

Vote: Burney, Graham, O’Barr, Sullivan-Leonard, Wall and Wilson in favor

**City of Wasilla  
Ordinance Serial No. 16-14**

**An Ordinance Of The Wasilla City Council Amending Wasilla Municipal Code (WMC) 5.16, Sales Tax, To Enhance Administrative Procedures For The Collection Of Sales Tax, And WMC 2.76.040, Regarding The Duties Of An Administrative Hearing Officer.**

**Section 1. Classification.** This ordinance is of a general and permanent nature and shall become part of the city code.

**Section 2. Amendment of section.** WMC 5.16.020, Definitions is hereby amended to read as follows:

**“Capital lease” also referred to as a financing lease, means a lease which is in substance a purchase and wherein substantially all of the risks and benefits of ownership are assumed by a lessee. A lease which meets any one or more of the following criteria shall be considered a capital lease:**

**(1) The lease transfers ownership of the leased property to the lessee by the end of the lease term.**

**(2) The lease contains a bargain purchase option or a purchase less than fair market value upon termination of the lease.**

**(3) The lease term is equal to 75 percent or more of the estimated economic life of the leased property.**

**(4) The present value at the beginning of the lease term of the minimum lease payments, excluding that portion of the payments, equals or exceeds 90 percent of the fair value of the leased property.**

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“Health Care Services” means services required in the course of mental or physical treatment of a human patient.

“Lease” means a contract permitting the use or occupancy of real or personal property for consideration.

“Other Lease Types” means any lease that is not a capital lease.

“Rental” means any transfer of the right to use or occupy property for consideration.

“Residential Rentals” means rental of a dwelling designed for living or sleeping purposes.

“Service” means any application of labor, skill or knowledge to produce value in exchange for consideration, and may include the provision of property or the right to use or occupy property, but does not include services rendered to an employer by an employee. “Service” may include, but is not limited to:

(1) Professional, advertising, maintenance, recreation, amusement, and craftsman services.

(2) Services in which a product or sale of property may be involved, including personal property made to order.

(3) Utility services including but not limited to sewer, water, solid waste collection or disposal, electrical, telephone services and repair, natural gas, cable television, and internet services.

(4) The sale of transportation services originating inside the City.

(5) Services rendered for compensation by any person who furnishes any such services in the course of the person’s trade, business, or

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occupation including services rendered for commission when the commission is paid on a service or product that has not been charged Wasilla sales tax.

“Shipping and Freight Hauling Services” means the service of transporting goods by means other than the United States Postal Service.

“U.S. Postage” means the cost of mailing an item by the United States Postal Service.

**Section 3. Amendment of section.** WMC 5.16.035, Maximum tax per transaction, is hereby amended to read as follows:

(A) Only the first ~~five hundred dollars (\$500.00)~~ of the price in each transaction shall be subject to sales tax; provided, that a single payment for the sale or rental of property, or the rendering of a service, over a period exceeding one month shall be allocated pro rata to each one-month period or part thereof during the term of the transaction, and the first ~~five hundred dollars (\$500.00)~~ of the price allocated to each such period shall be subject to sales tax.

**(B) The payment of rent, whether for real or personal property, in excess of \$500.00, and for more than one month shall be treated as separate transactions covering the rental for one month each. A transaction involving payment for services to be rendered or delivered over a period of more than one month for a consideration in excess of \$500.00 shall be treated as separate transactions occurring one each month over the period of time that the service is rendered.**

**(C) Each night of each individual room rental shall be considered a separate transaction and therefore the maximum tax computation shall be calculated on a per room per night basis.**

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**(D) Capital leases: contracts to purchase the property at the end of a lease shall be treated as a sale on the effective date of the contract and are subject to the maximum tax per transaction pursuant to subsection 5.16.035(A).**

**(E) Other lease types: leases that have an option to purchase at the end of the lease are taxed on the principal amount of each lease payment for the term of the lease. If the purchase is made at the end of the lease, the purchase transaction would be treated as another separate transaction. Interest and financing charges related to the lease payment are not subject to tax.**

**(F) Installment Payments: when payments for a single transaction are made on an installment basis the sales tax on the transaction shall be collected on the first payment.**

**Section 4. Amendment of section.** WMC 5.16.040, Transaction in the city, is hereby amended to read as follows:

5.16.040 Transactions in the city.

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

(3) A rental or lease of real property is made in the city if the real property is located in the city. **A rental or lease of personal property is made if delivery occurs in the city or the property is located in the city.**

**Section 5. Amendment of subsection.** WMC 5.16.050, Exemptions, is hereby amended to read as follows:

(A) The following transactions are exempt from sales tax:

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(1) Sales of real property and interests in real property.  
~~Whether a transaction is a sale of real property is determined as of the time of the transaction, and without reference to whether what is sold later will be incorporated into real property.~~

(2) Casual and isolated sales, rentals or services, not made:  
(a) in the ordinary course of business; or  
(b) pursuant to a business license; or  
(c) by sellers representing themselves to be in the  
business of making such retail sales, rentals or services.

(3) Sales of securities, insurance and bonds of guaranty and fidelity.

(4) The following fees charged by banks, savings and loan associations, credit unions and investment banks:

(a) Fees associated with deposit accounts, including service fees, monthly account fees, non-sufficient funds (NSF) fees, and attachment fees.

(b) Fees for the purchase of bank checks, money orders, travelers checks, foreign currency and similar products for payments.

(c) Fees for, or commissions on, the sale, exchange or transfer of currency, stocks, bonds and other securities.

(d) Fees for the use of automatic teller machines and for transactions made through automatic teller machines, notary fees and overdraft protection fees.

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(e) Loan transaction fees and escrow collection services.

(f) Safe deposit box rentals or fees.

(5) Contracts to transport elementary or secondary school students to and from school.

(6) Sales of food in lunchrooms or cafeterias in elementary, secondary or post-secondary schools that are operated primarily for the convenience of school students and faculty, and not operated for profit.

(7) Sales, rentals or services which the city is prohibited from taxing by the constitution or statutes of the United States or the State of Alaska.

(8) Sales of subscriptions to newspapers and other periodicals ~~that are made directly by carriers to consumers or users.~~

(9) Sales, rentals and services to the United States, the State of Alaska, and any of their agencies, instrumentalities, or political subdivisions.

(10) Dues or fees to nonprofit clubs, labor unions or fraternal organizations.

(11) Sales of admission to school entertainments, school athletic events, and events conducted for the benefit of charitable or community organizations. Retail sales by a school sanctioned activity group raising funds for its approved purpose. This exemption does not apply to sales of gaming property.

(12) Sales of air, train, boat, cruise line or bus tour transportation, car rentals, accommodations, or admission to entertainment events,

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where the service is provided outside the city, and fees or commissions related to such sales.

(13) Sales related to orbital space facilities, space propulsion systems, space vehicles, satellites or stations, to the extent of the exemption required by AS 29.45.650(h).

(14) Sales of property purchased with food coupons, food stamps, or other certificates issued under 7 U.S.C. 2011-2025 (Food Stamp Act) or food instruments, food vouchers, or other certificates issued under 42 U.S.C. 1786 (Special Supplemental Food Program for Women, Infants and Children).

(15) Residential rentals for a term of ~~thirty~~ (30) or more consecutive days.

(16) Child **and adult** day-care **daycare services**, pre-elementary school and babysitting services.

(17) Sales of cemetery plots, ~~and sales of~~ caskets, funeral and burial-related goods and services by a funeral home.

(18) **Human health care services provided** ~~Sales of property and services required in the course of mental or physical treatment by a health care provider licensed by the state of Alaska~~ **under Alaska Statue Title 8**, and sales of property and services pursuant to a prescription or written order from such a person.

(19) Sales and rentals of hearing aids, crutches, wheelchairs and personal apparatus specifically manufactured for a patient.

(20) **U.S. Postage; and shipping and freight hauling services that originate in the city but the end destination is outside city limits.**

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(21) Assisted living services provided in accordance with an assisted living plan and in an assisted living home licensed as such by the State of Alaska.

(22) Sales of goods and services provided under a warranty or service contract, whether performed by the manufacturer or authorized representative of the manufacturer, and charged to a third-party warrantor for repairs, major maintenance, or both. The initial purchase of warranty or service contract would be taxed at the time of purchase. Any portion of repair paid by the customer through a deductible or other means would not be exempt under this section.

(B) The following transactions are exempt from sales tax; provided, that the buyer presents to the seller at the time of the sale transaction a valid certificate of exemption applicable to the transaction, issued to the buyer under Section 5.16.080:

(1) Sales to a dealer in the property sold, for the purpose of resale by the dealer.

(2) Sales of raw material to a manufacturer, which raw material becomes an ingredient or component part of a manufactured product or a container thereof, or is consumed in the manufacturing process.

(3) Sales of tangible personal property that either will be consumed in the course of construction or become part of real property, and rentals of equipment or services by a licensed contractor under chapter 8.18 of the Alaska Statutes, to an owner of real property for use in the original construction of, or renovations to, improvements to the real property. This

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exemption does not apply to sales of tangible personal property, or rentals of equipment, that are to be used in repairing or maintaining real property.

(4) Sales of tangible personal property that either will be consumed in the course of construction or become part of real property, and rentals of equipment or services by a licensed contractor under chapter 8.18 of Alaska Statutes, to a person licensed as a contractor under chapter 8.18 of the Alaska Statutes for use in the original construction of, or renovations to, improvements to real property. This exemption does not apply to sales of tangible personal property, or rentals of equipment, that are to be used in repairing or maintaining real property.

(5) Sales, rentals and services to a person that the Internal Revenue Service recognizes as an organization described in Section 501(c)(3), 501(c)(4) or 501(c)(19) of the Internal Revenue Code; provided, that the sale, rental or service is not for use in an “unrelated trade or business” of the person, as that term is defined in Section 513 of the Internal Revenue Code.

(6) Sales, rentals and services to a church that is organized as a nonprofit corporation under the laws of the ~~s~~State of Alaska.

(7) Sales of food supplies to food service establishments for incorporation into food products to be sold to the public.

(8) Sales of food supplies to hospitals, institutions housing six or more residents, recreational camps, and schools.

(9) Services sold for resale when the services are directly integrated into services or goods sold by the buyer located within the city and registered with the sales tax administrator, to another purchaser in the

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normal course of business, provided that the services are purchased separately for resale, and the services are identified, charged for and billed for separately without markup from any other services.

(C) The following transactions are exempt from sales tax; provided, that the seller has at the time of the transaction a valid certificate of exemption applicable to the sales transaction, issued to the seller under section 5.16.080:

(1) Sales, rentals and services by a person that the Internal Revenue Service recognizes as an organization described in section 501(c)(3), 501(c)(4) or 501(c)(19) of the Internal Revenue Code; provided, that the sale, rental or service is not part of an “unrelated trade or business” of the person, as that term is defined in the Internal Revenue Code.

**Section 6. Amendment of subsection.** WMC 5.16.080, Certificate of exemption, is hereby amended to read as follows:

(A) A person shall apply to the finance director for a certificate of exemption that is required for an exemption from sales tax under ~~Section~~ **subsection** 5.16.050(B) or (C) on a form approved by the finance director. The application shall be accompanied by any applicable fee that is required under subsection (B) of this section. The finance director may require additional information **from** ~~of~~ the applicant as necessary to determine whether the application should be granted, including without limitation documentation of Internal Revenue Service recognition of the applicant as an exempt organization, or the organization of a church as a nonprofit corporation under the laws of the State of Alaska. A certificate of exemption is issued for a calendar year, and expires on December 31st of the calendar year for which it was issued.

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(B) Except as provided in this subsection, there shall be no charge for a certificate of exemption. The applicant shall pay the city:

~~(1) For a certificate of exemption issued under Section 5.16.050(B)(3) for the 2007 calendar year, twelve dollars and fifty cents (\$12.50).~~

~~(12)~~ For a certificate of exemption issued under ~~Section~~ **subsection** 5.16.050(B)(3) for the 2008 calendar year ~~or any subsequent calendar year, thirty dollars (\$30.00).~~

~~(23)~~ For a certificate of exemption issued under ~~Section~~ **subsection** 5.16.050(B)(4) for the 2008 calendar year ~~or any subsequent calendar year, one hundred fifty dollars (\$150.00).~~

(C) The finance director may revoke a certificate of exemption after notice to the holder of the certificate and a hearing, if the finance director finds that the holder of the certificate:

(1) Gave 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 the exemption in Section 5.16.050 for which the certificate was issued;

(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) Ceases to be entitled to exemption from sales tax under the exemption in Section 5.16.050 for which the certificate was issued.

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**(D) Prior to revocation of a certificate of exemption, the holder of the certificate shall be provided with notice of the alleged violation not less than 15 days prior to the proposed effective date of revocation of the certificate. The person or entity to whom the certificate was issued may request a hearing before the mayor or mayor's designee, who may be a city employee, regarding the alleged violation by filing a written request with the city prior to the effective date for revocation. If requested, the hearing shall be held within 20 days after the date of receipt of the request, and the certificate shall not be revoked prior to the date of hearing.**

**(E) A decision under subsection (D) of this section revoking a certificate of exemption may be appealed to the superior court as provided in the Alaska Rules of Appellate Procedure.**

**(F) If a certificate of exemption is revoked, a new certificate may not be issued to the same person or entity for a period of two years from the date of revocation.**

**Section 7. Amendment of subsection.** WMC 5.16.090, Determination whether transaction is exempt, is hereby amended to read as follows:

~~A seller shall require the buyer to pay sales tax on each transaction that is not exempt from sales tax under this chapter. If a buyer pays sales tax on a transaction that the buyer believes to be exempt, the buyer may request that the city determine whether the transaction is exempt by completing a certificate of protest in a form provided by the city. The certificate shall show the names and addresses of the seller and the buyer, the basis for the claim of exemption, and such other information as may be prescribed by the city. A seller shall keep a supply of~~

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~~certificates of protest and provide one to a buyer upon request. After completing the certificate of protest, the buyer shall give it to the seller, who shall deliver it to the city as promptly as possible, but in no event later than thirty (30) days after its receipt from the buyer. The finance director will determine whether a transaction is exempt from sales tax based on the information in the certificate of protest, and notify the buyer in writing of the determination, within thirty (30) days after receipt of the certificate. If the finance director determines that the transaction is exempt, the finance director shall remit a refund with the notice.~~

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

**(B) If the seller determines that a sale is not exempt, but the buyer believes the sale to be exempt, then the buyer may protest the tax by paying the tax at the time of sale and filing a certificate of protest form with the city no later than 60 days after the date of sale. The seller shall collect the protested tax at the time of the sale.**

**(C) If the seller determines that a sale is exempt, the seller can request a determination on whether a sale is exempt by filing a certificate of protest form with the city, no later than 60 days after the date of sale. The seller shall continue to collect the tax at the time of sale until the seller receives a determination from the city.**

**(D) The finance director will rule on each protest by sending to the buyer or seller a written determination on the protest. If the protest is**

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allowed, a refund of the sales tax paid will be remitted to the buyer with the determination.

(E) Either the buyer or seller may appeal the finance director's determination by requesting a hearing within 15 days after service of notification of the determination under subsection (D). A hearing requested shall be conducted before the mayor or the mayor's designee, who may be a city employee. After the hearing, the person conducting the hearing shall serve the decision on the protestor by delivering the notice to the protestor's address of record.

(F) A decision under subsection (E) of this section may be appealed to the superior court as provided in the Alaska Rules of Appellate Procedure.

**Section 8. Amendment of subsection.** WMC 5.16.100(A), Collection of sales tax - Addition and separate statement; Exceptions, is hereby amended to read as follows:

(A) The buyer shall pay sales tax to the seller at the time of payment for a sale, rental or service subject to sales tax. The seller shall collect sales tax from the buyer at the time of payment for a sale, rental or service subject to sales tax. The seller is responsible for remitting sales tax on all nonexempt sales to the city, regardless of whether the seller collects the sales tax from the buyer. The seller is liable for any sales tax due because of the seller's incorrect determination of the sales tax rate to be applied.

**Section 9. Amendment of subsection.** WMC 5.16.125, Application of sales tax payments, is hereby amended to read as follows:

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(A) Except as this section provides otherwise, payments on sales tax accounts shall be applied to the amount due for each calendar month, in chronological order, and within the amount due for each calendar month first to fees, accrued penalty, ~~second to~~ accrued interest and then to sales tax payments owed by the seller.

(B) Payments on sales tax accounts submitted with sales tax returns shall be applied to the most current return period, first to fees, accrued penalty, ~~second to~~ accrued interest and then to sales tax payable under the return. Any remaining moneys shall be applied as provided in subsection (A) of this section.

(C) Amounts of delinquent sales tax, interest, ~~or~~ penalty or fees 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 10. Enactment of subsection.** WMC 5.16.128, Deduction of bad debts, is hereby enacted to read as follows:

**WMC 5.16.128 Deduction of bad debts.**

**(A) A person filing a return under section 5.16.120 may deduct sales found to be worthless. The bad debt may be deducted when it meets the following:**

**(1) The sales tax was paid on an accrual basis; and**

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**(2) Is written off as uncollectible in the person's books and records; and**

**(3) Qualifies as a deduction for federal income tax purposes under the Internal Revenue Code of 1986.**

**(B) If the amount of bad debt exceeds the amount of taxable sales during the period that the bad debt is written off, a person may file a refund claim with the city.**

**(C) If a bad debt deducted under subsection (A) of this section is subsequently collected, the person who claimed the deduction shall pay the tax levied under section 5.16.030 on the amount collected. For purposes of this subsection, any payments made on a debt or account are applied:**

**(1) First to the taxable price of the property or service and the tax levied under section 5.16.030 on the property or service; then**

**(2) To interest, service charges, and any other charges.**

**Section 11. Amendment of subsection.** WMC 5.16.130(C), Duties upon cessation or transfer of business, is hereby amended to read as follows:

**(C) The transferee of a business, with written consent of the owner,** shall obtain from the city before the effective date of the transfer an estimate of the delinquent sales tax, penalty and interest, if any, owed by the seller as of the date of the transfer, and shall withhold that amount from the consideration payable for the transfer, until the seller has produced a receipt from the city showing that all tax obligations imposed by this chapter have been paid. A transferee that fails to withhold the amount required under this subsection shall be liable to the city for the lesser of the amount of delinquent sales tax, penalty and

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interest due from the seller as of the date of transfer, and the amount that the transferee was required to withhold.

**Section 12. Amended of subsection.** WMC 5.16.140, Amended returns, is hereby amended to read as follows:

(A) A seller may file with the city an amended sales tax return with supporting documentation, and the city may accept the amended return, but only in the following circumstances:

(1) The amended return is filed within one year of the original due date for the return; **and**

(2) The seller provides a written justification for amending the return; **and**

(3) The seller held a current city business license for the period for which the amended return was filed and filed an original return for that period; and

(4) The seller agrees to submit to an audit upon request of the city.

(B) The city shall notify the seller in writing ~~whether it accepts or~~ **if it** rejects an amended return, including the reasons for any rejection.

**Section 13. Enactment of subsection.** WMC 5.16.145, Refunds, is hereby enacted to read as follows:

**WMC 5.16.145 Refunds.**

(A) **No sales tax refund shall be made unless the claimant complies with the requirements to obtain a sales tax refund set out in this section.**

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**(B) A claim for refund of sales taxes paid for exempt sales shall be denied unless the claimant complies with section 5.16.140.**

**(C) A claim for refund of sales taxes over collected in error is barred unless:**

**(1) The claimant files a claim for refund with the city within one year of the date of sale, on the form prescribed by the city; and**

**(2) If the claimant is a seller, and the tax refund is owed to any buyer, the seller submits, and the city approves, a refund plan to all affected buyers.**

**(D) A claim for refund overpaid in error because of a mistake on the face of a sales tax return is barred unless:**

**(1) The claimant files a claim for refund within one year of the due date of the return, on the form prescribed by the city; and**

**(2) The claimant files an amended return pursuant to the requirements of this chapter.**

**(E) When the city initiates an audit or estimate pursuant to section 5.16.170, the period for claiming a refund under subsections (C) and (D) above, is the same as the period under audit, but in no case more than three years from the date of sale.**

**(F) The city shall not be liable for interest on any refund claimed or paid, or for any costs incurred by a buyer or seller in claiming or obtaining a refund.**

**Section 14. Amendment of section. WMC 5.16.150, Tax return – Extension of time, is hereby amended to read as follows:**

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WMC 5.16.150 ~~Tax return~~ - Extension of time, **Waivers, Forgiveness.**

(A) Upon written application of a seller, stating the reasons therefor, the finance director may extend the time to file a sales tax return, if the finance director finds each of the following:

(1) For reasons beyond the seller's reasonable control, the seller has been unable to maintain in a current condition the books and records that contain the information required to complete the return; **and**

(2) The seller has a reasonable plan to cure the problem that caused the seller to apply for an extension, the seller will commence and proceed with diligence to cure the problem, and the problem will be cured within a reasonable time; and

(3) At the time of the application, the seller is not delinquent in filing any other sales tax return or in remitting sales tax to the city.

(B) A penalty **and/or fee** assessed under ~~Section~~ **subsection** 5.16.120(D) for the delinquent remittance of sales tax or under ~~Section~~ **subsection** 5.16.180(F) for failure to file a sales tax return may be waived by the finance director, upon written application of the seller accompanied by a payment of all delinquent sales tax, interest, ~~and~~ penalty **and/or fee** otherwise owed by the seller to the city, within ~~forty five (45)~~ business days ~~after the date of delinquency.~~ **of the assessment of the penalty and/or fee.** A seller may not be granted more than one waiver of penalty **and/or fee** under this subsection in any period of ~~twenty four (24)~~ consecutive months. The finance director shall report all such waivers of penalty **and fees** to the council in writing, at least once each calendar quarter.

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**(C) The mayor or the mayor’s designee, who may be a city employee, may forgive the payment of uncollected sales taxes, interest and penalty thereon, and penalties for failure to file owing by a seller to the city upon a determination by the mayor or mayor’s designee that:**

**(1) Such uncollected sales taxes have never been collected by a substantial portion of a clearly, definable class of seller; or**

**(2) Such uncollected sales taxes have never been collected on a substantial portion of a clearly defined class or type of transaction or service; or**

**(3) A reasonable interpretation and reliance upon that interpretation results in failure to collect a sales tax, which collection is later determined to have been legally required under this chapter.**

**(D) The mayor or mayor’s designee shall notify the council in writing of any such incidence of forgiveness which shall be final unless overridden by the council within 30 days of such forgiveness.**

**Section 15. Amendment of section.** WMC 5.16.170, Tax records – Additional information from seller - Audits, is hereby amended to read as follows:

(A) A seller shall maintain records of transactions supporting the information that **the seller** ~~it~~ submits on ~~its~~ sales tax returns, including without limitation records of daily gross receipts from sales, rentals and services, invoices of purchases and sales, bills of lading and bills of sale. A seller ~~also~~ shall **also** maintain records of transactions that are exempt from sales tax, including information that will substantiate the claim of exemption. ~~The seller shall maintain all such records at a location within the city.~~ The seller shall maintain all

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such records for a period not less than three years after the date of payment of the sales tax to which they pertain, except to the extent that the city has authorized in writing their destruction or disposal at an earlier date.

(B) ~~The records that a seller is required to maintain under subsection A of 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.~~ **If insufficient detail exists within a seller's business records to substantiate retail sales exemptions, such sales will be reclassified as taxable sales and subject to sales tax collection and remittance.**

(C) ~~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 immediately notify the city of any fire, theft or other casualty which prevents the seller's compliance with this chapter. The casualty constitutes a defense to any penalty and/or fee provided in this chapter if determined to be the proximate cause of the failure to comply for a given reporting period, but does not excuse the seller from liability for taxes due. Accidental loss of funds or records is not a defense against the penalties and/or fees of this chapter.**

(D) ~~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.~~ **Any seller who has established a sales tax account with the city, who is required to collect and**

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remit sales tax, or who is required to submit a sales tax return under the provision of section 5.16.100 is subject to a discretionary sales tax audit at any time. The purpose of such an audit is to examine the business records of the seller in order to determine whether appropriate amounts of sales tax revenue has been collected by the seller and remitted to the city.

(E) The finance director shall be responsible for selecting the particular sellers whose business records will be audited.

(F) Sales tax audits of seller's business records may be accomplished by either an employee of the finance department or by an individual or firm under contract with the city. The city may use sampling principles or methods in lieu of 100 percent examination of records in conducting a sales tax audit.

(G) Sellers selected for a sales tax audit will be notified by letter and will be required to meet with, and make available for inspection and copying, all pertinent business records including income tax returns that may be requested for the prior three-years for examination, to the finance department employee, or contractor conducting the audit, within 30 days of notification. Under extenuating circumstances, the finance director may grant an extension of time for compliance.

(H) After completion of a sales tax audit, sellers subject to the audit will be notified of the results of the audit by letter. If the audit resulted in an additional sales tax liability to the city, the additional sales tax, with interest assessed retroactive to the date the sales tax was due, must be remitted to the city within 30 days after the receipt of the letter, or the additional sales tax

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will be subject to the procedures on delinquencies outlined in section 5.16.120. If the audit has resulted in a refund due to the seller, the refund outlined in section 5.16.145 will be sent to the seller within 30 days.

**Section 16. Amendment of subsection.** WMC 5.16.190(G)(2), Violations – Remedies, is hereby amended to read as follows:

(G) The city may bring a civil action to:

(2) Collect delinquent sales tax, penalty, interest, **fees** and costs of collection, either before or after estimating the amount of sales tax due under Section 5.16.180.

**Section 17. Enactment of section.** WMC 5.16.215, Protest, is hereby enacted to read as follows:

**WMC 5.16.215, Protest.**

**(A) A seller disputing the amount of the estimate, or the results of an examination or audit under WMC 5.16.170, may do so by filing a protest with the city's finance director within 30 days of the date of the notice of estimated tax or results of an audit or examination. The protest must set forth:**

**(1) The seller's justification for reducing or increasing the estimated tax amount, including any missing sales tax returns for the periods estimated; or**

**(2) the seller's reasons for challenging the examination or audit results.**

Underline, added. ~~Strikethrough, deleted~~

(B) Upon receipt of a protest filed under subsection (A) of this section, the finance director shall present the protest to the mayor for processing.

(C) The mayor or mayor's designee, who may be a city employee, shall advise the seller of a date certain for an informal meeting or hearing with the seller and shall informally review the protest, make written findings and state reasons for the decision. No later than the first business day following the written decision, the mayor or mayor's designee shall mail the decision to the seller by certified mail, return receipt requested, to the last known mailing address of the seller. The written decision shall be maintained by the mayor or the mayor's designee in accordance with the city's records management policy.

(D) The seller may appeal the written decision under subsection (C) of this section to an administrative hearing officer pursuant to WMC 5.16.220 within 15 business days from the date of mailing the written decision. Failure of the seller to appeal the decision shall be deemed to be a waiver of any right to appeal such decision.

Section 18. Enactment of section. WMC 5.16.220, Appeal, is hereby enacted to read as follows:

WMC 5.16.220 Appeal.

(A) Definitions. In this section, the following words and phrases shall have the meanings set forth in this section:

Underline, added, Strikethrough, deleted



ADMINISTRATIVE HEARING OFFICER. A person is appointed as an administrative hearing officer pursuant to Chapter 2.76 to hear appeals related to the decision of the mayor or mayor's designee on a sales tax audit.

APPELLANT. A person who files an appeal application pursuant to subsection (D) of this section.

(B) Hearing Officer. Appeals filed under this section shall be heard by an administrative hearing officer appointed under WMC 2.76.010. The administrative hearing officer shall hear and decide on appeals from a decision of the mayor or mayor's designee on the results of a sales tax audit pursuant to WMC 5.16.175.

(C) Staff. The Office of the City Clerk shall assist the administrative hearing officer in preparing for and conducting the hearing to include making an electronic recording of the appeal hearing, preparing correspondence to include the notification of the decision of the administrative hearing officer.

(D) Application for Appeal. The appellant affected by a decision of the mayor or mayor's designee on the results of a sales tax audit pursuant to WMC 5.16.175, may appeal the decision to an administrative hearing officer by filing an appeal application with the Office of the City Clerk on a form provided by the Office of the City Clerk within 15 business days from the date of decision. The appeal application shall state with specificity the grounds for the appeal and include contact information for the appellant or the appellant's representative.

Underline, added. ~~Strikethrough, deleted~~

(E) Filing Fee. A \$300 filing fee shall accompany the application for appeal. The appellant may request that the city waive payment of part or all of the fee and costs because of the appellant's indigence. The request shall include a sworn financial statement from the appellant and be submitted to the city clerk. The city clerk will grant or deny the request based on a determination whether the appellant is indigent.

(F) Hearing. The administrative hearing officer shall conduct a hearing on the appeal no more than 60 days after the appeal application is filed. Records and proceedings before the administrative hearing officer shall be confidential and are not open to the public. The records related to the proceedings shall be maintained by the mayor or the mayor's designee in accordance with the city's records management policy.

(G) Decision. The administrative hearing officer's authority includes the authority to recommend, in writing, that the mayor or mayor's designee compromise and abate penalties and/or interest and fees, and to recommend, that the mayor or mayor's designee negotiate and enter into payment plans for delinquent sales taxes, penalties, and/or interest and fees. The decision of the administrative officer shall be in writing and sent to the appellant by the city clerk on the first business day following the decision.

(H) A decision under subsection (G) of this section may be appealed to the superior court as provided in the Alaska Rules of Appellate Procedure.

Section 19. Amendment of subsection. WMC 2.76.040(A), Duties, is hereby amended to read as follows:

Underline, added. ~~Strikethrough, deleted~~

(A) Administrative hearing officers shall have jurisdiction over the following:

(4) **Sales tax audit, pursuant to Chapter 5.16.**

**Section 20. Amendment of subsection.** WMC 2.76.070(A), Appeal Procedures, is hereby amended to read as follows:

(A) The procedures defined in:

(4) **Section 5.16.220 shall govern appeals from a sales tax audit.**

**Section 21. Effective date.** This ordinance shall take effect upon adoption by the Wasilla City Council.

ADOPTED by the Wasilla City Council on April 11, 2016.

  
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BERT L. COTTLE, Mayor

ATTEST:

  
\_\_\_\_\_  
JAMIE NEWMAN, MMC, City Clerk

[SEAL]

Underline, added. ~~Strikethrough, deleted~~

CITY COUNCIL LEGISLATION STAFF REPORT

Ordinance Serial No. 16-14: An Ordinance Of The Wasilla City Council Amending Wasilla Municipal Code (WMC) 5.16, Sales Tax, To Enhance Administrative Procedures For The Collection Of Sales Tax, And WMC 2.76.040, Regarding The Duties Of An Administrative Hearing Officer.

Originator: Troy Tankersley, Finance Director
Date: 03/09/2016

Agenda of: 3/21/2016

Table with 4 columns: Route to, Department Head, Signature, Date. Rows include City Attorney, Public Works Director, Finance Director, Deputy Administrator, and City Clerk.

Reviewed by Mayor Bert L. Cottle: [Signature] 03:10:2016

Fiscal Impact: [ ] yes or [X] no Funds Available: [ ] yes or [ ] no

Account name/number: n/a

Attachments: Ordinance Serial No. 16-14 ( 28 pages)

Summary Statement: The proposed ordinance serves to revise Title 5 Revenue and Finance Chapter 5.16 Sales Tax and Title 2 Administration Chapter 76 Administrative Hearing Officers to provide enhanced procedures for the collection of sales tax and add appeal procedures.

Section 2: WMC 5.16.020, Definitions: Define Capital Lease, Health Care Services, Lease, Other Lease Types, Residential Rentals, Shipping and Freight Hauling Services, U.S. Postage and enhance the definition of a Service.

Section 3: WMC 5.16.035, Maximum tax per transaction: Striking written amount to conform to existing code format. Adding descriptions of specific transactions to clarify how transactions spanning more than one month or one payment should be treated.

Section 4: WMC 5.16.040, Transaction in the city: Adding leases to the types of transaction in the city.

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Section 5: WMC 5.16.050, Exemptions: adding language to clarify exempt transactions and add some exemptions that were not addressed in code to eliminate confusion and are in line with other codes within the State of Alaska with regards to postage, freight, healthcare, senior daycare and assisted living services, warranty services, contractor services and services for resale.

Section 6: WMC 5.16.080, Certificate of exemption: Adding subsection title to conform to existing code format and grammatical cleanup. Adding procedures for revoking an exemption for violation of subsection 5.16.080(C)

Section 7: WMC 5.16.090, Determination whether a transaction is exempt: Replacing current language with new procedures of a protest of tax and determination of taxability and extending the timeframe to process.

Section 8: WMC 5.16.100(A), Collection of sales tax - Addition and separate statement; Exceptions: Adding language to include seller liability for not applying the correct sales tax rate.

Section 9: WMC 5.16.125, Application of sales tax payments: Adding fees throughout the section will conform accounting procedures to city code.

Section 10: Enactment of subsection WMC 5.16.128, Deduction of bad debts: Adopting procedures to deal with uncollectable debt to a seller.

Section 11: WMC 5.16.130(C), Duties upon cessation or transfer of business: Adding written consent of the owner to the request for information of proprietary information.

Section 12: WMC 5.16.140, Amended returns: Adding language to clarify the process of amending sales tax returns.

Section 13: Enactment of subsection WMC 5.16.145, Refunds: Adopting a new subsection outlining the process for refunding sales tax, either by an amended return or through an audit finding.

Section 14: WMC 5.16.150, Tax return – Extension of time: Adding fees throughout the section, striking numerical written format will conform to existing code and adding a subsection to include a process of waiving uncollected sales tax.

Section 15: WMC 5.16.170, Tax records – Additional information from seller – Audits: Adding requirements of a seller to document records, notify the city of loss of any records, and outline the process of a sales tax audit.

Section 16: WMC 5.16.190(G)(2), Violations – Remedies: Adding fees throughout the section.

Section 17: Enactment of section WMC 5.16.215, Protest: Adopting a process to protest the findings of an audit.

Section 18: Enactment of section WMC 5.16.220, Appeal: Adopting an appeal process for protested audit findings.

Section 19: WMC 2.76.040(A), Duties: Adding sales tax audit hearings to duties of the administrative hearing officer.

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Section 20: WMC 2.76070(A), Appeal Procedures: Adding sales tax audits to appeal procedures.

**Staff Recommendation:** Introduce and set for public hearing Ordinance Serial No. 16-14.