

Introduced by: City Manager Herron
Date: October 27, 1998
Public Hearing: November 24, 1998
Action: Enacted as Amended
Vote: 4 Yes, 2 No

**CITY OF BETHEL, ALASKA
ORDINANCE #98-27**

**AN ORDINANCE REPEALING, REVISING AND READOPTING THE SALES TAX CODE;
MODIFYING EXEMPTIONS AND THE COLLECTION AND ENFORCEMENT PROCEDURES;
CLARIFYING APPEAL PROCEDURES; PROVIDING INCENTIVES FOR PROMPT
REPORTING AND PAYMENT OF SALES TAXES COLLECTED; AND MAKING OTHER
CHANGES**

BE IT ORDAINED the Bethel City Council that:

SECTION 1. Classification Code: This ordinance is permanent in nature and shall be incorporated into the Bethel Municipal Code.

SECTION 2. Repeal and Readoption of Chapter: Bethel Municipal Code Chapter 4.16, Sales Tax Code is repealed and readopted to read:

Chapter 4.16
Sales and Use Tax

- 4.16.010 Definitions.
- 4.16.020 Interpretation.
- 4.16.030 Imposition--rate.
- 4.16.040 Exemptions
- 4.16.050 Exemption certificates--applications.
- 4.16.060 Tax added to sales price.
- 4.16.070 Bracket collection schedule.
- 4.16.080 Situs of taxable transaction.
- 4.16.090 Record of sale.
- 4.16.100 Books, records and accounts.
- 4.16.110 Monthly returns and payments.
- 4.16.120 Termination, sale or transfer of retail business.
- 4.16.130 Sales tax trust fund.
- 4.16.140 Interest for delinquency.
- 4.16.150 Estimated tax.
- 4.16.160 Accelerated returns.
- 4.16.170 Investigation and audits.
- 4.16.180 Penalties.
- 4.16.190 Protest of tax and appeal by buyer.
- 4.16.200 Protest and appeal by seller.
- 4.16.210 Refund of excess payment.
- 4.16.220 Review by Finance Committee.
- 4.16.230 Appeal to City Manager
- 4.16.240 Rulings and regulations.
- 4.16.250 Time extensions.
- 4.16.260 Disposition of tax information
- 4.16.270 Civil enforcement remedies.

- 4.16.280 Liens.
- 4.16.290 Liability of responsible individuals.
- 4.16.300 Seller education.
- 4.16.310 Tax evasion.
- 4.16.320 Use tax.

4.16.010 Definitions.

For purposes of this chapter, certain words and phrases are defined as follows:

- A. "City" means the City of Bethel.
- B. "Common carrier" means a person engaged in transporting passengers or goods or both for valuable consideration in the normal course of the business of that person, or a seller engaged in transporting directly to a common carrier goods sold by him or her in a retail sales transaction directly to a buyer residing outside the city.
- C. "Finance Director" means the Finance Director of the City of Bethel or the designee of the Finance Director, the designee may be an employee of the city, an accountant or other person who is not an employee of the city, a certified public accounting firm or other type of firm.
- D. "Goods," "Fixtures," "Investment Securities," "General Intangibles," "Accounts," "Chattel Paper," "Documents," "Instruments" and "Money," and their singulars, have the meanings given the terms by the Alaska Uniform Commercial Code, AS 45.01 et seq., as amended.
- E. "Person" means an individual, partnership, cooperative, association, joint venture, corporation, estate trust, business, receiver, or any entity, group or combination acting as a unit.
- F. "Responsible individual" means any individual, including a group of individuals such as a board of directors, partnership, joint venture, corporation or other entity, who has the responsibility to, is required to, has the authority to, or has the authority to direct or cause another person to
 - 1. collect the tax levied under this chapter,
 - 2. segregate funds in lieu of the direct collection of the tax under this chapter,
 - 3. pay over to the city taxes required to be collected under this chapter, or
 - 4. determine which creditors of the seller are to be paid,
 and may include, but is not limited to, such officers and employees of a seller as the chief executive officer, president, vice-president for finance, controller, comptroller, treasurer, bookkeeper, majority shareholder, finance director, manager, partner, managing partner, chief fiscal or financial officer and accountant if they possess any of the authority, responsibility or duties described in this definition.
- G. "Sale" and "Sales Transaction" mean any sale, lease, rental, transfer or assignment of any right, title or interest in any goods, fixtures, real property, things in action, investment securities, future goods, goods to be severed from realty, admission privilege, right of participation or attendance, general intangibles, accounts, chattel paper, documents, instruments or money, and any sale, provision or performance of services, for valuable consideration.
- H. "Seller" means every person making a sales transaction to a buyer or consumer, every person renting goods, real or personal property and every person performing services, for valuable consideration.
- I. "Selling price" means the present fair market value of all detriment incurred by the buyer in the sales transaction, including cash payments, debt obligations and the present value of goods, personal property, realty or service that form part of the consideration for the sale without deduction for the value of trade-ins, markups, taxes on, collected or paid by the

seller or a prior owner or holder of the subject of the sale, invoice prompt payment discounts or discounts not available to all purchasers

J. "Services" includes all species of acts, activities, labor, advise, consultation, advertising, brokering, retainers, representation and intercession but does not include services rendered to an employer by an employee.

K. "Single sale unit" means that sale of a separate, single item or service which is customarily sold, advertised, contracted for sale or sold in the normal course of business as a separate and single item or unit or by a single unit of measurement (i.e. per gallon, ton, hour, day, week, month, foot, sack, yard, pound, piece, group, each, box, set, package, or other common unit of measurement). A single sale unit shall include a sale by contract, quote, bid or other lump sum amount only if the sale is based on and computed as a single bid, quote, sum or package price rather than as an accumulation, sum or aggregation of prices of separately identifiable or separate unit prices as defined above.

L. "Storage, use or consumption" means the storage, use or consumption in, or the importation into, the city of an alcoholic beverage purchased or acquired from a source outside the city.

4.16.020 Interpretation.

A. The application of the tax levied under this chapter shall be broadly construed and shall favor inclusion rather than exclusion.

B. The exemptions from the tax levied under this chapter shall be narrowly construed against the claimant and in favor of taxation.

4.16.030 Imposition--rate.

There is levied and shall be collected a sales tax on all sales transactions in the city unless specifically exempted under this chapter. The tax is five percent of the selling price.

4.16.040 Exemptions.

The following sales are exempt from the tax levied under this chapter.

A. Casual and isolated sales not made in the regular course of business;

B. Sales and rentals of goods and the sale or performance of services resulting from orders received from outside the city by mail, telephone or other public modes of communication if delivery of the goods ordered or rented is made outside the city by mail or common carrier, or if the performance of the services ordered occurs outside the city. The portion of the services ordered from outside the city that are performed inside the city are not covered under this exemption, and shall be fully taxable;

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.

D. Dues paid to clubs and other organizations solely for the privilege of membership;

E. A sale of goods made to a person in a foreign country for shipment out of the United States except where the goods or products sold are exported in bond for reentry into the United States;

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. A sale directly to the State of 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 payment of the sale price.;

G. Freight and wharfage charges, whether arising out of foreign, interstate or intrastate commerce. Warehouse and storage services are taxable;

H. The sale of insurance policies, guaranty bonds and fidelity bonds;

I. The lending of money and interest charged for loans, 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 covered by this exemption;

J. The sale of food and beverages to students and the public in primary or secondary schools or college cafeterias or lunchrooms which are operated by the school primarily for teachers and students;

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;

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 ;

M. The service of transporting students to and from a school in vehicles;

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 subsection 50B of this chapter;

O. Purchases made with food coupons, food stamps, or other type of certificate issued under 7 U.S.C. 2011--2025 (Food Stamp Act).

P. Ambulance, dental, hospital and medical services, including the sale of hearing aids, physical therapy services, prosthetic devices and medicinal preparations, when prescribed by a licensed health care provider. Ambulance, dental, hospital and medical services do not include services rendered by chiropractors, barbers, cosmeticians, masseurs, or veterinarians;

Q. The sale of services of transporting passengers by river taxi, taxicab, bus, or limousine. The lease of vehicle for hire permits is taxable.

4.16.050 Exemption certificates--applications.

A. Persons desiring an exemption certificate for exemptions under subsection 40N must make written application for the certificate on a form supplied by the Finance Director, pay the application fee and meet the other requirements of this section. The Finance Director may at any time require proof of the original grounds for the exemption still exist and the claimant shall have the burden of establishing his or her qualifications for the exemption

B. An exemption certificate for exemptions under subsection 40N may be issued only upon submission of a complete application to the Finance Director, including payment of the certificate fee of \$200, proof that the applicant owns or has a substantial ownership interest in the land upon which the home is to be built, 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 month, following the issuance of the permit. The expiration date shall be prominently displayed on the certificate.

4.16.060 Tax added to sales price.

A. Seller shall add the sales tax to the selling price and, except as provided in subsection 60D, shall collect the sales tax at the time of the sale. Such sales tax is a debt from the buyer or consumer to the seller until paid, and the same is recoverable at law in the same manner as other debts.

B. The tax levied under the provisions of this chapter is upon the buyer of goods, rentals or services, but the tax is payable to the city by the seller regardless of whether the seller has collected the same from the buyer. It is the duty of each seller to collect from the buyer or consumer the full amount of the sales tax payable on each taxable sales transaction at the earliest of the time goods are sold, delivered or paid for, the time rent is due, or the time services are performed or paid for, provided the provisions of this and the preceding sentence do not apply to the extent they are inconsistent with the provisions of subsection 60D of this section. Every sale which is made within the city unless explicitly exempted by this chapter, or a subsequent ordinance, shall be presumed to be subject to the tax imposed hereunder in any action to enforce the provisions of this chapter.

C. In cases of payment of the sale price by consideration other than cash or an agreement to deferred payments under section 60D, the seller shall collect the entire sales tax due on the non cash part of the sale at the time of the sale. The seller who fails to collect the sales tax due at the time of sale is immediately liable for the uncollected part of the sales tax due and shall segregate from the seller's own funds the amount of such uncollected part and shall deposit such amount as the sales tax due in the Bethel sales tax trust fund or account required to be maintained for the holding of Bethel sales tax collected by the seller.

D. In cases of payment of all or a part of the sale price by installment or deferred payment, the seller may collect the sales tax as if the down payment and each installment or deferred payment were separate, individual sales, with the sales tax computed and paid on the entire principal and interest payment at the time of each payment. If the payment invoice for a deferred sales tax payment does not set out the amount of the sales tax due with the payment, the payment received shall be deemed to include the sales tax which shall be computed by multiplying the total principal and interest payment amount by 0.04762. Upon the sale or transfer by the seller of an account from which deferred sales tax payments are still due, the seller shall pay over to the City the amount of the sales tax still due from future payments on the account.

4.16.070 Bracket collection schedule.

A. Except as provided in subsections B and C the sales tax shall be stated separately on all invoices, receipts and other documents of the sale. The tax shall be charged in accordance with the following schedule:

	<u>Selling Price (inclusive)</u> <u>Amount of Sales Tax</u>
\$.01 -- .09.....	\$ no tax
.10 -- .29.....	.01
.30 -- .49.....	.02
.50 -- .69.....	.03
.70 -- .89.....	.04
.90 -- 1.09.....	.05
1.10 -- 1.29.....	.06
amounts over \$1.29.....	5% of selling price rounded up to the nearest whole cent for each fraction of one half cent or more.

B. When sales are made through devices such as service station fuel pumps that compute the amount due as the product is delivered, the seller may set the device to add the sales tax as the product sold is delivered. In doing so, the seller may set the device to add the tax in one cent increments in accordance with the schedule in subsection A or may set the device to add the tax as exactly 5 percent of the price of the product as it is delivered. In either case where the tax is added as the product is delivered and the price of the sale, including the sales tax, is displayed on the device as the delivery is being made, the seller is not required to state the amount of the tax separately in an invoice or receipt, but shall place a notice on the device that the price shown includes the Bethel City sales tax.

C. When a coin or bill operated device dispenses goods, permits one or more plays of a game or other entertainment, or permits a predetermined use of a device, equipment or place, the sales tax levied under this chapter shall be deemed to be included in the amount required to be deposited and shall be computed for purposes of collection, holding in trust, and paying over to the city by multiplying 0.04762 by the gross proceeds of each collection removed from the device by the seller. If the seller sells tokens or cards that are used to operate the devices, the gross proceeds shall be the sum of the cash removed from the devices plus the receipts from the sale of the tokens and cards.

4.16.080 Situs of taxable transaction.

A. A sale occurs in the city when:

1. the sale agreement is reached between a buyer and seller in the city,
2. goods, property or rights sold by or through a seller or seller's agent in the city are delivered to the buyer in the city,
3. property within the city is leased or rented,
4. services are sold and performed within the city,
5. services are performed in the city, without regard to where the services were sold, or
6. any other activities related to the sale of goods, services or rentals occur within the city with a sufficient connection and relationship to the city to permit the imposition of the tax under this chapter.

B. Whenever a seller with a Bethel outlet consummates a mail order sale sent directly to a Bethel buyer, the transaction shall be construed as occurring in the city for tax purposes unless the seller meets the burden of proving that the direct mail order sale is wholly disassociated from any assistance by its Bethel operations.

C. In cases where services or goods subject to a sales transaction outside the city are delivered both inside and outside the city, the tax shall be due on that portion of the services and goods delivered inside the city.

4.16.090 Record of sale.

A. Except for a person who has been certified by the Finance Director as a seller who engages solely in tax exempt sales, each person making sales within the City shall provide to the buyer and shall retain a copy of, a receipt or invoice documenting the details of the sale.

B. Each receipt or invoice shall:

1. be dated,
2. be sequentially pre-numbered, but may be sequentially machine numbered if the number printed on the receipt or invoice is machine generated,
3. show the quantity, description and price of the goods sold, services rendered or sold or rentals made,
4. show the amount of the sales tax on the sale, and
5. if any part of the sale is exempt, set out in detail on the receipt or invoice,
 - a. each item and the amount of the sale that is tax exempt,

- b. the reason for the exemption,
- c. the name of the entity and the name of the person actually making the purchase, and
- d. if the exemption may be given only upon the display of an exemption certificate or business license or upon the provision of a business license number, the seller shall record on the receipt or invoice the number and expiration date of the certificate or business license and the name of the person to whom issued.

4.16.100 Books, records and accounts.

A. Sellers shall keep complete, adequate and accurate business records from which the city may determine sales tax liabilities. Failure to maintain such records of business transactions is evidence intent to evade the tax and may result in penalties. A person who fails to comply with the requirements of this section may not challenge or attack in any court action or proceedings, the correctness of any assessment of sales taxes based upon any period for which such books, records, and invoices have not been so maintained, preserved, or when requested, presented to the city.

B. Each seller shall prepare and preserve business records in a systematic manner conforming to accepted accounting methods and procedures. Such records include:

1. The books of account ordinarily maintained by a prudent business person. Records and accounting information stored on computers or microfilm must be provided to the city in readable form when requested by the city.

2. Documents of original entry such as original source documents, pre-numbered sequential receipts, cash register tapes, sales journals, invoices, job orders, contracts, or other documents of original entry that support the entries in the books of accounts.

3. All schedules or working papers used to prepare gross and taxable sales results, including receipts or invoices showing exempt sales.

C. Records must show:

1. Gross receipts and amounts due from all taxable and exempt sales.

2. All exemptions or deductions from gross sales, including the customer name and Bethel business license or exemption certificate number and expiration date, date of transaction, receipt number, and amount exempted.

3. The total purchase price of all goods and other property purchased for sale, resale, consumption, or lease.

D. All records that pertain to transactions involving sales tax liability shall be kept for three years following the end of the calendar year during which the transactions took place, unless the Finance Director grants written permission for earlier destruction. Records or copies of evidence presented as certification or proof of claimed sales tax exemption by the buyer are required when sales tax is not collected. If the seller is unable to provide the documentation required to validate the seller's treatment of the sale as exempt, or if the city determines that a sale was subject to tax, and the seller failed to collect the tax, the seller becomes liable for the tax, plus interest, penalty, costs and charges due the city.

E. Amounts received with the return shall be applied in the following order:

1. miscellaneous costs and charges and disallowed deductions or retentions;

2. penalties due, beginning with the oldest penalty;

3. interest due, beginning with the interest due on the oldest month; and

4. taxes due, beginning with the taxes due from the oldest month.

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. Each sales tax return shall set forth the gross receipts of the business for the month, including all taxable and nontaxable transactions; the amount of tax thereon; and 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 return.

B. Any seller who filed or should have filed a sales tax return for the prior month 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 when no tax is due is not required to file returns thereafter until it has one or more taxable sales during a subsequent month.

C. Each sales tax return for a month 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 month 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 by the Finance Director, a seller who had less than \$24,000 in taxable sales during the preceding calendar year and who 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 may file its sales tax return and payment of taxes on an annual basis for the current or coming year. Returns and taxes filed and paid on an annual basis must be received or postmarked not later than 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. If a complete return from a person reporting on a monthly 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 as compensation for its costs of administration of the tax; however, the amount deducted and retained may not exceed \$75 for any month.

4.16.120 Termination, sale or transfer of retail business.

A. A seller who sells, transfers or assigns a substantial portion of his retail business interest to another person shall make a final sales tax return within thirty (30) days after the date of such conveyance. At least ten business days before any such sale is completed, seller shall send to the Finance Director, by registered first-class mail, postage prepaid, a notice that the seller's interest is to be conveyed to another person and shall include the name, address and telephone number of the person to whom the interest is to be conveyed. Following receipt of said notice the city shall have 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 business days before the sale is completed, the city shall have 12 months from the later of the completion of the sale or the city's knowledge of the completion of the sale within which to begin a final sales tax audit and assess sales tax liability against the seller of the business. The

city may also initiate an estimated assessment if the requirements for such an assessment exist.

B. A person acquiring any interest of a seller in a business required to collect the tax under this chapter assumes the liability of the seller for all taxes due the city, whether current or delinquent, whether known to the city or discovered later, and for all interest, penalties, costs and charges on such taxes. The Finance Director, upon authorization of the seller, may disclose the sales tax payments, delinquencies and the status of the seller's sales tax account to any person designated by the seller.

C. A seller who terminates his or her business without the benefit of a purchaser, successor or assign, shall make a final tax return and settlement of tax obligations within thirty days after such termination. If a final return and settlement are not received within thirty days of the termination, the seller shall pay a penalty of \$100, plus an additional penalty of \$25 for each additional thirty day period, or part of such a period, during which the final return and settlement have not been made, for a maximum of six additional periods. A new or renewed business license may not be issued to a seller who has failed to make the return and settlement under this section until the return and settlement required have been made and the penalty imposed has been paid.

4.16.130 Sales tax trust fund.

A. Upon collection by the seller or the segregation from the seller's own funds of the tax levied and required to be collected under this chapter, title to the collected or segregated tax funds vests immediately in the city. The seller shall establish and maintain separate from all other funds and accounts of the seller a Bethel sales tax trust fund or account into which all sales tax collected or required to be collected shall be deposited or accounted for until paid over to the city.

B. Upon request of the Finance Director, a seller shall prove to the Finance Director that the seller has established and uses the trust fund or account required under this section.

C. A seller or any person with access to a trust fund or account required under this section or with access to funds required to be deposited in the trust fund who uses, diverts, or withdraws for any other use the tax funds collected and deposited or required to be deposited in the trust fund or account is guilty of a misdemeanor and may be punished upon conviction by a fine not to exceed \$1,000 or by imprisonment not to exceed 90 days or both fine and imprisonment for each such other use, diversion or withdrawal.

4.16.140 Interest for delinquency.

Interest shall accrue on the principal amount of the delinquent tax and other costs and charges, but not on penalties, at the rate of fifteen percent per annum from the date of the delinquency until paid. Interest shall be assessed and collected in the same manner as the sales tax is assessed and collected. The date of delinquency for the payment of costs and charges is the thirtieth day following the date of the notice of the amount of the cost or charge due. Interest due on delinquent taxes, costs or charges may not be waived or forgiven except to the extent the underlying principal amount has been determined not to have been due.

4.16.150 Estimated tax.

A. On or after the fifth day of delinquency in the filing of the required sales 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 seller a sales tax for the delinquent period or periods based on a reasonable estimate of the gross taxable sales computed from an audit or the tax returns submitted by the delinquent seller. If the Finance Director determines that information from prior tax returns is not adequate for computing a reasonable estimate of the gross taxable sales, 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 seller by certified mail. Such assessment shall be due and owing retroactively from the first day of delinquency and shall be subject to the interest, penalty and other costs and charges as provided in this chapter.

B. The estimated assessment of sales 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 sales tax return for the delinquent periods together with full payment of all taxes, interest, penalty, costs and other charges due, or the seller pays the amount due under protest under the provisions of section 190 of this chapter.

4.16.160 Accelerated returns.

A seller 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 weekly basis; provided, the Finance Director shall provide to the seller 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, a seller required to file on a weekly basis shall file a complete return and full payment for the weekly period not later than the fifth business day following the last day of the weekly period. The seller required to file and pay on a 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 a seller who files late two or more times during a three month period may be required by the Finance Director to file on a basis more frequent than weekly after written notice of intent and a hearing as provided in this section. The day by which more frequent filings are due shall be established by the Finance Director.

4.16.170 Investigation and audits.

A. The Finance Director is not bound to accept a sales tax return as correct and may conduct an investigation to determine the correctness of a return. A person shall, upon request, furnish to the Finance Director every facility and assistance for the purpose of the investigation.

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

C. The finance Director may issue subpoenas for the appearance of persons and for the production of records. The Finance Director may have enforcement of subpoenas in the superior court.

4.16.180 Penalties.

A. A seller who fails to file a return as required under this chapter or who fails to remit all the taxes due the city by that seller shall pay a penalty of five percent of the taxes due if no return is filed and five percent of the delinquent amount if a complete return is filed. The

penalty shall be imposed for each month or part of a month during which the delinquency of failure to file exists up to a maximum of twenty-five percent of the initial delinquency; provided, the total penalty for a single month shall not exceed one thousand five hundred dollars. The filing of an incomplete return shall be treated as the filing of no return.

B. A person required to collect a tax under this chapter, who fails to provide a written receipt or invoice setting out the amount of the tax due on the transaction when the amount of the tax is required to be shown on the receipt or invoice, shall pay a penalty to the city equal to twice the amount of the tax due on the sale.

C. A person required to collect a tax under this chapter, who fails or refuses to produce records demanded or allow inspection at such reasonable time as requested or demanded by the Finance Director shall pay to the city a penalty equal to three times any deficiency found or estimated by the Finance Director to have occurred; provided, the minimum penalty is three hundred dollars.

D. A person required to maintain records under the provisions of this chapter shall immediately notify the city of any fire, theft or other casualty that would prevent the person from complying with the provisions of this chapter. Such casualty may be a defense to a civil penalty levied under this section 180, but does not excuse the person from the liability for payment to the city of taxes required to be collected. The unexplained or accidental loss of records, except by fire, theft or casualty, does not excuse a person from the performance of any of the requirements under this chapter.

E. A penalty imposed under this chapter may not be waived or reduced except upon a clear showing of reasons beyond the control of the person upon whom the penalty is imposed or a similar strong justification and approval by the City Manager of the waiver or reduction.

4.16.190 Protest of tax and appeal by buyer.

A. The seller shall determine whether a sale is taxable under this chapter. If the seller fails to collect the tax due on a sale transaction because of an incorrect determination of taxability by the seller, except when the seller has been misled by the buyer, or fails for any other reason to collect the tax due on the sale, the seller becomes liable to the city for the tax in the same manner as if the tax had been collected.

B. If a buyer believes that a transaction is exempt or otherwise not subject to the tax imposed under this chapter, the buyer shall pay the tax to the seller under protest. A tax is paid under protest by stating to the seller that the tax is paid under protest and requesting the seller mark any receipts, invoices or other evidence of the sale to indicate that the tax is paid under protest. The buyer shall file with the Finance Director, a statement of protest on a form provided to the buyer by the Finance Director. Failure to file a complete statement of protest with the Financial Director within 10 days of the date of the sale or to pay the tax at the time of the sale constitutes a waiver of the protest and of any other right of the buyer to challenge the tax in any other forum. The buyer shall clearly set out on the form the terms and conditions of the sale, the amount of the sale, the goods, rental or services involved, the location of the sale and all other information necessary to support the buyer's claim that the tax does not apply.

C. The buyer shall file the completed form, including the copy of the receipt or invoice, with the Finance Director, within 10 days of the date of the sale. The seller shall include a copy of the receipt protested with the seller's sales tax return for the tax reporting period in which the protested tax was paid. The protested tax shall be paid over to the city with all other sales tax amounts due for the reported period.

D. The Finance Director shall issue a written ruling on the buyer's protest within 30 days of the timely filing by the buyer. The burden of proof is on the buyer. The Finance Director may make inquiry of any person who may have information of the facts relevant to the taxability of the protested tax and may seek the advice of the City Attorney on any protest. The ruling will

be in writing and must set forth the reason for the grant or denial of the protest. The ruling will be mailed to the buyer and the seller at the addresses given on the protest.

E. If a protest is granted, the Finance Director shall determine whether the tax protested has been received by the city from the seller. If the tax has been received, the Finance Director shall refund directly to the buyer the amount of the tax to be refunded. If the tax has not been received by the city, the Finance Director shall pay the refund to the buyer upon receipt of the sales tax from the seller.

F. In the event the protest is denied, the buyer may, within twenty days of the date of mailing of the notice of denial, either request a Finance Committee review of the decision pursuant to section 220 of this chapter or may file an appeal to the City Manager pursuant to section 230 of this chapter. The request for Finance Committee review shall be filed with the Finance Director who shall immediately forward the request to the chair of the Finance Committee. An appeal to the City Manager shall be filed with the Finance Director who shall immediately forward the appeal to the City Manager.

4.16.200 Protest and appeal by seller.

A. A seller may appeal a decision of the Finance Director if the seller believes that

1. a transaction is exempt or otherwise not subject to the tax imposed under this chapter but has been informed by the city that such transaction is subject to the tax imposed under this chapter;

2. the tax, a penalty, interest or other charge imposed or demanded by the city is not owing;

3. an application for a refund of an excess payment was incorrectly denied;

4. an estimated tax filing by the Finance Director is incorrect or erroneous;

or

5. any other notice or demand of any amount claimed by the city to be due under this chapter is incorrect or erroneous, but only if such notice or demand is not the result of a prior appeal of the same matter and is not a subsequent notice or demand for which a timely appeal or protest of the earlier notice or demand was not timely filed.

B. The seller may appeal the determination of the tax, interest, penalty, charge or other claimed amount by the city by paying the amount to the city under protest and filing with the Finance Director at the time of payment a statement of protest setting out all relevant facts and clearly explaining why the transaction, or the amount is exempt or not otherwise subject to the tax levied under this chapter or why the amount determined by the city is incorrect, erroneous, or otherwise not owing. The payment and statement of protest must be received by the city not later than the 20th day following the date the notice or determination is mailed to the seller. Failure to file a statement of protest and to pay the amount claimed by the city as owing within the time permitted under this subsection constitutes a waiver of the right to protest and to appeal the tax, disallowance, charge, interpretation or other city determination under this chapter and is a waiver of the right to appeal the determination to the City Manager or to appeal or otherwise challenge the tax, disallowance, charge or interpretation or other determination in any judicial or other proceeding. If a seller shows that payment under protest of the amount demanded would create an extreme hardship for the seller, the Finance Director may waive the payment of part or all of the amount required to be paid; provided, the amount determined to be due by the Finance Director in the written decision of the appeal must be paid prior to filing with the City Manager an appeal of the Finance Director's decision. Upon the request of the seller and a determination by the Finance Director that the seller has not been late or deficient in the payment of its sales taxes to the city for the immediately preceding three years, exclusive of the payments for the period under protest, and that he has a history of prompt payment of all its other accounts with the city, the Finance Director may waive the payment of part or all of the amount required to be paid; provided, the amount determined to be due by the Finance Director

in the written decision of the appeal must be paid prior to filing with the City Manager an appeal of the Finance Director's decision.

C. The Finance Director shall issue a written ruling on a seller's protest within 30 days of receipt of the protest and payment if timely filed. The seller has the burden of proof. The Finance Director shall permit or may require the seller to provide additional information relevant to the protest and appeal. The Finance Director may seek the advice of the City Attorney on a seller protest and appeal. The ruling will be in writing and must set forth the reason for the grant or denial of the protest and appeal. The ruling will be sent to the seller at the address given in the protest.

D. If a protest is granted in part or in whole, the Finance Director shall refund to the seller the amount paid over to the city under protest that was in excess of the amount found owing. The seller shall immediately refund to each buyer from whom the tax was collected the amount of the tax improperly collected; if the seller did not collect the tax but has paid the tax to the city from its own account, the seller may retain the tax refunded.

E. In the event the protest is denied, the buyer may, within twenty days of the date of mailing of the notice of denial, either request a Finance Committee review of the decision pursuant to section 220 of this chapter or may file an appeal to the City Manager pursuant to section 230 of this chapter. The request for Finance Committee review shall be filed with the Finance Director who shall immediately forward the request to the chair of the Finance Committee. An appeal to the City Manager shall be filed with the Finance Director who shall immediately forward the appeal to the City Manager.

4.16.210 Refund of excess payment.

A. A seller who, through a clerical or similar error, pays a tax under this chapter that exceeds the amount actually due may receive a refund of the excess payment upon meeting the conditions set out in this section.

B. A seller who has made an excess tax payment as set out in subsection (A) shall be given a refund of the excess if the city receives written notice from the seller of the amount claimed as an excess payment accompanied by satisfactory proof of the excess payment in the form required by the Finance Director. The claim and proof must be received not later than the last day of the third month following month for which the excess payment was made, without regard to the month during which the payment to the city was actually made.

C. Upon approval of a refund to a seller, the city may pay the refund to the seller or authorize the seller to take the refund as a credit against future monthly tax payments; provided, the amount taken as a credit in any one month may not exceed 20 percent of the amount otherwise due for the month. No interest may be paid on the excess payment.

D. In the event the protest is denied, the buyer may, within twenty days of the date of mailing of the notice of denial, either request a Finance Committee review of the decision pursuant to section 220 of this chapter or may file an appeal to the City Manager pursuant to section 230 of this chapter. The request for Finance Committee review shall be filed with the Finance Director who shall immediately forward the request to the chair of the Finance Committee. An appeal to the City Manager shall be filed with the Finance Director who shall immediately forward the appeal to the City Manager.

E. A claim for a refund of an excess payment to which this section 210 applies is forever barred if notice and proof of the excess payment are not given within the time required.

4.16.220 Review by Finance Committee.

A. Upon receipt of a request for Finance Committee review, the chair of the Committee shall determine the earliest dates the Finance Director, the Finance Committee and the person requesting review can meet. The chair of the Committee shall select a date, time

and place for a meeting and shall notify the Committee members, the person requesting review and the Finance Director of the meeting.

B. The Finance Director and the person requesting review shall provide to each other and to the Committee chair all documents upon which each intends to rely in the review of the matter. Such documents should be provided within three business days of the date notice of the meeting is mailed. The chair of the Committee shall distribute to the Committee members documents received in the matter.

C. The procedures at the meeting on the matter under review shall be informal. The person requesting review and the Finance Director shall each have a reasonable opportunity to explain their position. At the conclusion of the meeting on the matter, the committee shall determine what recommendation it will make to the Finance Director and shall set out its reasons for the recommendation. The Finance Committee recommendation is advisory only and is not appealable.

D. The recommendation and reasons shall be reduced to writing and mailed or delivered to the person requesting review, the Finance Director, and the City Manager. The Finance Director shall give consideration to the arguments raised by the person requesting review, the recommendations of the Committee, the scope of discretion of the Finance Director in the matter and other relevant factors. The Finance Director may consult with the City Manager on the matter. The Finance Director shall promptly decide the position of the Finance Department and inform the person requesting review and the Committee in writing of the final decision of the Finance Director. The Finance Director shall undertake such action as may be appropriate to implement the final decision.

E. A person who is dissatisfied with the final decision of the Finance Director may, within twenty days of the date of mailing of the decision, file with the Finance Director an appeal of the decision to the City Manager pursuant to section 230 of this chapter. The Finance Director shall immediately forward the appeal to the City Manager.

4.16.230 Appeal to City Manager.

A. An appeal to the City Manager of a Finance Director's decision must be in writing and must set out with specificity the errors claimed to have been made by the Finance Director.

B. An appeal to the City Manager of a Finance Director's decision shall be scheduled for a hearing and be heard by the City Manager or a hearing officer appointed by the City Manager. The City Manager or the hearing officer shall receive such relevant documents, information and testimony as the appellant and the Finance Director may desire to present at a hearing. The burden of proof is on the appellant. Unless the City Manager specifically delegates to the hearing officer the authority to hear and decide the appeal, the hearing officer shall hear the appeal and provide to the City Manager a proposed decision setting out findings, conclusions and orders which the City Manager may accept, modify or reject and refer back to the hearing officer for reconsideration. If the hearing officer is specifically authorized to decide the appeal, the hearing officer's decision is the final decision. If the City Manager hears the appeal or if the City Manager accepts and signs a hearing officer's proposed decision, whether or not modified by the City Manager, such decision is the City Manager's decision and is the final decision. A final decision shall be in writing and shall set out findings of fact, conclusions, and such orders as may be appropriate. A final decision may be appealed to the superior court pursuant to the rules of appellate procedure. A final decision shall state that it is a final decision and shall contain any notice of the limitations on and the right to appeal required by Rule 602(a)(2) of the Alaska Rules of Appellate Procedure or other applicable rule. A copy of the final decision shall be promptly mailed or delivered to the appellant and to the Finance Director.

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. 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.

4.16.250 Time extensions.

For good cause shown, the Finance Director may grant an extension of the time required for the performance of any act under this chapter. The extension shall be subject to such terms and conditions as the Finance Director finds appropriate. An application for an extension must be filed in writing before the date required for performance.

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 and 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 statistics presented in a manner that prevents the identification of particular reports, sellers and items or prohibit the publication of tax lists showing the names of sellers who are delinquent in the payment of taxes, the amount of the delinquency 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.

4.16.270 Civil enforcement remedies.

A. If sales tax is not paid when due, the city may enforce the payment of the tax, interest, penalty, costs and charges by any method available in law, including but not limited to the lien, foreclosure and sale of real and personal property or a civil action against the delinquent taxpayer or responsible individual.

B. The City may institute a civil action against any person who violates a provision of this chapter. In addition to injunctive and compensatory relief, a civil penalty not to exceed one thousand dollars may be imposed for each violation. An action to enjoin a violation may be brought notwithstanding the availability of any other remedy. On application for injunctive relief and a finding of a violation or a threatened violation, the superior court shall grant the injunction. Each day that a violation of this chapter continues constitutes a separate violation.

4.16.280 Liens.

A. The tax, interest, penalty and other costs due and owing the city by a seller under this chapter constitute a lien in favor of the city upon the assets and property of all persons liable for the payment of the tax, interest, penalty and other costs.

B. The lien imposed by this section arises and attaches at the time that payment becomes delinquent and continues until the entire amount due has been paid.

C. If delinquent sales taxes, interest, penalties and other costs are not paid within ten days from the mailing of notice and demand for payment thereof, a notice of lien may be recorded in the office of the district recorder in any recording district where the person liable has assets or property, and upon recordation a lien arising under this section has priority over any other liens except those for special assessments or those granted priority by state or federal law.

D. An action to foreclose the lien created by this section shall be commenced and pursued in the manner provided for the foreclosure of liens in AS 09.45.170 -- 09.45.220.

E. The remedy provided in this section is not exclusive and shall be in addition to all other remedies available to the city to collect the sales taxes, interest, penalty and costs due under this chapter.

F. The failure to record a lien does not constitute as a waiver or abrogation of any priorities, rights or interests of the city at law or in equity.

G. Fees for the administrative costs of filing notices of liens and releasing of liens shall be:

1. Filing of notices of lien: twenty-five dollars, plus recorder's office filing fee;
2. Release of liens: twenty-five dollars, plus recorder's office filing fee;
3. Upon full satisfaction of payment of all taxes, interest and costs, including

the administrative costs for the filing and release of the liens, due and owing to the city, the Finance Director shall file a certificate discharging the lien.

4.16.290 Liability of responsible individuals.

Each responsible individual as defined under section 4.16.010 is liable to the city for the payment of sales taxes that are delinquent and which were collected or required to be collected or required to be paid over to the city while such individual was a responsible individual with respect to such taxes. Such individual is liable to the city for penalties, interest on the delinquent taxes, costs and other charges accrued to the date of payment. Upon written demand for payment of delinquent taxes, penalty, interest, costs and charges sent by registered mail to a responsible individual, the responsible individual shall pay over to the city the amount of the delinquent taxes, interest, penalty, costs and charges due within 20 days of the date of mailing of the written demand or file a written appeal to the Finance Director setting out with specificity the amounts for which he or she is not liable and the reasons there is no liability for such amounts. The appeal shall be filed as a protest under section 190 of this chapter except that payment under protest is not required to be made as a condition of filing the appeal to the Finance Director; however, if the protest decision of the Finance Director is appealed to the City Manager, the amount set out as due in the finance Director's decision must be paid with the filing of the appeal to the City Manager. If the responsible individual upon whom demand for payment has been made fails to file an appeal or to pay the taxes, penalty, interest, costs and charges due within 20 days of the date of mailing of the demand, the amount due is deemed admitted to be due from the responsible individual and may not thereafter be made the subject of an appeal or otherwise challenged in any judicial proceeding. The amount due may be collected in a civil action against the responsible individual.

4.16.300 Seller education.

A. Each person who owns or operates a business that makes taxable sales within the city shall attend a general information and education class conducted by the city. Attendance shall be by the owner or an officer or employee of the business who is responsible for the monitoring and accounting of sales tax collection and the reporting and payment of sales taxes to the city. Attendance by the owner, an officer or employee shall occur at least once every four years and at any time the business does not have an owner, an officer or at least one individual in its employment who has attended the class within the last four years. Until July 1, 2004, the provisions of this subsection A do not apply to a business that has regularly collected sales taxes in the city since at least January 1, 1996, and since that date has not filed a return or paid any sales taxes owing twenty or more days late on more than two occasions.

B. The general information and education classes shall be conducted at least twice each year. The Finance Director shall be responsible for assembling course material, instructors and other resources that may be necessary for the classes. Classes shall be scheduled at times that take into account the availability of business personnel to attend.

C. A business may be required by the Finance Director to have its owner, an officer or an appropriate employee attend a class without regard to how recently an individual from the business has attended a prior class if the business has failed to:

1. file two or more returns on time within 6 months,
2. collect or to pay over all taxes required to be collected under this chapter, or
3. keep or produce records required to be kept or produced under this chapter.

D. A person who, at the time the person's city business license is to be renewed, has not met the requirements for class attendance under this section shall pay a penalty of \$250 prior to issuance of the business license. Payment of the penalty does not excuse and is not a substitute for the required class attendance.

E. Upon a determination by the Finance Director that a business does not meet the requirements of subsection A of this section, the Finance Director shall notify the business of the deficiency. The business shall come into compliance by not later than the conclusion of the second class conducted under this section following the date of the notice of deficiency. A business that fails to have an appropriate person attend one of the two classes following the notice or by other means to come into compliance with the requirements of this section shall pay a penalty of \$250 with the sales tax return next due following the second class.

4.16.310 Tax evasion.

A. A person commits the misdemeanor crime of tax evasion if the person

1. fails to file a statement or return required by this chapter;
2. makes a false statement or affidavit of occurrence, existence, amount, location, or value of a sales transaction or of property or service subject to tax under this chapter;
3. uses a tax exemption certificate or claims an exemption when an exemption is not applicable;
4. remits or rebates to a buyer or consumer whether directly or indirectly, by any means, all or any part of the tax levied hereunder;
5. makes in any form of advertising, whether in writing, verbally or otherwise, any statement which implies that the person is absorbing the tax, paying the tax for the buyer or consumer or user by an adjustment of prices or by any other means; or is guilty of a misdemeanor; provided, however, a seller may advertise that the purchase price includes the sales tax when authorized under section 4.16.070 B or C to include the tax in the sale price;
6. falsifies or changes the content of a record of any nature required to be kept under this chapter so as to misrepresent the facts or information contained therein;

- 7. submits to the city or the Finance Director any information or record that has been falsified or changed to create a misrepresentation;
 - 8. fails, neglects or refuses to comply with any provision of this chapter; or
 - 9. refuses as a buyer to pay to the seller the tax due under this chapter.
- B. Each day upon which a violation of this chapter continues is a separate violation.
 - C. Upon the conviction of tax evasion under this chapter, the court may impose a fine of not more than \$300 for each violation unless a greater punishment is authorized for the violation of a particular provision of this chapter.

4.16.320 Use tax.

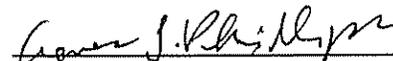
- A. There is levied and shall be collected a tax on the storage, use, or consumption of alcoholic beverages in the city. The tax shall be at the same rate as the sales tax levied under this chapter, but there shall be deducted from the tax levied under this section an amount equal to any sales tax paid by the buyer that was levied and collected on the sale of the alcoholic beverage.
- B. The buyer shall pay the tax. A person outside the city who receives an order for alcoholic beverages to be shipped by the seller or seller's agent or employee to an address or person in the city shall collect the tax and pay the tax collected or required to be collected to the city in the same manner as required for sales taxes levied by the city. Such seller shall be liable for the payment of the use tax in the same manner as a person who is required to collect the city sales tax on the sale of other goods. The buyer shall be liable to the city for all use taxes not collected by a seller.
- C. The provisions of the chapter applicable to sales tax shall apply to the use tax levied under this section, including, but not limited to, provisions regarding computation, collection, holding, reporting, record keeping, payment to the city, interest, penalties, enforcement, remedies, assessment of delinquent taxes, liability, audit, appeal and refund. When the sales tax provisions are applied to the use tax, the phrase "sales tax" shall be read as "use tax" where appropriate.

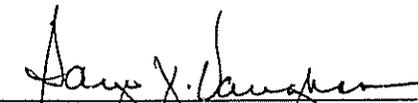
SECTION 3. Effective Date. This ordinance shall become effective on April 1, 1999; provided, sales taxes collected or required to be collected prior to April 1, 1999, pursuant to provisions of the code repealed by this ordinance shall be reported and paid over to the City pursuant to the applicable provisions of the repealed code; provided further, penalty, interest, audit, appeals and other post-filing procedures applicable to late filings and delinquent payments shall apply to filings and payments that are late or delinquent as of May 1, 1999, without regard to when the filing or payment was first due. The Finance Director may make adjustments in procedures to fully accommodate the transition to the new code provisions.

ENACTED this 17th day of November, 1998, by a vote of 4 Yea and 2 No.

CITY OF BETHEL

ATTEST:


 Agnes L. Phillips, Mayor


 Gaye J. Vaughan, City Clerk