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## Ordinance #17-39

### AN ORDINANCE REPEALING AND REPLACING CHAPTER 4.16 OF THE BETHEL MUNICIPAL CODE, SALES AND USE TAX

**SECTION 1. Classification.** This is a Codified Ordinance and shall become part of the Bethel Municipal Code.

**SECTION 2. Amendments.** Bethel Municipal Code Chapter 04.16 Sales and Use Tax, is amended as follows (old language is stricken, new language is underlined):

#### ~~Chapter 4.16~~ ~~SALES AND USE TAX~~

Sections:

- ~~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.
- ~~4.16.095~~ Receipts — Posting of signs.
- ~~4.16.100~~ Books, records and accounts.
- ~~4.16.110~~ Returns and remittances.
- ~~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 remittance.
- ~~4.16.220~~ Review by finance committee.
- ~~4.16.230~~ Appeal to city manager.
- ~~4.16.240~~ Rulings and regulations.

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- ~~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- ~~4.16.300~~ Repealed.
- ~~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 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. "Marijuana" means all parts of the plant (genus) Cannabis, whether growing or not, the seed thereof, the resin extracted from any part of the plant, and any compound, manufacture, derivative, mixture, or preparation of the plant, its seeds, or its resin, including marijuana concentrate. Marijuana does not include fiber products from the stalks, oil or cake made from the seeds of the plant, sterilized seed of the plant that is incapable of germination, or the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other products.
- F. "Person" means an individual, partnership, cooperative, association, joint venture, corporation, estate trust, business, receiver, or any entity, group or combination acting as a unit.

G. "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. Remit over to the city taxes required to be collected under this chapter; or

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~~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.~~

~~H. "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.~~

~~I. "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.~~

~~J. "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.~~

~~K. "Services" means and 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.~~

~~L. "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.~~

~~M. "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.~~

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#### **4.16.030 Imposition — Rate.**

~~A. 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 six (6) percent of the selling price.~~

~~B. The tax to be added to the sale price shall be twelve (12) percent for alcohol and transient lodging.~~

~~C. The tax to be added to the sale price shall be fifteen (15) percent for marijuana retail sales.~~

#### **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, 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 (5) days in a calendar year, and are not made through a dealer, broker, agent or consignee. A casual and isolated rental of real property by a seller who does not regularly engage in the business of renting real property is not exempt except as provided in subsection C of this section. A casual and isolated sale of real property by a seller who does not regularly engage in the business of selling real property is not exempt except as provided in subsection X of this section;~~

~~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. Except as provided in this subsection, that portion of the selling price of a single-sale unit in excess of ten thousand dollars (\$10,000) and that part of a periodic rental price of all types of property in excess of ten thousand dollars (\$10,000) are exempt. A periodic rental price is the amount owed on a monthly or more frequent period. Rentals with a payment period exceeding one (1) month are commuted 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 (\$3,500) 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 periodic rental price of single sale unit of real property in excess of fifty thousand dollars (\$50,000) is exempt;~~

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

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~~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 is exempt. A sale made directly to the state, its political subdivisions, or the U.S. government is exempt. A sale to a federal, state or city contractor is not exempt even if the government pays directly for the purchase;~~

~~G. A sale to an employee of the state, its political subdivisions, or the 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;~~

~~H. Freight and wharfage charges, whether arising out of foreign, interstate or intrastate commerce, are exempt. Warehouse and storage services are not exempt. Transportation of goods, equipment, or other property from one (1) point to another within the city limits by commercial movers is not exempt;~~

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

~~J. The lending of money and interest charged for loans, and other services provided by banks, savings and loans institutions, credit unions, and investment banks are exempt, except for ATM charges, safety deposit box charges, and cashier's and traveler's check charges;~~

~~K. The sale of food and beverages to students and 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;~~

~~L. The sale of goods to a wholesaler, retailer or other purchaser will only be exempt if such 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 the 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~~

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~~purchased to support a business but not for resale in accordance with this subsection are not exempt;~~

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

~~O. 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 BMC 4.16.050;~~

~~P. Purchases made with food coupons, food stamps, or other types of certificates issued under 7 USC Sections 2011 through 2025 (Food Stamp Act);~~

~~Q. 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 chiropodists, barbers, cosmeticians, masseurs or veterinarians;~~

~~R. The sale of services of transporting passengers by river taxi, taxicab, bus, commercial airline, air charter, air taxi, hovercraft or limousine is exempt. The lease of vehicle for hire permits is not exempt;~~

~~S. The sale to a senior citizen of food intended for consumption by the senior citizen, his or her spouse living in the same household, or the un-emancipated minor children of either the senior citizen or his or her spouse who live in the same household. The senior citizen shall display at the time of the sale a current and valid senior citizen exemption certificate issued to the person under BMC 4.16.050(C). For purposes of this subsection, "food" is defined in accordance with 7 USC Section 2012(g) (definition of "food" for purposes of the Food Stamp Act);~~

~~T. The payment of rent by a senior citizen on a single dwelling occupied as the senior citizen's primary residence and permanent place of abode. The senior citizen shall~~

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~~provide proof at the time of payment of a current and valid senior citizen exemption certificate issued to the person under BMC 4.16.050(C);~~

~~U. Payment for telephone, electric, water and sewer utility services by a senior citizen on a single dwelling occupied as the senior citizen's primary residence and permanent place of abode. The senior citizen shall provide proof at the time of payment of a current and valid senior citizen exemption certificate issued to the person under BMC 4.16.050(C);~~

~~V. The payment of rent by residents of Bethel community services and the payment of rent by Bethel community services clients who reside in Bethel at places other than the Bethel community services assisted living and supported living residences;~~

~~W. 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)(3), (4) or (19), and if the same goods or services are used exclusively in the fulfillment of activities within the federal tax exempt status;~~

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

~~Y. That portion of the selling price of real property in excess of twenty (20) percent of the first (1st) two hundred seventy five thousand dollars (\$275,000) of the selling price is exempt. This exemption does not apply to rentals of real property. This exemption applies to all sales of real property, including casual and isolated sales;~~

~~Z. The payment for No. 1 stove oil used as heating fuel by a senior citizen for a single dwelling occupied as the senior citizen's primary residence and permanent place of abode. The senior citizen shall provide proof at the time of payment of a current and valid senior citizen exemption certificate issued to the person under BMC 4.16.050(C);~~

~~AA. Payment for water and sewer utility services by any and all persons or entities;~~

~~BB. Sales made by operators of a transient lodging business for the rental of rooms that are subject to the transient lodging business tax listed under BMC 4.14.020.~~

#### **4.16.050 Exemption certificates — Applications.**

~~A. Persons desiring an exemption certificate for exemptions under BMC 4.16.040(N), (R), (S), (T), (U) or (W) 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 that 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 BMC 4.16.040(O) may be issued only upon:~~

- ~~1. Submission of a complete application to the finance director;~~
- ~~2. Payment of the certificate fee of two hundred 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;~~

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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, and shall expire on the last day of the twelfth (12th) month following the issuance of the permit. The expiration date shall be prominently displayed on the certificate.

~~C.1. An exemption certificate or a renewal or replacement of an exemption certificate for a senior citizen exemption under BMC 4.16.040(S), (T) or (U) may be issued only upon the submission to the finance director of a complete application and the payment of any required fee. The certificate shall be in the form of a card which contains the name and residence address of the applicant, the applicant's signature, a picture of the applicant, the expiration date of the certificate, and may contain codes and other information required by the finance director. The certificate shall expire two (2) years from the date of issuance. The finance director may establish and implement a system of staggered expiration dates. A certificate issued or renewed during the first (1st) two (2) years after the implementation of a system of staggered expiration dates may be given an expiration date that exceeds two (2) years as may be necessary to implement the system of staggered expiration dates. The finance director may issue temporary certificates under conditions determined by the finance director to be appropriate. The finance director shall conduct such investigation of the facts set out in an application as the director determines to be appropriate to verify the qualifications of the applicant for the certificate and shall issue the certificate within thirty (30) days of the submission of the application if the applicant is determined to be qualified.~~

~~2. A replacement certificate may be issued upon request, payment of any applicable replacement fee, proof of the loss of the original certificate and submission of a complete replacement certificate application.~~

~~3. If the applicant is physically or mentally disabled so that the applicant has unusual difficulty in shopping or other buying activities, the applicant may designate in the application up to two (2) persons who may act as proxy shoppers for the applicant. The names and signatures of the proxy shoppers shall be set out on the certificate.~~

~~4.a. Except for a proxy shopper whose name appears on the certificate, a person may not use in any way a certificate issued to another person.~~

~~b. A person to whom a certificate is issued may not give the certificate to another person for use by that other person unless the other person is a proxy shopper named on the certificate. Sales to a person acting as a proxy shopper are exempt only when the sale of the goods or services would be exempt if the sale had been made directly to the person to whom the certificate is issued.~~

~~5. To qualify for a certificate under this subsection, the applicant must be at least sixty five (65) years of age; provided, any person who will be at least sixty (60) years of age on December 31, 1999, and was registered with the city for the senior~~

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~~citizen sales tax exemption that existed on March 31, 1999, or who applies for a certificate under this subsection C on or prior to December 31, 1999, shall be treated as if they were sixty five (65) years of age and will be entitled to a certificate under this subsection if the person is sixty (60) years of age and meets all the other qualifications for a certificate except the age requirement.~~

~~6. The domicile of the applicant must be in the state.~~

~~D. An exemption certificate for persons applying for an exemption under BMC 4.16.040(V) for the payment of rent by a Bethel community service client who resides in Bethel at a place other than the Bethel community services assisted living and supported living residences may be issued only upon:~~

- ~~1. Submission of a complete application to the finance director;~~
- ~~2. Proof satisfactory to the finance director that the applicant is a Bethel community services client;~~
- ~~3. Address of residence along with name, address and phone number of property owner; and~~
- ~~4. Proof satisfactory to the finance director that the property owner has a current Bethel business license and a current state of Alaska business license.~~

~~A certificate issued under this subsection shall be numbered, identify the applicant, be signed by the finance director, and shall expire on the last day of the twenty fourth (24th) month following the issuance of the certificate. The expiration date shall be prominently displayed on the certificate. The finance director shall conduct such investigation of the facts set out in an application as the director determines to be appropriate to verify the qualifications of the applicant for the certificate and shall issue the certificate within thirty (30) days of the submission of the application if the applicant is determined to be qualified.~~

~~E. An exemption certificate or a renewal or replacement of an exemption certificate for a nonprofit organization under BMC 4.16.040(W) may be issued only upon:~~

- ~~1. Submission of a complete application to the finance director;~~
- ~~2. Proof that the claimant is a 501(c)(3), (4) or (19) organization;~~
- ~~3. Submission of the previous year's federal tax filing (if applicable).~~

~~A certificate issued under this subsection shall be numbered, identify the organization, be signed by the finance director, and shall expire within one (1) year following the issuance of the certificate. The expiration date shall be prominently displayed on the certificate. No more than three (3) certificates may be issued to any nonprofit organization~~

#### ~~**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 D of this section, 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.~~

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~~B. The tax levied under the provisions of this chapter is upon the buyer of goods, rentals or services, but the tax is remittable 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 D 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 subsection D of this section, the seller shall collect the entire sales tax due on the noncash 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 0.0566. 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 of this section, 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:~~

- ~~- Selling Price (inclusive) Amount of Sales Tax~~
- ~~\$ 0.01—0.09 \$ -0 tax~~
- ~~- 0.10—0.16 - 0.01~~
- ~~- 0.17—0.33 - 0.02~~
- ~~- 0.34—0.50 - 0.03~~

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- ~~0.51—0.66 - 0.04~~
- ~~0.67—0.83 - 0.05~~
- ~~0.84—1.09 - 0.06~~
- amounts - 6% of selling price  
over \$1.09 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 (\$0.01) increments in accordance with the schedule in subsection A of this section or may set the device to add the tax as exactly six (6) 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 city sales tax.~~

~~C. When a coin or bill operated device dispenses goods, permits one (1) 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 0.0566 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~~

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~~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 prenumbered, 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.~~~~

#### **4.16.095 Receipts — Posting of signs.**

~~A. The city finance department will create and distribute a poster designated by administration. The posters must be shown to the city council prior to being sent to businesses but do not require approval from council. The minimum requirements for the posters are as follows:~~

- ~~1. A request to patrons of the business to ask for a receipt; and~~
  - ~~2. An explanation that the requirements of a receipt are date of sale, amount of sale, amount of tax collected and a sequence number of the receipt or invoice.~~
- ~~B. Businesses that are open to the public are required to post the signs.~~
- ~~C. Exempt businesses are those for which one hundred (100) percent of their business is nontaxable.~~
- ~~D. Failure to comply will result in a one hundred dollar (\$100) fine per occurrence.~~

#### **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~~

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~~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 (3) 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~~

#### **4.16.110 Returns and remittances.**

~~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~~

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~~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 nontaxable 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 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 reporting period when no tax is due is not required to file returns thereafter until it has one (1) or more taxable sales during a subsequent reporting period.~~

~~C. Each sales tax return for 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 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 twenty four thousand dollars (\$24,000) in taxable sales during the current or coming calendar year may file its sales tax return and remittance of taxes on an annual basis for the current or coming year only if:~~

- ~~1. The seller had less than twenty four thousand dollars (\$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 twenty four thousand dollars (\$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. Penalties for the late filing of an annual return and for the late remittance of taxes shall be double the rate applicable to monthly returns~~

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~~and interest shall accrue on late annual remittances from July first (1st) 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 remittance 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 two hundred fifty thousand dollars (\$250,000) in taxable sales during the current or coming calendar year may file its sales tax return and remittance of taxes on a quarterly basis for the current or coming year only if:~~

~~1. The seller had less than two hundred fifty thousand dollars (\$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 twenty four thousand dollars (\$24,000) and less than two hundred fifty thousand dollars (\$250,000) in taxable sales during the current or coming calendar years; 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 remittance of taxes shall be double the rate applicable to monthly returns and interest shall accrue on late remittances as if monthly filing was required.~~

~~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 (1) 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 one hundred dollars (\$100) for any reporting period.~~

#### **~~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 (10) business days before any such sale is completed, the 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 sixty (60) days in which to perform a final sales tax audit and assess sales tax liability against the seller of the business. If the notice is not mailed at least ten (10) business days before the sale is completed, the city shall have twelve (12) months from the later of the~~

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~~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 remittances, 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 (30) days after such termination. If a final return and settlement are not received within thirty (30) days of the termination, the seller shall pay a penalty of one hundred dollars (\$100), plus an additional penalty of twenty five dollars (\$25) for each additional thirty (30) day period, or part of such a period, during which the final return and settlement have not been made, for a maximum of six (6) additional periods. 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 one thousand dollars (\$1,000) or by imprisonment not to exceed ninety (90) days or both fine and imprisonment for each such other use, diversion or withdrawal.~~

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#### **~~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 (15) 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 (30th) 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 (5th) day of delinquency in the filing of the required sales tax return or the failure to remit 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 (1st) 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 (20) 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 remittance of all taxes, interest, penalty, costs and other charges due, or the seller remits the amount due under protest under the provisions of BMC 4.16.190.~~

#### **~~4.16.160 Accelerated returns.~~**

~~A seller who is required to file a return and remit taxes to the city, who fails for more than thirty (30) days to file a return or remit the taxes due or who has, within a twelve (12-) month period, filed or paid taxes late on two (2) or more occasions may be required by the finance director to file and remit 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 remittance. 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 remittance for the weekly period not later than the fifth (5th) business day following the last day of the weekly period. The~~

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~~seller required to file and remit on a weekly basis who fails to file and remit the full amount due within two (2) business days of the date required for such filing and remittance or such a seller who files late two (2) or more times during a three (3) 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 timely file a return as required under this chapter shall pay a penalty of three and one half (3 1/2) percent of the taxes due. The penalty shall be imposed for each month or part of a month during which the delinquency or failure to file exists up to a maximum of seventeen and one half (17 1/2) percent of the initial delinquency. The filing of an incomplete return shall be treated as the filing of no return.~~

~~B. A seller who fails to timely pay an amount shown on a return as required under this chapter shall pay a penalty of one and one half (1 1/2) percent of the taxes not paid. The penalty shall be imposed for each month or part of a month during which the delinquency or failure to pay exists up to a maximum of seven and one half (7 1/2) percent of the initial delinquency.~~

~~C. 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~~

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~~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. The minimum penalty is five hundred dollars (\$500).~~

~~D. 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 (3) times any deficiency found or estimated by the finance director to have occurred; provided, the minimum penalty is two thousand five hundred dollars (\$2,500). In addition to penalties, violators may be assessed administrative and/or legal costs associated with the city's obtaining the necessary records to complete the audit or investigation.~~

~~E. 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, 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.~~

~~F. A penalty imposed under any part of this chapter except subsection C or D of this section 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.~~

~~G. A penalty imposed under subsection C or D of this section may be waived or reduced upon a showing of reasons upon whom the penalty is imposed or a similar justification. Discretion by the city manager upon appeal shall determine 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 ten (10) days of the date of the sale or to pay the tax at the time of the sale constitutes a waiver of the~~

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~~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 ten (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 thirty (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 (20) days of the date of mailing of the notice of denial, either request a finance committee review of the decision pursuant to BMC 4.16.220 or may file an appeal to the city manager pursuant to BMC 4.16.230. 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~~

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~~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 remitting the amount to the city under protest and filing with the finance director at the time of remittance 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 remittance and statement of protest must be received by the city not later than the twentieth (20th) day following the date the notice or determination is mailed to the seller. Failure to file a statement of protest and to remit 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 remittance under protest of the amount demanded would create an extreme hardship for the seller, the finance director may waive the remittance 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 remittance of its sales taxes to the city for the immediately preceding three (3) years, exclusive of the remittances for the period under protest, and that he has a history of prompt remittance of all its other accounts with the city, the finance director may waive the remittance 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 thirty (30) days of receipt of the protest and remittance 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~~

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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 (20) days of the date of mailing of the notice of denial, either request a finance committee review of the decision pursuant to BMC [4.16.220](#) or may file an appeal to the city manager pursuant to BMC [4.16.230](#). 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 remittance.~~**

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

~~B. A seller who has made an excess tax remittance as set out in subsection A of this section shall be given a refund of the excess if the city receives written notice from the seller of the amount claimed as an excess remittance accompanied by satisfactory proof of the excess remittance in the form required by the finance director. The claim and proof must be received not later than the last day of the twenty fourth (24th) month following the month for which the excess remittance was made, without regard to the month during which the remittance 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 remittances; provided, the amount taken as a credit in any one (1) month may not exceed twenty (20) percent of the amount otherwise due for the month. No interest may be paid on the excess remittance.~~

~~D. In the event the protest is denied, the buyer may, within twenty (20) days of the date of mailing of the notice of denial, either request a finance committee review of the decision pursuant to BMC [4.16.220](#) or may file an appeal to the city manager pursuant to BMC [4.16.230](#). 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 remittance to which this section applies is forever barred if notice and proof of the excess remittance 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~~

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~~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 (3) 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 (20) 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 BMC 4.16.230. 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~~

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~~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 ordinance. At least seven (7) 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 remit 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~~

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~~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 or prohibit the publication of tax lists showing the names of sellers who are delinquent in the remittance of taxes, the amount of the delinquency plus penalties and interest owed by the delinquent sellers. 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 remittance 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 (\$1,000) 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 remittance of the tax, interest, penalty and other costs.~~

~~B. The lien imposed by this section arises and attaches at the time that remittance 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 (10) days from the mailing of notice and demand for remittance 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 through 09.45.220.~~

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~~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 (\$25), plus recorder's office filing fee;~~
- ~~2. Release of liens: Twenty five dollars (\$25), plus recorder's office filing fee;~~
- ~~3. Upon full satisfaction of remittance 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 BMC 4.16.010 is liable to the city for the remittance 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 remittance. Upon written demand for remittance of delinquent taxes, penalty, interest, costs and charges sent by registered mail to a responsible individual, the responsible individual shall remit over to the city the amount of the delinquent taxes, interest, penalty, costs and charges due within twenty (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 BMC 4.16.190 except that remittance 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 remittance has been made fails to file an appeal or to remit the taxes, penalty, interest, costs and charges due within twenty (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.~~**

~~Repealed by Ord. 09-04.~~

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#### **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 BMC 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 three hundred dollars (\$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 remit 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 remittance 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.

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~~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, remittance 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.~~

**\*\*EDITOR'S NOTE**

*The numbering of the sections and subsections will be corrected following the passage of the ordinance.*

**Chapter 4.16: Sales Taxes**

- 4.16.010 Definitions
- 4.16.020 Declaration and Policy
- 4.16.030 Interpretation
- 4.16.040 Presumption of Taxability
- 4.16.050 Rules Applicable to Particular Businesses or Occupations
- 4.16.060 Title to Collected Sales Tax
- 4.16.070 Imposition – Rate
- 4.16.080 Payment and Collection
- 4.16.090 Sales Tax Collection – Registration Requirement
- 4.16.100 Certificate to be Displayed
- 4.16.110 Certificate Non-Transferable/Non-Assignable
- 4.16.120 Injunction Prohibiting Operation of Business for Failure to Register or Failure to Remit Returns
- 4.16.130 Revocation Hearing
- 4.16.140 Limits of Liability
- 4.16.150 Tax Receipts
- 4.16.160 Tax Exemptions

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- 4.16.170 Exemption Cards
- 4.16.180 Special Exemption for Charitable Events
- 4.16.190 Non-Profit Exemption Certificates
- 4.16.200 Revocation of Exemption Status
- 4.16.210 Seller's Liability for Incorrect Determination
- 4.16.220 Buyer's Protest of Imposed Taxes
- 4.16.230 Refunds – In General
- 4.16.240 Tax Filing Schedule
- 4.16.250 Contents of Tax Return
- ~~4.16.250 Security Deposits/Bonds~~
- 4.16.260 Extension of Time to File Tax Return
- 4.16.270 Penalties and Interest for Late Filings
- 4.16.280 Repayment Plans
- 4.16.290 Forgiveness of Uncollected Taxes, Penalties and Interest
- 4.16.300 Application of Payments
- 4.16.310 Application of Overpayments
- 4.16.320 Amended Returns
- 4.16.330 Recordkeeping Required of All Sellers
- 4.16.340 Loss of Records
- 4.16.350 Audits
- 4.16.360 Estimated Taxes
- 4.16.370 Accelerated Returns
- 4.16.380 Cessation or Transfer of Business
- 4.16.390 Use of Information on Tax Returns
- 4.16.400 Publication of Delinquent Sellers
- 4.16.410 Liens
- 4.16.420 Violations
- 4.16.430 Penalties for Violations
- 4.16.440 Appeals
- 4.16.450 Transition Period

#### **4.16.010 Definitions**

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

- A. "Buyer" means and includes persons who acquire interest in real or personal property, or the right to use or occupy property, or who receives a service for consideration.
- B. "City" means the City of Bethel.
- C. "Coin-Operated Machine" means a slot machine, juke box, merchandise vending machine, laundry and any other service dispensing machine or amusement device of any kind which requires the insertion of currency to make it operative.
- D. "Consumer" means the person who, in the ordinary meaning of the term, takes title to, takes possession of, or rents property, or receives services for consideration.

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- E. "Engaging in Business" means carrying on or causing to be carried on any activity with the purpose of direct or indirect economic benefit;
- F. "Federally Recognized Indian Tribe" means an Indian or Alaska Native tribe, band, nation, pueblo, village or community that the Secretary of the Interior has acknowledged to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, Public Law 103-454, 25 USC 479a.
- G. "Finance Director" means the finance director of the City or the designee of the finance director, the City Manager or the City Council; 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.
- H. "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.
- I. "Lease", "Leasing" or "Rental" regardless of whether a transaction is characterized as a lease or rental under generally accepted accounting principles, means a transfer of possession or control of tangible personal property or real estate of a fixed or indeterminate term for consideration; a lease or rental may include future option to purchase or extend. The provisions of 26 U.S.C. (Internal Revenue Code), AS 45.01 through AS 45.08, AS 415.12, AS 45.14 and AS 45.29 (Uniform Commercial Code) shall apply.
- J. "Person" means an individual, partnership, cooperative, association, joint venture, corporation, estate trust, business, receiver, or any entity, group or combination acting as a unit.
- K. "Political Subdivision" means a local government created by the State of Alaska to help fulfill its obligations. Political subdivisions include counties, cities, towns, villages, and special districts such as school districts, water districts, park districts, and airport districts.
- L. "Price" means the amount of money, or the fair market value of consideration other than money, that the buyer gives to the seller in exchange for the property, the right to use or occupy the property, or the rendering of services.
- M. "Rental" means any transfer of the right to use or occupy property for consideration.
- N. "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, 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. Remit 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

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officer, president, vice president for finance, 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.

- O. "Resale" means to sell again and is limited to items which are resold *per se* or are physically present in a final product which is sold and is subject to tax at the time of final sale. The item must be easily and readily identifiable in the final product.
- P. "Sale" or "retail sale" or "sale at retail" means every sale or rental of real property or sale or rental of personal property (whether tangible or intangible), every sale or exchange of services, including barter, credit, lease, installment and conditional sales, for any purpose other than resale when such resale is made in the regular course of business.
1. A "sale," "retail sale," or "sale at retail" includes, but is not limited to the following transactions:
    - a. Selling property; or
    - b. Renting, leasing, or letting of real or personal property, accommodations, facilities, or services of any nature whatsoever; or
    - c. Storing for use or consumption any item or article of personal property; or
    - d. Rendering occupational or professional services of any nature whatsoever; or
    - e. Furnishing materials and rendering services in connection therewith to accomplish the installation, construction, repair or completion of a specific end product or project; or
    - f. Selling real estate comprising parcels of land and buildings or improvements thereto, either separately or conjunctively; or
    - g. Transfer of the product of a manufacture or construction process to the user of the product; or
    - h. Importing, or causing to be imported, property from outside the city for sale or for rent, storage, distribution, use or consumption within the city; or
    - i. Selling or furnishing, preparing and serving food or beverages, alcoholic or nonalcoholic, for consumption on or off the premises of the seller; or
    - j. ~~Selling bingo cards or pull tabs; or~~
    - k. Every use or play of a coin-operated machine; or
    - l. Transacting or engaging in any type of business not enumerated herein
- Q. "Sales Price" or "Selling Price" means the consideration paid by the buyer, whether money, credit, rights or other property or interest in property expressed in terms of money equal to fair market value of the consideration including delivery costs, taxes, or any other expenses whatsoever and without deduction on account of the cost of property sold, the cost of materials used, labor costs, discount, delivery costs or other expenses paid or accrued, and without any deduction on account of losses.
- R. "Seller" means every person who, as principal or agent, makes a sales transaction to a buyer or consumer, every person renting goods, real or personal property and

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every person performing or providing services, for consideration. In the event that retail sales transactions are being conducted in the name of a corporation, partnership, cooperative, association, joint venture or other entity, the "seller" for purposes of responsibility and liability for the collection and remittance of sales tax shall include every director, officer and partner without exception.

- S. "Selling price" or "Sales Price" means the consideration paid by the buyer, whether money, credit, rights or other property or interest in property expressed in terms of money equal to the fair market value of the consideration including delivery costs, taxes, or any other expenses whatsoever and without deduction on account of the cost of property sold, the cost of materials used, labor costs, discount, delivery costs or other expenses paid or accrued, and without any deduction on account of losses.
- T. "Services" means and includes all services of every manner and description which are performed or furnished for compensation of any kind, except services rendered to an employer by an employee, including but not limited to:
  - 1. Professional services;
  - 2. Services in which a product or sale of property may be involved including personal property made to order;
  - 3. The sale of transportation services;
  - 4. Services rendered for compensation by any person who furnishes any services in the course of their business or occupation;
  - 5. Services wherein labor and materials are used to accomplish a specified result;
  - 6. Commissions earned during business conducted within the city; and
  - 7. Any other services including advertising, maintenance, recreation, amusement and craftsmen's services.
- U. "Time of Sale" for installment sales is the time at which the initial payment is made.
- V. "Transaction" means any transfer of property or the right to use or occupy property, or the rendering of a service, for consideration.
- W. "Wholesaler" means a merchant who sells goods, in the regular course of business, to retailers who sell to consumers, or sell goods in the regular course of business to dealers or other wholesalers, for the purpose of taxable resale in the City. To qualify as a wholesaler, a merchant must be regularly recognized as such, and known to the trade as such.
- X. "Wholesale Sale" means a sale of goods by a merchant selling them in the regular course of business; or a sale of goods by a merchant selling them in the regular course of business at wholesale prices to dealers or other wholesalers for the purpose of taxable resale in the City. The term does not include a sale by a wholesaler to users or consumers when such sale is not for taxable resale in the City.
- Y. "Z Tape" means the report feature of a cash register which records the total transactions, such as sales by type, the number of customers and the number of items rung in for the period; the transactional total of the current day's receipts.

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#### **4.16.020 Declaration and Policy**

- A. It is the policy of the City of Bethel to recognize that:
1. The voters of the City of Bethel have granted to the City government the power to levy sales taxes and, by doing so, have entrusted the City to administer those taxes fairly, effectively, efficiently, and in full compliance with State and City laws.
  2. State law imposes a fiduciary duty upon the City of Bethel to collect sales taxes levied within the City.
  3. Proceeds from the sales taxes levied by the City of Bethel constitute, by far, the principal sources of municipal tax revenues.
  4. A substantial portion of the proceeds of the sales taxes levied by the City are used to fund essential services and facilities provided by the City.
  5. Any sales taxes levied by the City that are not properly collected and remitted diminish the fiscal resources available to fund core local governmental services.
  6. Any sales taxes that are not properly collected and remitted shift the financial burden of funding local governmental facilities and services to other taxpayers, citizens and businesses.
  7. To the extent, if any, that businesses do not collect and remit taxes on taxable sales, those businesses have a distinct and unfair competitive advantage over businesses that are properly collecting and remitting sales taxes.
  8. Sales taxes are paid by purchasers of goods and services, not the businesses that collect those taxes. To the extent, if any, that sales taxes are collected but not remitted by businesses, the trust obligations of those businesses are not being fulfilled, and the interests of the greater community of Bethel suffer.
  9. Bethel area businesses perform a valuable service to the residents and visitors of Bethel by collecting and remitting sales taxes. While not compensated directly for that service, those businesses and other property owners in Bethel enjoy the benefits provided by those taxes.
  10. It is the duty, function, and responsibility of the City to collect City sales taxes, along with penalties and interest on those taxes when due, to issue citations for violations of the City code regarding collection of sales taxes, and otherwise administer the collection of sales taxes.
- B. Within the constraints outlined in the City code, the city manager shall keep the city council regularly informed regarding the collection of City sales taxes.

#### **4.16.030 Interpretation**

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

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B. The exemptions from the tax levied under this chapter shall be narrowly construed against the claimant and allowed only when such exemption clearly falls within an exemption defined in this chapter.

#### **4.16.040 Presumption of Taxability**

- A. In order to prevent evasion of the sales tax and to aid in its administration, it is presumed that all sales by a person engaging in business are subject to the sales tax; and
- B. There is levied by the City a sales tax on all retail sales, services and rentals which either commence or terminate within the City, or which are in any part rendered, supplied or provided within the City, except as expressly provided otherwise in this chapter.
- C. A sales tax applies to all real property within the City that is either rented or sold. The tax applies to commissions on the sale or rental of real property, on the rental of real property, and as limited in section BMC 4.16.160, on the sale of real property. The tax applies regardless of whether the seller, buyer, renter, lessee or tenant reside within or outside the City of Bethel.
- D. For the purposes of this section, any building or other place of business shall be considered to be within the City if any part thereof or any substantial part of a contiguous parking area or other supporting facility is within the City.
- E. For purposes of this chapter, the sales price or purchase price of property must be determined as of the time of acquisition.
- F. For purposes of this chapter, a sale of services occurs at the time the services are provided.

#### **4.16.050 Rules Applicable to Particular Businesses or Occupations**

- A. Commissions / Fees
  - 1. Commissions on sales of real property located in the City are subject to sales tax, regardless of the location of the person to whom the commission is payable.
  - 2. Commissions/Fees received as a result of professional services performed within the City, are subject to sales tax regardless of the location of the person to whom the commission is payable when the subject of the services occurred within the City.
- B. Sales from Coin-Operated Machines. An amount equal to the gross receipts from each coin-operated machine that the seller operates in the City, shall be subject to sales tax.
- ~~C. Gaming.
  - 1. Each operator or permittee conducting games of chance within the City must file with the finance director a Gaming Sales Tax Report quarterly on the same schedule as the filing of the State of Alaska Operator Quarterly Report for gaming is filed. A copy of the quarterly and annual reports that are required to~~

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~~be filed with the State of Alaska must also be filed with the quarterly report filed with the City. These copies must be filed simultaneous to the filing of the quarterly City Gaming Tax Report.~~

- ~~2. For Bingo games, the operator, vendor or permittee shall pay to the City the sum of six (6%) [3.9% 6%] of the gross sales as demonstrated on the daily "Z" tape.~~
- ~~3. For Pull Tab games, the operator, vendor or permittee shall pay to the City the sum of six (6%) [3.9% 6%] of the gross sales. "Gross sales" is to be calculated based on the number of cards in the box to be sold times the sale price x the tax. For example: 1000 cards x \$1.00/card = \$1,000 x 6% tax = \$60 tax.~~
- ~~4. For all other games of chance, the operator, vendor or permittee shall pay the City the sum of six (6%) of the gross sales.~~

#### **4.16.060 Title to Collected Sales Tax**

Upon collection by the seller, title to sales tax vests in the City. The seller holds collected sales tax in trust for the City, and is accountable to the City therefore.

#### **4.16.070 Imposition – Rate**

- A. To the fullest extent permitted by law, a sales tax is hereby levied and assessed on all retail sales, services and rentals within the City unless specifically exempted.
- B. The tax rate added to the sale price, shall be:
  1. Twelve (12%) Percent for transient lodging (see chapter 4.14)
  2. Twelve (12%) Percent for Alcohol sales (see chapter 5.08)
  3. Fifteen (15%) Percent for marijuana sales (see chapter 5.10)
  4. Six (6%) Percent for all other sales/services, including, delivery charges.
- C. The applicable tax rate shall be added to the sales price.
- D. When a sale is made on an installment basis, the sales tax shall be collected at the time of the sale, calculated at the sales tax rate in effect at the time of the sale.

#### **4.16.080 Payment and Collection**

Taxes imposed by this chapter shall be due and paid by the buyer to the seller at the time of sale or service, or with respect to credit transactions, at the time of collection. It shall be the duty of each seller making sales taxable under this chapter to collect the taxes imposed by this chapter from the buyer at the time of each sale, or with respect to a credit transaction, at the time of collection of sales, and to hold those taxes in trust for the City. Failure by the seller to collect the tax shall not affect the seller's responsibility for payment therefore to the City.

#### **4.16.090 Sales Tax Collection – Registration Requirement**

- A. No person may engage in any taxable transactions within the City without first procuring an annual a sales tax collection certificate from the City finance department.

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- B. A new business shall apply for a sales tax collection certificate not later than ten (10) days after the date of commencing business or opening additional places of business.
- C. ~~Existing businesses shall apply for a sales tax collection license concurrent with their business license renewal. All existing businesses must be compliant with this section no later than December 31, 2019~~ Sales tax collection certificates shall expire at the same time as the establishment's business license and may be renewed concurrently.
- D. A person, firm, partnership, corporation or other business entity shall file an application for a sales tax collection certificate with the finance department, on a form provided by the City, prior to conducting business within the City. The complete application shall be returned to the finance department along with a copy of the business entity's Alaska state business license and City of Bethel business license. The sales tax collection certificate application will not be complete until all of these requirements have been met.
- E. Each business entity shall have a sales tax certificate under the advertised name and each separate business shall be registered under its own account.
- F. No sales tax collection certificate shall be issued to or renewed for:
  - 1. A person who does not meet the licensing requirements set out in chapter 5.04 (Business licenses); or
  - 2. A person who has failed to pay any necessary fees due to the City; or
  - 3. A person owing a judgment, delinquent taxes or a utility bill to the City, unless the person is in a satisfactory repayment plan.
- G. Where the application or City records indicate that applicant is currently in violation of filing and/or remittance requirements of the City's sales tax provisions, the finance director may deny the application for a sales tax certificate until ~~such time as~~ the applicant enters into binding agreement setting out a method by which full compliance will be attained.
- H. The sales tax collection certificate of any seller will be suspended when such seller fails to pay delinquent taxes, penalties and interest within thirty (30) days after notice of delinquency is given or mailed provided such seller shall be afforded due process before the certificate suspension.

#### **4.16.100 Certificate to be Displayed**

- A. Upon receipt of a properly executed application, the finance director shall issue to the seller a sales tax certificate authorizing the seller to collect City sales tax. The certificate shall state the name of the business as well the address of the place of business to which it is applicable, and shall authorize the seller to collect the tax.
- B. The certificate must be prominently displayed at the place of business named in the certificate. A seller who has no regular place of business shall attach such certificate to his stand, truck or other merchandising device.

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- C. Upon notification, the finance director shall issue a duplicate sales tax collection certificate to any seller whose certificate has been lost or destroyed.

**4.16.110 Certificate Non-Transferable/Non-Assignable**

The sales tax collection certificate is non-assignable and non-transferable and must be surrendered to the finance director by the seller to whom it was issued upon its ceasing to do business at the location named therein or upon its revocation or suspension. If there is a change in the form of organization such as from a single proprietorship to a partnership or a corporation, the seller making such change shall surrender the old certificate to the finance director for cancelation. The successor seller is required to file a new application for a sales tax certificate. Upon receipt of such application, properly executed, as provided in this chapter, a new certificate may issue to such successor seller.

**4.16.120 Injunction Prohibiting Operation of Business for Failure to Register or Failure to Remit Returns**

- A. A proceeding requesting the issuance of an injunction prohibiting a business from continuing to conduct business within the City may be filed by the City in the superior court fifteen (15) days after providing notice either by hand delivery or by regular mail to any business which has failed to file a sales tax return or has failed to pay the sales taxes due even if a sales tax return has been filed.
- B. A proceeding requesting the issuance of an injunction prohibiting a business from continuing to conduct business within the City may be filed by the City in the superior court fifteen (15) days after providing notice either by hand delivery or by regular mail to any business which has failed to file a sales tax return or filed a sales tax return without remitting the payment due.

**4.16.130 Revocation Hearing**

- A. A hearing shall be conducted before a hearing officer within fifteen (15) calendar days of receipt of a written demand therefore from the person seeking the hearing unless such person waives the right to a speedy hearing.
- B. The hearing officer shall conduct the hearing in an informal manner and shall not be bound by technical rules of evidence.
- C. The person demanding the hearing shall carry the burden of establishing that such person has the right to represent the business (is an owner, agent or attorney hired for the proceeding).
- D. The Finance Director shall carry the burden by clear and convincing evidence.
- E. At the conclusion of the hearing, the hearing officer shall prepare a written decision. A copy of such decision and the reasons therefore shall be provided to the person demanding the hearing and the owner of the business if such owner is not the person requesting the hearing.

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- F. The hearing officer's decision in no way affects any civil proceeding in connection with the matter in question and any civil charges involved in such proceeding may only be challenged in the appropriate court. The decision of the hearing officer is final.
- G. Failure of the owner, operator, master, or managing agent to request or attend a scheduled hearing shall be deemed a waiver of the right to such hearing.

#### **4.16.140 Limit of Liability**

- A. Questions regarding the applicability of this Code, its interpretation, forms or any other matter relating to sales taxes shall be submitted in writing to the Finance Director or an appointed designee. Oral statements are not binding on the City. Only written interpretations, properly requested may be relied upon. The authority granted to the Finance Director shall not create an obligation or duty requiring the Finance Director to take any action to protect or notify any seller or buyer within the City regarding their tax rights. The City assumes no liability for loss or damage caused by individual interpretation and application of this Code or forms related thereto. Sellers are encouraged to work with their accountants and/or attorneys.
- B. Electronic Transactions. To the extent that the City of Bethel sends and accepts electronic records and electronic signatures, those electronic records and electronic signatures are governed by the Uniform Electronic Transactions Act, AS 09.080.010., et. seq.

#### **4.16.150 Tax Receipts**

- A. The following types of businesses shall provide a cash register receipt for all sales transactions, including those that are wholly exempt from taxes:
  - 1. Retail Sellers – to include, but not be limited to, supermarkets, sellers of fuel, boutiques, stores,
  - 2. Restaurant/Eating Establishments
  - 3. Movie Theaters
  - 4. Coffee Stands
- B. The following types of businesses shall provide either a receipt or an invoice for all sales transactions, including those that are wholly exempt from taxes:
  - 1. Construction;
  - 2. Trades – For example, plumbing, electrical, carpet installation, etc.
  - 3. Professional Services – For example, accounting, tax preparation, veterinary care,
  - 4. Transient Lodging
- C. Receipt Exceptions: The following types of businesses are exempt from the receipt/invoice requirements as outlined below:

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1. Lessors – When a valid lease Rental Agreement exists covering the period for which the rent amount was received;
  2. Vending machine sales;
  3. Insurance Sales;
  4. Legal Services – when such services are performed under a contract or other agreement for services;
  5. Vehicles for Hire – Provided registration and licensing is up to date with the City;
- D. Each receipt or invoice shall:
1. Be dated; and
  2. Be sequentially pre-numbered, but may be sequentially machine-numbered if the number printed on the receipt or invoice is machine generated; and
  3. Show the quantity, description and price of the goods sold, services rendered or sold or rentals made; and
  4. Show the amount of the sales tax on the sale.
- E. The seller shall, whenever feasible, separately state the tax to the buyer on each taxable transaction. When not feasible to state separately, the seller shall prominently display a sign indicating the imposition of the tax.
- F. Exempt Sales: If any part of the sale is exempt, it must be shown on the sales receipt. Exempt sales can only be made upon showing of a valid exemption card or certificate. For each such sale, the seller shall:
1. Record the date of the sale; and
  2. Record the exempt card/certificate number presented (when applicable); and
  3. Record the expiration date for the exempt card/certificate presented (when applicable); and
  4. Record the name of the person making the exempt sale; and
  5. Record the name of the entity/business claiming the exemption; and
  6. Record the receipt number for the sale.

#### **4.16.160 Tax Exemptions**

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

- A. Admissions: Sales of admission to school entertainments, school athletic events, and events conducted for the benefit of charitable or community organizations. This exemption does not apply to sales of gaming property.
- B. ATVs/Boats: 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 (\$3,500) Dollars is exempt regardless of whether or not such items are purchased simultaneously, or are invoiced or otherwise billed on the same billing document.
- C. Banking: The following fees, sales and services charged by banks, savings and loan associations, credit unions and investment banks:

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1. Fees for the sale, exchange or transfer of currency, stocks, bonds and other securities
  2. Loans: The principal amount of the loan, the interest charged for loaning of money, and escrow collection services, and any fees associated with the loaning of money are exempt.
  3. Services associated with the sale, exchange or transfer of currency, stocks, bonds and other securities;
  4. Pass-through charges on loan transactions which include sales tax;
  5. Sale of insurance policies, bonds of guaranty and fidelity (AS 21.09.210).
- D. Casual and isolated sales, services or rentals: Proceeds from casual, occasional or isolated sales which are easily identified as the sale of personal goods or property at such private functions as moving, garage, yard, food and bake sales, sale of private vehicles when the seller is not a dealer in used vehicles, or services such as babysitting or house-sitting provided the seller does not regularly engage in the business of selling such goods or services or rentals but only if:
1. The sales of goods and services do not occur for more than five (5) days in a calendar year, and are not made through a dealer, broker, agent or consignee; or
  2. The rental of personal tangible property that does not exceed sixty (60) days in a calendar year, whether or not consecutive. The rental of real estate is not exempt.
  3. Sales or rentals made pursuant to a business license or by sellers representing themselves to be in the business of making sure sales, rentals or services are not exempt.
- E. Cemetery Plots: The sale of cemetery/burial plots is exempt.
- F. Commerce: Freight and wharfage charges, whether arising out of foreign, interstate or intrastate commerce are exempt. Warehouse and storage services are not exempt. Transportation of goods, equipment, or other property from one point to another within the City limits by commercial movers is not exempt.
- G. Compliance with Laws:
1. Gross receipts or proceeds derived from sales or services which the City is prohibited from taxing under the laws of the state or under the laws and the Constitution of the United States, including, but not limited to:
    - a. Sales by the U.S. Postal Service;
    - b. Purchases made under the authority of or made with any type of certificate issued pursuant to 42 U.S.C. Sections 1771-1789 (Child Nutrition Act of 1966);
    - c. Interstate Sales;
    - d. Air transportation including that portion of any chartered fishing or hunting expedition which covers the cost of air transportation;

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- e. Gross receipts or proceeds derived from sales to the United States Government, the state, a city or any political department thereof. However, the exemption shall not apply to the sale of materials and supplies to contractors for the manufacture or production of property or rendering services for sale to such government units or agencies on a contract bid award, in which event the contractor shall be deemed the buyer, subject to the payment of the tax;
  2. A sale or rental to an employee of the state, its political subdivisions, or the 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, credit card, or warrant, or providing other verifiable documentation to the seller to allow the seller to readily determine that the sale is for government business;
  3. A sale or rental to a federally recognized tribe when the Tribal employee provides proof that the sale is for tribal government business by paying for the sale with a tribal voucher, purchase order, check, credit card, or warrant, or providing other verifiable documentation to the seller to allow the seller to readily determine that the sale is for tribal government business;
- H. Credit Unions: Sales to or by federally chartered credit unions or credit unions organized under AS 06.45;
- I. Dues: Dues or fees paid to clubs, labor unions and other organizations solely for the privilege of membership;
- J. Freight and Wharfage: Freight and wharfage charges, whether arising out of foreign, interstate or intrastate commerce, are exempt. Warehouse, storage services, and delivery services that begin and end within the City of Bethel are taxable, unless such delivery services are included in a through bill of lading in conjunction with interstate commerce.
- K. Maximum Tax: That portion of the selling price for a single piece of equipment or tangible personal property by an individual unit price in excess of Ten Thousand (\$10,000) Dollars is exempt. A single sales unit is any retail merchandise sale where the selling price is totaled on one invoice or on any sales slip, although this exemption does not apply if any portion of the invoice or sales slip refers to more than one calendar day.
- L. Medical Services:
1. Services of a person licensed or certified by the State of Alaska as a doctor of medicine and surgery, a doctor of osteopath and surgery, a chiropractor, a dentist, an optometrist, an audiologist, a hospital, an occupational therapist, a physical therapist or a licensed or practical nurse; provided, that the service is within the scope of the state license or certificate;
  2. Services of a person licensed or certified by the State of Alaska as a psychologist or psychological associate, a clinical social worker, an alcohol or drug counselor,

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- or a marital and family therapist or a licensed professional counselor; provided, that the service is within the scope of the state license or certificate;
3. Fees for supplies, equipment and services provided by a hospital, medical clinic or dental clinic for patient treatment, including laboratory and x-ray services;
  4. Assisted living services provided in accordance with an assisted living plan and in an assisted living home licensed as such by the State;
  5. Gross receipts or proceeds of the retail sale of prescription drugs;
  6. Services rendered by masseurs, even those working for a hospital, chiropractor or other medical provider, are not exempt.
- M. Newspapers: Sales of newspapers are exempt.
- N. Non-Profits: A sale of goods or services to any entity that, at the time of the sale, is: (1) legally constituted and legitimately acting in accordance with a duly authorized federal tax exempt status pursuant to IRS Regulations, Section 501(c)(3)(4) or (19); (2) provided any income from the exempt sale is exempt from federal taxation and (3) provided the non-profit produces a sales tax exemption card.
- Exceptions: ~~The sale of bingo, pull tabs or other gaming activities is not exempt.~~ Activities provided by the entity where such organization is engaged in business for profit or is competing with other persons engaged in the same manner or in a similar business is not exempt.
- O. Public Assistance: Purchases made with food coupons, food stamps, or other type of certificate issued under 7 USC Sections 2011 – 2025 (Food Stamp Act) or other certificates issued under 42 U.S.C 1786 (Special Supplemental Food Program for Women, Infants and Children).
- P. Real Estate Sales:  
Only the first twenty (20%) percent of the sale price of real property is subject to City sales tax\*.

Example: Home selling for \$275,000

$\$275,000 \times 20\% = \$55,000$  (first 20% of the sale price)  
 $\$55,000 \times 6\%$  (Sales Tax) = \$3,300 Sales Tax due to city

Home selling for \$450,000

$\$450,000 \times 20\% = \$90,000$  (first 20% of the sale price)  
 $\$90,000 \times 6\% = \$5,400$  Sales Tax due to City

\*This exemption does not apply to rentals of real property. This exemption applies to all sales of real property, including casual and isolated sales

- Q. Recreational Vehicles: 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

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(\$3,500) is exempt regardless of whether or not such items are purchased simultaneously, or are invoiced or otherwise billed on the same billing document.

R. Rental Units: Costs incurred by owners/landlords for rental units, such as included utilities, fuel, or any other expenses, are not exempt.

S. Retail Sales of Foods: Are exempt in the following circumstances:

1. When served in cafeterias or lunchrooms of elementary, secondary, post-secondary schools, colleges or universities which are operated primarily for students and staff, and are not operated for the public or for profit;
2. When served to clients and staff, and not to the public or for profit, as part of services provided by a nonprofit hospital or other nonprofit government organization licensed by the State of Alaska for the care of humans;
3. Meals delivered by a nonprofit organization to handicapped or senior citizens at their place of residence or meals served on the premises of a nonprofit to senior citizens or the homeless or disadvantaged provided that the sale price of such meals does not exceed the cost of delivery or service of such meals;

T. Sales to Retailers: Are exempt only if the buyer presents to the seller a valid exemption card, issued by the City pursuant to this section, and

1. The sale of goods, wares or merchandise to a retail dealer, manufacturer or contractor is for resale within the City as is or incorporated into a product or commodity to be sold by the dealer, manufacturer or contractor within the City, if the subsequent sale is subject to the City sales tax; and
2. The product is an item sold as part of the reseller's primary business and must be of such nature that it can be purchased by the general public in a transaction that is not dependent upon the purchase of another product or service.
3. The exemption card must be for the class of activities involving the resale of the type of goods for which the exemption is sought.
4. Food products that are purchased for resale must be purchased and sold as is or prepared in a commercial kitchen. 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 to be sold for resale in accordance with this subsection shall be exempt.
5. 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.

U. School:

1. Fees and charges for extracurricular activities or events promoted or undertaken by educational or student organizations;
2. Sales by any student organization, parent/teacher organization or booster club recognized by the school or educational organization in which it operates, which proceeds are utilized to further the purposes for which the organization was formed;

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3. Sales and services by schools or other educational organizations made in the course of their regular functions and activities, which proceeds are utilized to further the purposes for which such organization was formed;
  4. Sales of food and beverages at educational lunchrooms which are operated primarily for staff and/or students, and which are not operated for the purpose of sale to the general public for profit;
  5. The service of transporting students to and from a schools in vehicles when in the regular course of that business.
- V. Securities: The sale of insurance and bonds of guaranty and fidelity, and the commission thereon (AS 21.09.210(f), 21.79.130, 21.80.130);
- W. Senior Citizen Exemptions: The following are exempt only if the buyer, or their designee, present a valid senior citizen exemption certificate and the product or service is intended primarily for the senior citizen holding the exemption card:
1. The sale to a senior citizen of food intended for consumption by the senior citizen, his or her spouse or same sex partner living in the same household, or the un-emancipated minor children of either the senior citizen or his or her spouse or same sex partner, who live in the same household. For purposes of this subsection, "food" is defined in accordance with 7 USC Section 2012(g) (definition of "food" for purposes of the Food Stamp Act);
  2. The payment of rent by a senior citizen on a single dwelling occupied as the senior citizen's primary residence and permanent place of abode.
  3. Payment for telephone, electric, water and sewer utility services by a senior citizen on a single dwelling occupied as the senior citizen's primary residence and permanent place of abode.
  4. The payment for heating fuel used by a senior citizen for a single dwelling occupied as the senior citizen's primary residence and permanent place of abode.
  5. The sale of alcohol, tobacco, bingo cards, raffle tickets, pull-tabs, other games of chance and/or marijuana to a senior citizen is not exempt.
- X. Services. That portion of the selling price of a single service that exceeds \$12,000. This amount will be adjusted in 2019 and every two (2) calendar years thereafter consistent with the Consumer Price Index for all urban consumers for Anchorage metropolitan area compiled by the United States Department of Labor, Bureau of Labor Statistics. Adjustments to the amount listed will be rounded to the nearest \$100. For the purposes of this subsection, a single service is interrelated and interdependent function necessary to perform a specified action. For the purposes of this subsection, a single service is an interrelated and interdependent function necessary to perform a specified action. If a single service is performed over a period exceeding one month, the selling price must be apportioned to a monthly or invoice basis, whichever is more frequent, proportionate to the service performed, except for:

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6. a) a commission paid to an agent for negotiating the sale of real property (the commission is taxed at the first \$12,000 of the sale regardless of the length of time the agent has in selling the property); or
7. b) a written contingency fee agreement award or settlement (to be collected on the first \$12,000 of the fee award regardless of the length of time taken to resolve the case).

Y. Transportation:

1. The following types of transportation services are exempt:
  - a. The sale of services for transporting passengers by river taxi, taxicab, bus, commercial airline, air charter, air taxi, hover craft; or
  - b. The sale of passenger seat tickets by a commercial airline is exempt; or
  - c. The service of transporting disabled or handicapped individuals when in the regular course of that business.
2. The following are not exempt:
  - a. The lease of vehicle for hire permits are not exempt;
  - b. The portions of a sale of flight seeing or air/water/shore excursion travel or adventure services which are not charges for transportation of persons on a federal airway;
  - c. The lease or rental of vehicles is not exempt.

Z. Utilities: Payment for City water, sewer and refuse utility services by any and all persons or entities.

AA. Wholesale: Proceeds from products sold as wholesale sales to businesses designated by the State of Alaska as wholesalers. These include sales of goods, wares or merchandise to a retail dealer, manufacturer or contractor for resale within the City as is or incorporated into a product or commodity to be sold by the dealer, manufacturer or contractor within the City, if the subsequent sale is subject to the City sales tax. In this connection a retailer must stock that merchandise for resale, display the same to the public and hold himself out as regularly engaged in the business of selling such products.

**4.16.170 Exemption Cards**

- A. Sales to retailers, wholesalers, and senior citizens shall be exempted from sales tax only if the person requesting the exemption has obtained and produces a valid an exemption authorization card.
- B. Federal, State, and Tribal entities are not required to produce exemption cards. Sales to these entities are only exempt when the method of payment is made directly by the federal, state or tribal entity. Payments made by cash, personal check or personal credit card, even if on behalf of a federal, state or tribal entity, are never exempt.
- C. Cost: The annual charge for an exemption card are as follows:
  1. Retailer/Wholesaler: \$100 (Maximum 2 cards)

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2. Senior Citizens: \$15 Initial Card - Free (maximum 1 card)
  3. Senior Proxy Card: Initial Proxies – Free; Replacement/Substitute Proxies (\$15/each)
  4. Replacement Cards: \$30 each (1<sup>st</sup> card); \$45 (all subsequent replacement cards)
- D. With the exception of non-profit organizations which are covered in section BMC 4.16.190 of this ordinance, any person, corporation or other organization claiming an exemption under BMC 4.16.160 shall apply to the City for an exemption authorization card within one (1) month of operating or conducting business or sales or performing services within the City in the first year in which sales are made, and thereafter shall apply by November 15<sup>th</sup> of each year for the following calendar year. Numbered exemption authorization cards will be issued by the City. The exemption authorization card must be shown to all sellers and must be recorded at the time of sale by the seller. The exemption is valid only for those items that are purchased for resale as described under section BMC 4.16.160 or are purchased by persons, agencies and organizations that are exempted by City, state or federal law. Any person that believes an attempt to purchase unauthorized items as tax exempt is being made at his place of business may refuse to accept the exemption card.
- E. The following require an exemption card in order to qualify for the exemption:
1. Exemptions for Sales for Resale (Sales to Retailers);
  2. Exemptions for Sales to Wholesalers; and
  3. Exemptions for Senior Citizens.
- F. Persons requesting an exemption card shall apply at the finance department on a form approved by the finance director. The application shall be accompanied by any applicable fee that is required under this section. The Finance Director may require additional information of the applicant as necessary to determine whether the application should be granted.
- G. The exemption card will include, at a minimum:
1. For Resale or Wholesale:
    - a. General character of property or service sold by the purchaser in the regular course of business intended for resale;
    - b. Name and address of the purchaser;
    - c. Signature of the purchaser;
    - d. Expiration date; and
    - e. City of Bethel authorization exemption number.
  2. For senior citizen:
    - a. Name and address of the qualified senior citizen or proxy;
    - b. Signature of qualified senior citizen or proxy;
    - c. Expiration date;
    - d. City of Bethel authorization exemption number.
  3. For all others:

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- a. Name and address of the exempt entity;
  - b. Name and address of the qualified purchaser(s);
  - c. Expiration date; and
  - d. City of Bethel authorized exemption number.
- H. Timeframe:
1. For Resale or Wholesale: An exemption card is issued for two (2) years and expires on December 31<sup>st</sup>.
  2. For Seniors Citizen: An exemption card expires five (5) years from the date of issuance.
  3. For Senior Proxies: An exemption card expires two (2) years from the date of issuance.
- I. Proof: The finance director may require, at a minimum, the following proof before issuance of an exemption card:
1. Retailer Exemption Cards:
    - a. City of Bethel business license;
    - b. State of Alaska business license
    - c. If tobacco is to be purchased, must also present proof of State and City tobacco licenses
  2. Senior Citizen Exemption Cards:
    - a. Proof of meeting the age requirement (must be at least sixty-five (65) years of age on January 1<sup>st</sup> of the year for which the exemption card is applied for); and
    - b. Proof of residence within the City of Bethel;
- J. Residency Requirement for Senior Citizen Exemption Cards: Only bona fide residents of the City of Bethel are eligible to hold and use a senior citizen sales tax exemption card. In the event the person ceases to be a bona fide resident of the City, entitlement to the sales tax exemption shall automatically terminate, and the card shall be void as to that sales tax exemption.
1. For the purposes of this section, "resident of the City of Bethel" means a person who has established a residence in the City and has the intent to remain in the City indefinitely and makes his or her home in the City. A person demonstrates the intent required under this subsection by maintaining a principal place of abode in the City for at least one hundred eighty (180) consecutive days immediately preceding the date of application for the exemption card.
  2. The one hundred eighty (180) day consecutive day period provided for in this section may be reduced to thirty (30) days if:
    - a. The person has not been absent from the City of Bethel for more than twelve (12) months; and
    - b. The person establishes to the satisfaction of the finance director that either: (a) the absence was for medical treatment of the person or an immediate family member, or (b) the absence was due to circumstances beyond their control.

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- K. Proxy for Senior Citizen Exemption Cards: If a person who is authorized to receive a senior citizen exemption authorization card is physically or mentally disabled so that the applicant is physically unable to use the card, the applicant may designate up to two (2) proxies on their exemption application. Proxy cards are non-transferable. Only those purchases on behalf of the senior citizen are exempted from the sales tax. Before a proxy card can be issued, the finance director shall require:
1. The names, addresses and legal identifications of the proxy shoppers;
  2. Proof that the senior citizen is unable to personally use the card and requires a proxy;
  3. Legal proof that the proxy has the authority to represent the senior citizen (for example, a court order appointment the proxy as guardian or a valid power of attorney).
- L. Non-Transferable: An exemption authorization card is non-transferable and must be surrendered to the City finance office upon disqualification for use for any reason.
- M. An exemption authorization card executed by the purchaser must be in the possession of the purchaser at the time that an exempt transaction occurs.
- N. The finance director may revoke an exemption authorization card after notice to the holder of the certificate and hearing, if the director finds that the holder:
1. Gave materially false information when applying for the exemption authorization card;
  2. Used the exemption authorization card in a transaction that was not exempt from sales;
  3. Permitted the use of the exemption authorization card by a person other than an authorized agent or employee of the holder of the exemption; or
  4. Ceased to be entitled to exemption from sales tax.
- O. If the finance director revoke's a person's exemption authorization card, that person is no longer exempt from paying sales tax under this chapter until the person obtains a new exemption authorization card which may not occur sooner than one (1) year after the revocation.
- P. If the finance director revoke's a person's authorization card, that person must pay sales tax, interest, penalties, etc., on all sales made to or by the person which were not duly exempt.

#### **4.16.180 Special Exemption for Charitable Events**

- A. A special sales tax exemption may be granted no more than two (2) times in a calendar year to a nonprofit organization or ~~nonprofit institution~~ business exempting the organization or business ~~institution~~ from the obligation to collect sales taxes on sales of tangible personal property or admissions sold by such organization or business as part of a project to raise funds for a particular charitable project, upon the filing of an application for a charitable project sales tax exemption permit filed not less than thirty (30) days prior to the date for commencement of the exemption

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on a form required by the City and compliance with each of the following requirements:

1. The nonprofit organization or institution is organized exclusively for religious, educational or charitable purposes;
  2. The fundraising project must be to raise funds to be used and expended solely and exclusively for a qualified charitable project as set forth and specified in the application;
  3. All proceeds and revenues received from the sales from the project, less only the actual cost of the items sold, including shipping, must be used solely and exclusively for the specific charitable purpose that is identified and approved in the application and permit as issued;
  4. Separate accounting records as required by the finance department shall be kept as to all sales; and
  5. A tax return on such form as is required by the finance director shall be filed no later than thirty (30) days after the date specified in the application for conclusion of the fundraising project which tax return shall specify:
    - a. The total amount of gross receipts received;
    - b. The amount actually paid to the charitable organization to be funded as specified in the application and permit; and
    - c. Such further and additional information, data and verification as is deemed appropriate by the finance director.
  6. Sales taxes collected shall be submitted no later than the last day of the month following the month of collection along with the properly completed tax return form.
- B. Requests for exemptions of \$999 or less may be approved by the Finance Director. All requests for exemptions totaling \$1,000 or more will require City Council approval prior to the exemption being granted.
- C. In the event a tax return is not filed as herein provided, or if all of the funds are not paid in the manner and to the specific charity as required by the permit, the permittee shall be liable and responsible for payment of the entire amount of sales tax that would have been collected and remitted had the sales not been conducted as sales tax exempt, plus interest and penalties thereon as provided for in this chapter from the date the sales tax amount would have become due.
- 4.16.190 Non-Profit Exemption Certificates**
- A. No sales to a Non-Profit Organization shall be exempted from sales tax unless and until the non-profit organization has applied for and received an exemption certificate from the Finance Director.
  - B. There shall be no cost for a non-profit exemption certificate.

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- C. Any seller may demand proof of or copies of the non-profit exemption certificate at any time prior to exempting a sale.
- D. Non-Profits requesting an exemption certificate shall apply to the finance department on a form approved by the Finance Director. The Finance Director may require additional information of the applicant as necessary to determine whether the application should be granted.
- E. Non-Profit certificates shall expire within four (4) years from the date of issuance.
- F. Non-Profit exemption certificates shall include, at a minimum, the following information:
  - 1. Type of 501 designation;
  - 2. General Character of Services Performed;
  - 3. Expiration Date
- G. Proof. The Finance Director may require, at a minimum, the following proof before issuance of the exemption certificate:
  - 1. Proof of a City of Bethel business license;
  - 2. Copy of a State of Alaska business license;
  - 4. Proof of Federal 501(c) status;
- H. Non-Transferable. The exemption authorization certificate is non-transferable and must be surrendered to the Finance Director upon disqualification for use by any reason.
- I. The Finance Director may revoke an exemption authorization card after notice to the holder of the certificate and after a hearing, if the director finds that the holder:
  - 1. Gave materially false information when applying for the exemption authorization certificate;
  - 2. Used the exemption authorization certificate in a transaction that was not exempt from sales;
  - 3. Permitted the use of the exemption certificate by a person other than an authorized agent or employee of the holder of the exemption certificate;
  - or
  - 4. Ceased to be entitled to exemption from sales tax.
- J. If the Finance Director revokes an organization's exemption authorization certificate, that organization is no longer exempt from paying sales tax under this chapter until the organization obtains a new exemption certificate which may not occur sooner than one (1) year after the revocation.
- K. If the Finance Director revokes an organization's authorization card, that organization must pay sales tax, interest, penalties, etc., on all sales made to or by the organization which were not duly exempt.

#### **4.16.200 Revocation of Exemption Status**

- A. The finance director may revoke any exemption authorization card, or other authority to obtain an exemption, if the person holding the exemption has been found to have used the exemption authorization card to obtain an exemption to

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which the holder or any other person is not entitled. The burden of proving an exemption shall be on the person claiming an exemption.

- B. Upon a determination by the finance director that an exemption holder has misused or permitted another to misuse the sales tax exemption authorization issued to the holder, the finance director may revoke the sales tax exemption authorization of such person by sending written notice via certified mail to the exemption holder. Before such action, the finance director shall send written notice to the exemption holder, via certified mail, advising the holder of the violation and that the holder has the right to request a meeting with the finance director to discuss and resolve the issue without revocation of the sales tax exemption authorization. Should the holder not respond within ten (10) calendar days of receipt of the certified letter or should the holder refuse service of the certified letter, the finance director may revoke the sales tax exemption authorization of the holder without further action.
- C. The revocation shall be permanent unless the finance director provides for a shorter period in the revocation order. In no event, however, shall a revocation be for a period of less than one (1) year.

#### **4.16.210 Seller's Liability for Incorrect Determination**

A seller shall determine in the first instance whether a sale is exempt under this chapter. However, if a seller incorrectly determines that a sale is exempt, and does not collect the tax from the buyer, then the seller is liable to the City for the uncollected tax.

#### **4.16.220 Buyer's Protest of Imposed Taxes**

- A. If a seller determines that a transaction is not exempt, but the buyer believes the transaction to be exempt, then the buyer may protest but only after paying the tax deemed due by the seller.
- B. A buyer who has remitted sales tax under protest in accordance with subsection A of this section shall file with the finance director a statement of protest on a form provided by the finance director accompanied by a copy of the receipt or invoice for the sale within thirty (30) calendar days after the date of the sale. The buyer shall state on the form the terms of the sale, the amount of the sale, the goods, rental or service purchased, the location from which the seller fulfilled the order, and all other information necessary to support the exemption of the transaction from taxation. A buyer who fails to make a timely filing of a completed statement of protest waives the right to protest the tax or otherwise to challenge the imposition of the tax.
- C. A buyer who files a statement of protest under subsection B of this section bears the burden of proving that a transaction is exempt from taxation. In addition, the finance director may investigate facts related to the claim of exemption, and seek the advice of the city attorney on the claim. The finance director shall issue a written decision within forty-five (45) calendar days after the filing, stating the

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reasons for granting or denying the protest. The ruling will be mailed to the buyer and the seller at the addresses given on the protest.

- D. If a protest is granted, the City shall refund the protested tax amount to the buyer along with the written decision of the finance director.
- E. If a protest is denied, the buyer may appeal the denial by filing an appeal to the city manager pursuant to the appeal procedure set out in section BMC 4.16.440.

#### **4.16.230 Refunds – In General**

- A. A claim for refund of payment of sales tax which is made more than six (6) months from the date on which the tax was paid or became due and payable is forever barred, except for a refund for construction materials and services. ~~as set forth in BMC 4.16.220.~~
- B. A claim for refund of payment shall be made by filing with the finance director a statement of claim, specifying the date the tax was imposed, the amount of protest or refund claimed and the basis upon which the protest or claim for refund is made.
- C. The finance director shall respond, in writing, within forty-five (45) calendar days. If the finance director does not respond within forty-five (45), the claim of refund or protest shall be deemed to be approved.

#### **4.16.240 Tax Filing Schedule**

- A. ~~All persons subject to this chapter shall file a return on a form or in a format prescribed by the City and shall pay the tax due. Each person engaged in business in the City subject to taxation shall file a return in accordance with the following:~~
  - 1. ~~Quarterly. Unless as otherwise provided for in this section, sellers shall file on or before 3:00 pm local time on the last day of the month following the end of each quarter year ending March 31<sup>st</sup>, June 30<sup>th</sup>, September 30<sup>th</sup> and December 31<sup>st</sup>.~~
  - 2. ~~Monthly. If a seller fails to file or is late in filing returns for two (2) of the last four (4) quarters, the finance director may require the seller to submit returns and payments each month. The finance director may also require a seller to submit returns and payments monthly for other good cause, including, but not limited, to a lack of sales history, seasonal sales, etc.~~
  - 3. ~~Yearly. Upon approval of the finance director, a seller that has a documented history of less than twenty four thousand (\$24,000) dollars in taxable sales annually as well as a documented history of on-time filings and payments, may file its sales tax return and remittance of taxes on an annual basis. Returns and taxes filed and paid on an annual basis must be received no later than July 15<sup>th</sup> following the calendar year for which the tax return is required to be submitted. Penalties for late filing of an annual return and for the late remittance of taxes shall be double the rate applicable to monthly returns and interest shall accrue on late annual remittances from July 1<sup>st</sup> of the preceding year.~~

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~~4. Filing to be continuous. A person who has filed a sales tax return will be presumed to be making sales in successive quarters unless the person files a return showing a termination or sale of their business in accordance with section 4.16.380.~~

All persons subject to this chapter shall file a return on a form or in a format prescribed by the City and shall pay the tax due. Each person engaged in business in the City subject to taxation shall file a return in accordance with the following:

1. Monthly. Unless as otherwise provided for in this section, sellers shall file on or before 3:00 p.m. Alaska Time on the last day of the month following the end of each preceding month.
2. Semi-Monthly. If a seller fails to file or is late in filing returns for two (2) or more months, whether or not consecutive, the finance director may require the seller to submit returns and payments semi-monthly for other good cause, including, but not limited, to a lack of sales history, seasonal sales, etc.
3. Quarterly. Upon approval of the finance director, a seller that has a documented history of less than twenty-four thousand (\$24,000) dollars in taxable sales annually as well as a documented history of on-time filings and payments, may file its sales tax return and remittance of taxes on an annual basis. Returns and taxes filed and paid on an annual basis must be received no later than January 31st, following the calendar year for which the tax return is required to be submitted. Penalties for late filing of an annual return and for the late remittance of taxes shall be double the rate applicable to monthly returns and interest shall accrue on late annual remittances from January 1st of the preceding year.
4. Filing to be continuous. A person who has filed a sales tax return will be presumed to be making sales in successive periods unless the person files a return showing a termination or sales of their business in accordance with section BMC 4.16.380

- B. Special and/or Seasonal Events. For all sellers only operating at special and/or seasonal events, the tax return shall be due on or before the 5<sup>th</sup> business day following the event(s).
- C. It is the duty and responsibility of every seller liable for the collection of any tax imposed herein, unless otherwise provided herein, to file with the City upon forms prescribed and furnished by the City, a return, prepared under oath, setting forth

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the amount of all sales, taxable and nontaxable, the amount of tax thereon and other information the City may require on the form or forms.

- D. The completed and executed return, together with the remittance in full for the amount of the tax due, shall be transmitted to and must be received (not merely postmarked) by the finance department on or before 3:00 pm local time on:
1. Quarterly Filers: The last day of the month following the end of each quarter.
  2. Monthly Filers: The last day of the following month.
  3. Annual Filers: February 15<sup>th</sup> of the following year.
  4. Seasonal Filers: The 5<sup>th</sup> business day following the event.

Failure of the United States Postal Service or any private delivery service to make timely delivery of a sales tax return or the related remittance of sales tax shall not excuse an untimely filing or remittance.

- E. If the last day of the month following the end of the filing period falls on a Saturday, Sunday or federal, state or city holiday, the due date will be extended until the next business day immediately following. Exceptions will be made for proper proof of remittance (such as certified mail receipt, weigh bill, etc) showing timely submittal.
- F. Any person holding or required to hold a City of Bethel business license shall file a sales tax return even though no tax may be due. This return shall show why no tax is due. If the person intends to continue doing business they shall file a return reflecting no sales and a statement indicating their intent to continue doing business, and shall continue to do so each filing period until they cease doing business or sell the business. If the person intends to cease doing business they shall file a final return and statement of business closure, and must register before restarting operations. If the business is sold, then the person must file a final return upon sale of the business in accordance with BMC 4.16.380.
- G. The seller shall prepare the return and remit sales tax to the City on the same basis, cash or accrual, which the seller uses in preparing its federal income tax return. The seller shall sign the return, and transmit the return, with the amount of sales tax that it shows to be due, to the City.
- H. Sellers failing to comply with the provisions of this chapter shall, if required by the City, file and transmit collected sales taxes monthly until such time that they have demonstrated to the City that they are or will be able to comply with the provisions of this chapter. Six (6) consecutive on-time sales tax filings shall establish the presumption of compliance and return to quarterly filing status.
- I. Sales tax returns shall be accompanied by proof, satisfactory to the City, as to claimed exemptions or exceptions from tax herein imposed. In the absence of proof, the sales, rentals or services shall be deemed to have been taxable. The burden of establishing any tax exemption is upon the claimant.
- J. The preparer of the sales tax return form shall keep and maintain all documentation supporting any and all claims of exempted sales and purchases and be able to produce the documentation if requested by the City. Documentation for exempted

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sales should include the number of the City exemption authorization card presented by the buyer at the time of the purchase, the date of the purchase, the name of the person making the purchase, the organization making the purchase, the total amount of the purchase and the amount of sales taxes exempted. Failure to provide such documentation may invalidate that portion of the claim of exemption for which no documentation is provided.

#### **04.16.250 Contents of Tax Returns**

- A. Every seller required by this chapter to collect sales tax shall file with the City, upon forms furnished by the City, a return setting forth the following information with totals rounded to the nearest cent:
  - 1. Gross Receipts, divided into the following categories:
    - a. Sales – both retail and wholesale, including materials;
    - b. Rentals of property or equipment;
    - c. Services
  - 2. Exemptions – by exemption category with a detailed explanation as to buyer, amount of sale, sale date, class of exemption;
  - 3. Computation of taxes to be remitted;
  - 4. Such other information as may be required by the City.
- B. Each tax return remitted by a seller shall be signed by a responsible individual who shall attest as to the completeness and accuracy of the information on the tax return.
- C. Seller's operating within the City of Bethel for even one day of the month shall file a tax return for that reporting period even if no tax may be due.
- D. The City reserves the right to reject a filed return for failure to comply with the requirements of this chapter for up to three (3) months from the date of filing. The City shall give written notice to a seller, via certified mail, that a return has been rejected, including the reason for the rejection.

#### **~~4.16.250 Security Deposits/Bonds~~**

- ~~A. The City may require a seller to deposit with the City security in the form and amount that the City determines is appropriate. The deposit may not be more than twice the estimated average liability for the period for which the return is required to be filed or ten thousand (\$10,000) dollars, whichever is less. The amount of security may be increased or decreased by the City subject to the limitations provided in this section.~~
- ~~B. If necessary, the City may apply the security to recover a sales tax amount required to be collected, including interest and penalties. Notice of the intent to apply the security shall be sent to the person who deposited the security.~~
- ~~C. In lieu of a security, the City will require a seller to file a bond issued by a surety company authorized to transact business in the State of Alaska to guarantee the~~

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~~solvency and responsibility if such seller failed to remit sales tax on a previous business to the City.~~

~~D. In addition to the other requirements of this section, the City will require the corporate officers or directors of a corporation to provide a personal guaranty and assumption of liability for the payment of the tax due under this chapter.~~

**4.16.260 Extension of Time to File Tax Return**

- A. Upon written application of a seller, stating the reasons therefore, the finance director may extend the time to file a sales tax return but only if the finance director finds each of the following:
1. For reasons beyond the seller's control, the seller has been unable to maintain in a current condition the books and records that contain the information required to complete the return;
  2. Such extension is a dire necessity for bookkeeping reasons and would avert undue hardship upon the seller;
  3. The seller has a plan to cure the problem that caused the seller to apply for an extension and the seller agrees to proceed with diligence to cure the problem.
  4. At the time of the application, the seller is not delinquent in filing any other sales tax return, in remitting sales tax to the City or otherwise in violation of this chapter
  5. No such extension shall be made retroactively to cover existing delinquencies.

**4.16.270 Penalties and Interest for Late Filing**

- A. A late filing fee of Twenty-Five (\$25) dollars per month or partial month shall be added to all late-filed sales tax reports in addition to interest and penalties.  
 B. Delinquent sales tax bears interest at the rate of fifteen (15%) percent per annum until paid.  
 C. In addition, delinquent sales tax shall be subject to a late payment an additional penalty as follows:

<b>If payment made:</b>	<b>Additional Penalty (Percentage of Tax)</b>
Within seven (7) calendar days after delinquency date	One (1%) percent
More than seven (7) calendar days but less than thirty (30) calendar days after delinquency date	Seven (7%) percent

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Thirty (30) calendar days or more but less than sixty (60) calendar days	Fifteen (15%) percent
Sixty calendar days or more	Twenty (20%) percent

The penalty does not bear interest.

Penalties and interest shall be assessed and collected in the same manner as the tax is assessed and collected.

- D. The filing of an incomplete return, or the failure to remit all taxes, shall be treated as the filing of no return.
- E. A penalty assessed under this section for the delinquent remittance of sales tax for failure to file a sales tax return may be waived by the finance director, upon written application of the seller accompanied by a payment of all delinquent sales tax, interest and penalty otherwise owed by the seller to the City, within forty-five (45) business days after the date of delinquency. A seller may not be granted more than one waiver of penalty under this subsection in any period of twenty-four (24) consecutive months. The finance director shall report all such waivers of penalty to the council in writing, at least once each calendar quarter.

**4.16.280 Repayment Plans**

- A. The City may agree to enter into a repayment plan with a delinquent seller. No repayment plan shall be valid unless agreed to by both parties in writing.
- B. A seller shall not be eligible to enter into a repayment plan with the City if the seller has defaulted on a repayment plan in the previous two (2) calendar years.
- C. The repayment plan shall include a secured promissory note that substantially complies with the following terms:
  1. The seller agrees to pay a minimum of ten (10%) percent down payment on the tax, interest and penalty amount due. The down payment shall be applied first to penalty, then to accumulated interest, and then to the tax owed.
  2. The seller agrees to pay the balance of the tax, penalty and interest owed in monthly installments over a period not to exceed two (2) years.
  3. Interest at a rate of fifteen (15%) percent per annum shall accrue on the principal sum due. Interest shall not apply to penalties owed or to interest accrued at the time the repayment plan is executed or accruing during the term of the repayment plan.
  4. If the seller is a corporation or a limited liability entity the seller agrees to provide a personal guarantee of the obligations under the repayment plan.
  5. The seller agrees to pay all future tax bills in accordance with the provisions of this chapter.

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6. The seller agrees to provide a security interest in the form of a sales tax lien for the entire unpaid balance of the promissory note to be recorded by the City at the time the repayment plan is signed. The seller shall be responsible for the cost of recording the tax lien.
- D. If a seller fails to pay two (2) or more payments as required by the repayment plan agreement, the seller shall be in default and the entire amount owed at the time of default shall become immediately due. The City will send the seller a notice of default. The City may immediately foreclose on the sales tax lien or take any other remedy available under the law including placing the seller on the City's denied vendor list.

#### **4.16.290 Forgiveness of Uncollected Taxes, Penalties and Interest**

- A. The city manager, with the concurrence of the city council, may forgive the payment of uncollected sales taxes, interest and penalties owed by a seller to the City upon a determination by the city manager, with confirmation by the city attorney, that:
  1. Such uncollected taxes have never been collected by a substantial portion of a clearly definable class of sellers; or
  2. Such uncollected taxes have never been collected on a clearly defined type of transaction or service.
- B. The city manager may, upon recommendation of the city attorney, and with the concurrence of the city council, authorize forgiveness of uncollected sales taxes, interest and penalty thereon and penalties for failure to file, as part of the compromise and settlement of a disputed claim in an action for collection of such funds.
- C. Except as provided in subsections A and B, the City may not forgive or waive any amount of uncollected sales tax, interest or penalty. This section shall not prevent the Finance Director, with the concurrence of the City Manager, from discharging debts determined to cost more to collect than what is owed. Such discharges shall occur quarterly and a report shall be provided to the Council of all such discharges at the next regularly scheduled meeting following said discharge.

#### **4.16.300 Application of Sales Tax Payments.**

- A. Payments on sales tax accounts shall be applied to the oldest balance due, by sales tax period, in the following order: (1) first to accrued fees and costs, (2) then accrued interest, (3) then accrued penalty, (4) then to the tax principal; and (5) then the next oldest balance due, in the above order, and so forth, until the payment is applied in full; except as otherwise provided in this section.
- B. Payment on sales taxes submitted with sales tax returns shall be applied to the most current return period, in the following order: (1) first to accrued interest, (2) then to

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accrued penalty, and (3) then to the tax principal. Any remaining moneys shall be applied as in subsection A above.

- C. Payments on sales tax accounts where sales tax liens have been recorded to secure payment on the accounts shall be applied to the oldest balance due, by sales tax period, in the order listed in subsection A above.

#### **4.16.310 Application of Overpayments**

- A. A seller in good standing who, through clerical or similar error, remits a tax that exceeds the amount actually due or to which the City is not entitled by law, may, within one (1) calendar year from the due date of the tax or the collection of the tax, whichever is earlier, apply in writing to the finance director for a refund.
- B. A claim for refund is barred unless:
  - 1. The claimant files an amended tax return within one (1) calendar year of the due date of the return, on the form prescribed by the City;
  - 2. Made timely (the failure to file a claim for refund within the time allowed shall forever bar the claim); and
  - 3. The claimant files an amended return pursuant to the requirements of section BMC 4.16.320.
- C. When the City initiates an audit or estimate pursuant to BMC 4.16.350, .360, the period for claiming a refund under subsections A, above, is the same as the period under audit, but in no case more than three (3) years from the date of sale.
- D. The City shall not be liable for interest on any refund claimed or paid, or for any costs incurred by a buyer or seller in claiming or obtaining a refund.
- E. If the finance director determines, in writing, a refund is not due or is not due in the amount claimed, then the taxpayer may appeal pursuant to the provisions set out in BMC 4.16.440.
- F. The procedure set forth in this section is the recognized procedure whereby a refund may be made; and the taxpayer must first duly comply with this section and BMC 4.16.440 [appeals] as conditions precedent to bringing a suit to recover said taxes. Any person who has not timely availed themselves of these procedures shall be deemed to have waived any right to such refund as well as the right to recover said tax and interest.

#### **4.16.320 Amended returns.**

- A. A seller may file an amended sales tax return, with supporting documentation, and the City may accept the amended return, but only in the following circumstances:
  - 1. The amended return is filed within one (1) year of the original due date for the return; and
  - 2. The seller provides a written justification for requesting approval of the amended return; and

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3. The seller held a current City business license for the period for which the amended return was filed and filed an original return for that period; and
  4. The seller agrees to submit to an audit upon request of the City.
- C. The City shall notify the seller in writing whether it accepts or rejects an amended return, including the reasons for any rejection.
- D. The City may adjust a return for a seller if, after investigation, the City determines the figure included in the original returns are incorrect, and that additional sales taxes are due; and the City adjusts the return within two (2) years of the original due date for the return.

#### **4.16.330 Recordkeeping Required of all Sellers**

- A. Every seller engaged in activity subject to this chapter shall keep and preserve suitable records of all sales made by the seller and such other books or accounts as may be necessary to determine the amount of tax which it is obliged to collect, including records of the gross daily sales, together with invoices of purchases and sales, bills of lading, bills of sale or other pertinent records and documents as will substantiate and prove the accuracy of a tax return.
- B. It shall also be the duty of every seller who makes exempt sales to keep records of such sales, which shall be subject to examination by the City, or any authorized agent thereof, while engaged in checking or auditing the records of any seller required to make a report under the terms of this chapter.
- C. "Suitable records of all sales made" as used in subsection A of this section shall mean at a minimum a daily "Z" or "Z-total" report or equivalent, for all businesses with a cash register (A "Z" or "Z-total" report is the report generated by the cash register at the end of each business day, which calculates, at least, the totals for each department key, total sales and total receipts – although some cash registers have more detailed "Z" or "Z-total" reports). All sales made at businesses with cash registers must be rung on the cash registers. Businesses that do not have cash registers shall use another method, such as sequentially numbered invoices or sequentially numbered cash receipt books, for recording daily sales. Summaries of invoices are suitable records of all sales made, provided that copies of all back-up invoices are preserved as required under this chapter. Whatever records are kept must reflect the total daily purchases of taxable items. If no taxable sales are made on a business day, the records kept shall so reflect "zero" sales on that day. Records must also be kept to substantiate any claimed deductions or exclusions authorized by law. Records may be written, stored on data processing equipment or may be in any form that the City may readily examine.
- D. Unless a specific, written exception has been granted by the finance director, with the approval of the city manager, all sellers within the City required to provide receipts as per section BMC 4.16.150(A) must have a cash register and must record

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each retail sale on a cash register that provides, at a minimum, a daily "Z" or "Z-total" report, or equivalent, as set forth in subsection C of this section.

- E. Records shall be kept in a systematic manner conforming to accepted accounting methods and procedures. Such records include:
1. The books of accounts ordinarily maintained by a prudent business person. Records and accounting information stored on computers or in an electronic format must be provided to the City in a readable form when requested by the City.
  2. Documents of original entry such as original source documents, pre-numbered sequential 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.
- F. Records must show:
1. Gross receipts and amounts due from all taxable and exempt sales; and
  2. All exemptions or deductions from gross sales, as set out in section BMC 4.16.160; and
  3. The total purchase price of all goods and other property purchased for sale, resale, consumption, or lease.
- G. Every seller shall preserve suitable records of sales for a period of three (3) years from the date of the return reporting such sales, and shall preserve for a period of three (3) years all invoices of goods and merchandise purchased for resale, and all such other books, invoices and records as may be necessary to accurately determine the amount of taxes which the seller was obliged to collect under this chapter.
- H. The City finance department may examine and audit any relevant books, papers, records, returns or memoranda of any seller, may require the attendance of any seller, or any officer or employee of a seller, at a meeting or hearing, and may require production of all relevant business records, in order to determine whether the seller has complied with this chapter.
- I. The burden of proving that a sale, rental or service was not taxable shall be upon the seller.

#### **4.16.340 Loss of Records**

A seller shall immediately notify the City of any fire, theft or other casualty which prevents their compliance with this chapter. The casualty constitutes a defense to any penalty provided in this chapter if determined to be the proximate cause of the failure to comply for a given reporting period, but does not excuse the seller from liability for taxes due. Accidental loss of funds or records is not a defense against penalties of this chapter.

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#### **4.16.350 Audits.**

- A. Any seller who has established a sales tax account with the City, who is required to collect and remit sales tax, or who is required to submit a sales tax return, is subject to a discretionary sales tax audit at any time. The purpose of such an audit is to examine the business records of the seller in order to determine whether appropriate amounts of sales tax revenue have been collected by the seller and remitted to the City.
- B. The City is not bound to accept a sales tax return as correct. The finance director may make an independent investigation of all retail sales or transactions conducted within the City.
- C. The records that a seller is required to maintain under this chapter shall be subject to inspection and copying by authorized employees or agents of the City for the purpose of auditing any return filed under this chapter, or to determine the seller's liability for sales tax where no return has been filed.
- D. In addition to the information required on returns, the City may request, and the seller must furnish, any reasonable information deemed necessary for a correct computation of the tax.
- E. The City may adjust a return for a seller if, after investigation or audit, the City determines that the figures included in the original return are incorrect, and that additional sales taxes are due; and the City adjusts the return within three (3) years of the original due date for the return.
- F. For the purpose of ascertaining the correctness of a return or the amount of taxes owed when a return has not been filed, the 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 of any officer or employee of the seller. 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.
- G. The city manager may issue subpoenas to compel attendance or to require production of relevant books, papers, records or memoranda. If any person refuses to obey any such subpoena, the city manager may refer the matter to the city attorney for an application to the superior court for an order requiring the person to comply therewith.
- H. Any seller or person engaged in business who is unable or unwilling to submit their records within the City shall be required to pay the City for all necessary expenses incurred for the examination and inspection of their records maintained outside the City.

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- I. After the completion of a sales tax audit, the results of the audit will be sent to the business owner's address of record.
- J. In the event the finance director, upon completion of an audit, discovers more than five hundred (\$500) dollars in additional sales taxes due from a seller resulting from a seller's failure to accurately report sales and taxes due thereupon, the seller shall bear responsibility for the full cost of the audit. The audit fee assessment will be in addition to interest and penalties applicable to amounts deemed to be delinquent by the finance director at the time of the conclusion of the audit.

#### **4.16.360 Estimated Tax.**

- A. In the event the finance director is unable to ascertain the tax due from a seller by reason of the failure of the seller to keep accurate books, allow inspection, or file a return, or by reason of the seller filing a false or inaccurate return, the finance director may make an estimate of the tax due based on any evidence in their possession.
- B. Sales taxes may also be estimated, based on any information available, whenever the finance director has reasonable cause to believe that any information on a sales tax return is not accurate.
- C. A seller's tax liability under this chapter may be determined and assessed for a period of three (3) years after the date the return was filed or due to be filed with the City. No civil action for the collection of such tax may be commenced after the expiration of the three (3) year period except an action for taxes, penalties and interest due from those filing periods that are the subject of a written demand or assessment made within the three (3) year period, unless the seller waives the protection of this section.
- D. The City shall notify the seller, in writing, that the City has estimated the amount of sales tax that is due from the seller, stating the estimated amount. The City shall serve the notice on the seller by delivering the notice to the seller's place of business, or by mailing the notice by certified mail, return receipt requested, to the seller's last known mailing address. A seller who refuses the certified mail will be considered to have accepted the certified mail for purposes of service.
- E. The City's estimate of the amount of sales tax that is due from a seller shall become a final determination of the amount that is due unless the seller, within fifteen (15) calendar days after service of notice of the estimated tax:
  - 1. Files a complete and accurate sales tax return for the delinquent periods supported by satisfactory records and accompanied by a full remittance of all taxes, interest, penalties, costs and other charges due; or
  - 2. Files a written notice with the finance director appealing the estimated tax amount in accordance with the appeal procedures set out in section BMC 4.16.440 of this chapter.

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3. Arguments or reasons for failure to timely file a return and remit taxes collected shall not be considered a valid basis or grounds for granting an appeal. The basis and grounds for granting an appeal of an assessment are:
  - a. The identity of the seller is in error;
  - b. The amount of the debt is erroneous due to a clerical error (and the nature and extent of the error is specified in the request for appeal); or
  - c. The seller disputes the denial of exemption(s) for certain sales.
- F. The amount of sales tax finally determined to be due under this section shall bear interest and penalty as provided in Section BMC 04.16.270, from the date that the sales tax originally was due, plus an additional civil penalty of fifty dollars (\$50.00) for each calendar month or partial month for which the amount of sales tax that is due has been determined.

#### **4.16.370 Accelerated Returns**

- A. A seller who is required to file a return and remit taxes to the City, who fails for more than sixty (60) days to file a return or remit the taxes due or who has, within a twelve (12) month period, filed or paid taxes late on two (2) or more occasions, may be required to file and remit on an accelerated basis.
- B. The timeframe for filing on an accelerated basis will be determined by the finance director and will be communicated in writing prior to implementation.

#### **4.16.380 Cessation or Transfer of Business.**

- A. A seller who sells, leases, conveys, forfeits, transfers or assigns any portion of their business interest, including a creditor or secured party, shall make a final sales tax return within fifteen (15) days after the date of such conveyance.
- B. At least ten (10) business days before any such sale is completed, the seller shall send to the finance director, by certified first-class mail, postage prepaid, a notice that the seller's interest is to be conveyed and shall include the name, address and telephone number of the person or entity to whom the interest is to be conveyed.
- C. Upon notice of sale and disclosure of buyer, the Finance Director, shall be authorized to disclose the status of the seller's sales tax account to the named buyer or assignee.
- D. Upon receipt of notice of a sale or transfer, the Finance Director shall send the transferee a copy of the sales tax code with this section highlighted.
- E. Neither the Finance Director's failure to give the notice nor the transferee's failure to receive the notice shall relieve the transferee of any obligations under this section.
- F. Following receipt of said notice, the City shall have sixty (60) days in which to perform a final sales tax audit and assess sales tax liability against the seller of the business. If the notice is not mailed at least ten (10) business days before the sale is completed, the City shall have twelve (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

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

- G. 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.
- H. Before the effective date of the transfer, the transferee of a business shall obtain from the City, an estimate of the delinquent sales tax, penalty and interest, if any, owed by the seller as of the date of the transfer, and shall withhold that amount from the consideration payable for the transfer, until the seller has produced a receipt from the City showing that all tax obligations imposed by this chapter have been paid. A transferee that fails to withhold the amount required under this subsection shall be liable to the City for the lesser of the amount of delinquent sales tax, penalty and interest due from the seller as of the date of transfer, and the amount that the transferee was required to withhold.
- I. In this section, the term "transfer" includes the following:
  - 1. A change in voting control, or in more than fifty (50%) percent of the ownership interest in a seller that is a corporation, limited liability company or partnership;  
or
  - 2. A sale of substantially all of the assets used in the business of the seller; or
  - 3. The initiation of a lease, management agreement or other arrangement under which another person becomes entitled to the seller's gross receipts from sales, rentals or services.
- J. Subsection H shall not apply to any person who acquires their ownership interest in the ongoing business as a result of the foreclosure of a lien that has priority over the City's sales tax lien.
- K. Upon termination, dissolution or abandonment of a corporate business, any officer having control or supervision of sales tax funds collected or who is charged with responsibility for the filing of returns or the payment of sales tax funds collected, shall be personally liable for any unpaid taxes, interest, administrative costs and penalties on those taxes if such officer willfully fails to pay or cause to be paid any taxes due from the corporation. In addition, regardless of willfulness, each director of the corporation shall be jointly and severally liable for said amounts. The officer shall be liable only for taxes collected which became due during the period he or she had the control, supervision, responsibility or duty to act for the corporation. This section does not relieve the corporation of other tax liabilities or otherwise impair other tax collection remedies afforded by law.
- L. A 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 (30) days after such termination. If a final return and settlement are not received within thirty (30) days of the termination, the seller shall pay a penalty of

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one hundred dollars (\$100), plus an additional penalty of twenty-five dollars (\$25) for each additional thirty (30) day period, or part of such a period, during which the final return and settlement have not been made, for a maximum of six (6) additional periods.

- M. 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.

#### **4.16.390 Use of Information on Tax Returns**

- A. Except as otherwise provided in this chapter, all returns, reports and information required to be filed with the City under this chapter, and all information contained therein, shall be kept confidential and shall be subject to inspection only by:
1. Employees and agents of the City whose job responsibilities are directly related to such returns, reports and information;
  2. The person supplying such returns, reports and information; and
  3. Persons authorized in writing by the person supplying such returns, reports and information.
- B. The City will release information described in subsection A of this section pursuant to subpoena, order of a court or administrative agency of competent jurisdiction, and where otherwise required by law to do so.
- C. Notwithstanding subsection A of this section, the following information is available for public inspection:
1. The name and address of a person who holds a current City business license;
  2. The name and address of sellers, whether or not the business is registered to collect taxes;
  3. Whether a business is registered to collect taxes under this chapter;
  4. The name and address of businesses that are sixty (60) days or more delinquent in filing returns and/or in remitting sales tax; and, if so delinquent, the amount of estimated sales tax due, and the number of returns not filed;
- D. The City may provide the public statistical information related to sales tax collections, provided that no information identifiable to a particular seller is disclosed.
- E. Nothing in this section shall be construed to prohibit the delivery to a person, or his duly authorized representative, a copy of any return or report filed by him, nor to prohibit the publication of statistics so classified as to prevent the identification of particular buyers and sellers, nor to prohibit the furnishing of information on a reciprocal basis to other agencies or political subdivisions of the state or the United States concerned with the enforcement of tax laws.
- F. Nothing in this section shall be construed to prohibit the disclosure through the enforcement action proceedings or by public inspection or publication of the name, estimated balance due, and current status of payments, and filings of any seller or

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agent of any seller required to collect sales taxes or file returns under this chapter, who fails to file any return and/or remit in full all sales taxes due within sixty (60) days after the required date for that business. Entry into an agreement whether pursuant to the provisions of this chapter or otherwise shall not act as any prohibition to disclosure of the records of that seller as otherwise provided in this chapter.

- G. A prospective lessee or purchaser of any business or business interest may inquire as to the obligation or tax status of any business upon presenting to the finance director a release of tax information request signed by the registered owner of the business.
- H. All returns referred to in this chapter, and all data taken therefrom, shall be kept secure from public inspection, and from all private inspection.

#### **4.16.400 Publication of Delinquent Sellers**

- A. As soon as practicable after the expiration of sixty (60) days following the end of each calendar quarter, the City shall publish in a newspaper of general or customary circulation in the appropriate area of the City, as well as on the City's website, a list of every seller, including the "doing business as" name under which the seller is doing business who:
  - 1. Was conducting business in the City and was required to file a return during the quarter, but who has not filed the required returns, unless the seller has paid any balance due for that period in full; and
  - 2. Did not pay all balances due, as long as the balance is greater than Five-Hundred (\$500) Dollars.
- B. Notwithstanding subsection (A) above, the City is not required to include in the quarterly publication a closed business which has been published in the preceding four (4) publications.
- C. The names of sellers who have entered into and are satisfactorily complying with a payment agreement with the City will not be published.
- D. The publication of such delinquent sales tax accounts shall not be considered a disclosure within the provisions of this chapter.

#### **4.16.410 Lien**

- A. The tax, penalty and interest as imposed by this chapter, together with all administrative and legal costs incurred, shall constitute a lien in favor of the City upon all of the seller's real and personal property. The lien arises upon the delinquency, and continues until the liability for the amount is satisfied, or the property is sold at a foreclosure sale.
- B. The lien imposed by this section arises and attaches at the time that payment becomes delinquent and continues until the entire amount has been paid.

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- C. If delinquent sales taxes, interest, penalties and other costs are not paid within ten (10) calendar 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 and federal law (the lien has priority as allowed by AS 29.45.650(e)).
- D. The City may record subsequent notices of lien of amount due after the recording of a previous notice of lien. The City may also record amended notices of lien to correct any errors or to provide notice of the then current amount owing.
- E. Within ten (10) calendar days of receiving the conformed, filed notice of lien, or amended notice of lien from the recorder's office, the City shall mail a copy of the notice by certified mail, return receipt requested, to the last known address of seller; provided failure to so mail the copy shall not void the lien or lessen its priority.
- F. The city attorney, at the request and consent of the city council, may file an action to foreclose the lien of the City for the tax upon property and rights to property, real or personal, and sell the same, applying the proceeds thereof to the payment of the tax, interest, penalty, fees and costs. The action shall be commenced and pursued in the manner provided for the foreclosure of liens by applicable Alaska Statutes (currently AS 09.45.170 through 9.45.220); provided, however, upon commencement, the City shall provide written notice of the action to all reasonably known persons having an interest of record in the property being foreclosed, including persons in possession of the property. The action may be commenced within six (6) years after the lien arises.
- G. 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, penalties and costs due under this chapter.
- H. The failure to record a lien does not constitute a waiver or abrogation of any priorities, rights or interest of the City at law or in equity.
- I. Fees for the filing and releasing of liens shall be as set out in the Bethel Fee and Rate Schedule.
- J. 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.

#### **4.16.420 Violations**

- A. Failure to comply with any of the provisions of this chapter shall be a violation and will be considered an infraction.
- B. Each act or omission in violation of this chapter, and each day in which the act or omission occurs, is a separate violation of this chapter.

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- C. A seller that fails to file a sales tax return or remit sales tax when due, in addition to any other liability imposed by this chapter, shall pay to the City all costs incurred by the City to determine the amount of the seller's sales tax liability or to collect the sales tax, including without limitation, costs of obtaining, reviewing and auditing the seller's business records, collection agency fees, and actual reasonable attorney's fees.
- D. A person who causes or permits a corporation of which the person is an officer or director, a limited liability company of which the person is a member or manager, or a partnership of which the person is a partner, to fail to collect sales tax or to remit sales tax to the City as required by this chapter shall be liable to the City for the amount that should have been collected or remitted, plus any applicable interest and penalty.
- E. In addition to issuing citations for violation of this chapter, the City may bring a civil action to:
  - 1. Enjoin a violation of this chapter. On application for injunctive relief and a finding of a violation or threatened violation, the superior court shall enjoin the violation.
  - 2. Collect delinquent sales tax, penalty, interest and costs of collection, either before or after estimating the amount of sales tax due under Section BMC 4.16.360.
  - 3. Recover a civil penalty of up to five hundred dollars (\$500.00) for each violation of this chapter.
  - 4. Foreclose a recorded sales tax lien as provided by law.
- F. All remedies hereunder are cumulative and are in addition to those existing at law or equity.

#### **4.16.430 Penalties for Violations**

- A. A person, who is convicted of a violation of this chapter, where a fine is not otherwise specifically described in this section, shall be subject to a fine of not more than five hundred dollars (\$500.00) plus any surcharge required to be imposed by AS 29.25.074.
- B. A buyer or seller who knowingly or negligently submits false information in a document filed with the City pursuant to this Chapter is subject to a fine of Five Hundred (\$500) Dollars.
- C. A seller who knowingly or negligently falsifies or conceals information related to its business activities within the City is subject to a fine of Five Hundred (\$500) Dollars.
- D. A person who knowingly or negligently provides false information when applying for a certificate of exemption is subject to a fine of Three Hundred (\$300) Dollars.
- E. Any seller who fails to file a return required under this chapter within fifteen (15) days of written notification by regular mail, regardless of whether any taxes were due for the reporting period for which the return was required, shall be subject to a penalty of twenty-five (\$25) dollars for the first sales tax return not timely filed, and

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fifty (\$50) dollars for each subsequent sales tax return not timely filed within a one (1) year period thereafter. The filing of an incomplete return shall be treated as the filing of no return.

- F. Sellers who have not filed returns for two (2) consecutive reporting periods shall be assumed to have ceased conducting business and shall be removed from the roll of active businesses. Reinstatement of a business removed from the active role by this section shall require the payment of a mandatory reinstatement fee.
- G. A person subject to the requirements of BMC 4.16.150, who fails to provide a written receipt or invoice setting out the amount of 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, however the minimum penalty is twenty-five (\$25) dollars.
- H. A seller who fails or refuses to produce requested records or to allow inspection of their books and records, shall pay to the City a penalty equal to three (3) times any deficiency found or estimated by the finance department with a minimum penalty of five hundred (\$500) dollars. [penalty equal to 10% of any deficiency or estimate..]
- I. A seller who falsifies or misrepresents any record filed with the City is guilty of an infraction and subject to a penalty of five hundred (\$500) dollars per document.
- J. Misuse of an exemption card is an infraction and subject to a penalty of:
  - 1. Fifty (\$50) Dollars for a first occurrence and a one (1) month suspension of the privilege to use an exemption card;
  - 2. One Hundred Dollars (\$100) for a second occurrence and a one year suspension of the privilege to use an exemption card; and
  - 3. Five Hundred Dollars (\$500) for a third occurrence and the potential lifetime revocation of the privilege to use an exemption card issued by the City.
- K. A penalty imposed under any part of this section 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 and only with the written consent of the City Attorney. Any other waiver or reduction of penalties shall only occur with the consent of the City Council.
- L. All remedies for violations of this chapter are cumulative and are in addition to any others existing at law or in equity.
- M. Nothing in this chapter shall be construed as preventing the City from filing and maintaining an action at law to recover any taxes, penalties, interest and fees due from a seller. The City may also recover full actual reasonable attorney's fees in any action against a delinquent seller.
- N. If the City Manager or finance director have reason to believe that a seller who has been removed from the roll of active businesses pursuant to this section is in fact continuing to conduct business, the City Manager may cause a proceeding to be filed in the Superior Court requesting the issuance of an injunction prohibiting that business from continuing to conduct business.

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#### **4.16.440 Appeals**

- A. Unless a different timeframe is specified, a seller aggrieved by an action of the finance director in fixing the amount of tax or in imposing a penalty or interest shall appeal to the City Manager within thirty (30) calendar days from the date of the postmark on the finance director's written notification. A tax payer who has a cause of action, grievance or protest concerning the legality, collection or payment of the sales tax shall appeal in this manner and within the same timeframe. All right to an appeal shall be deemed waived if not timely requested as set forth in this subsection.
- B. All appeals shall be filed in writing addressed to the City Manager, must be signed by the seller/taxpayer (or counsel therefore) and shall contain the following information:
  - 1. Name, address and telephone number of aggrieved seller/taxpayer;
  - 2. A specific and detailed statement of the amount of tax, interest or penalty contested, the basis and grounds upon which the appeal is made, and all pertinent records, documents or other evidence substantiating the grounds as stated; and
  - 3. A statement of the relief sought.
- C. Failure to file an ~~timely~~ appeal within the time and manner provided shall be deemed a waiver of that right and to any appellate review to which the aggrieved party might have otherwise been entitled.
- D. Arguments or reasons for failure to timely file a return and remit taxes collected shall not be considered a valid basis or grounds for granting an appeal. The basis and grounds for granting any appeal are limited to:
  - 1. The identity of the seller is in error;
  - 2. The amount of the debt is erroneous due to a clerical error (and the nature and extent of the error is specified in the request for a hearing);
  - 3. The seller disputes the denial of exemption(s) for certain sales;
  - 4. Taxes have been levied and forgiven; or
  - 5. The Bethel Municipal Code has been misinterpreted, misapplied or not followed.
- E. A request for appeal is filed on the date it is personally delivered or, if delivered to the City Manager by United States mail, the date of the United States Postal Service postmark stamped on the properly addressed cover in which the request is mailed.
- F. A current mailing address must be provided to the City Manager with the request for appeal, and any change in mailing address after the request for appeal is filed must be reported to the City Manager.
- G. Upon notice of the filing of a written appeal, the finance director shall immediately send a copy of their decision and any information or documents utilized in reaching their decision, to the City Manager with a copy to the City Attorney and the party filing the appeal.

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- H. The City Manager shall decide the appeal based upon the pertinent records provided by the parties involved.
- I. The taxpayer must prove by a preponderance of the evidence the factual basis upon which he or she is relying.
- J. The City Manager's determination shall be based upon the evidence received and any written materials submitted by the parties. The determination need not make formal findings of fact or conclusions of law, but the written determination shall state the reasons for the decision and indicate the evidence relied upon. Such determination shall be issued no later than fifteen (15) calendar days after the appeal is filed. Such determination shall be final.
- K. The City Manager may retain the services of the City Attorney to assist him/her in making their decision.
- L. A seller who is not satisfied with a final written ruling of the City Manager may appeal the decision by requesting an appellate hearing before the Hearing Officer. The process for seeking appellate review of the City Manager's decision is as follows:
  - 1. Completing a written request for appeal;
  - 2. Submitting the appropriate appeal fee;
  - 3. Filing both with the City Clerk no later than twenty (20) calendar days from the date of the City Manager's written decision.
- M. Appeals of the City Manager's decision shall contain the following information:
  - 1. Name of appellant, Name of business (if different than appellant), address and telephone number of aggrieved tax payer;
  - 2. A specific and detailed statement outlining the procedural, factual or legal error on which the appeal is based; and
  - 3. A statement of the relief sought.
- N. Upon a properly filed appeal, the City Clerk shall request a full copy of the record used by the City Manager. That record will be forwarded to the Hearing Officer with a copy to the party filing the appeal.
- O. An appeal of the City Manager's decision shall be limited solely to the information previously provided. No new evidence will be permitted during the appeal. The parties will be allowed an opportunity to argue their case before the Hearing Officer.
- P. The order of presentation will be:
  - 1. Brief opening statement by the City's representative (optional);
  - 2. Brief opening statement by the taxpayer/appellant (optional);
  - 3. Argument and presentation of evidence by the City's representative;
  - 4. Argument and presentation of evidence by the taxpayer/appellant;
  - 5. Rebuttal as necessary;
- Q. All testimony shall be under oath. The proceedings shall be recorded. Upon written request, the appellant is entitled to a copy of the recording at no charge. The appellant or their legal counsel and the City may examine and cross-examine

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witnesses. Exhibits may be introduced. The rules of evidence need not be strictly followed; however, irrelevant or unduly repetitious evidence may be excluded.

- R. The factual record is closed at the close of the hearing. The Hearing Officer may continue the hearing for good cause.
- S. The Hearing Officer may choose to rule orally on the record or may choose to take the matter under advisement and issue a written decision at a later time. In either scenario, no later than twenty (20) calendar days from the date of the appeal hearing, a written decision will be issued. This decision will be final and may be appealed to the superior court as provided in the Alaska Rules of Appellate Procedure.
- T. Contested taxes, penalties and interest that have been paid and are found to be overpaid shall be refunded with interest at the rate of five (5%) percent from the date of the payment.
- U. Contested taxes, penalties and interest that remain unpaid shall continue to accrue penalty and interest as provided by this chapter until paid.

#### **4.16.450 Transition Period**

- A. Sellers already licensed to do business at the time of the passage of this chapter shall be provided the following timelines for compliance:
  - 1. Equipment – Sellers shall have six (6) months from the date of the passage of this chapter to implement all of the requirements for compliance with the necessary equipment, hardware and/or software requirements.
    - a. Except as set forth herein, no additional implementation or preparation time may be granted to sellers except for those who have taken timely, verifiable, good faith steps to comply with the provisions of this chapter and yet, through extraordinary circumstances beyond the control of seller, need additional time to comply.
    - b. In such cases, the finance director may grant no more than ninety (90) additional calendar days.
    - c. Requests for such additional time to comply shall be in writing, setting out the specific, extraordinary circumstances, which merit consideration for additional time.
    - d. Inadvertence, neglect or delay on the part of a seller is not grounds for an extension of time.
    - e. Only one (1) extension may be granted to any given seller.
  - 2. Sales Tax Collection Certificate – Existing businesses shall register. ~~upon renewal of their sales tax license but in no event shall application for a sales tax collection license occur later than December 31, 2019. register within sixty (60) days of the passage of this Ordinance.~~
  - 3. Filing Status Changes – Sellers already licensed to do business within the City of Bethel who are filing other than as now prescribed in this chapter, shall have six

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(6) months from the date of passage of this chapter to change their filing status to meet the new requirements as set out herewith. This change will not apply to those sellers specifically notified by the finance director to remain monthly due to poor sales tax payment history.

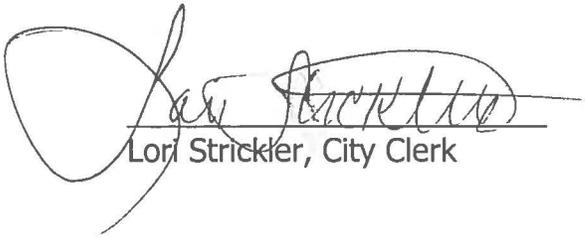
4. Seasonal Businesses – Sellers who wish to change their status to a seasonal business may do so any time after the passage of this chapter.
- B. This section does not apply to the obligations of sellers under this chapter to collect and remit applicable sales taxes mandated by this chapter. The collection and remission of the City's sales tax must be done in a timely manner, regardless of any extensions of time sought for other obligations imposed by this chapter. Likewise, all the remedies, penalties and interest assessed for failure to properly collect and remit the City's sales tax obligations are applicable to sellers who fail to do so, as required by this chapter.

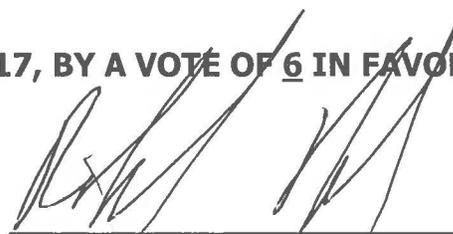
**SECTION 3. Effective Date.** This ordinance shall become effective ninety (90) days from the passage of this Ordinance.

**SECTION 3A. Effective Date** Section BMC 4.16.450A(2) will become effective 150 days from the passage of this Ordinance.

**ENACTED THIS 12 DAY OF September 2017, BY A VOTE OF 6 IN FAVOR AND 1 OPPOSED.**

ATTEST:

  
Lori Strickler, City Clerk

  
Richard Robb, Mayor