



City of Homer

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Memorandum

Agenda Changes/Supplemental Packet

TO: MAYOR CASTNER AND HOMER CITY COUNCIL
FROM: MELISSA JACOBSEN, MMC, CITY CLERK
DATE: FEBRUARY 10, 2020
SUBJECT: AGENDA CHANGES AND SUPPLEMENTAL PACKET

CONSENT AGENDA

Resolution 20-017, A Resolution of the City Council of Homer, Alaska, Delegating Authority to Implement, Administer and Enforce the Provisions of the Uniform Code to the Alaska Intergovernmental Remote Sales Tax Commission and Supporting Adoption of Kenai Peninsula Borough Ordinance 2020-03. City Manager.

KPB Ordinance 2020-03 as backup

Page 3

ORDINANCES

Ordinance 19-47, An Ordinance of the City Council of Homer, Alaska, Repealing Homer City Code 2.76 Economic Development Advisory Commission, Requiring Economic Finding to Accompany Recommendations from City Commission, Establishing an Official Mayoral Appointment to the Kenai Peninsula Economic Development District Board of Directors City of Homer Seat and Encouraging Appointment of Task Forces to Address Timely Community Issues, and Amending Homer City Code 2.58.020 Creation of City Boards and Commissions to Delete (e) Economic Development Advisory Commission. Lord. Introduction October 14, 2019 Postponed. Introduction February 10, 2020, Public Hearing and Second Reading February 24, 2020.

Ordinance 19-47(S), An Ordinance of the City Council of Homer, Alaska, Repealing Homer City Code 2.76 Economic Development Advisory Commission, Requiring Economic Finding to Accompany Recommendations from City Commission, Establishing an Official Mayoral Appointment to the Kenai Peninsula Economic Development District Board of Directors City of Homer Seat and ~~Encouraging Appointment of Task Forces to Address Timely Community Issues~~ **Creating an Annual Process for the City to Review and take Action on Prioritized Economic Development Issues**, and Amending Homer City Code 2.58.020 Creation of City Boards and Commissions to Delete (e) Economic Development Advisory Commission. Lord

Ordinance 19-47(S-2), An Ordinance of the City Council of Homer, Alaska, Repealing Homer City Code 2.76 Economic Development Advisory Commission, Requiring Economic Finding to Accompany Recommendations from City Commission, Establishing an Official Mayoral Appointment to the Kenai Peninsula Economic Development District Board of Directors City of Homer Seat and ~~Encouraging Appointment of Task Forces to Address Timely Community Issues~~ **Creating an Annual Process for the City to Review and take Action on Prioritized Economic Development**

Issues, and Amending Homer City Code 2.58.020 Creation of City Boards and Commissions to Delete (e) Economic Development Advisory Commission. Lord/**Venuti**. Page 31

ANNOUNCEMENTS / PRESENTATIONS / REPORTS

Planning Commission Report – Medical Zoning District neighborhood meeting mailer Page 35

NEW BUSINESS

Memorandum 20-025 from Councilmember Aderhold Re: City of Homer Comments on the Alaska We Want

March 11, 2019 Letter to Governor from Homer City Council RE: City of Homer Municipal Impact Statement as backup and Written Public Comments. Page 41

Introduced by: Cooper, Smalley
Date: 01/21/20
Hearing: 02/25/20
Action:
Vote:

**KENAI PENINSULA BOROUGH
ORDINANCE 2020-03**

**AN ORDINANCE AMENDING KPB 5.18 SALES TAX CODE AND ENACTING KPB
5.19 UNIFORM REMOTE SELLER SALES TAX CODE**

WHEREAS, the inability to effectively collect sales tax on sales of personal property, products or services transferred or delivered into Alaska by sellers who do not have a physical presence in the borough (“remote seller”) is eroding the sales tax base of Alaska communities and resulting in revenue losses that are causing imminent harm to residents through the loss of critical funding for local education; and

WHEREAS, the harm from the loss of revenue is especially problematic in Alaska because the state has no broad-based sales tax, and sales tax revenues are essential in funding the provision of services by local governments; and

WHEREAS, the failure to collect tax on remote sales creates artificial market distortions and competitive advantages for remote sellers by perpetuating tax shelters for businesses that limit their physical presence in the state or its municipalities but still sell goods and services to local consumers without collecting sales tax, something that becomes easier and more prevalent as technology continues to advance; and

WHEREAS, the structural advantages for remote sellers, including the absence of point-of-sale tax collection, combined with the general growth of online retail sales, means that the erosion of the sales tax base is a growing problem that will only worsen in the near future if the borough is not able to legally collect remote seller sales tax within the framework of current United States Supreme Court case law; and

WHEREAS, the failure to effectively collect sales tax on remote or internet-based sales results in the creation of incentives for businesses to avoid a physical presence in the borough, resulting in less jobs and increasing the share of taxes paid by those consumers who buy from competitors with a physical presence in the borough; and

WHEREAS, remote sellers who make a substantial number of deliveries into or have large gross revenues from Alaska benefit extensively from the Alaska market, affecting the economy generally, as well as local infrastructure; and

WHEREAS, the recent decision by the United States Supreme Court in *South Dakota v. Wayfair* (“*Wayfair*”) allows for the amendment of the sales tax code to account for remote sellers who do not have a physical presence in the borough, but do have a taxable connection with the borough; and

WHEREAS, the *Wayfair* decision provides guidance that includes the defensibility of a single-level statewide administration of remote sales tax collection and remittance so long as the law is not retroactive in its application and provides a safe harbor to sellers who have limited sales or transactions in Alaska; and

WHEREAS, in order to implement a single-level statewide sales tax administration, numerous local taxing jurisdictions within Alaska worked together to establish an intergovernmental entity known as the Alaska Remote Seller Sales Tax Commission (the “Commission”); and

WHEREAS, currently 23 municipalities in Alaska are members of the Commission; and

WHEREAS, the function and powers of the Commission are set forth in the Alaska Intergovernmental Remote Seller Sales Tax Agreement (the “Agreement”), a cooperative agreement between Commission members; and

WHEREAS, as part of the process to implement a remote seller sales tax code and pursuant to Resolution 2019-056, the borough signed the Agreement and is currently a full member of the Commission; and

WHEREAS, five of the incorporated cities within the borough are members of the Commission; and

WHEREAS, representatives from the borough, the City of Soldotna, and the City of Kenai also currently hold three of the seven Board of Director seats on the Commission; and

WHEREAS, under the terms of the Agreement, in order to maintain membership in the Commission, local governments must enact the Uniform Remote Seller Sales Tax Code (“Uniform Code”) as adopted by the Commission’s Board of Directors;

WHEREAS, the Board of Directors adopted the Uniform Code at its meeting on January 6, 2020; and

WHEREAS, the Uniform Code will govern the collection and remittance of municipal sales tax applicable to remote or internet-based sales; and

WHEREAS, the purpose of the Uniform Code is to comply with guidance in *Wayfair* by providing statewide threshold criteria, streamlined single-level tax administration for remote sellers, and no retroactive application; and

WHEREAS, the Uniform Code will provide for streamlined remote sales tax collection and remittance process which is necessary to avoid claims that local municipal tax unduly burdens interstate sellers; and

WHEREAS, this ordinance will adopt the Uniform Code, amend current borough sales tax code for consistency, and authorize the Commission to administer the remote sales tax collection and remittance for the borough; and

WHEREAS, this is the culmination of a process that began in June of 2019 and is the last step before municipal tax collected by remote sellers can be remitted to the borough through the Commission; and

WHEREAS, in light of the *Wayfair* decision, failure to adopt a uniform, streamlined, remote seller sales tax code will jeopardize the ability of the borough and its cities to collect tax on remote sales;

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

SECTION 1. That KPB 5.18.450(A) is hereby amended as follows:

5.18.450. - Tax jurisdiction Point of Taxation.

A. The rate of tax to be added to the sale price is based on the place of sale. The place of sale of goods and merchandise is the location of the [RETAIL OUTLET] physical presence at which or from which delivery was made. This provision applies to goods delivered to buyers within the borough and to goods delivered to buyers outside the borough but within the state of Alaska. If the invoice includes a charge for installation, then the place of the sale for the goods and service is the retail outlet at which or from which delivery was made. When goods are delivered into the borough from a point outside of the borough and the seller maintains an ongoing physical presence in the borough, then the location of the seller's in-borough presence will determine the place of sale. [IF A SELLER HAS NO ONGOING PHYSICAL PRESENCE IN THE BOROUGH BUT HAS ESTABLISHED NEXUS WITH THE BOROUGH, THE POINT OF DELIVERY WILL DETERMINE THE PLACE OF SALE. IF THE SELLER HAS NO ONGOING PHYSICAL PRESENCE IN, OR NEXUS WITH, THE BOROUGH THE SALE IS NOT SUBJECT TO THE BOROUGH SALES TAX. FOR PURPOSES OF THIS SECTION THE FOLLOWING TERMS ARE DEFINED AS SHOWN BELOW:

1. "NEXUS" MEANS THE SELLER HAS ESTABLISHED A TAXABLE CONNECTION WITHIN THE BOROUGH BY USE OF MARKETING TECHNIQUES, SUCH AS DIRECTED ADVERTISING IN THE BOROUGH VIA TELEPHONE OR INTERNET, OR DOOR-TO-DOOR SALES WITHIN THE BOROUGH, OR BY USE OF CONTRACT WORKERS OR CONTRACT OR COMMISSION AGENTS OR BUSINESSES, WHICH ARE ASSOCIATED WITH THE SELLER'S EFFORTS TO ESTABLISH OR MAINTAIN A MARKET FOR ITS GOODS OR SERVICES, DELIVER THOSE GOODS OR SERVICES, OR PROVIDE WARRANTY OR OTHER REPAIR OR RETURN SERVICES IN THE BOROUGH.

2. THE "POINT OF DELIVERY" WHERE THERE IS NO ONGOING PHYSICAL PRESENCE IN THE BOROUGH IS THE PLACE WHERE PHYSICAL POSSESSION OF THE GOODS IS TRANSFERRED TO THE CUSTOMER.]

...

SECTION 2. That KPB 5.18.680 is hereby enacted as follows:

5.18.680 Uniform Remote Seller Sales Tax Code

Sellers with no physical presence in the borough that have remote or internet-based sales in the borough and sellers with a physical presence in the borough that have remote or internet-based sales within other taxing jurisdictions in Alaska are subject to KPB 5.19 instead of KPB 5.18.

SECTION 3. That KPB 5.19 is enacted as follows:

KPB 5.19. Uniform Remote Seller Sales Tax Code

5.19.010. Interpretation.

- A. In order to prevent evasion of the sales taxes and to aid in its administration, it is presumed that all sales and services by a person or entity engaging in business are subject to the sales tax.
- B. The application of the tax levied under this Code shall be broadly construed and shall favor inclusion rather than exclusion.
- C. Exemptions from the tax levied under this Code or from the taxing jurisdiction shall be narrowly construed against the claimant and allowed only when such exemption clearly falls within an exemption defined in this Code or the taxing jurisdiction's Code.
- D. The scope of this Code shall apply to remote sellers or marketplace facilitators, delivering products or services to Member municipalities adopting this Code, within the state of Alaska.

5.19.020. Title to Collected Sales Tax.

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

5.19.030. Imposition – Rate.

- A. To the fullest extent permitted by law, a sales tax is levied and assessed on all remote sales where delivery is made within the local taxing jurisdiction(s) that is a Member, within the state of Alaska.

- B. The applicable tax shall be added to the sales price.
- C. The tax rate added to the sale price shall be the tax rate for the taxing jurisdiction(s) where the property or product is sold, or service that was rendered is received, and based on the date the property or product was sold or the date the service rendered was received.
- D. An Address and Tax Rate Database will be made available to remote sellers and marketplace facilitators, indicating the appropriate tax rate to be applied.
- E. The tax assessed shall be consistent with relevant jurisdictional tax caps, single unit sales, and exemptions.
- F. When a sale is made on an installment basis, the applicable sales tax shall be collected at each payment, calculated at the sales tax rate in effect, and with the cap applied, at the time of the original sale or the date the service is rendered, based on the local jurisdictions' Code(s).
- G. When a sales transaction involves placement of a single order with multiple deliveries made at different points in time that are separately invoiced, the applicable sales tax shall be collected on each separately invoiced delivery, calculated at the sales tax rate in effect, and with the cap applied, at the time of the original sale or the date the service is rendered.

5.19.040. Obligation to Collect Tax - Threshold Criteria.

- A. Any remote seller or marketplace facilitator must collect and remit sales tax in compliance with all applicable procedures and requirements of law, provided the remote seller or marketplace facilitator has met one of the following Threshold Criteria ("Threshold Criteria") in the previous calendar year:
 - 1. The remote seller's statewide gross sales, including the seller's marketplace facilitator's statewide gross sales, from the sale(s) of property, products or services delivered into the state meets or exceeds one hundred thousand dollars (\$100,000); or
 - 2. The remote seller, including the seller's marketplace facilitator, sold property, products, or services delivered into the state in two hundred (200) or more separate transactions.
- B. For purposes of determining whether the Threshold Criteria are met, remote sellers or marketplace facilitators shall include all gross sales, from all sales of goods, property, products, or services rendered within the state of Alaska.

5.19.050. No Retroactive Application.

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

5.19.060. Payment and Collection.

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

5.19.070. Remote Seller and Marketplace Facilitator Registration Requirement.

- A. If a remote seller's gross statewide sales within the last calendar year meets or exceeds the Threshold Criteria, the remote seller shall register with the Commission. If a marketplace facilitator's gross statewide sales within the last calendar year meets or exceeds the Threshold Criteria, the marketplace facilitator shall register with the Commission.
- B. A remote seller or marketplace facilitator meeting the Threshold Criteria shall apply for a certificate of sales tax registration within thirty (30) calendar days of the effective date of this Code or within thirty (30) calendar days of meeting the Threshold Criteria whichever occurs second. Registration shall be to the Commission on forms prescribed by the Commission.
- C. An extension may be applied for and granted based on criteria established by the Commission, based on evidence produced to describe time necessary to update software or other technical needs, not to exceed ninety (90) days.
- D. Upon receipt of a properly executed application, the Commission shall confirm registration, stating the legal name of the remote seller or marketplace facilitator, the primary address, and the primary sales tax contact name and corresponding title. The failure of the Commission to confirm registration does not relieve the remote seller or marketplace facilitator of its duty to collect and remit sales tax.
- E. Each business entity shall have a sales tax registration under the advertised name.
- F. The sales tax certificate is non-assignable and non-transferable.

5.19.080. Tax Filing Schedule.

- A. All remote sellers or marketplace facilitators subject to this Code shall file a return on a form or in a format prescribed by the Commission and shall pay the tax due.
- B. Filing of sales tax returns are due monthly; quarterly filing is optional upon application and approval by the Commission, consistent with the code of the local jurisdiction.
- C. A remote seller or marketplace facilitator who has filed a sales tax return will be presumed to be making sales in successive periods unless the remote seller or marketplace facilitator

files a return showing a termination or sale of the business in accordance with this Code.

- D. The completed and executed return, together with the remittance in full for the tax due, shall be transmitted to and must be received by the Commission on or before midnight Alaska Standard Time on the due date. Monthly returns are due the last day of the immediate subsequent month. Quarterly returns are due as follows:

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

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

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

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

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

- I. The preparer of the sales tax return shall keep and maintain all documentation supporting any and all claims of exempted sales and purchases. Documentation for exempted sales should include the number of the exemption authorization card presented by the buyer at the time of the purchase; the date of the purchase; the name of the person making the purchase; the organization making the purchase; the total amount of the purchase; and the amount of sales tax exempted. This documentation shall be made available to the Commission upon request. Failure to provide such documentation may invalidate that

portion of the claim of exemption for which no documentation is provided.

5.19.090 Estimated Tax

- A. In the event the Commission is unable to ascertain the tax due from a remote seller or marketplace facilitator by reason of the failure of the remote seller or marketplace facilitator to keep accurate books, allow inspection, or file a return, or by reason of the remote seller or marketplace facilitator filing a false or inaccurate return, the Commission may make an estimate of the tax due based on any evidence in their possession.
- B. Sales taxes may also be estimated, based on any information available, whenever the Commission has reasonable cause to believe that any information on a sales tax return is not accurate.
- C. A remote seller's or marketplace facilitator's tax liability under this Code may be determined and assessed for a period of six (6) years after the date the return was filed or due to be filed with the Commission. No civil action for the collection of such tax may be commenced after the expiration of the six (6) year period except an action for taxes, penalties and interest due from those filing periods that are the subject of a written demand or assessment made within the six (6) year period, unless the remote seller or marketplace facilitator waives the protection of this section.
- D. The Commission shall notify the remote seller or marketplace facilitator, in writing, that the Commission has estimated the amount of sales tax that is due from the remote seller or marketplace facilitator. The Commission shall serve the notice on the remote seller or marketplace facilitator by delivering the notice to the remote seller's or marketplace facilitator's place of business, or by mailing the notice by certified mail, return receipt requested, to the remote seller's or marketplace facilitator's last known mailing address. A remote seller or marketplace facilitator who refuses the certified mail will be considered to have accepted the certified mail for purposes of service.
- E. The Commission's estimate of the amount of sales tax that is due from a remote seller or marketplace facilitator shall become a final determination of the amount that is due unless the remote seller or marketplace facilitator, within thirty (30) calendar days after service of notice of the estimated tax:
1. Files a complete and accurate sales tax return for the delinquent periods supported by satisfactory records and accompanied by a full remittance of all taxes, interest, penalties, costs and other charges due; or
 2. Files a written notice with the Commission appealing the estimated tax amount in accordance with the appeal procedures.
 3. Arguments or reasons for failure to timely file a return and remit taxes collected shall not be considered a valid basis or grounds for granting an appeal. The basis and grounds for granting an appeal of an assessment are:

- a. The identity of the remote seller or marketplace facilitator is in error;
 - b. The amount of the debt is erroneous due to a clerical error (and the nature and extent of the error is specified in the request for appeal); or
 - c. The remote seller or marketplace facilitator disputes the denial of exemption(s) for certain sales.
- F. The amount of sales tax finally determined to be due under this section shall bear interest and penalty from the date that the sales tax originally was due, plus an additional civil penalty of fifty dollars (\$50) for each calendar month or partial month for which the amount of sales tax that is due has been determined.

5.19.100. Returns – Filing Contents.

- A. Every remote seller or marketplace facilitator required by this chapter to collect sales tax shall file with the Commission upon forms furnished by the Commission a return setting forth the following information with totals rounded to the nearest dollar:
- 1. Gross sales;
 - 2. The nontaxable portions separately stating the amount of sales revenue attributable to each class of exemption;
 - 3. Computation of taxes to be remitted;
 - 4. Calculated discount (if applicable) based on taxing jurisdiction’s code; and
 - 5. Such other information as may be required by the Commission.
- B. Each tax return remitted by a remote seller or marketplace facilitator shall be signed (digital or otherwise) by a responsible individual who shall attest to the completeness and accuracy of the information on the tax return.
- C. The Commission reserves the right to reject a filed return for failure to comply with the requirements of this Code for up to three (3) months from the date of filing. The Commission shall give written notice to a remote seller or marketplace facilitator that a return has been rejected, including the reason for the rejection.

5.19.110. Refunds.

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

- B. If the claimant is a remote seller or marketplace facilitator, and the tax refund is owed to any buyer, the remote seller or marketplace facilitator submits, and the Commission approves, a refund plan to all affected buyers.
- C. The Taxing Jurisdictions may allow a buyer to request a refund directly from the Taxing Jurisdiction.

5.19.120. Amended Returns.

- A. A remote seller or marketplace facilitator may file an amended sales tax return, with supporting documentation, and the Commission may accept the amended return, but only in the following circumstances:
 - i. The amended return is filed within one (1) year of the original due date for the return; and
 - ii. The remote seller or marketplace facilitator provides a written justification for requesting approval of the amended return; and
 - iii. The remote seller or marketplace facilitator agrees to submit to an audit upon request of the Commission.
- B. The Commission shall notify the remote seller or marketplace facilitator in writing (by email or otherwise) whether the Commission accepts or rejects an amended return, including the reasons for any rejection.
- C. The Commission may adjust a return for a remote seller or marketplace facilitator if, after investigation, the Commission determines the figure included in the original returns are incorrect; and the Commission adjusts the return within two (2) years of the original due date for the return.
- D. A remote seller or marketplace facilitator may file a supplemental sales tax return, with supporting documentation, and the Commission may accept the supplemental return, but only in the following circumstances:
 - i. The remote seller or marketplace facilitator provides a written justification for requesting approval of the supplemental return; and
 - ii. The remote seller or marketplace facilitator agrees to submit to an audit upon request of the Commission.

5.19.130. Extension of Time to File Tax Return.

Upon written application of a remote seller or marketplace facilitator, stating the reasons therefor, the Commission may extend the time to file a sales tax return but only if the Commission finds each of the following:

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

5.19.140. Audits.

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

- E. The Commission may adjust a return for a remote seller or marketplace facilitator if, after investigation or audit, the Commission determines that the figures included in the original return are incorrect, and that additional sales taxes are due; and the Commission adjusts the return within two (2) years of the original due date for the return.
- F. For the purpose of ascertaining the correctness of a return or the amount of taxes owed when a return has not been filed, the Commission may conduct investigations, hearings and audits and may examine any relevant books, papers, statements, memoranda, records, accounts or other writings of any remote seller or marketplace facilitator at any reasonable hour on the premises of the remote seller or marketplace facilitator and may require the attendance of any officer or employee of the remote seller or marketplace facilitator. Upon written demand by the Commission, the remote seller or marketplace facilitator shall present for examination, in the office of the Commission, such books, papers, statements, memoranda, records, accounts and other written material as may be set out in the demand unless the Commission and the person upon whom the demand is made agree to presentation of such materials at a different place.
- G. The Commission may issue subpoenas to compel attendance or to require production of relevant books, papers, records or memoranda. If any remote seller or marketplace facilitator refuses to obey any such subpoena, the Commissioner may refer the matter to the Commission's attorney for an application to the superior court for an order requiring the remote seller or marketplace facilitator to comply therewith.
- H. Any remote seller, marketplace facilitator, or person engaged in business who is unable or unwilling to submit their records to the Commission shall be required to pay the Commission for all necessary expenses incurred for the examination and inspection of their records maintained outside the Commission.
- I. After the completion of a sales tax audit, the results of the audit will be sent to the business owner's address of record.
- J. In the event the Commission, upon completion of an audit, discovers more than five hundred dollars (\$500) in additional sales tax due from a remote seller or marketplace facilitator resulting from a remote seller's or marketplace facilitator's failure to accurately report sales and taxes due thereupon, the remote seller or marketplace facilitator shall bear responsibility for the full cost of the audit. The audit fee assessment will be in addition to interest and penalties applicable to amounts deemed to be delinquent by the Commission at the time of the conclusion of the audit.

5.19.150. Audit protest.

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

1. The remote seller's or marketplace facilitator's justification for reducing or increasing the estimated tax amount, including any missing sales tax returns for the periods estimated; or
 2. The remote seller's or marketplace facilitator's reasons for challenging the examination or audit results.
- B. In processing the protest, the Commission may hold an informal meeting or hearing with the remote seller or marketplace facilitator, either on its own or upon request of the remote seller or marketplace facilitator, and may also require that the remote seller or marketplace facilitator submit to an audit, if one was not previously conducted or a more formal audit, if an estimation audit was previously performed.
- C. The Commission shall make a final written determination on the remote seller's or marketplace facilitator's protest and mail a copy of the determination to the remote seller or marketplace facilitator.
- D. If a written protest is not filed within thirty (30) days of the date of the notice of estimated tax or the result of a review, audit or examination, then the estimated tax, review, audit or examination result shall be final, due and payable to the Commission.

5.19.160. Penalties and Interest for Late Filing.

- A. A late filing fee of twenty-five dollars (\$25) per month (or quarter) shall be added to all late-filed sales tax reports in addition to interest and penalties.
- B. Delinquent sales tax bear interest at the rate of fifteen percent (15%) per annum until paid.
- C. In addition, delinquent sales tax shall be subject to an additional penalty of 5% per month, or fraction thereof, until a total of 20% of delinquent tax has been reached. The penalty does not bear interest.
- D. Penalties and interest shall be assessed and collected in the same manner as the tax is assessed and collected, and applied first to penalties and interest, second to past due sales tax.
- E. The filing of an incomplete return, or the failure to remit all tax, shall be treated as the filing of no return.
- F. A penalty assessed under this section for the delinquent remittance of sales tax or failure to file a sales tax return may be waived by the Commission, upon written application of the remote seller or marketplace facilitator accompanied by a payment of all delinquent sales tax, interest and penalty otherwise owed by the remote seller or marketplace facilitator, within forty-five (45) calendar days after the date of delinquency. A remote seller or marketplace facilitator may not be granted more than one (1) waiver of penalty

under this subsection in any one calendar year. The Commission shall report such waivers of penalty to the taxing jurisdiction, in writing.

5.19.170. Repayment Plans.

- A. The Commission may agree to enter into a repayment plan with a delinquent remote seller or marketplace facilitator. No repayment plan shall be valid unless agreed to by both parties in writing.
- B. A remote seller or marketplace facilitator shall not be eligible to enter into a repayment plan with the Commission if the remote seller or marketplace facilitator has defaulted on a repayment plan in the previous two (2) calendar years.
- C. The repayment plan shall include a secured promissory note that substantially complies with the following terms:
 - i. The remote seller or marketplace facilitator agrees to pay a minimum of ten percent (10%) down payment on the tax, interest and penalty amount due. The down payment shall be applied first to penalty, then to accumulated interest, and then to the tax owed.
 - ii. The remote seller or marketplace facilitator agrees to pay the balance of the tax, penalty and interest owed in monthly installments over a period not to exceed two (2) years.
 - iii. Interest at a rate of fifteen percent (15%) per annum shall accrue on the principal sum due. Interest shall not apply to penalties owed or to interest accrued at the time the repayment plan is executed or accruing during the term of the repayment plan.
 - iv. If the remote seller or marketplace facilitator is a corporation or a limited liability entity the remote seller or marketplace facilitator agrees to provide a personal guarantee of the obligations under the repayment plan.
 - v. The remote seller or marketplace facilitator agrees to pay all future tax bills in accordance with the provisions of this chapter.
 - vi. The remote seller or marketplace facilitator agrees to provide a security interest in the form of a sales tax lien for the entire unpaid balance of the promissory note to be recorded by the Commission at the time the repayment plan is signed. The remote seller or marketplace facilitator shall be responsible for the cost of recording the tax lien.
- D. If a remote seller or marketplace facilitator fails to pay two (2) or more payments as required by the repayment plan agreement, the remote seller or marketplace facilitator shall be in default and the entire amount owed at the time of default shall become

immediately due. The Commission will send the remote seller or marketplace facilitator a notice of default. The Commission may immediately foreclose on the sales tax lien or take any other remedy available under the law.

5.19.180. Remote Seller or Marketplace Facilitator Record Retention.

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

5.19.190. Cessation or Transfer of Business.

- A. A remote seller or marketplace facilitator who sells, leases, conveys, forfeits, transfers or assigns the majority of their business interest, including a creditor or secured party, shall make a final sales tax return within thirty (30) days after the date of such conveyance.
- B. At least ten (10) business days before any such sale is completed, the remote seller or marketplace facilitator shall send to the Commission, by approved communication (email confirmation, certified first-class mail, postage prepaid) a notice that the remote seller's or marketplace facilitator's interest is to be conveyed and shall include the name, address and telephone number of the person or entity to whom the interest is to be conveyed.
- C. Upon notice of sale and disclosure of buyer, the Commission shall be authorized to disclose the status of the remote seller's or marketplace facilitator's sales tax account to the named buyer or assignee.
- D. Upon receipt of notice of a sale or transfer, the Commission shall send the transferee a copy of this Code with this section highlighted.
- E. Neither the Commission's failure to give the notice nor the transferee's failure to receive the notice shall relieve the transferee of any obligations under this section.
- F. Following receipt of the notice, the Commission shall have sixty (60) days in which to perform a final sales tax audit and assess sales tax liability against the seller of the business. If the notice is not mailed at least ten (10) business days before the sale is completed, the Commission shall have twelve (12) months from the date of the completion of the sale or the Commission's knowledge of the completion of the sale within which to begin a final sales tax audit and assess sales tax liability against the seller of the business. The Commission may also initiate an estimated assessment if the requirements for such an assessment exist.

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

L. A remote seller or marketplace facilitator who terminates the business without the benefit of a purchaser, successor or assign shall make a final tax return and settlement of tax obligations within thirty (30) days after such termination. If a final return and settlement are not received within thirty (30) days of the termination, the remote seller or marketplace facilitator shall pay a penalty of one hundred dollars (\$100), plus an additional penalty of twenty-five dollars (\$25) for each additional thirty- (30-) day period, or part of such a period, during which the final return and settlement have not been made, for a maximum of six (6) additional periods.

5.19.200. 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 Commission under this Code, and all information contained therein, shall be kept confidential and shall be subject to inspection only by:

1. Employees and agents of the Commission and taxing jurisdiction whose job responsibilities are directly related to such returns, reports and information;
2. The person supplying such returns, reports and information; and
3. Persons authorized in writing by the person supplying such returns, reports and information.

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

C. Notwithstanding subsection A of this section, the following information is available for public inspection:

1. The name and address of sellers;
2. Whether a business is registered to collect taxes under this chapter;
3. The name and address of businesses that are sixty (60) days or more delinquent in filing returns or in remitting sales tax, or both filing returns and remitting sales tax; and, if so delinquent, the amount of estimated sales tax due, and the number of returns not filed.

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

E. Nothing contained in this section shall be construed to prohibit the delivery to a person, or their duly authorized representative, of a copy of any return or report filed by them, nor to prohibit the publication of statistics so classified as to prevent the identification of

particular buyers, remote sellers, or marketplace facilitators, nor to prohibit the furnishing of information on a reciprocal basis to other agencies or political subdivisions of the state or the United States concerned with the enforcement of tax laws.

- F. Nothing contained in this section shall be construed to prohibit the disclosure through enforcement action proceedings or by public inspection or publication of the name, estimated balance due, and current status of payments, and filings of any remote seller or marketplace facilitator or agent of any remote seller or marketplace facilitator required to collect sales taxes or file returns under this chapter, who fails to file any return and/or remit in full all sales taxes due within thirty (30) days after the required date for that business. Entry into any agreement whether pursuant to the provisions of this chapter or otherwise shall not act as any prohibition to disclosure of the records of that remote seller or marketplace facilitator as otherwise provided in this chapter.
- G. A prospective lessee or purchaser of any business or business interest may inquire as to the obligation or tax status of any business upon presenting to the Commission a release of tax information request signed by the authorized agent of the business.
- H. All returns referred to in this chapter, and all data taken therefrom, shall be kept secure from public inspection, and from all private inspection.

5.19.210. Violations.

- A. A remote seller or marketplace facilitator that fails to file a sales tax return or remit sales tax when due, in addition to any other liability imposed by this Code, shall pay to the Commission all costs incurred by the Commission to determine the amount of the remote seller's or marketplace facilitator's liability or to collect the sales tax, including, without limitation, reviewing and auditing the remote seller's or marketplace facilitator's business records, collection agency fees, and actual reasonable attorney's fees.
- B. A person who causes or permits a corporation of which the person is an officer or director, a limited liability company of which the person is a member or manager, or a partnership of which the person is a partner, to fail to collect sales tax or to remit sales tax to the Commission as required by this Code shall be liable to the Commission for the amount that should have been collected or remitted, plus any applicable interest and penalty.
- C. Notwithstanding any other provision of law, and whether or not the Commission initiates an audit or other tax collection procedure, the Commission may bring a declaratory judgment action against a remote seller or marketplace facilitator believed to meet the criteria to establish that the obligation to remit sales tax is applicable and valid under local, state and federal law. The action shall be brought in the judicial district of the taxing jurisdiction.
- D. The Commission may cause a sales tax lien to be filed and recorded against all real and personal property of a remote seller or marketplace facilitator where the remote seller or marketplace facilitator has:

1. Failed to file sales tax returns for two (2) consecutive filing periods as required by the Code; or
2. Failed within sixty (60) days of the end of the filing period from which taxes were due to either (a) remit all amounts due or (b) to enter into a secured payment agreement as provided in this Code.
3. Prior to filing a sales tax lien, the Commission shall cause a written notice of intent to file to be mailed to the last known address of the delinquent remote seller or marketplace facilitator.

E. In addition to other remedies discussed in this Code, the Commission may bring a civil action to:

1. Enjoin a violation of this Code. On application for injunctive relief and a finding of a violation or threatened violation, the superior court shall enjoin the violation.
2. Collect delinquent sales tax, penalty, interest and costs of collection, either before or after estimating the amount of sales tax due.
3. Foreclose a recorded sales tax lien as provided by law.

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

5.19.220. Penalties for Violations.

- A. A buyer, remote seller, or marketplace facilitator who knowingly or negligently submits false information in a document filed with the Commission pursuant to this Code is subject to a penalty of five hundred dollars (\$500).
- B. A remote seller or marketplace facilitator who knowingly or negligently falsifies or conceals information related to its business activities with the Commission or taxing jurisdiction is subject to a penalty of five hundred dollars (\$500).
- C. A person who knowingly or negligently provides false information when applying for a certificate of exemption is subject to a penalty of five hundred dollars (\$500).
- D. Any remote seller or marketplace facilitator who fails to file a return required under this chapter by the due date, regardless of whether any taxes were due for the reporting period for which the return was required, shall be subject to a penalty of twenty-five dollars (\$25) for the first sales tax return not timely filed. The filing of an incomplete return shall be treated as the filing of no return.

- E. A remote seller or marketplace facilitator who fails or refuses to produce requested records or to allow inspection of their books and records shall pay to the Commission a penalty equal to three (3) times any deficiency found or estimated by the Commission with a minimum penalty of five hundred dollars (\$500).
- F. A remote seller or marketplace facilitator who falsifies or misrepresents any record filed with the Commission is guilty of an infraction and subject to a penalty of five hundred dollars (\$500) per record.
- G. Misuse of an exemption card is a violation and subject to a penalty of fifty dollars (\$50) per incident of misuse;
- H. Nothing in this chapter shall be construed as preventing the Commission from filing and maintaining an action at law to recover any taxes, penalties, interest and/or fees due from a remote seller or marketplace facilitator. The Commission may also recover attorney's fees in any action against a delinquent remote seller or marketplace facilitator.

5.19.230. Remote Sellers with a physical presence in the taxing jurisdiction.

- A. Sellers with a physical presence in a Taxing Jurisdiction and no remote or internet-based sales shall report, remit, and comply with standards, including audit authority, of the Taxing Jurisdiction.
- B. Sellers with a physical presence in a Taxing Jurisdiction that also have remote or internet-based sales where the Point of Delivery is in a different Taxing Jurisdictions shall (i) report and remit the remote or internet sales to the Commission; and (ii) report and remit the in-store sales to the Taxing Jurisdiction.
- C. Sellers with a physical presence in a Taxing Jurisdiction that also have remote or internet-based sales where the Point of Delivery is in the same Taxing Jurisdictions shall report and remit those remote sales to the Taxing Jurisdiction.
- D. Remote Sellers and marketplace facilitators that do not have a physical presence in a Taxing Jurisdiction must report and remit all remote sales to the Commission.
- E. For all purchases the tax rate added to the sale price shall be as provided in the Taxing Jurisdiction's sales tax code, based on point of delivery.
- F. A marketplace facilitator is considered the remote seller for each sale facilitated through its marketplace and shall collect, report, and remit sales tax to the Commission. A marketplace facilitator is not considered to be the remote seller for each sale or rental of lodging facilitated through its marketplace, wherein the seller is considered to have a physical presence in the Taxing Jurisdiction.

5.19.240. Remittance of Tax; Remote Seller Held Harmless.

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

5.19.250. Definitions.

For purposes of this chapter, the following definitions shall apply:

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

“Commission” means the Alaska Intergovernmental Remote Sales Tax Commission established by Agreement between local government taxing jurisdictions within Alaska, and delegated tax collection authority.

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

“Entity-based exemption” means an exemption based on who purchases the product or who sells the product. An exemption that is available to all individuals shall not be considered an entity-based exemption.

“Goods for resale” means:

- A. the sale of goods by a manufacturer, wholesaler or distributor to a retail vendor; sales to a wholesale or retail dealer who deals in the property sold, for the purpose of resale by the dealer.
- B. Sales of personal property as raw material to a person engaged in manufacturing components for sale, where the property sold is consumed in the manufacturing process of, or becomes an ingredient or component part of, a product manufactured for sale by the manufacturer.
- C. Sale of personal property as construction material to a licensed building contractor where the property sold becomes part of the permanent structure.

“Marketplace facilitator” means a person that contracts with remote sellers to facilitate for consideration, regardless of whether deducted as fees from the transaction, the sale of the remote seller’s property or services through a physical or electronic marketplace operated by the person, and engages:

- A. Directly or indirectly, through one or more affiliated persons in any of the following:
 - (i) Transmitting or otherwise communicating the offer or acceptance between the buyer and remote seller;
 - (ii) Owning or operating the infrastructure, electronic or physical, or technology that brings buyers and remote sellers together;
 - (iii) Providing a virtual currency that buyers are allowed or required to use to purchase products from the remote seller; or
 - (iv) Software development or research and development activities related to any of the activities described in (b) of this subsection (3), if such activities are directly related to a physical or electronic marketplace operated by the person or an affiliated person; and
- B. In any of the following activities with respect to the seller’s products:
 - (i) Payment processing services;
 - (ii) Fulfillment or storage services;
 - (iii) Listing products for sale;

(iv) Setting prices;

(v) Branding sales as those of the marketplace facilitator;

(vi) Order taking;

(vii) Advertising or promotion; or

(viii) Providing customer service or accepting or assisting with returns or exchanges.

“Member” means a taxing jurisdiction that is a signatory of the Alaska Remote Sales Tax Intergovernmental Agreement, thereby members of the Commission, and who have adopted the Remote Seller Sales Tax Code.

“Monthly” means occurring once per calendar month.

“Nonprofit organization” means a business that has been granted tax-exempt status by the Internal Revenue Service (IRS); means an association, corporation, or other organization where no part of the net earnings of the organization inures to the benefit of any member, shareholder, or other individual, as certified by registration with the IRS.

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

“Physical presence” means a seller who establishes any one or more of the following within a local taxing jurisdiction:

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

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

“Point of delivery” means the location at which property or a product is delivered or service rendered.

- A. When the product is not received or paid for by the purchaser at a business location of a remote seller in a Taxing Jurisdiction, the sale is considered delivered to the location where receipt by the purchaser (or the purchaser's recipient, designated as such by the purchaser) occurs, including the location indicated by instructions for delivery as supplied by the purchaser (or recipient) and as known to the seller.
- B. When the product is received or paid for by a purchaser who is physically present at a business location of a Remote Seller in a Taxing Jurisdiction the sale is considered to have been made in the Taxing Jurisdiction where the purchaser is present even if delivery of the product takes place in another Taxing Jurisdiction. Such sales are reported and tax remitted directly to the Taxing Jurisdiction not to the Commission.
- C. For products transferred electronically, or other sales where the remote seller or marketplace facilitator lacks a delivery address for the purchaser, the remote seller or marketplace facilitator shall consider the point of delivery the sale to the billing address of the buyer.

“Product-based exemptions” means an exemption based on the description of the product and not based on who purchases the product or how the purchaser intends to use the product.

“Property” and “product” means both tangible property, an item that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses; and intangible property, anything that is not physical in nature (i.e.; intellectual property, brand recognition, goodwill, trade, copyright and patents).

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

“Receive or receipt” means

- A. Taking possession of property;
- B. Making first use of services; or
- C. Taking possession or making first use of digital goods, whichever comes first.

The terms “receive” and “receipt” do not include temporary possession by a shipping company on behalf of the purchaser.

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

“Remote seller” means a seller or marketplace facilitator making sales of goods or services delivered within the State of Alaska, without having a physical presence in a taxing jurisdiction, or conducting business between taxing jurisdictions, when sales are made by internet, mail order,

phone or other remote means. A marketplace facilitator shall be considered the remote seller for each sale facilitated through its marketplace.

“Resale of services” means sales of intermediate services to a business the charge for which will be passed directly by that business to a specific buyer.

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

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

- A. The seller’s cost of the property or product sold;
- B. The cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;
- C. Charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;
- D. Delivery charges;
- E. Installation charges; and
- F. Credit for any trade-in, as determined by state law.

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

“Services” means all services of every manner and description, which are performed or furnished for compensation, and delivered electronically or otherwise outside the taxing jurisdiction (but excluding any that are rendered physically within the taxing jurisdiction, including but not limited to:

- A. Professional services;
- B. Services in which a sale of property or product may be involved, including property or products made to order;
- C. Utilities and utility services not constituting a sale of property or products, including but not limited to sewer, water, solid waste collection or disposal, electrical, telephone services and repair, natural gas, cable or satellite television, and Internet services;
- D. The sale of transportation services;

E. 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;

F. Advertising, maintenance, recreation, amusement, and craftsman services.

“Tax cap” means a maximum taxable transaction.

“Taxing jurisdiction” means a local government in Alaska that has a sales tax and is a member of the Alaska Remote Sellers Sales Tax Commission.

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

5.19.260 Supplemental Definitions.

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

SECTION 4. That the Alaska Intergovernmental Remote Sales Tax Commission is hereby authorized to implement, administer, and enforce the provisions of KPB 5.19 Uniform Remote Seller Sales Tax Code. This authority remains in full force and effect until the assembly revokes this authorization or otherwise withdraws from the Alaska Remote Seller Sales Tax Commission.

SECTION 5. This ordinance is effective March 1, 2020.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY OF *, 2020.

Kelly Cooper, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

43
44 WHEREAS, The few tasks identified for the EDC in the Homer Comprehensive Plan are
45 providing reviews and updates; and
46

47 WHEREAS, CEDS reviews and updates should be completed in partnership with the
48 KPEDD, and Comprehensive Plan updates occur on a 5-10 year cycle and are not best suited
49 for the time and expense of a standing City Commission; and
50

51 WHEREAS, City Commissions can recommend to City Council and Council can appoint
52 Task Forces to address timely issues of concern to the community, including those related to
53 economic development; and
54

55 WHEREAS, Focusing limited City resources is critically important to ensure the efficient
56 and productive response to concerns and answering questions; and
57

58 WHEREAS, Maximizing citizen involvement to answer specific questions and provide
59 recommendations through the Task Force model will enhance public engagement and provide
60 for targeted efforts that are most viable for City action.
61

62 NOW, THEREFORE, THE CITY OF HOMER ORDAINS:
63

64 Section 1. HCC 2.76 is repealed.
65

66 Section 2. HCC 2.58.020 is amended as follows:
67

68 2.58.020 Creation of City boards and commissions.
69

70 The following commissions and boards have been created by City Council and are
71 subject to this chapter unless otherwise provided in this title:
72

- 73 a. Library Advisory Board;
74 b. Parks, Art, Recreation, and Culture Advisory Commission;
75 c. Port and Harbor Advisory Commission;
76 d. Planning Commission;
77 e. Economic Development Advisory Commission.
78

79 Section 3. ~~City Council shall consider creating Task Forces in accordance with the City~~
80 ~~Council Operating Manual (per Resolution 19-051) in proactive response to timely issues of~~
81 ~~concern to the community. **Annually during the first quarter, staff shall circulate the**~~
82 ~~**Comprehensive Plan's Economic Vitality Chapter, highlighting the implementation table,**~~
83 ~~**amongst Departments, Commissions, Committees, Boards, and other community**~~

84 **stakeholders with a request to provide City Council with priorities, additional**
85 **opportunities, needs, concerns, and suggestions for implementation. The City Council**
86 **shall hold an annual Economic Development Priorities worksession, during which they**
87 **shall set their top three priorities and develop strategies for working on these EDPs over**
88 **the year.**

89
90 Section 4. Throughout the year, Recommendations to City Council from the
91 Planning Commission, Port & Harbor Advisory Commission and the Park, Arts, Recreation and
92 Culture Advisory Commission **City commissions** should include any relevant economic
93 development nexus information for City Council review.

94
95 Section 5. The Mayor shall appoint a member of the Homer Business Community to fill
96 the City of Homer seat on the KPEDD Board of Directors who shall report to the City Council on
97 a quarterly basis **at least annually and who shall additionally work with the City Council,**
98 **Mayor, and the City Manager’s office to strategically engage with KPEDD on the regional**
99 **CEDS update in order to gather and promote inclusion of Homer-specific economic**
100 **development priorities and needs.**

101
102 Section 6. This ordinance is of a permanent and general nature and shall be included in
103 Homer City Code, effective January 1, 2020.

104
105 ENACTED BY THE CITY COUNCIL OF HOMER, ALASKA, this __ day of _____, 2019**20**.

106
107
108 CITY OF HOMER

109
110
111 _____
112 KEN CASTNER, MAYOR

113
114 ATTEST:

115
116
117 _____
118 MELISSA JACOBSEN, MMC, CITY CLERK

119
120
121 YES:

122 NO:

123 ABSTAIN:

124 ABSENT:

125

126 Introduction:

127 Public Hearing:

128 Second Reading:

129 Effective Date:

130

131 Reviewed and approved as to form:

132

133 _____

134 Katie Koester, City Manager

135

136 Date: _____

Michael Gatti, City Attorney

Date: _____



City of Homer

www.cityofhomer-ak.gov

Planning

491 East Pioneer Avenue
Homer, Alaska 99603

Planning@ci.homer.ak.us

(p) 907-235-3106

(f) 907-235-3118

February 6, 2020

Dear Landowner,

You are invited to a neighborhood meeting regarding two proposed zoning changes in your area. Attached to this letter is a map of the proposed Medical Zoning District boundaries, and a copy of the draft zoning code. The purpose of the meeting is to give residents the opportunity to learn about the potential zoning changes and have a conversation with the Planning Commission. This is not a public hearing and no final decisions will be made.

Why are changes being proposed? Homer City Council passed a six month moratorium on new professional offices and clinics and directed the Planning Commission to look at how the area around the hospital is developing. Recently, several new medical clinics have gone through the permitting process and there have been neighborhood concerns about traffic and land use. The moratorium area is north of Fairview up to the hospital, and includes properties from Bartlett east to Main Street. To date, the Planning Commission has created a draft map and zoning code. With these items on paper, the Commission is ready to fine tune the proposals with your input.

When: 5:30-6:20 pm, Wednesday February 19th. Presentation at 5:30, followed by questions and discussion

Where: 491 E Pioneer Ave, Homer City Hall Cowles Council Chambers

Who: Landowners, area residents, Homer Planning Commission and Planning Department Staff

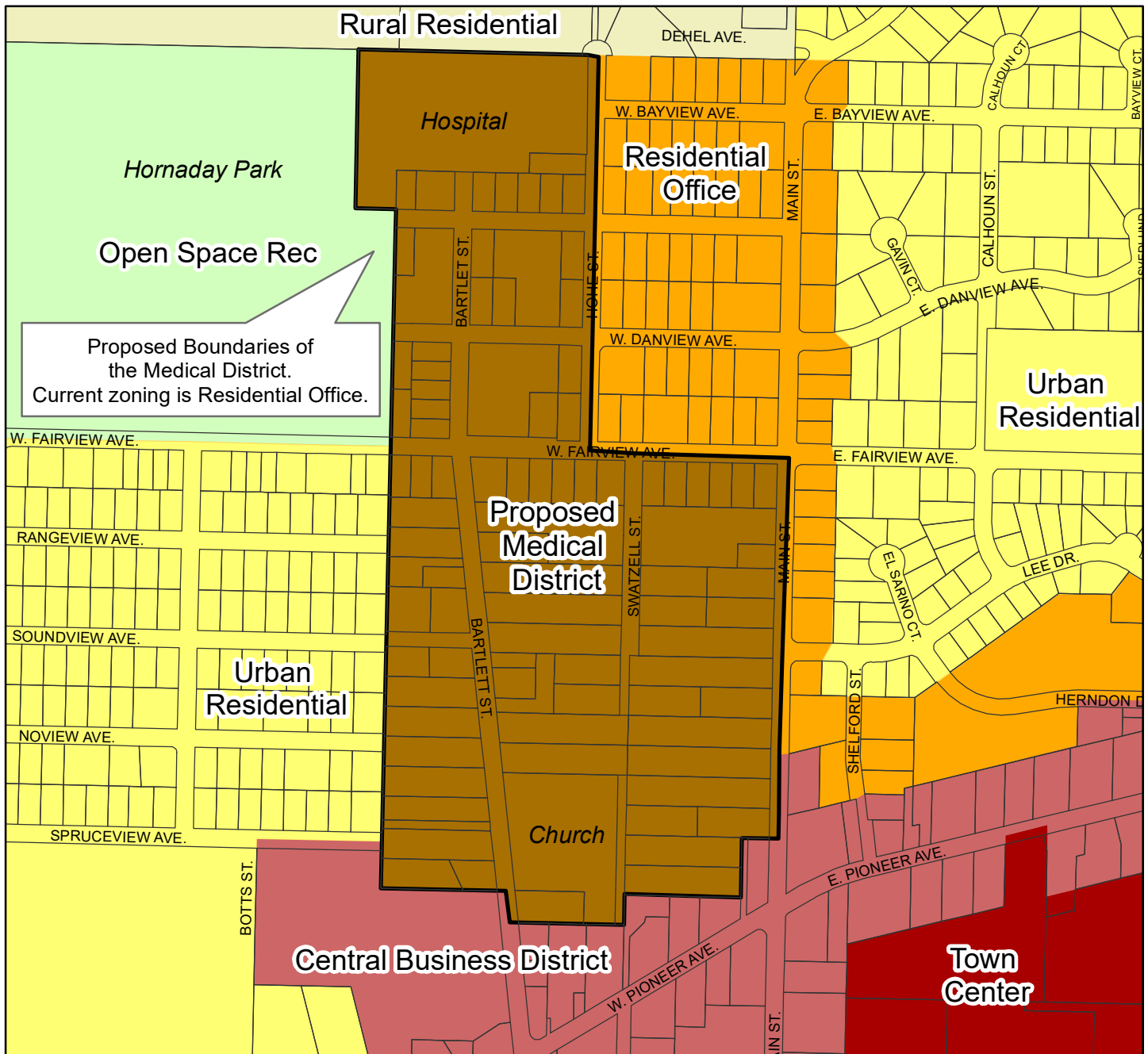
What happens next? The Council tasked the Commission to respond by June 30th. Between now and June, there is ample time to hold another neighborhood meeting if desired. There will also be formal public hearing, prior to the June 30th deadline.

For more information, call 235-3106 to speak with City Planner Rick Abboud, or Deputy City Planner Julie Engebretsen. Or visit the Planning Department website at <https://www.cityofhomer-ak.gov/planning>

Sincerely,

Rick Abboud, AICP
City Planner

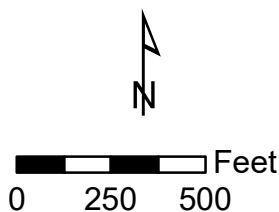
Proposed Medical District Boundaries and Current Zoning



Proposed Boundaries of the Medical District. Current zoning is Residential Office.

Legend

- Current Zones**
- Central Business District
 - Town Center
 - Rural Residential
 - Urban Residential
 - Residential Office
 - Open Space Rec
 - Medical District Draft Boundary



City of Homer
Planning and Zoning Department

1/29/2020

Disclaimer:
It is expressly understood the City of Homer, its council, board, departments, employees and agents are not responsible for any errors or omissions contained herein, or deductions, interpretations or conclusions drawn therefrom.

1 **Chapter 21.XX**

2 **M MEDICAL DISTRICT**

3 Sections:

- 4 21.XX.010 Purpose.
- 5 21.XX.020 Permitted uses and structures.
- 6 21.XX.030 Conditional uses and structures.
- 7 21.XX.040 Dimensional requirements.
- 8 21.XX.050 Site and access.
- 9 21.XX.060 Traffic requirements.
- 10 21.XX.070 Site development standards.
- 11 21.XX.080 Nuisance standards.
- 12 21.XX.090 Lighting standards.

13 **21.XX.010 Purpose.**

14 The purpose of the medical district is to provide an area near the hospital to support allied
15 industries and other professional office and limited commercial uses. The district is meant to
16 accommodate a mixture of residential and nonresidential uses with conflicts being resolved in
17 favor of nonresidential uses. Pedestrian-friendly designs and amenities are encouraged.

18 **21.XX.020 Permitted uses and structures.**

19 The following uses are permitted outright in the Medical District:

- 20 a. Single-family and duplex dwelling, excluding mobile homes;
- 21 b. Multiple-family dwelling, provided the structure conforms to HCC 21.14.040(a)(2) and
22 excluding mobile homes;
- 23 c. Public parks and playgrounds;
- 24 d. Rooming house, bed and breakfast;
- 25 e. Townhouses; (compliant w 21.53.010 (g) and (h))
- 26 f. Home occupations; provided they conform to the requirements of HCC 21.51.010;
- 27 g. Professional offices and general business offices;
- 28 i. Day care facilities
- 29 j. Day care homes
- 30 k. Personal services;
- 31 l. Museums, libraries and similar institutions;

- 32 m. Nursing facilities, convalescent homes, homes for the aged, assisted living homes;
- 33 n. Religious, cultural and fraternal assembly;
- 34 o. Storage of the occupant's personal commercial fishing gear in a safe and orderly manner and
35 separated by at least five feet from any property line as an accessory use incidental to a
36 permitted or conditionally permitted principal use;
- 37 p. Private exterior storage of the occupant's personal noncommercial equipment, including
38 noncommercial trucks, boats, campers and not more than one recreational vehicle in a safe and
39 orderly manner and separated by at least five feet from any property line as an accessory use
40 incidental to a permitted or conditionally permitted principal use;
- 41 q. Other customary accessory uses to any of the permitted uses listed in the Residential Office
42 District; provided, that no separate permit shall be issued for the construction of any detached
43 accessory building prior to that of the main building;
- 44 r. The outdoor harboring or keeping of dogs, small animals and fowl as an accessory use in a
45 manner consistent with the requirements of the Homer City Code and as long as such animals
46 are kept as pets and their numbers are such as not to unreasonably annoy or disturb occupants
47 of neighboring property;
- 48 s. Recreational vehicles, subject to the standards set out in HCC 21.54.320;
- 49 t. As an accessory use, one small wind energy system per lot having a rated capacity not
50 exceeding 10 kilowatts;
- 51 u. Mobile food services
- 52 v. Retail as an accessory use to a permitted principle use
- 53 w. Sale of durable and non-durable medical supplies and equipment
- 54 x. More than one building containing a permitted principal use on a lot;
- 55 y. Parking lots

56 **21.XX.030 Conditional uses and structures.**

57 The following uses may be permitted in the Residential Office District when authorized by
58 conditional use permit issued in accordance with Chapter 21.71 HCC:

- 59 a. Planned unit developments, excluding all industrial uses;
- 60 b. Public or private schools;
- 61 c. Hospitals;
- 62 d. Public utility facilities and structures;

- 63 e. Mortuaries;
- 64 f. Group care homes;
- 65 g. Helipads, but only as an accessory use incidental to a hospital conditional use;
- 66 h. One small wind energy system having a rated capacity exceeding 10 kilowatts; provided, that
- 67 it is the only wind energy system of any capacity on the lot;
- 68 i. Other uses approved pursuant to HCC 21.04.020.

69 **21.XX.040 Dimensional requirements.**

70 The following dimensional requirements shall apply to all structures and uses in the Medical
71 District:

72 a. The minimum lot size is 7,500 square feet.

73 b. Building Setbacks.

74 1. Buildings shall be set back 20 feet from all dedicated rights-of-way.

75 2. All buildings shall be set back from all other lot boundary lines according to the number
76 of stories as follows:

Number of Stories	Setback (in feet)
1 story	5 feet
1 1/2 stories	6 feet
2 stories	7 feet
2 1/2 stories	8 feet

77

78 c. Building Height.

79 1. The maximum building height is 35 feet, except as provided in subsection (c)(2) of this
80 section.

81 2. If approved by conditional use permit, multifamily residential and commercial
82 buildings up to 85 feet in height may be allowed.

83 d. No lot shall contain more than 8,000 square feet of building area (all buildings combined),
84 nor shall any lot contain building area in excess of 30 percent of the lot area, without an
85 approved conditional use permit.

86 **21.XX.050 Site and access.**

87 a. A zoning permit for any nonresidential use or structure shall not be issued by the City without
88 an approved site plan and an approved level two right-of-way access plan that conform to the
89 standards of Chapter 21.73 HCC.

90 b. All access points to rights-of-way shall conform to the standards of a level two right-of-way
91 access plan stated in Chapter 21.73 HCC. This applies to all uses and structures.

92 **21.XX.060 Traffic requirements.**

93 A conditional use permit is required for every use that:

94 a. Is estimated to generate more than 100 vehicle trips during any hour of the day calculated
95 utilizing the Trip Generation Handbook, Institute of Transportation Engineers, 9th Edition;

96 b. Is estimated to generate more than 500 vehicle trips per day calculated utilizing the Trip
97 Generation Handbook, Institute of Transportation Engineers, 9th Edition;

98 c. Is estimated to generate an increase in the traffic to more than 100 vehicle trips during any
99 hour of the day due to a change in land use or intensity of use; or

100 d. Is expected to generate traffic that will detract from the safety of, or degrade by one level of
101 service, the highway, road, street, alley or intersection.

102 **21.XX.070 Site development standards.**

103 a. All single-family and duplex residential development in the Residential Office District shall
104 comply with the level one site development standards contained in HCC 21.50.020.

105 b. All residential development of three units or more and all nonresidential on lands in this
106 district shall conform to the level two site development standards set forth in HCC 21.50.030
107 subsections (a) through (e), and HCC 21.50.030(f)(1)(a) and HCC 21.50.030(f)(2). Parking lots
108 with a minimum of 24 spaces or more shall provide a minimum of 10% landscaped area in
109 dividers, islands or buffers or any combination thereof, adjacent or within the parking area.

110 c. New non-residential construction shall be screened from existing single family or duplex
111 dwellings by a fence or landscaping so as to obscure the view of the parking lot and loading
112 areas from the adjacent dwelling.

113 **21.XX.080 Nuisance standards.**

114 The nuisance standards of HCC 21.59.010 apply to all development, uses, and structures in this
115 zoning district.

116 **21.XX.090 Lighting standards.**

117 The level one lighting standards of HCC 21.59.030 apply to all development, uses, and
118 structures in this zoning district.

119



City of Homer

www.cityofhomer-ak.gov

Homer City Council

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March 11, 2019

Honorable Governor Dunleavy
Alaska State Legislature, State Capitol
120 4th St.
Juneau, Alaska 99801

RE: City of Homer Municipal Impact Statement

Honorable Governor Dunleavy and Members of the Alaska State Legislature,

We appreciate the State's commitment to sustainable spending but want to draw attention to the unsustainable impact the proposed FY20 budget will have on local governments in Alaska and offer our support for considering revenue solutions. We believe the information below needs to be considered by you before these very drastic cuts occur.

REVENUE SOLUTIONS

The Homer City Council wants to be proactive and is supportive of a sincere and honest look at new revenue for the State of Alaska. This includes:

- Examining the oil tax credit structure to ensure oil and gas exploration is not being subsidized by citizens
- Exploring an income tax
- Using our largest asset, the Permanent Fund, to fund essential government services by capping the Permanent Fund Dividend

IMPACT OF PROPOSED CUTS IN HOMER

The City of Homer is responsible for municipal governance in our community of 5,313 residents. We have 101.5 full time employees who fulfill the obligations of a local government. Our ability to do so is limited by statute, public interest, and available resources. Traditionally those resources have included State and Federal funding, which offset the burdens that might otherwise be felt by a local tax base.

On average our tax revenue comprises 72% of our total General Fund budget, and any impact from State decision-making on Alaska's economy further weakens the City's ability to sustainably serve our community. The City of Homer is very concerned about the impact cuts to the University, Alaska Marine Highway System, education, and Medicaid will have on our local economy. You need to know that just stopping these services will have a direct impact on the quality of life for Alaskans.

- The Kachemak Bay Branch of the Kenai Peninsula College is part of the fabric of Homer. It educates students in a formal learning environment and the community through diverse programming. It provides critical job training for everyone from fisherman to nurses and employs 56 full and part-time professionals.
- The City of Homer is the Home Port to the M/V Tustumena. In addition to employing local residents, the

Alaska Marine Highway System brings visitors and residents ~~throughout town~~ **into town** as a gateway to Seldovia, Kodiak, and Western Alaska. The ferry port in Homer is also a freight destination for cars and trucks from Kodiak, Seldovia, and the Aleutians. Fishermen use the ferry to move gear, groceries are transported to and from the outlying villages, and mail is sent using the marine highway.

- South Peninsula Hospital is the largest employer in Homer with over 400 professional jobs. The Hospital provides critical care to our residents; the Kenai Peninsula Borough has the fastest growing senior population in the State.
- Without adequately funded schools, families will leave Homer. Cuts to the Kenai Peninsula Borough will have a direct impact on the City of Homer and our residents. We are especially concerned about \$20 million in cuts to the Kenai Peninsula Borough School District that will force the closure of schools and compromise the quality of education. Without good schools, people will leave Homer which will further effect our local economy and erode our tax base.

Based on the proposed FY20 budget, we have highlighted below some of the areas that will be directly impacted based on your administration's proposed budget:

- Our Community Assistance funding was \$177,172 in State FY2019.
- Our receipt of the Petroleum Property Tax was \$5,998 in 2018.
- We received \$62,069 in 2018 in Fisheries Taxes from the State. These funds are invested directly back into our public access fish dock to support fishing industry infrastructure.

The City of Homer was hit hard in 2015 when the State reduced the contract with communities for shared prisoner space by 45% and we removed Community Assistance from our operating budget due to the uncertain future of the fund. Also during this time, the City Council cut the budget, which included staff reductions, and with voter approval, restructured sales tax to cover municipal operations. Recognizing the need to pay our own way, voters approved a .35% sales tax increase in 2018 to fund a long overdue police station. The City of Homer and its residents have stepped up to the plate. There is no room in our budget or tax base for further cost shifting.

We believe the proposed FY20 budget and approach that you have outlined reflects little concern for the burden that you have passed on to the residents of Alaska and the local governments that serve them. The City of Homer will work to mitigate the damage from these administrative actions while partnering with our legislative leaders to develop solutions that protect the public's interest.

Sincerely,

Homer City Council



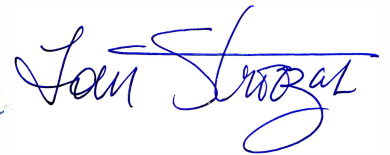
Mayor Ken Castner



Donna Aderhold



Heath Smith



Tom Stroozas



Shelly Erickson



Caroline Venuti



Rachel Lord

From: [Eileen Becker](#)
To: [Department Clerk](#)
Subject: Re: Letter to the Governor
Date: Sunday, February 9, 2020 2:43:01 PM

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

To Mayor Ken Castner & Homer City Council, This letter is concerning the wishes of the folks in Homer, regarding use of the permanent funds. This is NOT be an issue the Homer City Council can speak for the citizens. This is going too far and is outside your job responsibilities. You all have responsibilities that are far and above creating division and friction for Homer. Please find other ways to forward your own personal agendas. I own land and have a business in Homer. I lived on Pioneer Ave for seven years so I have a vested interest in our town. Do what is right. Sincerely. Eileen Becker.

Sent from my iPad

February 10, 2020

Dear Homer City Council Members and Mayor Castner,

We would like to be clear and to go on city record as indicating that we oppose Ms. Aderhold's and the Homer City Council's proposal to allot a percentage of our permanent fund towards funding state government and/or to initiate a statewide income tax.

It is our firm belief that any such proposal is based on the opinion of the writer(s)—local city council members—and is outside their duty as representatives of small town, local government. As recipients of the Alaska Permanent Fund since its inception, we have a very clear understanding of the intent of this unique fund and feel the Homer City Council is overstepping its bounds in trying to speak for us on this matter and other matters such as state income tax outside their jurisdiction of service.

We would like to remind each of you that you were elected to serve the people on local governmental issues and are not the ultimate voice of the people on matters outside the City of Homer. We encourage any of you who would like this larger voice to run for elected office at the state level and to expend your other efforts towards improving harmony with voters within this community.

Sincerely,

William D. and Marianne Schlegelmilch
Residents and registered voters, City of Homer, Alaska