

Introduced by: City Manager
Date Introduced: July 10, 2001
Public Hearing Date: July 24, 2001
Action: Enacted
Vote: 6-yes, 1-no

CITY OF BETHEL, ALASKA

ORDINANCE #01-28

AN ORDINANCE AMENDING VARIOUS SECTIONS OF CHAPTERS 4.14, 4.16 AND 5.04 OF THE BETHEL MUNICIPAL CODE REGARDING ADMINISTRATION OF THE TRANSIENT LODGING BUSINESS TAX; SALES TAX EXEMPTIONS AND ADMINISTRATION; AND BUSINESS LICENSE FEES

BE IT ORDAINED by the Bethel City Council that:

Section 1. Classification. This ordinance is permanent in nature and shall be placed in the Bethel Municipal Code.

Section 2. Amendment of Section 4.14.050. Section 4.14.050 of the Bethel Municipal Code is amended to read as follows (new language is underlined and old language is stricken out):

4.14.050 Tax returns and remittance.

H. ~~Within ten business days after the end of each calendar quarter~~ Not later than the last day of the month following the quarter a tax return is required to be submitted, every operator under this chapter shall deliver to the City finance department a tax return, signed by the operator(s), on a form provide by the City finance department for each registered place of business regardless of whether taxes are due for the quarter.

Section 3. Repeal and Re-enactment of Section 4.14.060. Section 4.14.060 of the Bethel Municipal Code shall be repealed and reenacted as follows (new language is underlined; old language is stricken out):

4.14.060 Involuntary return.

~~A. If an operator fails to file a tax return as required by this chapter or if the Director finds that a tax return is not supported by the records required to be submitted with the return or to be maintained under this chapter by the operator filing the tax return, the Director may prepare and file an involuntary tax return on behalf of the operator. Taxes estimated on a tax return filed on behalf of an operator under this section may be premised upon any information that is available to the Director including, but not limited to, comparative data for similar businesses and prior returns of the operator. An operator for whom an involuntary tax return is filed under this subsection shall be liable for the taxes stated on the tax return, as well as all administrative costs, penalties and interest provided for in this chapter.~~
~~B. The department shall notify the operator of determinations made under subsection (A) and include in such notice the basis of the department's calculations determining the operator's liability together with a notice of the operator's rights under section BMC 4.14.160, that payment is due immediately and that interest and penalties on taxes due continue to accrue from the date taxes were originally due under this chapter for each period covered by the involuntary tax return.~~

~~C. Unless otherwise determined by the Director in a decision under subsection (A), taxes, costs, interest and penalties due under this section shall be payable immediately.~~

~~D. Interest on administrative costs shall accrue from the date the City incurred or paid the cost unless the Director provides as a part of the determination or notice under subsections (A) or (B) for a later date for commencement of interest on administrative costs.~~

4.14.060 Estimated tax assessed against delinquent operator

A. On or after the fifth day of delinquency in the filing of the required tax return or the failure to pay all taxes, interest and penalty due, or upon a determination of a delinquency based upon an audit, the finance director shall assess against the delinquent operator a transient lodging business tax for the delinquent period or periods based on a reasonable estimate of the gross receipts computed from an audit or the tax returns submitted by the delinquent operator. If the finance director determines that information from prior tax returns is not adequate for computing a reasonable estimate of the gross receipts, other sources of information, including but not limited to information derived from similar businesses, may be used. Notice of the estimated assessment shall be provided to the operator by certified mail. Such assessment shall be due and owing retroactively from the first day of delinquency and shall be subject to interest, penalty and other costs and charges as provided in this chapter.

B. The estimated assessment of tax and other amounts due and owing, as provided in subsection A of this section, shall be deemed to be admitted to be the amount due and owing to the city unless the finance director receives, within twenty days of the date of the certified mailing of notice of the estimated assessment, an accurate and complete tax return for the delinquent periods together with full payment of all taxes, interest, penalty, costs and other charges due, or the operator pays the amount due under protest under the provisions of section 4.16.190.

Section 4. Amendment of Chapter 4.14 to Add Accelerated Returns Section. Chapter 4.14 of the Bethel Municipal Code is amended to add the following section:

4.14.200 Accelerated returns.

An operator who is required to file a return and pay taxes to the city, who fails for more than thirty days to file a return or pay the taxes due or who has, within a twelve-month period, filed or paid taxes late on two or more occasions may be required by the finance director to file and pay on a monthly or weekly basis; provided, the finance director shall provide to the operator a hearing after reasonable notice of the finance director's intention to require more frequent filing and payment. Unless otherwise required or authorized by the finance director, an operator required to file on a monthly or weekly basis shall file a complete return and full payment for the monthly or weekly period not later than the fifth business day following the last day of the monthly or weekly period. The operator required to file and pay on a monthly or weekly basis who fails to file and pay the full amount due within two business days of the date required for such filing and payment or such an operator who files late two or more times during a three month

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period may be required by the finance director to file on a basis more frequent than monthly or weekly after written notice of intent and a hearing as provided in this section. The finance director shall establish the day by which more frequent filings are due.

Section 5. Amendment of Chapter 4.14 To Add Rulings and Regulations Section.

Chapter 4.14 of the Bethel Municipal Code is amended to add the following section:

4.14.220 Rulings and Regulations.

- A. The finance director may promulgate and amend regulations and may prescribe the content and use of forms appropriate to the implementation of this chapter. Regulations promulgated by the finance director are effective on the date they are promulgated unless a different date is indicated in the regulations, provided all regulations are subject to amendment and repeal at any time by the city council by resolution. At least seven calendar days prior to promulgation, a proposed regulation or amendment shall be submitted to the city attorney and the city manager for review and comment. Upon promulgating a regulation or any amendment to an existing regulation, the finance director shall submit the regulation or amendment to the city council at its next regular meeting.
- B. If any person who is or may be required to pay or collect the tax under this chapter questions the application of this chapter to a transaction or other situation in which that person is involved or may become involved, the person may apply to the finance director for a ruling on the question. The finance director may rule on the question and may seek the advice of the city attorney on the question. Before a ruling of the finance director is effective or binding on the city, it must be signed by the city manager. Rulings having general applicability shall be considered by the finance director for promulgation as a regulation.

Section 6. Amendment of Section 4.16.040. Section 4.16.040 of the Bethel Municipal Code is amended as follows (new language is underlined and old language is stricken out):

4.16.040 Exemptions.

The following sales are exempt from the tax levied under this chapter only in accordance with the limitations provided for in this section:

- A. Casual and isolated sales not made in the regular course of business; services or rentals by a seller who does not regularly engage in the business of selling such goods, services, or rentals are only exempt if such sales, services or rentals do not occur for more than five days in a calendar year, and are not made through a dealer, broker, agent or consignee. A casual and isolated sale or rental of real property by a seller who does not regularly engage in the business of selling or renting real property is not exempt except as provided in subsection C of this section.

C. ~~That portion of the selling price of a single sale unit in excess of three thousand five hundred dollars, and that part of a periodic rental price of all types of property exceeding three thousand five hundred dollars. The periodic rental price is the amount owed on a monthly or more frequent period; rentals with a payment period exceeding one month are computed for sales tax purposes as though payment were to be made on a monthly basis.~~ Except as provided below in this subsection, that portion of the selling price of a single sale unit in excess of ten thousand dollars and that part of a periodic rental price of all types of property in excess of ten thousand dollars is exempt. A periodic rental price is the amount owed on a monthly or more frequent period. Rentals with a payment period exceeding one month are computed for sales tax purposes as though payment were to be made on a monthly basis.

That portion of the selling price of an all terrain vehicle (ATV), snow machine, boat, or boat motor in excess of three thousand five hundred dollars is exempt regardless of whether or not such items are purchased simultaneously, or are invoiced or otherwise billed on the same billing document.

That portion of the selling price of a single sale unit of real property in excess of fifty thousand dollars is exempt.

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F. A sale the city is prohibited from taxing under the Constitution and laws of the United States or the Constitution and the laws of the state of Alaska is exempt. A sale made directly to a state or the U.S. government is exempt. ~~but a sale to an employee or contractor of the state or U.S. government is not exempt unless the state or U.S. government is directly liable to the seller for the payment of the sale price;~~ A sale to a federal or state contractor is not exempt even if the government pays directly for the purchase unless the contractor and government cannot be viewed as separate entities. A sale to an employee of the state or federal government is only exempt when the government employee provides proof that the sale is for government business by paying for the sale with a government voucher, purchase order, check, or warrant, or providing other verifiable documentation to the seller to allow the seller to readily determine that the sale is for government business.

G. Freight and wharfage charges, whether arising out of foreign, interstate or intrastate commerce are exempt. Warehouse and storage services are not exempt taxable. Transportation of goods, equipment, or other property from one point to another within the city limits by commercial movers is not exempt.

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I. The lending of money and interest charged for loans are exempt. ATM, bank service charges, and all other goods and services are not exempt. But loan origination fees, points, set-up charges, closing and similar fees and charges that are not exact reimbursements for third-party vendor services rendered to the borrower are not exempt covered by this exemption. ATM and bank service charges are not exempt.

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- J. ~~The sale of food and beverages to students and the public staff in primary or secondary schools or college cafeterias or lunchrooms that are operated by the school primarily for teachers and students are exempt as long as such sales are made during regular school hours and such sales are not sold for profit. The sale of food and beverages to patients and staff as part of the services provided by local, state, and federal government agencies, hospitals and nonprofit organizations licensed to provide patient services by the State of Alaska are exempt as long as such sales are made during regular operating hours of the government agency, hospital, or nonprofit organization, and are not sold for profit.~~
- K. ~~The sale of goods to a purchaser where the resale of the goods, in the same or altered form, will be subject to the tax levied under this chapter, but only if the purchaser displays or provides to the seller at the time of the sale a copy of or the number from the current Bethel business license of the purchaser, which license is for the class of activities involving the resale of the type of goods for which the exemption is sought; The sale of goods to a wholesaler, retailer or other purchaser will only be exempt if such a purchaser resells the same goods, in the same or altered form, and the resold goods will not be exempt from the tax levied under this chapter. In order to obtain the exemption provided for in this subsection, the purchaser shall display or provide to the seller at the time of the sale a copy of the purchaser's current Bethel business license. The Bethel business license must be for the class of activities involving the resale of the type of goods for which the exemption is sought. If a purchaser buys goods for resale in accordance with this subsection and for personal or other use at the same time, only the goods that are sold for resale in accordance with this subsection shall be exempt. Supplies, services, tools, repair services, equipment or any other goods or services purchased to support a business but not for resale in accordance with this subsection are not exempt.~~
- L. ~~The sale of goods to a purchaser where the goods will be transferred to another person in a sale or performance of a service subject to the tax levied under this chapter if the purchaser displays or provides to the seller at the time of the sale a copy of, or the number from, the current Bethel business license of the purchaser, which license is for the class of activities involving the services and transfer of the type of goods for which the exemption is sought. The sale of goods to a purchaser that will be transferred to another person in a sale or performance of a service is exempt only if the purchaser displays or provides to the seller at the time of the sale a copy of the purchaser's current Bethel business license. The Bethel business license must be for the class of activities involving the resale of the type of goods for which the exemption is sought. If a purchaser buys goods for transfer in accordance with this subsection and for personal or other use at the same time, only the goods that are sold for transfer in accordance with this subsection shall be exempt. Labor, tools, supplies, equipment rentals or any other goods or services purchased to prepare goods for transfer or in support of business operations but not for transfer in accordance with this subsection are not exempt.~~
- ...
- N. ~~The sale of labor and materials for a new single family home if the sale is to a private individual who acts as his own general contractor in constructing his own permanent home and the purchaser displays at the time of sale an exemption certificate issued under Section 4.16.050B of this chapter; The sale of labor and materials for a single-family residence in~~

which a private individual resides full time without leasing for compensation any portion of the residence to another person, including labor and materials for the improvement, renovation, or remodel of such a single family residence, is exempt only if (1) the sale of such labor and materials is to the private individual who resides in the residence; (2) the private individual is acting as his or her own general contractor in constructing, improving, renovating, or remodeling the residence; and (3) the private individual displays at the time of sale an exemption certificate issued under Section 4.16.050B of this chapter.

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Q. The sale of services of transporting passengers by river taxi, taxicab, bus, commercial airline, air charter, air taxi, hover craft or limousine is exempt. The lease of vehicles for hire permits is ~~taxable~~ not exempt.

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V. A sale of goods or services to any entity that, at the time of the sale, is legally constituted and legitimately acting in accordance with a duly authorized federal tax exempt status pursuant to IRS Regulations, Section 501(c) ~~or its successor regulation, and the entity is a receiver of Alaska Revenue Sharing, and~~ if the same goods or services are used exclusively in the fulfillment of activities within the federal tax exempt status. ~~and the entity is a receiver of Alaska Revenue Sharing.~~

W. A sale of goods is exempt if a credit union organized under state or federal law is the purchaser of the goods.

Section 7. Amendment of Section 4.16.050. Section 4.16.050.B of the Bethel Municipal Code is amended as follows (new language is underlined and old language is stricken out):

4.16.050 Exemption certificates -- Applications.

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B. An exemption certificate for exemptions under Section 4.16.040N may be issued only:

1. Upon submission of a complete application to the Finance Director including,
2. Payment of the certificate fee of ~~two hundred dollars~~ two hundred and fifty dollars (\$250).
3. Proof that the applicant owns or has a substantial ownership interest in the land upon which the home is to be built,
4. Proof that all building, zoning and other permits and approvals have been obtained and that the home will meet all requirements of the Bethel sewer and water codes.

A certificate issued under this subsection shall be numbered, identify the applicant property owner, be signed by the Finance Director, ~~be attested and sealed by the City Clerk and shall expire on the later of the second October 31st or the last day of the twentieth last day of the twelfth month following the issuance of the permit.~~ The expiration date shall be prominently displayed on the certificate.

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Section 8. Amendment of Section 4.16.110. Section 4.16.110 of the Bethel Municipal Code is amended as follows (new language is underlined and old language is stricken out):

4.16.110 ~~Monthly~~ Returns and payments.

A. For each separate business entity and location, a seller shall complete a City sales tax return, reporting accurately and completely all information required on the form for all sales transactions occurring during the preceding month, quarter or year. Each sales tax return shall:

1. Set forth the gross receipts of the business for the reporting period: month, quarter or year.
2. Include all taxable and nontaxable transactions;
3. Itemize non taxable transactions on the exemption form,
4. Include the amount of tax thereon, and
5. Include such other information as the finance director may require.

Each return shall be signed by a responsible individual who shall swear as to the completeness and accuracy of the information on the tax return.

B. Any seller who filed or should have filed a sales tax return for the ~~prior month~~ reporting period shall file a return even though no tax may be due. This return shall show why no tax is allegedly due, and, if the business is sold, foreclosed upon or otherwise transferred to another person, the person to whom it was sold or transferred, the date it was sold or transferred and the address and telephone number of the person to whom it was sold or transferred. A seller who files a return for a ~~month~~ reporting period when no tax is due is not required to file returns thereafter until it has one or more taxable sales during a subsequent ~~month~~ reporting period.

C. Each sales tax return for a ~~month~~ a reporting period must be received at the office of the Finance Director or, if mailed with sufficient postage, be postmarked by the U.S. Postal Service with a readable postmark date, on or before the last day of the month following the period for which the return is required to be submitted. In the event ~~that~~ the due date is a Saturday, Sunday or state legal holiday, the sales tax return shall be received or postmarked on or before the next following business day. All taxes required to be collected, interest, penalty, costs and charges due shall be remitted with the sales tax return, whether or not the tax has been collected from the buyer.

D. Upon approval of the finance director, a seller that anticipates that it will have less than \$24,000 in taxable sales during the current or coming calendar year may file its sales tax return and payment of taxes on an annual basis for the current or coming year only if:

1. The seller had less than \$24,000 in taxable sales during the preceding calendar year,
2. The seller executes an affidavit in a form satisfactory to the finance director stating that the seller anticipates that it will have less than \$24,000 in taxable sales during the current or coming calendar year, and
3. The seller applies in advance for annual filing status on a form provided by the finance department and receives written approval from the finance director.

Returns and taxes filed and paid on an annual basis must be received or postmarked not later than the last day of the month following the calendar year for which the tax return is required to be submitted February 15 for the preceding calendar year. Penalties for the late filing of an annual return and for the late payment of taxes shall be double the rate applicable to monthly returns and interest shall accrue on late annual payments from July 1 of the preceding year. If the seller was in business during the preceding year, the Finance Director may approve an annual filing for a seller at any time during the current calendar year, but such approval is prospective only and may be given only upon payment by the seller of all taxes, penalties and interest due to the date of the approval.

E. Upon approval of the Finance Director, a seller that anticipates that it will have less than \$250,000 in taxable sales during the current or coming calendar year may file its sales tax return and payment of taxes on a quarterly basis for the current or coming year only if:

1. The seller had less than \$250,000 in taxable sales during the preceding calendar year,
2. The seller executes an affidavit in a form satisfactory to the Finance Director stating that the seller anticipates that it will have more than \$24,000 and less than \$250,000 in taxable sales during the current or coming calendar year, and
3. The seller applies in advance for quarterly filing status on a form provided by the finance department and receives written approval from the finance director.

Returns and taxes filed and paid on a quarterly basis must be received or postmarked not later than the last day of the month following the quarter in which the tax return is required to be submitted. Penalties for the late filing of a quarterly return and for the late payment of taxes shall be double the rate applicable to monthly returns and interest shall accrue on late payments as if monthly filing was required.

E.F. If a complete return from a person reporting on a monthly, quarterly or annual basis is accompanied by the entire tax due and is received by the city within the time allowed, the person collecting the tax may deduct and retain up to one percent of the tax due for the entire reporting period as compensation for its costs of administration of the tax; however, the amount deducted and retained may not exceed \$75 100 for any month reporting period.

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Section 9. Amendment of Section 4.16.240. Section 4.16.240.A of the Bethel Municipal Code is amended to read as follows (new language is underlined and old language is stricken out):

4.16.240 Rulings and Regulations.

A. The Finance Director may promulgate and amend regulations and may prescribe the content and use of forms appropriate to the implementation of this chapter. Regulations promulgated by the Finance Director are effective on the date they are promulgated unless a different date is indicated in the regulations, provided all regulations are subject to amendment and repeal at any time by the city council by ~~resolution~~ ordinance. At least seven calendar days prior to promulgation, a proposed regulation or amendment shall be submitted to the city attorney and the city manager for review and comment. Upon promulgating a regulation or any amendment to an existing regulation, the Finance Director shall submit the regulation or amendment to the city council at its next regular meeting.

Section 10. Amendment of Section 4.16.260. Section 4.16.260 of the Bethel Municipal Code is amended to read as follows (new language is underlined and old language is stricken out):

4.16.260 Disposition of tax information.

Information in the possession of the city which was obtained by the city in the administration or enforcement of the provisions of this chapter which discloses the particulars of the business or affairs of a seller or other person from whom the information is obtained is not a matter of public record, but may be disclosed to other municipalities, the state or the United States for purposes of investigations and law enforcement. The information shall be kept confidential except when its production is required in an official investigation or an administrative or court proceeding. These restrictions do not prohibit the publication of general sales tax statistics and information, ~~presented in a manner that prevents the identification of particular reports, sellers and items~~ or prohibit publication of tax lists showing the names of sellers who are delinquent in the payment of taxes, and the amount of the delinquency plus penalties and interest owed by the delinquent sellers ~~and relevant information which may assist in the collection of delinquent taxes~~. Information otherwise protected by this section may be furnished on a reciprocal basis to other municipalities, agencies of the State or the United States concerned with the enforcement of tax laws, and may be furnished to any person authorized in writing by the seller to receive or view the information.

Section 11. Amendment of Section 5.04.040. Section 5.04.040 of the Bethel Municipal Code is amended to read as follows (new language is underlined and old language is stricken out):

5.04.040 Fee.

The biennial license fee for businesses that have less than \$250,000 in taxable sales in a calendar year with the business classification of BT, TB, ER, RE, FN, NF, IS, SI, NP, PN, PS, SP, PV, VP, RT, TR, FP, PF, MS or SM is fifty dollars (\$50). The biennial license fee for businesses with the classification of CM, TG, FT, TF, GT, TG, PR, RP, RM, MR, RS, SR, TC, CT, TX, XT, OT or TO is one hundred and fifty dollars (\$150). Classification of business appears on the business license. ~~including the business of selling games of skill and chance is fifty dollars for the biennial license.~~ The fee for a license issued to a new business that commences after the beginning of the biennial period applicable to the applicant, shall be 25 percent of the biennial fee times the number of full and partial semesters remaining in the biennial period. No proration may be given for seasonal or other part-year operations.

Section 12. Amendment of Section 5.04.050. Section 5.04.050 of the Bethel Municipal Code is amended to read as follows (new language is underlined and old language is stricken out):

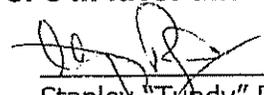
5.04.050 Additional fees for business selling games of skill and chance.

C. Qualified organizations authorized to conduct games of skill and chance by the state pursuant to AS 5.15.010 *et. seq.*, who do not make use of a licensed operator shall pay the fee on a quarterly basis not later than the last day of the month following the quarter a tax return is required to be submitted. ~~by the forty fifth day following each calendar quarter in which their gross receipts equaled fifty thousand dollars or more. If gross receipts do not exceed fifty thousand dollars for any quarter the fee shall be paid on an annual basis on or before March 15th of each year. Payment of the fee shall be accompanied by a copy of the quarterly or annual report filed with the state pursuant to AS 5.15.080 or any successor statute or regulation.~~ A copy of the quarterly or annual report filed with the State pursuant to AS 5.15.080 or any successor statute or regulation shall accompany payment of the fee.

Section 13. Effective Date. This ordinance shall become effective 30 days from the day Council enacts this ordinance.

ENACTED THIS 24th DAY OF JULY 2001, by a vote of 6 in favor and 1 opposed.

ATTEST:
for Laurie J. Walters
Colleen Soberay, City Clerk


Stanley "Tundy" Rodgers, Mayor