

Introduced by: City Manager Allen
Date: September 14, 2010
Public Hearing: September 28, 2010
Action: Postponed to November, 2010
Date: November 23, 2010
Action: Adopted
Vote: Unanimous

Yes:	No:
Best	
Erbey	
Vanover	
Brown	
DeVries	
Johnson	

CITY OF PALMER, ALASKA

ORDINANCE NO. 10-019

An Ordinance of the Palmer City Council Amending Palmer Municipal Code Chapter 3.16 Sales Tax, By Specifically Enacting Sections 3.16.035 Transaction in the City, to Clarify When a Transaction is Taxable; Section 3.16.065 Application of Sales Tax Payment, to Specify How Tax Payments are to be Applied; Enacting Subsection 3.16.080 G. Tax Returns – Contents – Administration Cost and Interest, to Allow for a Waiver of Penalty and Interest Within a Twenty-Four Month Period; Enacting 3.16.087 Tax Records – Inspection and Audit, to Meet Records Retention Requirements; Amending Section 3.16.040 Examples of Taxed Transactions, By Adding Games of Chance and Computer Programmers, to Clarify Applicable Requirements; and Amending Various Sections to Replace Finance Director with Director of Administration to Accurately Reflect the Title of the Position, and Repealing Sections 3.16.130 and 3.16.140 in its Entirety to Reflect the Relocation of the Language to the Business License Section, Palmer Municipal Code Chapter 5.04

THE CITY OF PALMER, ALASKA ORDAINS:

Section 1. Classification. This ordinance shall be permanent in nature and shall be incorporated into the Palmer Municipal Code.

Section 2. Severability. If any provisions of this ordinance or application thereof to any person or circumstances are held invalid, the remainder of this ordinance and the application to the other persons or circumstances shall not be affected thereby.

Section 3. Palmer Municipal Code Section 3.16.035 is hereby enacted to read as follows:

3.16.035 Transactions in the City.

The following rules determine whether a transaction is made within the city:

- A. A sale or rental is made within the city if delivery occurs in the city and the seller either:
 - 1. Maintains a place of business, or an agent or employee, in the city; or
 - 2. Regularly or repeatedly promotes sales or rentals in the city by means such as advertising, promotional events or solicitation of sales.

- B. A service is made within the city if:
 - 1. All or a substantial part of the service is rendered in the city; or
 - 2. The seller maintains a place of business or an agent or employee, in the city, the service benefits a person or property in the city and either the order for the service is received or solicited in the city, or payment for the service is received in the city.
- C. A rental of real property is made in the city if the real property is located in the city.
- D. A service involving the construction, repair, renovation, improvement, sale or rental of real property is made in the city if the real property is located in the city.

Section 4. Palmer Municipal Code Section 3.16.040 is amended to read as follows (new language is underlined and deleted language is stricken):

3.16.040 Examples of taxed transactions.

Illustrative examples of transfers of ownership or possession, and rendering of services, which are taxed under this chapter include, but are not limited to, the following:

- A. Rentals of all tangible personal property, including vending machines, typewriters, office furniture and equipment, tools, automobiles, construction equipment and aircraft, including all maintenance and repair contracts in connection therewith;
- B. Supplying natural or artificial gas, electricity, ice, steam, water and all services by a public or private utility;
- C. Transportation for hire of persons by common carrier, including motor transportation, taxicab companies and all other means of transportation for hire;
- D. Service by telephone companies to subscribers or users, including transmission of messages, whether local or long distance. This shall include all services and rental charges having any connection with telephone service, but shall not include deposits;
- E. Printing or printed matter of all types, kinds and characters and the service of printing or overprinting;
- F. Renting rooms or living quarters or offices or other commercial space of whatever name or nature by hotels, apartments, rooming houses, public lodging houses or by firms or individuals renting single- or multiple-unit residences or offices or other commercial space, including state or federally subsidized rentals. For purposes of computing the maximum tax, a rental of property for a period in excess of one month shall be deemed as a series of rentals with each rental transaction terminating as a rental payment is made. The maximum sales tax payable shall be applicable to each deemed rental with tax payments to accrue and become payable at the time of filing the next monthly return to be submitted following receipt of the rental;
- G. Foods, confections, and all liquors, beverages and drinks sold and dispensed by retail stores, restaurants or other dispensers, and sold for immediate consumption upon the premises or delivered or carried away from the premises for consumption elsewhere;
- H. Advertising of all kinds, types and characters contracted for or sold in the city, including any and all devices used for advertising purposes and the servicing of advertising devices;
- I. Gross proceeds derived from the operation of punchboards, slot machines, marble machines, jukeboxes, merchandise-vending machines, pull-tabs, games of chance, or amusement devices of any kind, and self-service laundry and dry cleaning machines;
- J. The sale of tickets or admissions to places of amusement, entertainment, recreational or athletic events, or dues or fees for the privilege of having access to or use of amusement, entertainment, athletic or recreational facilities, including free or complimentary passes and

- tickets, admissions dues or fees. Such free or complimentary passes and tickets, dues or fees are declared to have a value equivalent to the sale price or value of the tickets, passes, admissions dues or fees;
- K. Subject to PMC 3.16.050(S), sales of tangible personal property and services made for the purpose of developing and improving real estate, even though such real estate is intended for resale as real property;
 - L. Services of drycleaners, laundries (including self-service laundry and drycleaning machines), garages, barbershops, beauty shops and cold storage and locker plants;
 - M. Retail sales of motor fuels, oils and lubricants;
 - N. The provision of services rendered by lawyers, accountants, shoe repair shops, carpenters and cabinetmakers, house painters and decorators, tinsmiths and sheet iron workers, watchmakers, radio and television advertising, photographers (including all film development), computer programmers, printing establishments, garages, mechanics and machinists, plumbers and electricians, welders and stove cleaners, and services of all other tradesmen, craftsmen and professional practitioners and service fees (except commissions) charged by travel agencies; and
 - O. The provision of electrical, telephone, water, garbage, sewer, natural gas and cablevision utility services including the installation and connection charges and fees.

Section 5. Palmer Municipal Code Section 3.16.055 is amended to read as follows (new language is underlined and deleted language is stricken):

3.16.055 Sales tax certificate of exemption.

- A. No sales in the city ~~shall be are excepted~~ exempted from sales tax under PMC 3.16.050(Q), (R), (S), (W), (X), and (Y) unless and until the person obtains from the ~~finance-director of~~ administration a certificate of exemption.
- B. A person may apply to the ~~finance-director of~~ administration for a certificate of exemption on a form approved by the ~~finance-director of~~ administration. The ~~finance-director of~~ administration may require additional information of the applicant as necessary to determine whether the application should be granted.
- C. The ~~finance-director of~~ administration may revoke a certificate of exemption after notice to the holder of the certificate and a hearing, if the ~~finance-director of~~ administration finds that the holder of the certificate:
 1. Gave materially false information when applying for the certificate of exemption;
 2. Used the certificate of exemption in a transaction that was not exempt from sales tax under PMC 3.16.050;
 3. Permitted the use of the certificate of exemption by a person other than an authorized agent or employee of the holder of the certificate; or
 4. Ceased to be entitled to exemption from sales tax.
- D. If the ~~finance-director of~~ administration revokes a person's license, that person is not exempt from paying sales tax under PMC 3.16.050 until the person obtains a new certificate of exemption, which may not occur sooner than one year after the revocation.
- E. If the ~~finance-director of~~ administration revokes a person's license, that person must pay sales tax, interest, penalties, etc., on all sales made to or by the person which were not duly exempt.
- F. A contractor duly licensed under AS 8.18 may obtain a sales tax certificate of exemption for one calendar year upon payment of the fee established in the current, adopted budget.

- G. A buyer who proposes to undertake the construction of or renovations to improvements to real property within the city may, at the time of applying and receiving the building permit, apply for a certificate of exemption and pay the sales tax in the amount established by the current, adopted budget in the year which the building permit is issued. The buyer may renew the certificate for only one additional calendar year for an additional amount will be collected based on the current, adopted budget, and after that year purchases for the original construction shall not be exempt.

Section 6. Palmer Municipal Code Section 3.16.065 is hereby enacted to read as follows:

3.16.065 Application of sales tax payments.

- A. Payments on sales tax accounts shall be applied to the earliest delinquent amount due, first to accrued penalty, second to accrued interest and then to sales tax payments owed by the seller.
- B. Amounts of delinquent sales tax, interest or penalty that have been reduced to judgment, are the subject of a confession of judgment, or are the subject of a written payment agreement between the city and the seller are payable as provided in the judgment, confession of judgment or payment agreement, respectively, and, except as provided otherwise in the judgment, confession of judgment or payment agreement, thereafter cease to be subject to the further accrual of interest or penalty under this chapter.

Section 7. Palmer Municipal Code Section 3.16.080 is amended to read as follows (new language is underlined and deleted language is stricken):

3.16.080 Tax returns – Contents – Administration cost and interest for delinquency.

- A. 1. Except as provided in subsection (A)(2) of this section, every seller, on or before the last business day of each month, shall make out a return for the preceding month, upon forms to be provided by the city, setting forth the amount of all sales, rentals and services, all nontaxable sales, rentals and services, and all taxable sales, rentals and services for the preceding month, the amount of tax thereon, and such other information as the city may require, and sign and transmit the same to the city. A sales tax return, and the related remittance of sales tax, is due and must be received, not merely postmarked, by the city not later than 5:00 p.m. on the last business day of the month immediately following the month for which the return was prepared. The failure of the United States Postal Service or any private delivery service to make timely delivery of a sales tax return or the related remittance of sales tax shall not excuse an untimely filing or remittance.
2. For all sales made during and at the Alaska State Fair under a special city business license for sales at the Alaska State Fair only, the tax return shall be due on or before the tenth day of October in the year of the sales. Other than for the different date, the duties are the same as stated in subsection (A)(1) of this section.
- B. The tax levied, whether or not collected from the buyer, shall be paid by the seller to the city at the time of transmitting the return, and, if not so paid, the tax shall immediately become delinquent.
- C. In the event the tax is not paid before delinquency, as provided in this chapter, administration costs shall be added to the tax. Administration costs shall include non-sufficient fund charges, process server fees, actual reasonable attorney's fees, and the fee

established in the current, adopted budget for any sales tax lien recorded after notice and opportunity for a sales tax hearing, and any other reasonable out-of-pocket cost to the city related to the tax delinquency.

- D. In addition to the items described in subsection (C) of this section, administration costs shall be the greater of:
1. A percentage of the tax as established in the current, adopted budget for the first month or fraction thereof of delinquency, and the additional percentage established in the current, adopted budget for each additional month or fraction thereof of delinquency, until the total administration cost established in the current, adopted budget has been accrued; or
 2. Actual costs of administration, to include without limitation extra personnel costs related to the delinquency. The administration costs shall be assessed and collected in the same manner as the tax is assessed and collected.
- E. In addition to the aforesaid administration costs, interest at the rate established in the current, adopted budget, per year on the delinquent tax from the date of delinquency until paid shall accrue and be collected in the same manner the delinquent tax is collected.
- F. All tax returns shall show such further information as the city may require to enable it to compute correctly and collect the tax levied in this chapter. In addition to the information required on returns, the city may request, and the seller must furnish, any information deemed necessary for a correct computation of the tax. The seller shall compute and remit to the city the required tax due for the preceding month, and the remittance of the tax must accompany the returns herein required. If not paid when due, the tax shall be delinquent from such date, and collection shall be enforced under the terms of this chapter, as set forth in this chapter.
- G. Penalty assessed on the delinquent remittance of sales tax or for failure to file a sales tax return shall be waived by the director of administration, upon written application of the seller accompanied by a payment of all delinquent sales tax, interest and penalty otherwise owed by the seller to the city if:
1. the seller applies for a waiver of the penalty within 30 (thirty) days after the delinquency; and
 2. the seller has not been delinquent in their sales tax remittance within the previous 24 (twenty-four) consecutive months.

Section 8. Palmer Municipal Code Section 3.16.087 is amended to read as follows (new language is underlined and deleted language is stricken):

3.16.087 Tax Records – Inspection and Audit

The records that a seller is required to maintain under this section shall be subject to inspection and copying by authorized employees or agents of the city for the purpose of auditing any return filed under this chapter, or to determine the seller's liability for sales tax where no return has been filed. In addition to the information required on returns, the city may request, and the seller must furnish, any information deemed necessary for a correct computation of the tax. The city may adjust a return for a seller if, after investigation or audit, the city determines that the figures included in the original return are incorrect, and that additional sales taxes are due; and the city adjusts the return within three years of the original due date for the return.

Section 9. Palmer Municipal Code Section 3.16.130 is hereby repealed in its entirety.

Section 10. Palmer Municipal Code Section 3.16.140 is hereby repealed in its entirety.

Section 11. Palmer Municipal Code Section 3.16.160 is amended to read as follows (new language is underlined and deleted language is stricken):

3.16.160 Liability for payment – Protest of tax.

- A. A seller shall determine in the first instance whether a sale is exempt under this chapter; however, if the seller incorrectly determines that a sale is exempt, the seller is liable to the city for the tax just as if he had collected it.
- B. If the seller determines that a transaction is not exempt, but the buyer believes the transaction to be exempt, then the buyer may protest. A buyer who protests the payment of the tax levied under this chapter shall pay the tax with the sales price and shall deliver to the city ~~finance~~-director of administration and to the seller a written statement of protest within five working days of the sale that identifies the sale, rental or service that is the subject of the tax protested, the amount of tax paid, the buyer's and seller's name, mailing address and telephone number and the basis for the protest. The city ~~finance~~-director of administration, after investigation (if necessary) and after consultation with the city attorney, 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 statement by the city. If the claim has been allowed, a refund will be remitted with the notice. In the event the claim is disallowed, the buyer may seek review thereof by the city manager within 30 days. Unless such review is sought within such time, the decision of the city ~~finance~~-director of administration is final.

Section 12. Palmer Municipal Code Section 3.16.270 is amended to read as follows (new language is underlined and deleted language is stricken):

3.16.270 Refund of sales tax – Interest.

- A. If through error or otherwise, a taxpayer pays to the city sales taxes to which the city is not entitled by law, the taxpayer may, within one year from the due date of the tax, apply in writing to the city ~~finance~~-director of administration for a refund.
- B. If the application for refund of tax, and where applicable interest at eight percent per annum as well, does not exceed in the aggregate \$500.00, the city ~~finance~~-director of administration may, upon approval by the city attorney and an audit of the applicant's account, refund to the applicant the said tax, and where applicable, interest as well.
- C. If the city ~~finance~~-director of administration determines a refund is not due or is not due in the amount claimed, then the taxpayer may appeal to the city manager within 30 days as provided in PMC 3.16.280.
- D. The procedure set forth in this section is the recognized procedure whereby a refund may be made; and the taxpayer must first duly comply with this section and PMC 3.16.280 as conditions precedent to bringing a suit to recover said taxes. Any person who has not timely availed himself of these procedures shall be deemed to have waived any right to such refund as well as the right to recover said tax and interest.
- E. Any claim for refund shall be filed with the city ~~finance~~-director of administration within one year from the date of payment of the tax. The failure to file a claim for refund within the time allowed shall forever bar the claim.

Section 13. Palmer Municipal Code Section 3.16.280 is amended to read as follows (new language is underlined and deleted language is stricken):

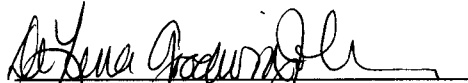
3.16.280 Appeal.

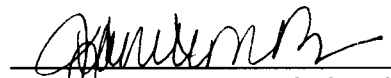
A taxpayer may appeal a decision of the ~~finance~~-director of administration to the city manager in accordance with the provisions of this section.

- A. The taxpayer has the right to a hearing before the city manager.
- B. The taxpayer's request for a hearing must be in writing, signed by the taxpayer (or counsel ~~therefore~~) and delivered to the city manager within 30 days of receipt of written notice of the ~~finance~~-director of administration's decision. Taxpayer's failure to request a hearing within the time and manner provided shall be deemed a waiver of his or her appeal rights and to any appellate review to which he or she might have otherwise been entitled; and the ~~finance~~-director of administration's decision becomes final.
- C. If the taxpayer duly delivers his or her request for hearing, the city manager will hold a hearing within 15 days from the date of receipt of the request. The city manager may extend in writing the hearing date, but no extension of more than 30 days shall be granted. The city manager shall duly notify the taxpayer of the date, time and place of the hearing.
- D. The taxpayer at his or her own expense may be represented by counsel.
- E. The hearing shall be open to the public.
- F. The city manager may attain the services of an attorney or other person to assist him or her in conducting the hearing and making the decision.
- G. All testimony shall be under oath. The proceedings shall be tape-recorded. Upon written request, the taxpayer is entitled to a copy of the tape at no charge. The taxpayer or representative and the ~~finance~~-director of administration or representative may examine and cross-examine witnesses. The city manager or representative may also question witnesses. Exhibits may be introduced. The rules of evidence need not be strictly followed. Irrelevant or unduly repetitious evidence may be excluded. The factual record is closed at the close of the hearing. The city manager may continue the hearing for good cause.
- H. The order of presentation will be:
 1. Brief opening statement by the ~~finance~~-director of administration;
 2. Brief opening statement by the taxpayer, which is optional;
 3. Presentation of evidence by ~~finance~~-director of administration;
 4. Presentation of evidence by taxpayer;
 5. Rebuttal as necessary;
 6. Argument by ~~finance~~-director of administration;
 7. Argument by taxpayer;
 8. Rebuttal argument by ~~finance~~-director of administration.
- I. The taxpayer must prove by a preponderance of the evidence the factual basis upon which he or she is relying.
- J. Within 10 working days from the conclusion of the hearing, the city manager shall render a written decision which shall be effective immediately or according to its terms.
- K. A taxpayer who is dissatisfied with the city manager's decision may appeal it to the superior court in Palmer only. Said appeal must be filed within 30 days of taxpayer's receipt of the decision. Taxpayer's failure to appeal within this time constitutes a waiver of his or her appeal rights and the city manager's decision becomes final.

Section 14. Effective Date. Ordinance No. 10-019 shall take effect upon adoption of the Palmer City Council.

Passed and approved this twenty-third day of November, 2010.


DeLeha Goodwin Johnson, Mayor


Janette M. Bower, MMC, City Clerk