

CITY OF PALMER, ALASKA

ORDINANCE NO. 445

AN ORDINANCE AMENDING THE CITY SALES TAX CODE, 3.16.010 ET SEQ., IN MANY PARTICULARS

THE CITY OF PALMER, ALASKA, ORDAINS:

Section 1. Classification. This ordinance shall be of a permanent nature and shall become a part of the City of Palmer Code of Ordinances.

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

Section 3. PMC 3.16.010 is amended to read as follows:

3.16.010 Authority. This sales tax is imposed and collected pursuant to the authority granted by Alaska Constitution, Art. X, and the Palmer Municipal Charter, §1.4.

Section 4. PMC 3.16.070 is amended to read as follows:

3.16.070 Seller accountability. Upon collection by the seller of the taxes imposed in this chapter, title to the collected taxes shall vest in the city. All taxes collected are city moneys, and the seller holds the moneys in trust for the city and is at all times accountable to the city for such moneys. Collection of any tax or taxes, interest, administrative costs and penalties due and payable to the city under this chapter may be enforced through civil action brought in any court of competent jurisdiction. Every sale which is made within the city, unless explicitly exempted by this chapter or subsequent ordinance, shall be presumed to be subject to the tax imposed under this chapter in any action to enforce the provisions of this chapter.

Section 5. PMC 3.16.080 is amended to read as follows:

3.16.080 Tax returns--Contents--Administrative charge for delinquency. A. Every seller, on or before the tenth 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 service 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. 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, such tax shall forthwith become delinquent. In the event the tax is not paid before delinquency, as provided in this chapter, an administrative charge of five percent of such tax shall be added to the tax for the first month or fraction thereof of delinquency, and an additional five percent for each additional month or fraction thereof of delinquency, until a total administrative charge of fifteen percent has been accrued. Such administrative charge shall be assessed and collected in the same manner as the tax is assessed and collected. In addition to the aforesaid administrative charge, interest at the rate of eight percent 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.

B. 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 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 become delinquent from such date, and collection shall be enforced under the terms of this chapter, as set forth in this chapter.

Section 6. PMC 3.16.090 is amended to read as follows:

3.16.090 Tax records--Final tax return. It shall be the duty of every seller required to make a return and pay over any tax under this chapter to keep and preserve suitable records of the gross daily sales together with invoices of purchases and sales, bills of lading, bills of sales and other pertinent records and documents which may be necessary to determine the amount of tax due under this chapter and such other records of goods, wares, merchandise and other subjects of taxation under this chapter as will substantiate and prove the accuracy of such returns. It shall also be the duty of every seller who makes exempt sales to keep records of such sales, which shall be subject to examination by the city or any authorized employee or agent thereof while engaged in checking or auditing the records of any seller required to make a report under the terms of this chapter. All such records shall remain in the city and be preserved for a period of three years after payment of the taxes, unless the city has authorized, in writing, their destruction or disposal at an earlier date, and shall be open to examination at any time by the city or any authorized employee or agent thereof while engaged in checking such records. The burden of proving that a sale, rental or service was not taxable shall be upon the seller.

Any seller who filed or should have filed a sales tax return for the prior month shall file a return for the current month even though no tax may be due. This return shall show why no tax is due and, if the business is sold, the name of the person to whom it was sold. If any seller sells, leases or otherwise disposes of his business, he shall make a final sales tax return within fifteen days after the date of sale.

Section 7. PMC 3.16.095 is adopted to read as follows:

3.16.095 Liability of third parties. A. If any seller sells, assigns, transfers, conveys, leases, forfeits, abandons or otherwise disposes of the business or accounts receivable, then the purchaser, successor, transferee, lessee, assignee, creditor or secured party shall withhold a sufficient portion of the purchase money or loan to pay the amount of such sales taxes, penalties, administrative costs and interest as may be due and unpaid to the city and to pay such to the city. If the purchaser, assignee, transferee, lessee, successor, creditor or secured party fails to withhold from the purchase money or loan, or fails to otherwise provide for or make the payment of the taxes, interest, administrative costs and penalties owed by the business as provided in this chapter, then the purchaser, assignee, transferee, lessee, successor, creditor or

secured party shall be personally liable, jointly and severally with the seller, for the payment of the taxes, penalties, administrative costs and interest accruing and unpaid to the city on account of the operation of the business of any former owner, owners, operators or assigns. This section is in addition to any rights of the city arising under AS 45.06.101 et seq.

B. 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 the 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 wilfully fails to pay or cause to be paid any taxes due from the corporation. In addition, regardless of wilfulness, each director of the corporation shall be jointly and severally liable for said amounts. The officer shall be liable only for taxes collected which became due during the period he or she had the control, supervision, responsibility, or duty to act for the corporation. This section does not relieve the corporation of other tax liabilities or otherwise impair other tax collection remedies afforded by law.

Section 8. PMC 3.16.140 is amended to read as follows:

3.16.140 Business License--Requirements Before issuing a business license to a seller, the City may require the applicant to post a bond, furnish a statement of net worth, or furnish additional security to insure the full and prompt payment of taxes to be collected under this chapter when in the judgment of the city manager it is in the best interests of the city to do so. The business license of any seller will be suspended when such seller fails to pay delinquent taxes, penalties, administrative costs, and interest within thirty days after notice of delinquency is given or mailed, provided such seller shall be afforded due process before license suspension. It is an ordinance violation for a seller to engage in sales without a current city business license or to engage in sales when such license is suspended. Each seller who obtains or should obtain a city business license in accordance with this chapter and this code consents to the inspections of his state business license tax returns and so much of his federal income tax returns as necessary in order to facilitate the accomplishment of the provisions and objectives of this chapter.

Section 9. PMC 3.16.160 is amended to read as follows:

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 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, 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 thirty 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 thirty days. Unless such review is sought within such time, the decision of the city finance director is final.

Section 10. PMC 3.16.180 is amended to read as follows:

3.16.180 Estimated tax. A. In the event that the city is unable to ascertain the tax due to be remitted by a seller by reason of seller's failure to keep accurate books, to allow inspection, or to file a return or seller's falsification of records, the city may make an estimate of the tax due based on any information available to it. Notice of the estimate of tax due shall be furnished the seller, and the amount therein stated shall become final thirty three days thereafter for the purposes of determining liability of seller to the city, unless the seller earlier files an accurate return, supported by satisfactory records, indicating a lesser liability, or unless the city proves a greater liability within six years from the date the final estimate is established. A seller shall immediately notify the city of any fire, theft or other casualty which would prevent his complying with this chapter. Such casualty constitutes a defense to any penalty provided in this chapter, but does not excuse the seller from liability for taxes due. Accidental loss of funds or records is not a defense under this section.

B. Nothing in this section shall prevent the city from filing and maintaining an action to collect any taxes collected or which should have been collected in addition to any penalty assessed. In such action, the estimated tax due made by the city shall be prima facie evidence of the amount payable.

Section 11. PMC 3.16.200 is amended to read as follows:

3.16.200 Lien for tax, interest and administration costs and penalties. A. The tax, interest, penalties and administrative costs imposed under this chapter shall constitute a lien in favor of the city upon the assets, including all real and personal property, of every person making taxable sales within the city. The lien arises upon delinquency and continues until the liability for the amount is satisfied or the property of the delinquent person is sold at foreclosure sales. When recorded, the sales tax lien has priority over all other liens except (1) liens for property taxes and special assessments; (2) liens that were perfected before the recording of the sales tax lien for amounts actually advanced before the recording of the sales tax lien; (3) mechanics' and materialmen's liens for which claims of lien under AS 34.35.070 or notices of right to lien under AS 34.35.064 have been recorded before the recording of the sales tax lien.

B. The city may file a notice of lien in the manner provided for federal tax liens under AS 40.19, provided that, in addition to the rights afforded thereunder, the city's sales tax lien shall attach to all seller's personal property, whether tangible or intangible, located in the recording district in which the lien is filed regardless of where the seller resides. The city may record subsequent notices of lien for amounts due after the recording of a previous notice of lien. The city may also record amended notices of lien to correct

any errors or to provide notice of the then current principal amount owing.

C. The notice of lien for real property shall set out:

1. The name of the seller;
2. The principal amount owing at a stated date;

and

3. A statement that penalty, interest and administration costs are also owing.

D. Within ten days after filing the notice of lien or amended notice of lien, the city shall mail a copy of the notice by certified mail, return receipt requested, to the last known address of seller; provided failure to so mail the copy shall not void the lien nor lessen its priority.

Section 12. PMC 3.16.260 is amended to read as follows:

3.16.260 Violation--Remedies. A. A person found by a court to owe sales taxes to the City shall pay the City all administrative costs of collection, to include without limitation, actual reasonable attorney's fees, court costs and audit fees incurred for collection.

B. Each of the following acts, when intentional, constitutes an ordinance violation and subjects the violator to a civil penalty of twenty-five dollars for each violation occurring in the first ten days and of one hundred dollars for each violation occurring thereafter, and each act or omission set forth in this section constitutes a separate violation, and each day constitutes a separate violation for continuing violations of omission, commission or concealment:

1. Failure to obtain a business license by a seller;
2. Failure to file a tax return or failure to remit taxes when due;
3. Falsification or misrepresentation of any record or fact provided to the city under this chapter or required to be kept by this chapter, if used to mislead the city tax authorities;
4. Failure to correct a falsification or misrepresentation of any record or fact provided to the city concerning sales tax;
5. Making sales while the seller's business license is suspended; and
6. Failure of a seller to allow the inspection at reasonable times of records required to be kept by this chapter.

C. The City may request the court to enjoin a seller from violating any provision of this Chapter, 3.16.

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

Section 13. PMC 3.16.270 is adopted to read as follows:

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 for a refund.

B. If the application for refund of tax, and where applicable interest at 8% per annum as well, does not exceed in the aggregate five hundred dollars, the city finance director 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 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 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 14. PMC 3.16.280 is adopted to read as follows:

3.16.280 Appeal. A taxpayer may appeal a decision of the finance director 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 therefor) and delivered to the city manager within thirty (30) days of receipt of written notice of the finance director'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's decision becomes final.

C. If the taxpayer duly delivers his or her request for hearing, the city manager will hold a hearing within fifteen (15) days from date of receipt of the request. The city manager may extend in writing the hearing date, but no extension of more than thirty (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 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
2. Brief opening statement by the taxpayer, which is optional
3. Presentation of evidence by finance director
4. Presentation of evidence by taxpayer
5. Rebuttal as necessary
6. Argument by finance director
7. Argument by taxpayer
8. Rebuttal argument by finance director

I. The taxpayer must prove by a preponderance of the evidence the factual basis upon which he or she is relying.

J. Within ten 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.

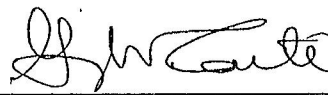
K. A taxpayer who is dissatisfied with the city manager's decision may appeal it to the Superior Court in Palmer only. Said appeal must be filed within thirty (30) days of taxpayer's receipt of the decision. Taxpayer's failure to appeal within this time constitutes a waiver of his or her appeal rights and the city manager's decision becomes final.

Section 15. Publication and Effective Date. This ordinance shall become effective immediately upon its adoption. Publication shall be by posting a copy hereof on the City Hall bulletin board for a period of ten (10) days following its adoption, and further it shall be published by being printed and included in the Palmer Municipal Code at its next regular supplementation and printing. A notice of public hearing shall be given by such posting at least five (5) days before final passage.

First Reading: April 14, 1992

Public Hearing &
Second Reading: April 28, 1992

Adopted by the City Council of the City of Palmer, Alaska, this 28th day of April, 1992.



GEORGE W. CARTE', Mayor



GEORGE A. CASTANEDA, Acting City Clerk