

CITY OF HOMER  
HOMER, ALASKA

ORDINANCE 85-17

AN ORDINANCE REPEALING CHAPTER 9.16, SALES TAX, OF THE HOMER MUNICIPAL CODE AND RE-ENACTING CHAPTER 9.16, IN CONFORMANCE WITH THE AMENDED SALES TAX ORDINANCE ENACTED BY THE KENAI PENINSULA BOROUGH JANUARY 22, 1985.

WHEREAS, the Kenai Peninsula Borough has revised its existing sales tax ordinances, and

WHEREAS, the City of Homer sales tax is implemented in accordance with the Borough sales tax procedures, and

WHEREAS, it is the desire of the Homer City Council to bring the City's sales tax ordinance into conformity with the Borough ordinance.

NOW, THEREFORE, the City of Homer ordains:

Section 1. Chapter 9.16, Sales Tax, of the Homer Municipal Code is hereby repealed and re-enacted to read as follows:

Chapter 9.16  
SALES TAX

9.16.010 Sales Tax Levied. A sales tax has been levied by the City of Homer in the amount of two percent on all retail sales, rents and services made or rendered within the City, as measured by the gross sales price of the seller. A copy of the sales tax ordinance is included as Appendix "A" to this chapter.

9.16.020 Ownership of Monies. All sales taxes collected under the two percent levy are city monies and the seller is at all times accountable to the City of Homer for such monies.

9.16.030. Incorporation by Reference of Borough Sales Tax Provisions. Kenai Peninsula Borough Ordinance 84-74 (Substitute) as amended is hereby adopted by reference as though fully set forth herein. The procedures and regulation of said ordinance shall govern the collection and remittance of city sales taxes. The words "city" and "council" are substituted for "borough" and "assembly" wherever appropriate to give effect to Borough Ordinance 84-74 (Substitute) as the same applies to the collection of sales taxes within the City of Homer.


Ordinance 85-17  
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A copy of the Kenai Peninsula Borough Ordinance 84-74  
(Substitute) is included as Appendix "B" to this chapter.

CITY OF HOMER

  
\_\_\_\_\_  
Wayne L. Kessler, Mayor


ATTEST:

  
\_\_\_\_\_  
Kathleen Herald, City Clerk

Reviewed and approved as to form and content:

  
\_\_\_\_\_  
Phil C. Shealy, City Manager

Date: 6/25/85

  
\_\_\_\_\_  
A. Robert Hann, City Attorney

Date: 6/25/85

First Reading: 5/28/85  
Public Hearing: 6/10/85  
Second Reading: 6/24/85  
Date of Adoption: 6/24/85  
Effective Date: 7/1/85

**APPENDIX A**

Chapter 9.16SALES TAX\*Sections:

- 9.16.010 Sales tax levied.
- 9.16.020 Ownership of monies.
- 9.16.030 Dedication of revenues.
- 9.16.040 Rules and regulations.
- 9.16.050 Borough sales tax provisions adopted by reference.
- 9.16.060 Tax schedule.
- 9.16.070 Effective date.

## Appendix

9.16.010 Sales tax levied. There is levied a consumer's sales tax of two percent on all retail sales, on all rents, and on all services made or rendered within the city of Homer, measured by the gross sales price of the seller. (Prior code §13A-700.1).

9.16.020 Ownership of monies. The two percent consumer's sales tax levied under this chapter and all sales taxes collected are City moneys and the seller is at all times accountable to the City for such moneys. (Prior code §13A-700.2).

9.16.030 Dedication of revenues. a. All revenues of a one percent consumer's sales tax approved by the voters at a special election August 28, 1973, are dedicated to the retirement of the general obligation bonds for the improvement of the municipal water system also authorized in the special election August 28, 1973. It is the intent of this dedication that the proceeds shall be used exclusively for the purposes of repaying, retiring or otherwise discharging the City from the obligations of the bonded indebtedness assumed pursuant to the authorization of the special election.

b. All revenues of a one percent consumer's sales tax approved by the voters at a special election April 20, 1976, are dedicated to the retirement of the bonds issued for the constructing and equipping of a Public Safety Building also authorized at the special election April 20, 1976. It is the intent of this dedication that the proceeds shall be used exclusively for the purposes of repaying, retiring and otherwise discharging the City of the obligations of the bonded indebtedness assumed pursuant to the authorization of the special election April 20, 1976. (Prior code §13A-700.3).

9.16.040 Rules and regulations. a. The City Treasurer may take any action necessary or appropriate to the implemen-

\* For statutory provisions authorizing cities to levy sales taxes, see A.S. 29.53.440--29.53.460.  
Prior ordinance history: Ordinances 73-10 and 76-11.



tation of this chapter by promulgating regulations which may include the adoption of forms. Such regulations, or any procedures, adopted by the City Treasurer are effective at the time indicated by him, but are subject to revision or repeal by the City Council, at the next meeting following their effective date or at any time that the City Council acts thereon.

b. Should a taxpayer under this Code or a seller obliged to collect the tax be in doubt as to the applications of the provisions to an actual situation facing the taxpayer, or about to face a taxpayer, the taxpayer may apply for an informal ruling on the issue. Rulings having a general application, may at the discretion of the City Treasurer be promulgated as regulations. (Prior code §13A-700.4).

9.16.050 Borough sales tax provisions adopted by reference. Incorporated by reference as though fully set forth in this chapter\* and made a part of this chapter are those sections of the Kenai Peninsula Borough Code of Ordinances, identified by catchlines and code section reference numbers as follows:

<u>CODE SECTION NUMBERS</u>	<u>CATCHLINE</u>
Sec. 25.10.010	Obligation to Pay
Sec. 25.10.015 (Omit Subparagraph [1])	Custody, Reporting and Remittance
Sec. 25.10.020	Exemptions
Sec. 25.10.025	Maximum Tax
Sec. 25.10.030	Definitions
Sec. 25.10.035	Installment Sales
Sec. 25.10.050	Registration of Sellers as Tax Collectors, Certificate of Registration
Sec. 25.10.055	Seller Not to Assume Tax
Sec. 25.10.065	Protest of Tax
Sec. 25.10.070	Registration of Buyers Entitled to Exemption
Sec. 25.10.075	Confidential Material
Sec. 25.10.080	Duty to Keep Books
Sec. 25.10.085	Omissions and Civil Penalties
Sec. 25.10.086	Lien
Sec. 25.10.090	Extensions
Sec. 25.10.095	Criminal Penalties

(Ord. 82-13 §1, 1982; Ord. 78-22 §1, 1978; prior code §13A-700.5).

\* Editor's Note: In an appendix following this chapter appear the various sections of the Kenai Peninsula Borough Code adopted by reference in this section. For complete Borough sales tax provisions, see KPC Ch. 5.16, a recodification of the Kenai Peninsula Borough Code sections adopted by reference in this section.

9.16.060 Tax schedule. a. The total tax to be added to the sale price, charge or rental shall be in accordance with the following schedule:

<u>PRICE</u>	<u>TAX</u>
\$.26--\$.75	\$.01
\$.76--\$1.25	\$.02

For sales above one dollar twenty-five cents, the tax shall be determined by applying two percent to the sale price, charge or rental rounded off to the nearest cent by eliminating any fraction less than one-half cent and by increasing any fraction of one-half cent or over to the next highest cent. Each seller shall be furnished the schedule of tax payable on each taxable amount from one cent to one hundred dollars. Any one sale of items separately priced shall be taxed upon the aggregate amount.

b. The revenue from a coin-operated machine shall be treated in gross on a monthly basis, without reference to the amount paid or played on a particular transaction. (Prior code §13A-700.6).

9.16.070 Effective date. a. Sellers shall begin applying the one percent sales tax as approved by the voters August 28, 1973, to all applicable sales as defined in Section 9.16.010, on January 1, 1974. This tax shall remain in effect only until such time as the general obligation bonds have been redeemed and shall terminate on that date without further action by the City unless its continuation is given by a majority vote of the people at a General or Special Election.

b. Sellers shall begin applying an additional one percent, for a total of two percent, sales tax approved by the voters April 20, 1976, on July 1, 1976. This tax shall remain in effect only until such time as the bonds have been redeemed and shall terminate on that date without further action by the City unless its continuation is given approval by a majority vote of the people at a General or Special Election. (Prior code §13A-700.7).

#### APPENDIX

The following are those portions of the Kenai Peninsula Borough Code of Ordinances incorporated into this code by reference:

Sec. 25.10.010. OBLIGATION TO PAY. The obligation of the tax is upon the buyer. The seller shall collect the tax at the time of sale. Collection is enforceable by the seller as the certified tax collector of the Borough; provided however, that this shall not limit the liability of the buyer to the Borough.

Sec. 25.10.015. CUSTODY, REPORTING AND REMITTANCE.

(2) Taxes due the Borough (City) collected by a seller hereunder shall be paid at the expiration of each quarter of each calendar year. Every seller liable for the collection of the tax shall file with the Borough upon forms furnished by it a return setting forth:

- (a) Gross sales,
- (b) The non-taxable portion separately stating the

- amount of sale revenue attributable to each class of exemption,
- (c) Taxes collected,
  - (d) Such other information as may be required by regulation.

The completed return, together with remittance in full for the amount of the tax due, must be transmitted to the Borough on or before the last day of the month succeeding the end of each quarter.

(3) If a return is filed with the taxes remitted within the time allowed, the seller may retain three percent of the tax collected to cover his costs of administration of the tax.

(4) Any person who filed or should have filed a sales tax return for the prior quarter shall file a return, even though no tax may be due. This return shall show why no tax is due, and, if the business is sold, the name of the person to whom it was sold.

(5) If any seller sells, leases or otherwise disposes of his business, he shall make a final sales tax return within 15 days after the date of sale; and the purchaser, successor or assign shall withhold a sufficient portion of the purchase money to safely cover the amount of such sales tax, penalties and interest as may be due and unpaid to the Borough until such time as the former owner has produced a receipt from the Borough showing that all tax obligations imposed by this chapter have been paid; and further provided, if any purchaser of a business fails to withhold from the purchase money as herein provided for he shall be personally liable for the payment of the taxes, penalties and interest accruing and unpaid to the Borough on account of the operation of the business by any former owner; owners or assigns.

Sec. 25.10.020. EXEMPTIONS. The following classes of retail sales, services and rentals are exempt:

(1) Casual, isolated sales of property and services or the rental of personal or real property not in the regular course of the business of the seller.

(2) Hospital services and medical services performed by licensed medical doctors, dentists, osteopaths, optometrists, and chiropractors; and retail sales of medicinal preparations, drugs or appliances under a written prescription from one of the foregoing.

(3) Retail sales, services and rentals to religious and charitable organizations in the conduct of their regular religious and charitable functions and activities as defined by the revenue laws of the United States.

(4) Retail sales of food to college and school cafeterias which are operated primarily for teachers or students and which are not operated for profit.

(5) Subscriptions to newspapers and periodicals.

(6) Retail sales, services and rentals to the United States, the State of Alaska, or any instrumentality or political subdivision of either.

(7) Dues or fees to clubs, labor unions and fraternal organizations.

(8) Sales of animal food, seed, plants, and fertilizers to farmers using such commodities to produce goods for sale.

(9) Retail sales of real property. Services performed by a real estate broker or agent are not exempt under this section.

(10) Retail sales or rent which the Borough is prohibited from taxing by the Constitution or laws of the United States or of the State of Alaska.

(11) Services performed by morticians licensed under AS 08.44.010; and retail sales of funeral supplies by such persons.

(12) In addition to exemptions presently authorized by the City of Homer, the inventory of a business\* held for sale in the normal course of the business if classified as personal property is exempt from taxation by the City of Homer.

Sec. 25.10.025. MAXIMUM TAX. The tax shall be applied only to the first \$500.00 of each separate sale, rent or service transaction. The payment of rent, whether for real or personal property, in excess of \$500.00 and for more than one month shall be treated as several separate transactions covering the rental for one month each. A transaction involving payment for services or personal property to be rendered or delivered over a period of more than one month for a consideration in excess of \$500.00 shall be treated as several separate transactions occurring one each month over the period of time that the service or property is rendered or delivered.

Sec. 25.10.030. DEFINITIONS. When not clearly otherwise indicated by the context, the following words and phrases, as used in this Chapter, have the following meanings:

(1) "Sale" and "Retail Sale" shall include:

- (a) Every sale of services;
- (b) Every rental of real or personal property;
- (c) Every sale of the use or play of a coin-operated machine; and
- (d) Every sale of tangible personal property, regardless of quantity or price, whether sold by coin-operated machine or otherwise, except:
  - 1. Sales to a wholesale or retail dealer in the property sold, for the purpose of resale by him;
  - 2. Sale of personal property as raw material to a person engaged in manufacturing for sale,

when the property becomes an ingredient or component part of the manufactured product or a container thereof or is consumed in the manufacturing process.

(2) "Sale" includes every sale or exchange of services, use or title in property. Installment, credit and conditional sales are included in the term. Generally, the point of origin and/or the business location of the transaction is the place of sale. The place of sale for electric utility companies, however, is the point of delivery to the consumer.

(3) "Sale Price" means consideration paid by the buyer in terms of money, and, in the case of a sale involving an exchange of property, the fair market value of the property exchanged, including delivery or installation costs, taxes, or any other expenses whatsoever, measured by the gross sales of the seller.

(4) "Buyer" includes persons who are purchasers of personal property, rental space or services.

(5) "Seller" includes persons who are vendors of property, persons furnishing services, the lessors of rental space or goods, and all persons making sales.

(6) "Coin-Operated Machine" means a slot machine, marble machine, juke box, merchandise vending machine, laundry, dry cleaning and any other service-dispensing machine or amusement device of any kind which requires the insertion of a coin to make it operative.

(7) "Services" includes all services of every manner and description which are performed or furnished for compensation, except services rendered to an employer by an employee, including but not limited to:

- (a) Professional services;
- (b) Services in which a product or sale of property may be involved, including personal property made to order;
- (c) Utilities and utility services not constituting a sale of personal property, including sewer, water, electrical and telephone services and repair;
- (d) The sale of transportation services;
- (e) Services rendered for compensation by any person who furnishes any such services in the course of his business or occupation;
- (f) Services wherein labor and materials are used to accomplish a specified result;
- (g) Any other services including advertising, maintenance, recreation, amusement and craftsmen services.

(8) "Person" includes individuals and every person recognized in law and every group of persons who act as a unit.

(9) "Chairman" or "Borough" means the Chairman of the Kenai Peninsula Borough or his designee.



Sec. 25.10.035. INSTALLMENT SALES. When a sale is made on an installment basis, the sales tax shall be collected from the down payment, or if none, from the first installment, or if the installment or down payment is less than the tax, then from as many installments as is necessary to pay the tax.

Sec. 25.10.050. REGISTRATION OF SELLERS AS TAX COLLECTORS, CERTIFICATE OF REGISTRATION.

(1) All sellers shall file with the Borough an application for a Certificate of Registration, on a form prescribed by the Borough, not more than ten (10) days after the effective date of this Chapter, the date of commencing business or the opening of an additional place of business.

(2) Upon receipt of a properly executed application, the Chairman will issue, without charge to the seller, a Certificate of Registration, stating the address of the place of business to which it is applicable and authorizing the seller to collect the tax. The Certificate must be prominently displayed at the place of business named therein. A seller who has no regular place of business shall attach such Certificate to his stand, truck, or other merchandising device.

(3) The Certificate of Registration is non-assignable and non-transferable and must be surrendered to the chairman by the seller to whom it was issued upon his ceasing to do business at the location named therein. If the business is continued at the same location but there is a change in its form of organization such as from a single proprietorship to a partnership or a corporation, the admission or withdrawal of a partner or any other change, the seller making such change shall surrender his old Certificate to the chairman for cancellation. The successor seller is required to file a new application for a Certificate of Registration. Upon receipt of such application, properly executed, a new Certificate will be issued to such successor seller.

(4) When there is a change of location for the seller's place of business, a new Certificate of Registration is required showing the new address.

(5) Before issuing a Certificate of Registration, the Chairman may require the applicant to post a bond, furnish a statement of net worth, or furnish additional security to insure the full and prompt payment of taxes to be collected under such certificate when in his judgment it is in the interest of the Borough to do so.

(6) A seller who obtains or should obtain a Certificate of Registration in accordance with this chapter hereby consents to the inspection of his Alaska Business License Tax returns in order to facilitate the accomplishment of the provisions and objectives of this chapter.

Sec. 25.10.055. SELLER NOT TO ASSUME TAX. A seller shall not advertise or hold out or state to the public or to any buyer, directly or indirectly, that the tax or any part thereof imposed by this Chapter will be assumed or absorbed by the seller or that it will not be added to the sales price or that it will be refunded or assumed, in whole or in part. 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 provided by the Borough indicating the imposition of the tax.

Sec. 25.10.065. PROTEST OF TAX.

(1) A seller shall determine in the first instance whether a retail sale is exempt under this Chapter. However, if a seller incorrectly determines that a sale is exempt, then the seller is liable to the Borough for the tax, just as if he had collected it.

(2) In the event that the seller determines that a transaction is not exempt, but the buyer believes the transaction to be exempt, then the seller will furnish to the buyer a form of Certificate of Protest, supplied by the Borough, which shall be filled out by the buyer and delivered to the seller with the disputed tax. The Certificate shall show the respective names and addresses of the seller and the buyer, the nature of the claim of exemption and such other information as may be prescribed by the Borough.

(3) The seller shall remit to the Borough all Certificates of Protest delivered to him as promptly as possible, but in any event no later than 30 days after delivery of a Certificate to him, together with any additional information which the seller believes to be pertinent to the determination of the issue.

(4) The Chairman will rule on each protest and send to the buyer a notice that his claim has been allowed or disallowed, within 30 days of receipt of the Certificate by the Borough. If the claim has been allowed, a refund will be remitted with the notice.

(5) In the event that the claim is disallowed, the buyer may, within 30 days, request that the claim be referred to the Borough Attorney for review and then to the chairman for reconsideration. The decision of the chairman on reconsideration shall be rendered in writing and shall be final, subject to judicial review where applicable.

Sec. 25.10.070. REGISTRATION OF BUYERS ENTITLED TO EXEMPTION.

(1) The Borough may require by regulation that the seller collect the tax on sales from any class of buyer allegedly exempt under Section 10.020 (3) or 10.020 (8), unless the



buyer is registered under paragraph (2) of this Section. An unregistered buyer may file a Certificate of Protest under Section 10.065.

(2) The Borough may by regulation require that any class of buyer exempt under Section 10.020 (3) and 10.020 (8) register with the Borough as an exempted buyer to avoid payment of tax. Registration shall be upon forms provided by the Borough and shall include a brief statement of the reason for exemption and such other information as the Borough may require. Upon registration, the buyer shall be issued a Certificate or Certificates of Exemption which the buyer must show seller to avoid initial payment of the sales tax.

Sec. 25.10.075. CONFIDENTIAL MATERIAL.

(1) Returns filed with the Borough for the purpose of complying with the terms of this Chapter and all data obtained from such returns are confidential, and such returns and data obtained therefrom shall be kept from inspection by all private persons except as necessary to investigate and prosecute violations of this Chapter.

(2) Nothing contained in this Section shall be construed to prohibit the delivery to a person, or his duly authorized representative, of 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 or sellers, nor to prohibit the furnishing of information on a reciprocal basis to other agencies of the State or the United States concerned with the enforcement of tax laws.

Sec. 25.10.080. DUTY TO KEEP BOOKS.

(1) Every seller engaged in activity subject to this Chapter shall keep and preserve suitable records of all sales made by him and such other books or accounts as may be necessary to determine the amount of tax which he is obliged to collect. Every seller shall preserve suitable records of sales for a period of four years from the date of the return reporting such sales, and shall preserve for a period of four 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 obligated to collect under this Chapter.

(2) For the purpose of ascertaining the correctness of a return, or for the purpose of determining the amount of tax collected or which should have been collected by any seller, the chairman may hold investigations and hearings concerning any matters covered by this Chapter and may examine any relevant books, papers, records, or memoranda of any seller and may require the attendance of any seller or buyer, or any officer or employee of a seller or buyer at the hearing.

Sec. 25.10.085. OMISSIONS AND CIVIL PENALTIES.

(1) Failure to Obtain Certificate. A seller who is obliged to obtain a Certificate of Registration but fails to do so within the time prescribed herein is subject to civil penalty of five times the amount of any tax due. A seller who, after notice, continues to conduct business without obtaining a Certificate is subject to a penalty of ten times the amount of any tax due.

(2) Failure to file a return. A seller who fails to file a return as required by this Chapter or who fails to remit taxes collected by him, or which should have been collected by him, is subject to a penalty of five percent of the taxes collected, or which should have been collected, per month to a maximum of the higher of 25% or \$300.00. The filing of an incomplete return is the equivalent of filing no return.

(3) Falsification. Falsification or knowing misrepresentation of any record required hereunder subjects the person making such falsification or misrepresentation to a penalty of 100 times any tax due or lost because of such falsification or misrepresentation to a maximum of \$1000.00.

(4) Failure to Separately State the Tax. A seller who fails to separately state the tax due in any sales transaction shall be subject to a penalty equal to the amount collected as a tax.

(5) Inspection. The failure of a seller to allow the inspection at reasonable times of records required to be kept by this Chapter subjects the seller to a penalty of three times any deficiency found or estimated to have occurred by the Borough in the tax accounting of the seller.

(6) Estimation. In the event that the Borough is unable to ascertain the tax due to be remitted by a seller by reason of the failure of the seller to keep accurate books, allow inspection, failure to file a return, or falsification of records, the Borough may make an estimate of the tax due based on any information available to it. Notice of the estimate of taxes due shall be furnished the seller and shall become final for the purposes of determining liability of seller to the Borough in 30 days unless the seller earlier files an accurate return, supported by satisfactory records, indicating a lesser liability.

(7) Loss of Records. A seller shall immediately notify the Borough of any fire, theft, or other casualty which would prevent his complying with this Chapter. Such casualty constitutes a defense to any penalty provided in this Chapter, but does not excuse the seller from liability for taxes due. Accidental loss of funds or records is not a defense hereunder.

(8) Maintenance of Suits. Nothing in this Section shall prevent the Borough from filing and maintaining an action to collect any taxes collected or which should have been collected in addition to any penalty assessed.

Sec. 25.10.086. LIEN. The tax, penalty and interest imposed by this Chapter shall constitute a lien in favor of the Borough. The lien arises upon delinquency and continues until the liability for the amount is satisfied or the property is sold at foreclosure sale. The lien is not valid as against a mortgagee, pledgee, purchaser or judgment creditor until notice of the lien is filed in the office of the Recorder in which the property is located in the manner provided for Federal Tax Liens in AS 43.10.090 - 43.10.150. AS 43.10.090 - 43.10.150 apply to the tax liens arising under this ordinance. These sections of state law are herewith adopted by reference the same as if set forth in full herein.

Sec. 25.10.090. EXTENSIONS. For good cause shown, the Borough may grant extensions on any time limitation described in this Chapter. Any application for an extension must be filed before the date specified as the original time limitation.

Sec. 25.10.095. CRIMINAL PENALTIES.

(1) Each of the following acts, when intentional, constitutes a misdemeanor and is punishable by imprisonment for up to 30 days and by a fine of up to \$300.00, in addition to any civil penalty assessed:

(a) Failure to obtain a Certificate of Registration;

(b) Failure to file a return or failure to remit taxes due;

(c) Falsification or misrepresentation of any record filed with the Borough hereunder or required to be kept hereby, if used to mislead Borough tax authorities.

(2) Each act hereunder constitutes a separate offense and each day constitutes a separate offense for continuing crimes or omission or concealment.

**APPENDIX B**

Introduced by: Sales Tax Committee  
Date: Oct. 9, 1984  
Hearing: Jan. 22, 1985  
Vote: 12 Yes, 3 No  
Action: Enacted

KENAI PENINSULA BOROUGH  
ORDINANCE 84-74 (SUBSTITUTE)

PROVIDING AN AMENDED SALES TAX ORDINANCE THROUGH A NEW KPB CHAPTER 5.18 AND REPEALING THE CURRENT CHAPTER 5.16.

WHEREAS, Chapter 5.16 of the Borough Code outlines the current provisions for levy, collection, and enforcement of the Borough sales tax; and

WHEREAS, the present 5.16 has undergone piecemeal amendments throughout the past decade resulting in a sometimes confusing and redundant sales tax ordinance; and

WHEREAS, the present 5.16 leaves unanswered several important questions as to application and method of enforcement of the Borough sale tax ordinance; and

WHEREAS, in order to obtain the most complete, consistent, and self-explanatory sales tax ordinance possible it is necessary to substantially reorder and rewrite the provisions of the current Chapter 5.16;

NOW, THEREFORE, BE IT ORDAINED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:

Section 1. That Chapter 5.16 of the KPB Code of Ordinances is hereby repealed in its entirety, and a new Chapter 5.18, entitled "Sales Tax" is hereby enacted to read:

5.18

SALES TAX

5.18.010 Levied--Amount. A. There is levied by the Borough a consumer's sales tax of 2% on all retail sales, on all rents, and on all services made or rendered within the borough, measured by the gross sales price of the seller.

B. In addition to the tax levied by the borough, any municipality within the borough may levy a consumer's sales tax as provided by AS 29.53.440 which shall be reported, collected, and enforced according to the terms of this chapter.

5.18.020 Payment by buyer obligatory--Collection and enforcement. The obligation of the tax is upon the buyer. The seller shall collect the tax at the time of payment for the sale, except as provided in Section 5.18.030.

5.18.030 Installment sales--Tax collected when. When a sale is made on an installment basis, the sales tax shall be collected at the time of sale.

5.18.040 Seller--Accountability to borough. All sales taxes collected or which should have been collected pursuant to this chapter are borough moneys for which the seller is at all times accountable to the borough.

5.18.050 Liability for payment--Certificate of protest furnished when--Ruling on claims--Reconsideration procedure. A. A seller shall determine in the first instance whether a retail sale is exempt under this chapter. However, if a seller incorrectly determines that a sale is exempt, then the seller is liable to the borough for the tax, just as if he had collected it.

B. In the event that the seller determines that a transaction is not exempt, but the buyer believes the transaction to be exempt, then the seller shall collect the tax and furnish to the buyer a form of certificate of protest, supplied by the borough, which shall be filled out by the buyer and delivered to the borough. The certificate shall show the respective names and addresses of the seller and the buyer, the nature of the claim of exemption and such other information as may be prescribed by the borough.

C. The seller shall remit to the borough all certificates of protest delivered to him as promptly as possible, but in any event no later than 30 days after delivery of a certificate to him, together with any additional information which the seller believes to be pertinent to the determination of the issue.

D. The mayor will rule on each protest and send to the buyer a notice that his claim has been allowed or disallowed within 30 days of receipt of the certificate by the borough. If the claim has been allowed, a refund will be remitted with the notice.

E. In the event that the claim is disallowed, the buyer may, within 30 days, request that the claim be referred to the borough attorney for review and then to the mayor for reconsideration. The decision of the mayor on reconsideration shall be rendered in writing and shall be final, subject to judicial review where applicable.

5.18.055 Computation--Maximum tax. The tax shall be applied only to the first \$500 of each separate sale, rent or service transaction.

A. The payment of rent, whether for real or personal property, in excess of \$500 and for more than one month shall be treated as several separate transactions covering the rental/ lease for one month each.



B. A transaction involving payment for services or personal property to be rendered or delivered over a period of more than one month for a consideration in excess of \$500 shall be treated as several separate transactions occurring one each month over the period of time that the service or property is rendered or delivered.

C. The purchase of building construction materials on a single vendor job account number and billed on a monthly basis are subject to application of the tax on a maximum of \$500 of each monthly billing.

D. Services provided on account and billed to the customer on a monthly basis are subject to application of the tax on a maximum of \$500 of each monthly billing, per account.

5.18.060 Schedule of tax--Computation of coin-operated machine revenue. A. The tax to be added to the sale price, charge or rental shall be 2% of the sale price, charge or rental rounded off to the nearest cent by eliminating any fraction of one-half cent or less and by increasing any fraction over one-half percent to the next highest cent. Each seller shall be furnished the schedule of tax payable on each taxable amount from one cent to one hundred dollars. Any one sale of items separately priced shall be taxed upon the aggregate amount.

B. The revenue from a coin-operated machine shall be treated in gross on a monthly basis, without reference to the amount paid on a particular transaction.

5.18.070 Seller--Retaining portion of tax permitted when. If a return is filed with the taxes remitted within the time allowed, the seller may retain 5% of the tax collected, to a maximum of \$1,000 per quarter, to cover his costs of administration of the tax, except in instances where an extension of time to file and remit has been granted under KPB 5.18.110.

5.18.080 Seller--Payment of taxes and filing of returns required--Contents of return. A. Taxes collected or which should have been collected by a seller hereunder shall be paid to the borough at the expiration of the reporting period established for that seller.

B. Every seller required by this chapter to collect sales tax shall file with the borough upon forms furnished by it a return setting forth:

1. Gross sales;
2. The nontaxable portion separately stating the amount of sales revenue attributable to each class of exemption;
3. Computation of taxes to be remitted;

4. Such other information as may be required by regulation.

C. The completed return, together with remittance in full for the amount of the tax due, must be transmitted to the borough on or before the first business day following the last day of the month following the end of each reporting period.

D. A transmittal of taxes made by mail shall not be considered delinquent if the postmark on the envelope indicates the date of mailing to be on or before the first business day following the last day of the month following the end of the reporting period.

5.18.085 Returns--Schedule for filing. The mayor shall designate in writing the schedule for filing periodic sales tax returns for each seller which shall be on a tri-monthly basis, except as follows:

1. The mayor may provide that a business which operates on a short term or seasonal basis may be given the option to file returns monthly for months during which there are actual sales of \$100 or more, and not file for months in which taxable sales are less than \$100. Sellers electing this option shall be required to file an annual return covering all months for which a monthly filing was not required.
2. A seller who fails to file a tax return or who has been late in filing for two or more quarters may be required by the mayor to file returns and remit taxes on a monthly basis.

5.18.090 Seller-Return filing required when. Any person who filed or should have filed a sales tax return for the prior reporting period shall file a return, even though no tax may be due. This return shall show why no tax is due, and, if the business is sold, the name and address of the person to whom it was sold, and the date of sale.

5.18.100 Seller--Final return required when--Responsibility of purchaser or successor--Publishing names of businesses assumed to have ceased conducting business. A. Fifteen days prior to the sale, lease, or other disposition, or change in ownership interest, other than a transfer of outstanding shares of stock, or upon incorporation of any business registered pursuant to this chapter, the business seller shall file a notice with the Borough together with an informational return identifying the name and address of each person or entity involved in the change, the nature of the change, and the effective date of the change.

B. Any purchaser acquiring an ongoing business or the accounts receivable of a business shall be liable for the payment of taxes, penalties and interest accruing and unpaid to the



borough on account of the operation of the business by the former owner, owners or assigns; provided, however, that the borough shall first make all reasonable efforts to collect the tax from the person who owned the business at the time the liability was incurred.

C. A prospective lessee or purchaser of any business or business interest may inquire as the obligation or tax status of any business upon presenting to the mayor a Release of Tax Information Request signed by the registered owner of the business. The liability of a purchaser or other entity for outstanding taxes, penalties and interest accrued and unpaid by the former owner shall be limited to an amount stated in writing by the borough in response to a Release of Information Request. The Borough shall have 15 days to respond to the request.

5.18.110 Extensions of time--Application required when. For good cause shown, the mayor may grant extensions on any time limitation described in this chapter upon application filed on or before the date specified as the original time limitation. The 5% credit will not be allowed where extension is granted.

5.18.120 Seller--Certificate of registration required when. All sellers shall file with the borough an application for a certificate of registration, on a form provided by the borough, not more than 10 days after the date of commencing business, or the opening of an additional place of business.

5.18.130 Certificate of registration--Prerequisites--  
Issuance--Display required. A. Upon receipt of a properly executed application indicating that all returns required to have been filed pursuant to this chapter by the applicant as seller or agent of any seller have been filed, and that all sales taxes required to have been remitted to the borough have been paid, the mayor will issue without charge to the seller a certificate of registration. The certificate shall state the address of the place of business to which it is applicable, the applicable State of Alaska business license number, if any, and shall authorize the seller to collect the tax.

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.

B. Where the application or borough records indicate that applicant is currently in violation of filing and remittance requirements of the borough sales tax provisions, the mayor may deny the application for registration until such time as applicant enters a binding agreement setting out a method by which full compliance will be attained.

C. Before issuing a certificate of registration, the mayor may require an applicant with no permanent place of business

within the borough to post a cash bond, of an amount deemed sufficient to insure the full and prompt payment of taxes to be collected under such certificate when in his judgment it is in the interest of the borough to do so. Failure to file forfeits the bond, but does not waive the rights of the borough to collect additional amounts due.

5.18.140 Certificate of registration--Nontransferable--Surrender required when. The certificate of registration is nonassignable and nontransferable and must be surrendered to the mayor by the seller to whom it was issued upon his ceasing to do business within the taxing jurisdiction named therein. If there is a change in the form of organization such as from a single proprietorship to a partnership or a corporation, the admission or withdrawal of a general partner, or a change in seller's agent for service, the seller making such change shall surrender his old certificate to the mayor for cancellation. The successor seller is required to file a new application for a certificate of registration. Upon receipt of such application, properly executed, as provided for by KPB 5.18.130, a new certificate will be issued to such successor seller.

5.18.150 Resale cards--Expiration. The borough shall issue resale cards to be utilized in purchases for resale which are exempt from sales tax due to the exception provided by KPB 5.18.255(E)(5) governing resale exemption. Resale cards shall be valid for a period of one year and shall be reissued annually by the borough upon determination that seller has established compliance with the regulations adopted by the assembly setting out criteria for issuance. Resale cards shall be surrendered when holder ceases doing business. Misuse of a resale card is a violation subject to penalty under KPB 5.18.300(5).

5.18.160 Seller--Restrictions on imposition of tax. A seller shall not advertise, hold out, or state to the public or to any buyer, directly or indirectly, that the tax payment or any part thereof imposed by this chapter will be assumed or absorbed by the seller, or that it will not be added to the sales price or that it will be refunded or assumed, in whole or in part. 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.

5.18.180 Returns--Confidentiality required--Exceptions. A. Returns which include remittance in full of all sales taxes due and which are timely and properly filed with the borough for the purposes of complying with the terms of this chapter and all data obtained from such returns are confidential, and such returns and data obtained therefrom shall be kept from inspection by all private persons. Nothing contained in this section shall be construed to prohibit the audit and investigation by the borough of any return filed under this chapter or of the books and

records of any seller required to file any return under this chapter.

B. Nothing contained in this section shall be construed to prohibit the delivery to a person, or his duly authorized representative, of 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 or 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.

C. Nothing contained in this section shall be construed to prohibit the disclosure through enforcement action or proceedings or by public inspection or publication of the name, balance due, and current status of payments of any seller or 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 30 days after written notice is posted by regular mail to the address of record.

5.18.190 Seller--Recordkeeping required--Investigation authority. A. Every seller engaged in activity subject to this chapter shall keep and preserve suitable records of all sales made by him and such other books or accounts as may be necessary to determine the amount of tax which he is obliged to collect. Every seller shall preserve suitable records of sales for a period of six years from the date of the return reporting such sales, and shall preserve for a period of six 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.

B. For the purpose of ascertaining the correctness of a return, or for the purpose of determining the amount of tax collected or which should have been collected by any seller, the mayor may hold investigations and hearings concerning any matters covered by this chapter. The mayor may examine any relevant books, papers, records, or memoranda of any seller, may require the attendance of any seller or buyer, or any officer or employee of a seller or buyer at the hearing, and may require production of all relevant business records.

5.18.200 Seller--Consent to inspection of certain returns required. A seller required to register for sales tax collection under this chapter consents to the inspection of his Federal income tax returns in order to facilitate the accomplishment of the provisions and objectives of this chapter.

5.18.210 Regulation promulgation authority--Informal rulings. A. The mayor shall have the power to adopt appropriate regulations, procedures, and forms as necessary to facilitate and enforce proper registration, reporting, and collection of the tax

herein imposed, and providing for the implementation and interpretation of this chapter. Regulations establishing procedures for rulemaking and interpretation are subject to assembly approval.

B. Should a taxpayer under this chapter or a seller obliged to collect the tax be in doubt as to the application of the chapter to an actual situation facing him or about to face him, he may apply to the mayor for a ruling on the issue. Rulings having general application shall be promulgated as regulations.

5.18.220 Index of certificates--Public inspection and publication. A. The mayor or his designee shall maintain in a public place within the borough administration building a current index alphabetized by name of business and name of owner, updated not less than quarterly, of all current certificates of registration, for public inspection.

B. As soon as practicable after the first day of January of each year, but not later than the first day of June each year, the mayor shall publish in a newspaper of general or customary circulation in the appropriate area of the borough, a list of all businesses with a then current certificate of registration.

5.18.230 Publishing names of businesses assumed to have ceased conducting business. Sellers and agents of sellers who have not filed returns for two consecutive reporting periods shall be assumed to have ceased conducting business and shall be removed from the roll of active businesses. As soon as practicable after the expiration of 30 days following the end of the second consecutive reporting period in which a return is not filed, the mayor shall publish in a newspaper in general or customary circulation in the appropriate area of the borough, a list of all sellers and agents of sellers who have not so filed and are therefore assumed to no longer be conducting business in the Kenai Peninsula Borough. Nothing contained in this section shall be construed to prohibit additional publications in such other newspapers as the mayor shall authorize. Continued operation of a business removed from the active roll by this section after 30 days following publication shall raise a liability for payment of a mandatory reinstatement fee of \$100.

5.18.240 Proceeds--Disposition. A. The net proceeds from the taxes collected by the borough pursuant to this chapter shall be used exclusively for borough school purposes.

B. The net proceeds from the taxes collected for any city shall be promptly paid over to the appropriate city.

5.18.250 Exempted buyer--Registration--Certificate of exemption granted when. Any class of buyer exempt under Section 5.18.260(C) shall register with the borough as an exempted buyer to avoid payment of tax. Registration shall be upon forms



provided by the borough and shall include a brief statement of the reason for exemption and such other information as the borough may require. Upon registration, the buyer shall be issued a certificate of exemption which the buyer must show seller to utilize the exemption.

5.18.255 Definitions. When not clearly otherwise indicated by the context, the following words and phrases, as used in this chapter, have the following meanings:

A. "Buyer" includes persons who are purchasers of personal property, rental space or services.

B. "Mayor" or "borough mayor" means the mayor of the Kenai Peninsula Borough or his designee.

C. "Coin-operated machine" means a slot machine, marble machine, jukebox, merchandise vending machine, laundry, dry-cleaning and any other service-dispensing machine or amusement device of any kind which requires the insertion of a coin to make it operative.

D. "Person" includes individuals and every person recognized in law and every group of persons who act as a unit.

E. "Sale" or "retail sale" includes:

1. Every sale or exchange of services, with the exception of sales of intermediate services to a business the charge for which will be passed directly by that business to a specific buyer;
2. Every rental or lease of real or personal property; where personal property is rented from a dealer in a taxable transaction and the renter is then directly reimbursed by a third party for the exact rental expense, without markup, then that reimbursement is not a rental or lease subject to the borough sales tax;
3. Every sale of the use or play of a coin-operated machine;
4. Installment, credit and conditional sales;
5. Every sale of use or title in tangible personal property, regardless of quantity or price, whether sold by coin-operated machine or otherwise, except:
  - a. Sales to a wholesale or retail dealer in the property sold, for the purpose of resale by him;

b. Sale of personal property as raw material to a person engaged in manufacturing for sale, where the property sold is consumed in the manufacturing process of, or becomes an ingredient or component part of a product manufactured for sale by the manufacturer. Building contractors are manufacturers for purposes of this section;

6. The place of delivery of the goods or services is the place of sale. Sellers of service which lack a definite place of delivery may, upon prior Borough approval, collect the tax based upon the office location of the business selling such services..

F. "Time of sale" for installment sales is the time at which the initial payment is made.

G. "Sales price" means consideration paid by the buyer whether money, credit, rights or other property, expressed in terms of money equal to the fair market value of the consideration, and including delivery or installation costs, taxes, or any other expenses whatsoever, measured by the gross sales price of the seller.

H. "Seller" includes persons who are vendors of property, persons furnishing services, the lessors of rental space or goods, and all persons making sales, including consignees and including persons conducting garage or moving sales on more than 14 days during any calendar year and including persons who conduct garage or moving sales where items will be sold for a commission or fee. Notwithstanding any other provisions of this chapter, "seller" shall include all persons engaging in sales of fireworks regardless of the length of time, duration or volume of such sales in any calendar year.

I. "Services" includes all services of every manner and description which are performed or furnished for compensation, including but not limited to:

1. Professional services;
2. Services in which a product or sale or property may be involved, including personal property made to order;
3. Utilities and utility services not constituting a sale of personal property, including sewer, water, solid waste collection or disposal, electrical, and telephone services and repair;
4. The sale of transportation services;

5. Services rendered for compensation by any person who furnishes any such services in the course of his trade, business or occupation, including all services rendered for commission;
6. Any other services, including advertising, maintenance, recreation, amusement and craftsman services;
7. Services rendered by an employee to his/her employer are not subject to borough sales tax.

J. "Quarter" means tri-monthly period established by the Finance Director.

5.18.260 Exemptions. The following classes of retail sales, services and rentals are exempt:

- A. Isolated sales or rentals of property or services.
- B. Hospital services and medical services performed by licensed medical doctors, dentists, osteopaths, optometrists, chiropractors, state-licensed private nurses, speech and hearing pathologists, physical therapists, and retail sales of medicinal preparations, drugs or appliances for which a written prescription is required from one of the foregoing.
- C. Retail sales, services and rentals to religious and charitable organizations in the conduct of their regular religious and charitable functions and activities as defined by the revenue laws of the United States.
- D. Subscriptions to newspapers and periodicals.
- E. Retail sales, services and rentals to the United States, the State of Alaska, or any instrumentality or political subdivision of either.
- F. Dues or fees to clubs, labor unions, and fraternal organizations.
- G. Sales of animal food, seed, plants and fertilizers to farmers using such commodities to produce goods for sale.
- H. Retail sales of real property. Services performed by a real estate broker or agent are not exempt under this section.
- I. Retail sales, rents or services which the borough is prohibited from taxing by the Constitution or laws of the United States or of the State of Alaska.

J. Services performed by morticians licensed under AS 08.44.010, and retail sales of funeral supplies by morticians and municipalities.

K. Receipts of nonprofit schools and student organizations within the schools for extracurricular activities or events.

L. Financial service transactions. For purposes of this ordinance, financial service transactions are limited to: Deposit account services; loan transaction fees; transactions relating to the sale or exchange of currency or securities; transactions for conversion of negotiable instruments; safe deposit services and escrow collection services.

M. Retail sales, services and rentals by or to organizations not organized for business or profitmaking purposes, and which are engaged in the provision of charitable, educational, recreational, rehabilitative, hospital, cemetery, or other charitable purposes open to all interested members of the community without discrimination. In no event shall this exemption apply to sales of liquor or food through the course of regularly-conducted operations. No exemption certificate shall be approved by the mayor until the applicant has produced suitable evidence that it is currently incorporated by the State of Alaska as a nonprofit corporation and that it has received tax-exempt status from the United States Internal Revenue Service.

N. Sale of passenger seat tickets by a commercial airline. Air charter sales are not exempt.

O. Freight hauling services.

P. Title insurance premiums.

5.18.290 Unlawful acts--Civil penalties--Loss of records.

A. Failure to obtain certificate of registration: A seller who is required to obtain a certificate of registration, but fails to do so within the time prescribed, is subject to a civil penalty equal to 50% of the amount of any tax found to be due in addition to payment of the actual amount of taxes.

B. Failure to file return: A seller who fails to file a return within the time required by this chapter, or who fails to remit all taxes collected by him, or later found to be due, is subject to a civil penalty of 5% per month of the amount of taxes found to be due, to a maximum of 25%. The filing of an incomplete return, or the failure to remit all taxes, is the equivalent of filing no return. All taxes due but not paid within the time required by this chapter shall accrue and be assessed an interest charge at the statutory rate.



C. Estimation of tax due: In the event that the borough is unable to ascertain the amount of tax due from a seller because the seller has failed to keep accurate records, to allow inspection of records, has failed to file a return or has falsified records, then the borough shall estimate the tax due based upon any information available to it. The estimate shall become final for the purpose of determining liability of the seller in 30 days unless the seller earlier files an accurate auditable return indicating a lesser liability or unless a greater liability is shown upon audit.

D. Penalties provided by city sales tax ordinances shall be enforced by the borough in the same manner as the penalties imposed by this chapter.

E. Maintenance of suits: Nothing in this chapter shall be construed as preventing the borough from filing and maintaining an action at law to recover any taxes, penalties, and interest due from a seller.

F. A seller shall immediately notify the borough of any fire, theft or other casualty which prevents his compliance with this chapter. The casualty constitutes a defense to any penalty provided in this chapter, but does not excuse the seller from liability for taxes due. Accidental loss of funds or records is not a defense against the penalties of this section.

G. The mayor may enter an agreement secured by a Confession of Judgment or a Deed of Trust on property with sufficient equity to cover the liability for delinquent sales taxes, on such payment terms as the administration finds reasonable provided that the terms shall require the full payment of all obligations of the seller within a maximum period of 24 months from entry of such an agreement.

5.18.300 Unlawful acts--Criminal penalties imposed when.

A. Each of the following acts, when intentional, constitutes a misdemeanor and is punishable by imprisonment for up to 30 days, and by a fine not to exceed \$500, plus costs of prosecution, in addition to any civil penalty assessed:

1. Failure to obtain a certificate of registration after notice by mail to the seller's last known address;
2. Failure to file two or more returns in any one calendar year after notice from the borough to the seller's last registered address;
3. Falsification or misrepresentation of any record filed with the borough hereunder or required to be kept hereby, if used to mislead borough tax authorities;

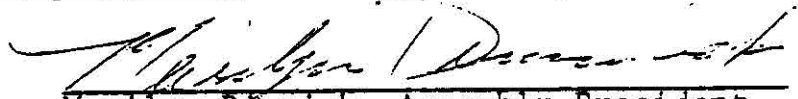
4. Refusal of a seller to allow inspection at reasonable times of records required to be kept by this chapter; and

5. Misuse of resale or exemption cards.

B. Each act prohibited by subsection A of this section constitutes a separate offense.

Section 2. That this ordinance shall take effect on July 1, 1985.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH ON THIS 22nd DAY OF January, 1985.

  
Marilyn Dimmick, Assembly President

ATTEST:

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Acting Borough Clerk