throughout the State of Alaska; and
- P. **WHEREAS**, the Agreement also required signatory municipalities to adopt a uniform code of provisions for collection and enforcement of municipal sales tax applicable to sales made by remote sellers similar to the Streamlined Sales and Use Tax Agreement; and

- Q. WHEREAS**, the uniform code of provisions developed by the Commission, in the form of the Alaska Remote Seller Sales Tax Code is set forth in this ordinance which, if adopted, will satisfy the obligations of the city relative to its membership in the Commission; and
- R. WHEREAS**, if adopted, the Remote Seller Sales Tax Code will allow the Commission to begin collecting sales taxes on remote sales into the city on the city's behalf.

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF KETCHIKAN, ALASKA;** as follows:

**Section 1.** KMC 3.04.010 (Definitions) is hereby amended to include a definition of Physical presence as follows:

...

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

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

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

...

**Section 2.** KMC 3.04 (Sales Tax) is hereby amended by adding a new section, 03.04.230, to read as follows:

KMC 3.04.230 Remote Seller Sales Tax Code; Applicability

(a) Sellers with no physical presence in the city that have remote or internet-based sales in the city are subject to KMC 3.05 instead of KMC 3.04.

(b) Sellers with a physical presence in the city that have remote or internet-based sales delivered to a taxing jurisdiction in Alaska outside the city boundaries are subject to KMC 3.04 and KMC 3.05.

(c) Sellers with a physical presence in the city that have remote or internet-based sales delivered within the city boundaries are subject to KMC 3.04.

**Section 3.** The Alaska Remote Seller Sales Tax Commission is hereby authorized to implement, administer, and enforce the provisions of KMC 3.05 Remote Seller Sales Tax Code in accordance with the terms of the Alaska Remote Seller Sales Tax Agreement. This authority remains in full force and effect until the Council revokes this authorization or otherwise withdraws from membership in the Alaska Remote Seller Sales Tax Commission.

**Section 4. New Chapter.** A new chapter, to be numbered 3.05 entitled "Remote Seller Sales Tax Code," is added to Title 3, of the City of Ketchikan Municipal Code, to read as follows:

### **"CHAPTER 3.05 REMOTE SELLER SALES TAX CODE**

Sections:

- 3.05.010 Interpretation.
- 3.05.020 Definitions
- 3.05.030 Supplemental Definitions
- 3.05.040 Title to collected sales tax
- 3.05.050 Imposition; rate
- 3.05.060 Obligation to collect tax; threshold criteria
- 3.05.070 No retroactive application
- 3.05.080 Payment and Collection
- 3.05.090 Remote seller and marketplace facilitator registration requirement
- 3.05.100 Tax Filing Schedule
- 3.05.110 Estimated Tax
- 3.05.120 Returns; filing contents

3.05.130	Refunds
3.05.140	Amended Returns
3.05.150	Extension for Return
3.05.160	Audits
3.05.170	Audit protest
3.05.180	Penalties/Interest for Late Filing
3.05.190	Repayment Plans
3.05.200	Remote seller or marketplace facilitator record retention
3.05.210	Cessation/Transfer of Business
3.05.220	Use of Information; confidentiality
3.05.230	Violations
3.05.240	Penalties for Violations
3.05.250	Reporting/Remitting for sellers with physical presence/no physical presence
3.05.260	Remittance of tax; remote seller held harmless
3.05.270	Savings Clause

### **REMOTE SELLER SALES TAX CODE**

#### 3.05.010 Interpretation.

- (a) In order to prevent evasion of the sales taxes and to aid in its administration, it is presumed that all sales and services by a person or entity engaging in business are subject to the sales tax.
- (b) The application of the tax levied under this chapter shall be broadly construed and shall favor inclusion rather than exclusion.
- (c) Exemptions from the tax levied under this chapter or by the city shall be narrowly construed against the claimant and allowed only when such exemption clearly falls within an exemption defined in this chapter or in KMC 3.04.



(d) The scope of this chapter shall apply to remote sellers or marketplace facilitators, delivering products or services to the city or other member municipalities adopting the Alaska Remote Sellers Sales Tax Code, within the state of Alaska.

(e) Pursuant to AS 29.35.170 the Ketchikan Gateway Borough ("the borough") is required to assess and collect sales taxes levied by the city and return the sales taxes collected to the city.

3.05.020 Definitions. As used in this chapter, the following terms mean:

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

"Commission" means the Alaska Remote Seller Sales Tax Commission established by the Alaska Remote Seller Sales Tax Agreement between the city and other local government taxing jurisdictions within Alaska, and which has been delegated sales tax collection authority.

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

"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.

"Goods for resale" means:

(1) The sale of goods by a manufacturer, wholesaler or distributor to a retail vendor; sales to a wholesale or retail dealer who deals in the property sold, for the purpose of resale by the dealer.

(2) Sales of personal property as raw material to a person engaged in manufacturing components for sale, where the property sold is consumed in the manufacturing process of, or becomes an ingredient or component part of, a product manufactured for sale by the manufacturer.

(3) Sale of personal property as construction material to a licensed building contractor where the property sold becomes part of the permanent structure.

"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:

- (1) Directly or indirectly, through one or more affiliated persons in any of the following:
  - a. Transmitting or otherwise communicating the offer or acceptance between the buyer and remote seller;
  - b. Owning or operating the infrastructure, electronic or physical, or technology that brings buyers and remote sellers together;
  - c. Providing a virtual currency that buyers are allowed or required to use to purchase products from the remote seller; or
  - d. Software development or research and development activities related to any of the activities described in subsection (2) of this definition section, if such activities are directly related to a physical or electronic marketplace operated by the person or an affiliated person; and
- (2) In any of the following activities with respect to the seller's products:
  - (a) Payment processing services;
  - (b) Fulfillment or storage services;
  - (c) Listing products for sale;
  - (d) Setting prices;
  - (e) Branding sales as those of the marketplace facilitator;
  - (f) Order taking;
  - (g) Advertising or promotion; or
  - (h) Providing customer service or accepting or assisting with returns or exchanges.

"Member" means a taxing jurisdiction that is a signatory of the Alaska Remote Seller Sales Tax Agreement, thereby members of the Commission, and who have adopted the Alaska Remote Seller Sales Tax Code. The City of Ketchikan is a member under this chapter.

"Monthly" means occurring once per calendar month.

"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.

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

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

the city:

- (1) Has any office, distribution or sales house, warehouse, storefront, or any other place of business within the boundaries of the city;
- (2) Solicits business or receiving orders through any employee, agent, salesman, or other representative within the boundaries of the city or engages in activities in the State of Alaska that are significantly associated with the seller's ability to establish or maintain a market for its products within the state.
- (3) Provides services or holds inventory within the boundaries of the city;
- (4) Rents or Leases property located within the boundaries of the city. A seller that establishes a physical presence within the city in any calendar year will be deemed to have a physical presence within that the city for the following calendar year.

"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 the city, 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 seller.
- (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 the city, the sale is considered to have been made in the city where the purchaser is present even if delivery of the product takes place in another the taxing jurisdiction. Such sales are reported and tax remitted directly to the borough for payment to the city, 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.

"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.

"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).

“Quarter” means trimonthly periods of a calendar year; January-March, April-June, July-September, and October-December.

“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.

“Remote sales” means sales of goods or services by a remote seller or marketplace facilitator.

“Remote seller” means a seller or marketplace facilitator making sales of goods or services 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.

“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.

“Sale” or “retail sale” means any transfer of property for consideration for any purpose other than for resale.

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

- (1) The seller’s cost of the property or product sold;
- (2) The cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;
- (3) Charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;
- (4) Delivery charges;



- (5) Installation charges; and
- (6) Credit for any trade-in, as determined by state law.

"Seller" means a person making sales of property, products, or services, or a marketplace facilitator facilitating sales on behalf of a seller.

"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.

"Tax cap" means a maximum taxable transaction.

"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. The City of Ketchikan is a taxing jurisdiction under this chapter.

"Transferred electronically" means obtained by the purchaser by means other than tangible storage media.

### 3.05.030 Supplemental Definitions.

The Commission shall promulgate supplemental definitions that are incorporated into this Remote Seller Sales Tax Code. Supplemental definitions are available at [www.arsstc.org](http://www.arsstc.org). Provisions of the supplemental definitions that are amended, deleted, or added prior to or after the effective date of the latest amendment to this chapter shall be applicable for purposes of this chapter on the effective date provided for such amendments, deletions, or additions, including retroactive provisions.

#### 3.05.040 Title to collected sales tax.

Upon collection by the remote seller or marketplace facilitator, title to collected sales tax vests in the Commission for remittance to the borough for the borough to return any city sales taxes collected to the city. The remote seller or marketplace facilitator remits collected sales tax to the Commission on behalf of the taxing jurisdiction, from whom that power is delegated, in trust for the taxing jurisdiction and is accountable to the Commission and taxing jurisdiction.

#### 3.05.050 Imposition; rate.

- (a) To the fullest extent permitted by law, a sales tax is levied and assessed on all remote sales where delivery is made within the city or another local taxing jurisdiction(s) that is a member, within the state of Alaska.
- (b) The applicable tax shall be added to the sales price. The tax rate added to the sale price shall be the tax rate for the city and based on the date the property or product was sold or the date the service rendered was received. The city's sales tax levy is set forth in KMC 3.04.020.
- (c) An address and tax rate database will be made available to remote sellers and marketplace facilitators, indicating the appropriate tax rate to be applied.
- (d) The tax assessed shall be consistent with relevant city tax caps, single unit sales, and exemptions. The relevant city exemptions are set forth in KMC 3.04.
- (e) When a sale is made on an installment basis, the applicable sales tax shall be collected at each payment, calculated at the sales tax rate in effect, and with the cap applied, at the time of the original sale or the date the service is rendered, based on the local jurisdictions' Code(s).
- (f) When a sales transaction involves placement of a single order with multiple deliveries made at different points in time that are separately invoiced, the applicable sales tax shall be collected on each separately invoiced delivery, calculated at the sales tax rate in effect, and with the cap applied, at the time of the original sale or the date the service is rendered.

#### 3.05.060 Obligation to collect tax; threshold criteria.

- (a) Any remote seller or marketplace facilitator must collect and remit sales tax in compliance with all applicable procedures and requirements of law, provided the remote

seller or marketplace facilitator has met one of the following threshold criteria in the previous calendar year:

- (1) The remote seller's statewide gross sales, including the seller's marketplace facilitator's statewide gross sales, from the sale(s) of property, products or services delivered into the state meets or exceeds one hundred thousand dollars (\$100,000); or
- (2) The remote seller, including the seller's marketplace facilitator, sold property, products, or services delivered into the state in two hundred (200) or more separate transactions.

(b) For purposes of determining whether the threshold criteria are met, remote sellers or marketplace facilitators shall include all gross sales, from all sales of goods, property, products, or services rendered within the state of Alaska.

#### 3.05.070 No retroactive application.

The obligations to collect and remit sales tax required by this chapter are applicable at the effective date of the ordinance adopting this Remote Seller Sales Tax Code.

#### 3.05.080 Payment and collection.

Pursuant to this chapter, taxes imposed shall be due and paid by the buyer to the remote seller or marketplace facilitator at the time of the sale of property or product or date service is rendered, or with respect to credit transactions, at the time of collection. It shall be the duty of each remote seller or marketplace facilitator to collect the taxes from the buyer and to hold those taxes in trust for the taxing authority of the city or other taxing jurisdiction. Failure by the remote seller or marketplace facilitator to collect the tax shall not affect the remote seller's, or marketplace facilitator's, responsibility for payment to the Commission.

#### 3.05.090 Remote seller and marketplace facilitator registration requirement.

(a) If a remote seller's gross statewide sales within the last calendar year meets or exceeds the threshold criteria, the remote seller shall register with the Commission. If a marketplace facilitator's gross statewide sales within the last calendar year meets or exceeds the threshold criteria, the marketplace facilitator shall register with the Commission.

(b) A remote seller or marketplace facilitator meeting the threshold criteria shall apply for a certificate of sales tax registration within thirty (30) calendar days of the effective date of this chapter or within thirty (30) calendar days of meeting the threshold criteria whichever

occurs later. Registration shall be to the Commission on forms prescribed by the Commission.

- (c) An extension may be applied for and granted based on criteria established by the Commission, based on evidence produced to describe time necessary to update software or other technical needs, not to exceed ninety (90) days.
- (d) Upon receipt of a properly executed application, the Commission shall confirm registration, stating the legal name of the remote seller or marketplace facilitator, the primary address, and the primary sales tax contact name and corresponding title. The failure of the Commission to confirm registration does not relieve the remote seller or marketplace facilitator of its duty to collect and remit sales tax.
- (e) Each business entity shall have a sales tax registration under the advertised name.
- (f) The sales tax certificate is non-assignable and non-transferable.

#### 3.05.100 Tax filing schedule

- (a) All remote sellers or marketplace facilitators subject to this Code shall file a return on a form or in a format prescribed by the Commission and shall pay the tax due.
- (b) Filing of sales tax returns are due monthly; quarterly filing is optional upon application and approval by the Commission, consistent with the code of the local jurisdiction.
- (c) A remote seller or marketplace facilitator who has filed a sales tax return will be presumed to be making sales in successive periods unless the remote seller or marketplace facilitator files a return showing a termination or sale of the business in accordance with this Code.
- (d) The completed and executed return, together with the remittance in full for the tax due, shall be transmitted to and must be received by the Commission on or before midnight Alaska Standard Time on the due date. Monthly returns are due the last day of the immediate subsequent month. Quarterly returns are due as follows:

Quarter 1 (January – March)	April 30
Quarter 2 (April – June)	July 31
Quarter 3 (July – September)	October 31
Quarter 4 (October – December)	January 31

- (e) If the last day of the month following the end of the filing period falls on a Saturday, Sunday, federal holiday or Alaska state holiday, the due date will be extended until the next



business day immediately following.

(f) Any remote seller or marketplace facilitator holding a remote seller registration shall file a sales tax return even though no tax may be due. This return shall show why no tax is due. If the remote seller or marketplace facilitator intends to continue doing business a return shall be filed reflecting no sales and a confirmation of the intent to continue doing business and shall continue to do so each filing period until the entity ceases doing business or sells the business. If the remote seller or marketplace facilitator intends to cease doing business, a final return shall be filed along with a statement of business closure.

(g) The remote seller or marketplace facilitator shall prepare the return and remit sales tax to the Commission on the same basis, cash or accrual, which the remote seller or marketplace facilitator uses in preparing its federal income tax return. The remote seller or marketplace facilitator shall sign the return, and transmit the return, with the amount of sales tax and any applicable penalty, interest or fees that it shows to be due, to the Commission.

(h) Remote sellers and marketplace facilitators failing to comply with the provisions of this Code shall, if required by the Commission and if quarterly filing has been chosen, file and transmit collected sales taxes more frequently until such time as they have demonstrated to the Commission that they are or will be able to comply with the provisions of this Code. Six (6) consecutive on-time sales tax filings, with full remittance of the sales taxes collected, shall establish the presumption of compliance and return to quarterly filing.

(i) The preparer of the sales tax return shall keep and maintain all documentation supporting any and all claims of exempted sales and purchases. Documentation for exempted sales should include the number of the exemption authorization card presented by the buyer at the time of the purchase; the date of the purchase; the name of the person making the purchase; the organization making the purchase; the total amount of the purchase; and the amount of sales tax exempted. This documentation shall be made available to the Commission upon request. Failure to provide such documentation may invalidate that portion of the claim of exemption for which no documentation is provided.

#### 3.05.110 Estimated tax.

(a) In the event the Commission is unable to ascertain the tax due from a remote seller or marketplace facilitator by reason of the failure of the remote seller or marketplace facilitator to keep accurate books, allow inspection, or file a return, or by reason of the remote seller or marketplace facilitator filing a false or inaccurate return, the Commission may make an estimate of the tax due based on any evidence in their possession.

(b) Sales taxes may also be estimated, based on any information available, whenever the

Commission has reasonable cause to believe that any information on a sales tax return is not accurate.

(c) A remote seller's or marketplace facilitator's tax liability under this chapter may be determined and assessed for a period of six (6) years after the date the return was filed or due to be filed with the Commission. No civil action for the collection of such tax may be commenced after the expiration of the six- (6-) year period except an action for taxes, penalties and interest due from those filing periods that are the subject of a written demand or assessment made within the six- (6-) year period, unless the remote seller or marketplace facilitator waives the protection of this section.

(d) The Commission shall notify the remote seller or marketplace facilitator, in writing, that the Commission has estimated the amount of sales tax that is due from the remote seller or marketplace facilitator. The Commission shall serve the notice on the remote seller or marketplace facilitator by delivering the notice to the remote seller's or marketplace facilitator's place of business, or by mailing the notice by certified mail, return receipt requested, to the remote seller's or marketplace facilitator's last known mailing address. A remote seller or marketplace facilitator who refuses the certified mail will be considered to have accepted the certified mail for purposes of service.

(e) The Commission's estimate of the amount of sales tax that is due from a remote seller or marketplace facilitator shall become a final determination of the amount that is due unless the remote seller or marketplace facilitator, within thirty (30) calendar days after service of notice of the estimated tax:

- (1) Files a complete and accurate sales tax return for the delinquent periods supported by satisfactory records and accompanied by a full remittance of all taxes, interest, penalties, costs and other charges due; or

- (2) Files a written notice with the Commission appealing the estimated tax amount in accordance with the appeal procedures.

- (3) Arguments or reasons for failure to timely file a return and remit taxes collected shall not be considered a valid basis or grounds for granting an appeal. The basis and grounds for granting an appeal of an assessment are:

- a. The identity of the remote seller or marketplace facilitator is in error;
- b. The amount of the debt is erroneous due to a clerical error (and the nature and extent of the error is specified in the request for appeal); or
- c. The remote seller or marketplace facilitator disputes the denial of exemption(s) for certain sales.

(f) The amount of sales tax finally determined to be due under this section shall bear interest and penalty from the date that the sales tax originally was due, plus an additional civil penalty of fifty dollars (\$50) for each calendar month or partial month for which the amount of sales tax that is due has been determined.

#### 3.05.120 Returns; filing contents.

(a) Every remote seller or marketplace facilitator required by this chapter to collect sales tax shall file with the Commission upon forms furnished by the Commission a return setting forth the following information with totals rounded to the nearest dollar:

(1) Gross sales;

(2) The nontaxable portions separately stating the amount of sales revenue attributable to each class of exemption;

(3) Computation of taxes to be remitted;

(4) Calculated discount (if applicable) based on taxing jurisdiction's code; and

(5) Such other information as may be required by the Commission.

(b) Each tax return remitted by a remote seller or marketplace facilitator shall be signed (digital or otherwise) by a responsible individual who shall attest to the completeness and accuracy of the information on the tax return.

(c) The Commission reserves the right to reject a filed return for failure to comply with the requirements of this Code for up to three (3) months from the date of filing. The Commission shall give written notice to a remote seller or marketplace facilitator that a return has been rejected, including the reason for the rejection.

#### 3.05.130 Refunds.

(a) Upon request from a buyer or remote seller or marketplace facilitator the Commission shall provide a determination of correct tax rate and amount applicable to the transaction. In the case of an overpayment of taxes, the remote seller or marketplace facilitator shall process the refund and amend any returns accordingly.

(b) If the claimant is a remote seller or marketplace facilitator, and the tax refund is owed to any buyer, the remote seller or marketplace facilitator submits, and the Commission approves, a refund plan to all affected buyers.

(c) The city or borough may allow a buyer to request a refund directly from the city or borough.

#### 3.05.140 Amended returns.

(a) A remote seller or marketplace facilitator may file an amended sales tax return, with supporting documentation, and the Commission may accept the amended return, but only in the following circumstances:

- (1) The amended return is filed within one (1) year of the original due date for the return; and
- (2) The remote seller or marketplace facilitator provides a written justification for requesting approval of the amended return; and
- (3) The remote seller or marketplace facilitator agrees to submit to an audit upon request of the Commission.

(b) The Commission shall notify the remote seller or marketplace facilitator in writing (by email or otherwise) whether the Commission accepts or rejects an amended return, including the reasons for any rejection.

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

(d) A remote seller or marketplace facilitator may file a supplemental sales tax return, with supporting documentation, and the Commission may accept the supplemental return, but only in the following circumstances:

- (1) The remote seller or marketplace facilitator provides a written justification for requesting approval of the supplemental return; and
- (2) The remote seller or marketplace facilitator agrees to submit to an audit upon request of the Commission.

#### 3.05.150 Extension of time to file tax return.

Upon written application of a remote seller or marketplace facilitator, stating the reasons

therefor, the Commission may extend the time to file a sales tax return but only if the Commission finds each of the following:

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

#### 3.05.160 Audits.

- (a) Any remote seller or marketplace facilitator who has registered with the Commission, who is required to collect and remit sales tax, or who is required to submit a sales tax return is subject to a discretionary sales tax audit at any time. The purpose of such an audit is to examine the business records of the remote seller or marketplace facilitator in order to determine whether appropriate amounts of sales tax revenue have been collected by the remote seller or marketplace facilitator and remitted to the Commission.
- (b) The Commission is not bound to accept a sales tax return as correct. The Commission may make an independent investigation of all retail sales or transactions conducted within the State or taxing jurisdiction.
- (c) The records that a remote seller or marketplace facilitator is required to maintain under this chapter shall be subject to inspection and copying by authorized employees or agents of the Commission for the purpose of auditing any return filed under this chapter, or to determine the remote seller's or marketplace facilitator's liability for sales tax where no return has been filed.

(d) In addition to the information required on returns, the Commission may request, and the remote seller or marketplace facilitator must furnish, any reasonable information deemed necessary for a correct computation of the tax.

(e) The Commission may adjust a return for a remote seller or marketplace facilitator if, after investigation or audit, the Commission determines that the figures included in the original return are incorrect, and that additional sales taxes are due; and the Commission adjusts the return within two (2) years of the original due date for the return.

(f) For the purpose of ascertaining the correctness of a return or the amount of taxes owed when a return has not been filed, the Commission may conduct investigations, hearings and audits and may examine any relevant books, papers, statements, memoranda, records, accounts or other writings of any remote seller or marketplace facilitator at any reasonable hour on the premises of the remote seller or marketplace facilitator and may require the attendance of any officer or employee of the remote seller or marketplace facilitator. Upon written demand by the Commission, the remote seller or marketplace facilitator shall present for examination, in the office of the Commission, such books, papers, statements, memoranda, records, accounts and other written material as may be set out in the demand unless the Commission and the person upon whom the demand is made agree to presentation of such materials at a different place.

(g) The Commission may issue subpoenas to compel attendance or to require production of relevant books, papers, records or memoranda. If any remote seller or marketplace facilitator refuses to obey any such subpoena, the Commissioner may refer the matter to the Commission's attorney for an application to the superior court for an order requiring the remote seller or marketplace facilitator to comply therewith.

(h) Any remote seller, marketplace facilitator, or person engaged in business who is unable or unwilling to submit their records to the Commission shall be required to pay the Commission for all necessary expenses incurred for the examination and inspection of their records maintained outside the Commission.

(i) After the completion of a sales tax audit, the results of the audit will be sent to the business owner's address of record.

(j) In the event the Commission, upon completion of an audit, discovers more than five hundred dollars (\$500) in additional sales tax due from a remote seller or marketplace facilitator resulting from a remote seller's or marketplace facilitator's failure to accurately report sales and taxes due thereupon, the remote seller or marketplace facilitator shall bear responsibility for the full cost of the audit. The audit fee assessment will be in addition to interest and penalties applicable to amounts deemed to be delinquent by the Commission at

the time of the conclusion of the audit.

#### 3.05.170 Audit protest.

(a) If the remote seller or marketplace facilitator wishes to dispute the amount of the estimate, or the results of an examination or audit, the remote seller or marketplace facilitator must file a written protest with the Commission, within thirty (30) calendar days of the date of the notice of estimated tax or results of an audit or examination. The protest must set forth:

(1) The remote seller's or marketplace facilitator's justification for reducing or increasing the estimated tax amount, including any missing sales tax returns for the periods estimated; or

(2) The remote seller's or marketplace facilitator's reasons for challenging the examination or audit results.

(b) In processing the protest, the Commission may hold an informal meeting or hearing with the remote seller or marketplace facilitator, either on its own or upon request of the remote seller or marketplace facilitator, and may also require that the remote seller or marketplace facilitator submit to an audit, if one was not previously conducted or a more formal audit, if an estimation audit was previously performed.

(c) The Commission shall make a final written determination on the remote seller's or marketplace facilitator's protest and mail a copy of the determination to the remote seller or marketplace facilitator.

(d) If a written protest is not filed within thirty (30) days of the date of the notice of estimated tax or the result of a review, audit or examination, then the estimated tax, review, audit or examination result shall be final, due and payable to the Commission.

#### 3.05.180 Penalties and interest for late filing.

(a) A late filing fee of twenty-five dollars (\$25) per month (or quarter) shall be added to all late-filed sales tax reports in addition to interest and penalties.

(b) Delinquent sales tax bear interest at the rate of fifteen percent (15%) per annum until paid.

(c) In addition, delinquent sales tax shall be subject to an additional penalty of 5% per month, or fraction thereof, until a total of 20% of delinquent tax has been reached. The penalty does not bear interest.



(d) Fees, penalties and interest shall be assessed and collected in the same manner as the tax is assessed and collected, and applied first to fees, penalties and interest, second to past due sales tax.

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

(f) A penalty assessed under this section for the delinquent remittance of sales tax or failure to file a sales tax return may be waived by the Commission, upon written application of the remote seller or marketplace facilitator accompanied by a payment of all delinquent sales tax, interest and penalty otherwise owed by the remote seller or marketplace facilitator, within forty-five (45) calendar days after the date of delinquency. A remote seller or marketplace facilitator may not be granted more than one (1) waiver of penalty under this subsection in any one calendar year. The Commission shall report such waivers of penalty to the taxing jurisdiction, in writing.

#### 3.05.190 Repayment plans.

(a) The Commission may agree to enter into a repayment plan with a delinquent remote seller or marketplace facilitator. No repayment plan shall be valid unless agreed to by both parties in writing.

(b) A remote seller or marketplace facilitator shall not be eligible to enter into a repayment plan with the Commission if the remote seller or marketplace facilitator has defaulted on a repayment plan in the previous two (2) calendar years.

(c) The repayment plan shall include a secured promissory note that substantially complies with the following terms:

(1) The remote seller or marketplace facilitator 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.

(2) The remote seller or marketplace facilitator agrees to pay the balance of the tax, penalty and interest owed in monthly installments over a period not to exceed two (2) years.

(3) 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.

- (4) If the remote seller or marketplace facilitator is a corporation or a limited liability entity the remote seller or marketplace facilitator agrees to provide a personal guarantee of the obligations under the repayment plan.
- (5) The remote seller or marketplace facilitator agrees to pay all future tax bills in accordance with the provisions of this chapter.
- (6) The remote seller or marketplace facilitator 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 Commission at the time the repayment plan is signed. The remote seller or marketplace facilitator shall be responsible for the cost of recording the tax lien.

(d) If a remote seller or marketplace facilitator fails to pay two (2) or more payments as required by the repayment plan agreement, the remote seller or marketplace facilitator shall be in default and the entire amount owed at the time of default shall become immediately due. The Commission will send the remote seller or marketplace facilitator a notice of default. The Commission may immediately foreclose on the sales tax lien or take any other remedy available under the law.

#### 3.05.200 Remote seller or marketplace facilitator record retention.

Remote sellers or marketplace facilitators shall keep and preserve suitable records of all sales made and such other books or accounts as may be necessary to determine the amount of tax which the remote seller or marketplace facilitator is obliged to collect. Remote sellers or marketplace facilitators shall preserve suitable records of sales for a period of six (6) years from the date of the return reporting such sales, and shall preserve for a period of six (6) years all invoices of goods and merchandise purchased for resale, and all such other books, invoices and records as may be necessary to accurately determine the amount of taxes which the remote seller or marketplace facilitator was obliged to collect under this chapter.

#### 3.05.210 Cessation or transfer of business.

(a) A remote seller or marketplace facilitator 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 remote seller or marketplace facilitator shall send to the Commission, by approved communication (email confirmation, certified first-class mail, postage prepaid) a notice that the remote seller's or marketplace facilitator'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 Commission shall be authorized to disclose the status of the remote seller's or marketplace facilitator's sales tax account to the named buyer or assignee.
- (d) Upon receipt of notice of a sale or transfer, the Commission shall send the transferee a copy of this Code with this section highlighted.
- (e) Neither the Commission'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 Commission 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 Commission shall have twelve (12) months from the date of the completion of the sale or the Commission'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 Commission may also initiate an estimated assessment if the requirements for such an assessment exist.
- (g) A person acquiring any interest of a remote seller or marketplace facilitator in a business required to collect the tax under this chapter assumes the liability of the remote seller or marketplace facilitator for all taxes due the Commission, whether current or delinquent, whether known to the Commission 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 Commission an estimate of the delinquent sales tax, penalty and interest, if any, owed by the remote seller or marketplace facilitator as of the date of the transfer, and shall withhold that amount from the consideration payable for the transfer, until the remote seller or marketplace facilitator has produced a receipt from the Commission 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 Commission and taxing jurisdiction for the lesser of the amount of delinquent sales tax, penalty and interest due from the remote seller or marketplace facilitator 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 remote seller or marketplace facilitator 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 remote seller or marketplace facilitator; 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 Commission's sales tax lien.

(k) Upon termination, dissolution or abandonment of a corporate business, any officer having control or supervision of sales tax funds collected, or who is charged with responsibility for the filing of returns or the payment of sales tax funds collected, shall be personally liable for any unpaid taxes, interest, administrative costs and penalties on those taxes if such officer willfully fails to pay or cause to be paid any taxes due from the corporation. In addition, regardless of willfulness, each director of the corporation shall be jointly and severally liable for unpaid amounts. The officer shall be liable only for taxes collected which became due during the period he or she had the control, supervision, responsibility or duty to act for the corporation. This section does not relieve the corporation of other tax liabilities or otherwise impair other tax collection remedies afforded by law.

(l) A remote seller or marketplace facilitator 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 remote seller or marketplace facilitator 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.

### 3.05.220 Use of information; confidentiality.

(a) Except as otherwise provided in this chapter, all returns, reports and information required to be filed with the Commission under this chapter, and all information contained therein, shall be kept confidential and shall be subject to inspection only by:

(1) Employees and agents of the Commission, the city and the borough whose job responsibilities are directly related to such returns, reports and information;

(2) The person supplying such returns, reports and information; and

(3) Persons authorized in writing by the person supplying such returns, reports and information.

(b) The Commission will release information described in subsection (a) of this section pursuant to subpoena, order of a court or administrative agency of competent jurisdiction, and where otherwise required by law to do so.

(c) Notwithstanding subsection (a) of this section, the following information is available for public inspection:

(1) The name and address of sellers;

(2) Whether a business is registered to collect taxes under this chapter;

(3) The name and address of businesses that are sixty (60) days or more delinquent in filing returns or in remitting sales tax, or both filing returns and remitting sales tax; and, if so delinquent, the amount of estimated sales tax due, and the number of returns not filed.

(d) The Commission may provide the public statistical information related to sales tax collections, provided that no information identifiable to a particular remote seller or marketplace facilitator is disclosed.

(e) Nothing contained in this section shall be construed to prohibit the delivery to a person, or their duly authorized representative, of a copy of any return or report filed by them, nor to prohibit the publication of statistics so classified as to prevent the identification of particular buyers, remote sellers, or marketplace facilitators, nor to prohibit the furnishing of information on a reciprocal basis to other agencies or political subdivisions of the state or the United States concerned with the enforcement of tax laws.

(f) Nothing contained in this section shall be construed to prohibit the disclosure through enforcement action proceedings or by public inspection or publication of the name, estimated balance due, and current status of payments, and filings of any remote seller or marketplace facilitator or agent of any remote seller or marketplace facilitator required to collect sales taxes or file returns under this chapter, who fails to file any return and/or remit in full all sales taxes due within thirty (30) days after the required date for that business. Entry into any agreement whether pursuant to the provisions of this chapter or otherwise shall not act as any prohibition to disclosure of the records of that remote seller or marketplace facilitator as otherwise provided in this chapter.

(g) A prospective lessee or purchaser of any business or business interest may inquire as to the obligation or tax status of any business upon presenting to the Commission a release of tax information request signed by the authorized agent of the business.

(h) All returns referred to in this chapter, and all data taken therefrom, shall be kept secure from public inspection, and from all private inspection.

### 3.05.230 Violations.

(a) A remote seller or marketplace facilitator that fails to file a sales tax return or remit sales tax when due, in addition to any other liability imposed by this chapter, shall pay to the Commission all costs incurred by the Commission to determine the amount of the remote seller's or marketplace facilitator's liability or to collect the sales tax, including, without limitation, reviewing and auditing the remote seller's or marketplace facilitator's business records, collection agency fees, and actual reasonable attorney's fees.

(b) A person who causes or permits a corporation of which the person is an officer or director, a limited liability company of which the person is a member or manager, or a partnership of which the person is a partner, to fail to collect sales tax or to remit sales tax to the Commission as required by this Code shall be liable to the Commission for the amount that should have been collected or remitted, plus any applicable interest and penalty.

(c) Notwithstanding any other provision of law, and whether or not the Commission initiates an audit or other tax collection procedure, the Commission may bring a declaratory judgment action against a remote seller or marketplace facilitator believed to meet the criteria to establish that the obligation to remit sales tax is applicable and valid under local, state and federal law. The action shall be brought in the judicial district of the taxing jurisdiction.

(d) The Commission may cause a sales tax lien to be filed and recorded against all real and personal property of a remote seller or marketplace facilitator where the remote seller or marketplace facilitator has:

(1) Failed to file sales tax returns for two (2) consecutive filing periods as required by the Code; or

(2) Failed within sixty (60) days of the end of the filing period from which taxes were due to either (a) remit all amounts due or (b) to enter into a secured payment agreement as provided in this chapter.

(3) Prior to filing a sales tax lien, the Commission shall cause a written notice of

intent to file to be mailed to the last known address of the delinquent remote seller or marketplace facilitator.

(e) In addition to other remedies discussed in this chapter, the Commission may bring a civil action to:

(1) Enjoin a violation of this chapter. On application for injunctive relief and a finding of a violation or threatened violation, the superior court shall enjoin the violation.

(2) Collect delinquent sales tax, penalty, interest and costs of collection, either before or after estimating the amount of sales tax due.

(3) Foreclose a recorded sales tax lien as provided by law.

(f) All remedies hereunder are cumulative and are in addition to those existing at law or equity.

#### 3.05.240 Penalties for violations.

(a) A buyer, remote seller, or marketplace facilitator who knowingly or negligently submits false information in a document filed with the Commission pursuant to this chapter is subject to a penalty of five hundred dollars (\$500).

(b) A remote seller or marketplace facilitator who knowingly or negligently falsifies or conceals information related to its business activities with the Commission or taxing jurisdiction is subject to a penalty of five hundred dollars (\$500).

(c) A person who knowingly or negligently provides false information when applying for a certificate of exemption is subject to a penalty of five hundred dollars (\$500).

(d) Any remote seller or marketplace facilitator who fails to file a return by the due date required under this chapter, regardless of whether any taxes were due for the reporting period for which the return was required, shall be subject to a penalty of twenty-five dollars (\$25) for the first sales tax return not timely filed. The filing of an incomplete return shall be treated as the filing of no return.

(e) A remote seller or marketplace facilitator who fails or refuses to produce requested records or to allow inspection of their books and records shall pay to the Commission a penalty equal to three (3) times any deficiency found or estimated by the Commission with a minimum penalty of five hundred dollars (\$500).

- (f) A remote seller or marketplace facilitator who falsifies or misrepresents any record filed with the Commission is guilty of an infraction and subject to a penalty of five hundred dollars (\$500) per record.
- (g) Misuse of an exemption card is a violation and subject to a penalty of fifty dollars (\$50) per incident of misuse;
- (h) Nothing in this chapter shall be construed as preventing the Commission from filing and maintaining an action at law to recover any taxes, penalties, interest and/or fees due from a remote seller or marketplace facilitator. The Commission may also recover attorney's fees in any action against a delinquent remote seller or marketplace facilitator.

3.05.250 Reporting/Remitting for sellers with physical presence/no physical presence.

- (a) Sellers with a physical presence in the city and no remote or internet-based sales shall report, remit, and comply with standards, including audit authority, of the city and the borough.
- (b) Sellers with a physical presence in the city that also have remote or internet-based sales where the point of delivery is in a different taxing jurisdiction shall (i) report those sales taxes and remit the remote or internet sales taxes to the Commission; and ii) report all other sales and remit all other sales taxes to the borough for payment to the city.
- (c) Sellers with a physical presence in the city that also have remote or internet-based sales where the Point of Delivery is in the city shall report those sales and remit those remote sales taxes to the borough for payment to the city.
- (d) Sellers and marketplace facilitators that do not have a physical presence in the city must report and remit all remote sales to the Commission.
- (e) For all purchases the tax rate added to the sale price shall be as provided in the city's sales tax code, based on point of delivery.
- (f) A marketplace facilitator is considered the remote seller for each sale facilitated through its marketplace and shall collect, report, and remit sales tax to the Commission. A marketplace facilitator is not considered to be the remote seller for each sale or rental of lodging facilitated through its marketplace, wherein the seller is considered to have a physical presence in the city.



### 3.05.260 Hold harmless.

- (a) Any remote seller or marketplace facilitator that collects and remits sales tax to the Commission as provided by law may use an electronic database of state addresses that is certified by the Commission pursuant to subsection (c) of this section to determine the jurisdictions to which tax is owed.
- (b) Any remote seller or marketplace facilitator that uses the data contained in an electronic database certified by the Commission pursuant to subsection (c) of this section to determine the jurisdictions to which tax is owed shall be held harmless for any tax, charge, or fee liability to any taxing jurisdiction that otherwise would be due solely as a result of an error or omission in the database.
- (c) Any electronic database provider may apply to the Commission to be certified for use by remote sellers or marketplace facilitators pursuant to this section. Such certification shall be valid for three years. In order to be certified, an electronic database provider shall have a database that satisfies the following criteria:
  - (1) The database shall designate each address in the state, including, to the extent practicable, any multiple postal address applicable to one location and the taxing jurisdictions that have the authority to impose a tax on purchases made by purchasers at each address in the state.
  - (2) The information contained in the electronic database shall be updated as necessary and maintained in an accurate condition. In order to keep the database accurate, the database provider shall provide a convenient method for taxing jurisdictions that may be affected by the use of the database to inform the provider of apparent errors in the database. The provider shall have a process in place to promptly correct any errors brought to the provider's attention.

### 3.05.270 Savings Clause.

If any provision of KMC 3.05, Remote Sellers Sales Tax Code, and KMC 3.04, Consumer's Sales Tax, is determined by the Commission or an adjudicatory body of competent jurisdiction to discriminate against a remote seller in favor of a local seller with a physical presence in the city, the discriminatory provision shall continue in effect only to the extent such provision does not discriminate against a remote seller, and the comparable code provision applicable to a local seller will apply to a remote seller, and the remainder of KMC 3.05 and KMC 3.04 shall continue in full force and effect.

**Section 5.** Effective date. After final passage and publication, this ordinance shall be effective at 12:01 a.m. on October 1, 2020.

PASSED ON FIRST READING \_\_\_\_\_.

FINAL PASSAGE \_\_\_\_\_.

\_\_\_\_\_  
Robert Sivertsen, Mayor

ATTEST:  
  
\_\_\_\_\_  
Kim L. Stanker  
City Clerk

FYI: Bracketed language is intended to be removed from the existing ordinance, and underlined language in bold type is intended as an addition to the existing Ketchikan Municipal Code.

EFFECTIVE		DATE:	
ROLL CALL	YEA	NAY	ABSENT
BERGERON			
CHAPEL			
COOSE			
FLORA			
GAGE			
KIFFER			
ZENG			
MAYOR			