

Chapter 3.04
CONSUMER'S SALES TAX¹

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3.04.010 Definitions.

For the purposes of this chapter, the following words and phrases have the meanings respectively ascribed to them:

“Buyer” or “consumer” means and includes, without limitation on the generality of the terms, every individual, receiver, assignee, trustee in bankruptcy, trust, estate, firm, copartnership, joint venture, club, company, business trust, corporation, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit or otherwise.

“Marijuana” means all parts of the plant of the genus cannabis whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt derivative, mixture, or preparation of the plant, its seeds, or its resin, including marijuana concentrate; “marijuana” does not include fiber produced from the stalks, oil or cake made from the seeds of the plant, sterilized seed of the plant which is incapable of germination, or other ingredient combined oral administrations, food, drink, or other products.

“Marijuana products” means concentrated marijuana products and marijuana products that are comprised of marijuana and other ingredients and are intended for use or consumption, such as, but not limited to, edible products, ointments, and tinctures.

“Remuneration for services” means and includes the gross remuneration received for furnishing labor and materials for accomplishing a specified result, including travel and adventure services, and rentals of all types, including but not limited to rentals of equipment, buildings, lands and materials. It shall not be construed to include salaries or wages received by an employee from an employer; however, it shall include all fees received for rentals and services charged under the authority of Chapter 14.40 KMC (harbor fees) and KMC 13.08.100 and 13.08.110 (port dockage and wharfage charges).

“Retail sale” or “sale at retail” means any nonexempt sale of services, rentals, or tangible personal property made to a buyer who intends to use, consume, or receive the item or services purchased for his own personal use as the ultimate consumer with no intention to sell the item again, whether to be sold in the same form as received, or in some modified condition or form or after fabrication or use with some other substance or item. Notwithstanding any other provision of this chapter, arrangements made with another person or agent, including, but not limited to, a travel agent, broker, representative, tour operator, tour marketer, or cruise ship line, by a provider of services, rentals or goods to market such services, rentals, or goods (including travel

and adventure services) or to provide such services, rentals or goods to another person, or the transfer to the buyer of the right or privilege to receive or assign such services, rentals or goods, is a taxable sale by such provider, and such provider is a seller for purposes of this chapter. Except as provided below or in KMC 3.04.013 and 3.04.100, a retail sale or sale at retail is subject to sales tax if the sale occurs within the city. Without limiting the generality of the foregoing, the following more specific examples in subsections (1) through (5) of this definition are provided to clarify the applications of this section:

- (1) Where the physical location of the business is within the city, the sale is subject to the city's sales tax; provided, however, that the point of sale of fuel shall be the seller's tank-equipped fuel delivery vehicle or vessel. In the event that the seller has no fixed place of business but is conducting business within the city, the tax will be based on the location of where the property is being delivered or the work is being conducted.
- (2) The sale of property in the city is considered subject to city sales tax if the seller maintains any office, distribution or sales within the city. If the seller maintains offices both in the city and outside the city, city sales tax shall apply unless the product is provided, sold, stored, distributed, billed and paid for solely outside the city and the product is delivered outside the city.
- (3) A real estate rental is subject to sales tax on the basis of where the rental property is located.
- (4) Where a buyer receives a service within the corporate limits of the city and the service begins or ends therein, or where the buyer receives an entire service therein, or where a buyer purchases from the city the privilege to use any harbor facilities owned or operated by the city at any location within the borough, the sale is subject to the city's sales taxes.
- (5) A person who furnishes proof, in the form required by the revenue collector, that he has paid a sales tax in some jurisdiction other than the borough or the city, on the sale of services, rentals, or tangible personal property, is required to pay the borough's sales tax only to the extent between the amount of the sales tax so paid elsewhere and the amount of the sales tax levied by the borough. This subsection applies to a sales tax levied in any taxing jurisdiction whether in or outside the state.

"Sale for resale" means the sale of tangible personal property to a buyer whose principal business is the resale of the property whether in the same or an altered form and who holds a valid resale certificate issued by the Ketchikan Gateway Borough. "Sale for resale" also means the provision of services to a broker whose principal business is the resale of those services to an ultimate consumer and who holds a valid resale certificate issued by the Ketchikan Gateway Borough. Resale certificates do not apply to: travel and adventure services if the sale is to a person who would be entitled to claim the exemption provided by KMC 13.04.100(u); or supplies purchased by travel and adventure service providers, hotels/motels, lodges, apartment/house rentals, or bed and breakfasts which are not separately charged to the consumer when resold.

“Sales price” means and includes the consideration, whether money, credit, rights, or other property expressed in terms of money paid or delivered by a buyer to a seller, all without any deduction on account of the cost of property sold, the cost of materials used, labor costs, discount, delivery costs, or any other expenses whatsoever paid or accrued, and without any deduction on account of losses.

“Sales tax” means and includes the tax herein levied on gross revenues derived from all taxable commercial retail sales, rentals and services, including sales of travel and adventure services, said revenues being computed in dollars and cents and the tax payable by the seller, the person performing the services, or the person receiving gross revenues from rentals, to the city.

“Seller” means and includes every person making sales at retail, including travel and adventure services, to a buyer or consumer, whether as agent, broker or principal, and the term also means and includes persons performing services for remuneration as well as persons receiving gross revenues derived from rents.

“Single-unit sale” means the sale of a separate, single item or service which is customarily sold, advertised, contracted for sale or sold in the normal course of business as a separate and single item or unit or by a single unit of measurement (i.e., per gallon, ton, hour, day, week, month, foot, sack, yard, pound, piece, group, each, box, set, package, or other common unit of measurement). A single-unit sale shall include a sale by contract, quote, bid or other lump-sum amount only if the sale is based on and computed as a single bid, quote, sum, or package price rather than as an accumulation, sum, or aggregation of prices of separate identifiable or separable unit prices as defined above. For purposes of package tours, every individual in the tour will count as a single unit. For purposes of harbor fees and port dockage, each foot or other measurement of length will count as a single unit.

“Travel and adventure services” include, but are not limited to, tours and charters on land and water, guide services, admissions, lectures, transportation services (excluding air transportation), and the rental of lodging, aircraft, vehicles, watercraft, and equipment, including fishing, boating, camping and other tour or adventure-related goods. Travel and adventure services also include sales of goods incidental or related to such services. Regardless of the location of any marketing, brokering, packaging, resale, assignment, or other arrangement and regardless of the beginning or ending of any other related services, the point of delivery of a travel and adventure service is within the city if the ultimate consumer of the travel and adventure service receives any such service which begins, ends, or occurs, as described in subsection (4) of the definition of “Retail sale” or “sale at retail.” (Ord. 1821 § 1, 2016; Ord. 1562 § 2, 2006; Ord. 1433 § 1, 2000; Ord. 1335 § 1, 1996; Ord. 1230, 1992; Ord. 1096 § 1, 1986; Ord. 1063 §§ 1, 2, 1985; Ord. 984 §§ 1, 2, 1982; Ord. 892 § 2, 1978; Ord. 870 § 2, 1977)

3.04.011 Delivery charges.

(a) Delivery Charges. Delivery charges for services rendered for delivery of any personal property, goods or materials which delivery services both commence and terminate within the city are subject to sales taxes.

(b) Definition. "Delivery charges" means and includes any costs or charges imposed on the sale of freight services, shipping services, courier services, wharfage services, postal services, excepting postal delivery services rendered by the United States Postal Service, and any other services related to the delivery or transportation of any personal property, goods or materials of any nature whatsoever. (Ord. 984 § 3, 1982)

3.04.012 Employees/subcontractors – Sale of services.

(a) The remuneration paid by an employer in the form of wages or salary to an employee for the sale of services by such employee to the employer are not taxable under the provisions of this chapter. Sales of services by contractors, or subcontractors, and any other type of sale of a service by a person other than an employee are taxable unless specifically exempted.

(b) A person shall be deemed to be an employee under the provisions of this chapter if the person claiming to be an employer is withholding a portion of such person's wages or salary in accordance with federal income tax laws and regulations. In the event no amounts are being withheld, it shall be presumed such person is not an employee unless the person claiming to be his employer submits clear and convincing evidence establishing the person's status as an employee. (Ord. 984 § 4, 1982)

3.04.013 Multijurisdictional services.

(a) All services which either commence or terminate within the city, or which are in any part rendered, supplied or provided within the city, shall be subject to sales tax, except as otherwise provided in this chapter.

(b) Sightseeing charter services and shore excursions by land or water which are provided by a person in the business of providing such services and are either sold within the city or begin or end within the city are subject to sales tax under this chapter to the maximum extent permitted consistent with state and federal law. (Ord. 1562 § 3, 2006; Ord. 984 § 5, 1982)

3.04.020 Levy of tax.

(a) To the fullest extent permitted by law, a sales tax of four percent is hereby assessed and levied on the following sales, except as otherwise specifically exempted under this chapter:

- (1) All retail sales;
- (2) All services;
- (3) All rents and fees paid for the use of real and personal property.

(b) In addition to tax levied and assessed under subsection (a) of this section, a sales tax of five percent is hereby levied and assessed on retail sales of marijuana, and retail sales of marijuana products. (Ord. 1821 § 2, 2016; Ord. 1748 § 1, 2014; Ord. 1562 § 5, 2006; Ord. 1095 § 1, 1986; Ord. 870 § 2, 1977)

3.04.030 Duty of seller to collect.

The tax levied under the provisions of this chapter is primarily upon the buyers of the personal property, rentals, or services, but the tax is payable to the city by the seller regardless of whether the seller has collected the same from the buyers. It is the duty of each seller to collect

from the buyer or consumer the full amount of the sales tax payable on each taxable sale, service or rental, at the time the property sold is delivered, or when the rentals are collected. Every sale which is made within the city, unless explicitly exempted by this chapter, or a 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. (Ord. 870 § 2, 1977)

3.04.035 Temporary suspension of sales tax collection.

The council may, for periods of up to two consecutive weeks, suspend the duty of a seller to collect the tax levied under this chapter. The council may establish regulations, conditions, and limitations on the suspension of the duty to collect the tax. Such regulations, conditions, and limitations may apply the suspension to the sale of certain goods or services while requiring the collection of the tax on other goods or services. When the collection of the tax on certain goods or services has been suspended by the council, the seller may choose not to collect the tax on its sale of those goods or services. The buyer will then have no obligation to pay the tax on that sale. If the seller chooses to continue collecting the tax during the period of any suspension, the buyer shall pay the tax and the seller shall collect and transmit the tax as required by this chapter. (Ord. 1425 § 1, 2000)

3.04.037 Temporary exemption from tax on residential heating oil.

For periods of up to three consecutive months the council may by motion exempt sales of heating oil for residential use from the tax levied under this chapter. A sale of heating oil will be considered for residential use if it is sold for the purpose of providing heat solely to a building designed and used by individuals as their residence. Sales of heating oil for motels and similar transient lodging, buildings containing mixed commercial and residential uses, premises containing both residential and commercial buildings and similar premises containing mixed uses are not sales of heating oil for residential use even though some of the oil may be used to heat a residence. For purposes of this section, home occupations permitted under the Ketchikan Gateway Borough Code of Ordinances Chapter 18.120 shall not be considered to be commercial uses. Fuel sold for use on vessels or motor vehicles is not sold for residential use even if the vessel or motor vehicle is used as a residence. No seller shall collect a tax under this chapter on sales of heating oil for residential use during any period in which the council has exempted such sales from the tax. The council may by motion establish such additional regulations, conditions, limitations, and definitions for the implementation of this section as it determines useful to assure that the exemption provided under this section is limited to residential sales. (Ord. 1587 § 1, 2008)

3.04.040 Tax added to sales price.

- (a) Sellers shall add the sales tax to the sales price, rental, or charge for services. Such sales tax is a debt from the buyer or consumer to the seller until paid, and the same is recoverable at law in the same manner as other debts.
- (b) Except as provided in subsection (c) of this section, sellers who are required to collect a sales tax for the city shall add the tax imposed in this chapter to the rental, sales price or service charge in strict accordance with the following schedule:

Sales	Tax
Under \$0.25	\$0.01
\$0.25 through 0.74	0.03
0.75 through 1.24	0.05
1.25 through 1.74	0.07
1.75 through 2.24	0.09
2.25 through 2.74	0.11
2.75 through 3.24	0.13
3.25 through 3.74	0.15
3.75 through 4.24	0.17
4.25 through 4.74	0.19
4.75 through 5.24	0.21
5.25 and over	Continue on the same scale.

(c) Sellers who are required to collect a sales tax for the city shall add the tax imposed by this chapter on retail sales of marijuana, and retail sales of marijuana products, in strict accordance with the following schedule:

Sales	Tax
Under \$0.25	\$0.01
\$0.25 through 0.74	0.04
0.75 through 1.24	0.06
1.25 through 1.74	0.09
1.75 through 2.24	0.11
2.25 through 2.74	0.14
2.75 through 3.24	0.16
3.25 through 3.74	0.19
3.75 through 4.24	0.21
4.25 through 4.74	0.24
4.75 through 5.24	0.26
5.25 and over	Continue on the same scale.

(Ord. 1821 § 3, 2016; Ord. 1748 § 2, 2014; Ord. 1122 § 1, 1987; Ord. 1095 § 2, 1986; Ord. 870 § 2, 1977)

3.04.050 Unlawful for seller to fail to collect.

(a) Any seller who willfully or intentionally fails, neglects, or refuses to comply with the provisions of this chapter, or remits or rebates to a buyer or consumer whether directly or indirectly and by whatsoever means, all or any part of the tax levied under this chapter, or makes in any form of advertising, verbally or otherwise, any statement which implies that he is absorbing the tax, or paying the tax for the buyer or consumer or user by an adjustment of

prices or in any manner whatever, is guilty of a violation punishable as provided for in KMC 1.02.040; each act of violation and every day upon which any such violation occurs shall constitute a separate offense; provided, however, a seller may advertise that the purchase price includes the sales tax.

(b) In addition to the penalties provided elsewhere for violation of this section, a seller who intentionally or recklessly violates this section shall be liable to the city for civil penalties in an amount of three times the amount of sales tax the seller failed to collect. (Ord. 1769 § 1, 2014; Ord. 1562 § 4, 2006; Ord. 870 § 2, 1977)

3.04.051 Collection of sales tax and not due.

It shall be unlawful and a violation of this title for a person to charge and collect sales tax which is not due under this title. (Ord. 1562 § 7, 2006)

3.04.060 Tax to be paid quarterly.

(a) The tax levied under this chapter is due and payable at the expiration of each quarter of each calendar year. It is the duty and responsibility of every seller liable for the collection of any tax imposed in this chapter, unless otherwise provided herein, to file with the revenue collector upon forms prescribed and furnished by the revenue collector, a return, prepared under oath, setting forth the amount of all sales, taxable and nontaxable, the amount of tax thereon and such other information as the revenue collector may require on such form or forms. The completed and executed return, together with remittance in full for the amount of the tax due, shall be transmitted to and received by an employee working in the revenue collector's department of administrative services on or before 5:00 p.m. local time on the last day of the month succeeding the end of each quarter. If the last day of the month succeeding the end of a quarter is a Saturday, Sunday or a holiday observed by the revenue collector, the completed and executed return and amount of the tax due shall be transmitted and received by 5:00 p.m. local time on the next business day. Returns may be accepted based upon a timely postmark only if the return is sent certified or registered mail and receives a United States Postal Service cancellation on or before the due date.

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

(c) Sellers failing to comply with the provisions of this chapter shall, if required by the revenue collector, file and transmit collected sales taxes monthly until such time that they have demonstrated to the revenue collector that they are or will be able to comply with the provisions of this chapter.

(d) Sales tax returns shall be accompanied by proof, satisfactory to the revenue collector, as to claimed exemptions, or exceptions from the tax herein imposed. In the absence of the proof, the sales, rentals, or services shall be deemed to have been taxable.

(e) The burden of establishing any tax exemption is upon the claimant. The city manager shall, from time to time, recommend to the council procedures, regulations and forms to facilitate the

proper procedure for filing and claiming exemptions. (Ord. 1369 § 1, 1997; Ord. 870 § 2, 1977)

3.04.065 Registration.

(a) A person, firm, partnership, corporation or other business entity shall file an application for registration with the revenue collector's department of administrative services on a form provided by that department, prior to making any retail sales, rendering any services, making rentals within the city or the opening of an additional place of business in the city. The completed application shall be returned to that department of administrative services along with a copy of the business entity's Alaska State business license.

(b) Each business entity shall be registered under the advertised name, and each separate business shall be registered under its own account.

(c) A person, corporation or other association that is about to make sales, perform services or make rentals shall first register with the revenue collector's department of administrative services and shall make the deposit of cash or bond required by this section unless the person has been a resident of the Ketchikan Gateway Borough for six months prior to registering or the corporation or association is composed of such residents or has been regularly engaged in business within said borough for nine of the 12 months preceding registration.

(d) The deposit required under subsection (c) of this section must be an amount determined by the revenue collector that is not less than the maximum amount of sales tax that the person, corporation or other association is likely to be required to collect during any filing period within a year of the date of registration.

(e) The deposit must be refunded by the revenue collector upon written request and a determination by the revenue collector that:

(1) The seller has filed sales tax returns and made full remittance of sales tax owing for the preceding year; or

(2) The seller has filed a statement that the seller has ceased engaging in transactions within the city and has remitted all sales taxes due.

The deposit must be refunded by the revenue collector within 30 days of the receipt of the refund request unless the revenue collector has initiated an audit of the seller or has otherwise questioned a return made during the period under construction. The revenue collector shall be responsible for payment and safeguarding of all deposits and for maintaining all records concerning the deposits.

(f) The revenue collector may order the withdrawal from the deposit of the seller the amount that is required to make up for any deficiency or late payment of taxes. No seller may engage in transactions within the city after receipt of written notice that the revenue collector has withdrawn all or a portion of the seller's deposit for application to a delinquent or insufficient payment of sales taxes. Upon the deposit with the revenue collector of funds restoring the deposit to its original amount or such higher amount as the revenue collector determines is appropriate in light of the actual sales experience of the seller, the seller may again engage in

transactions. A seller may not deduct the deposit amount from the seller's last or any other sales tax return. (Ord. 1368 § 1, 1997)

3.04.070 Duty to keep books – Investigation.

(a) Every seller shall keep and preserve suitable records of all sales made by him, and such other books or accounts as may be necessary for the revenue collector to determine the amount of tax for the collection of which he is liable hereunder. Every such person shall keep and preserve for a period of two years all invoices of goods and merchandise purchased for resale, and all such books, invoices and other records as may be necessary, all of which are open for examination at any reasonable time by the revenue collector, the city manager, or his or their designee.

(b) For the purpose of ascertaining the correctness of a return or for the purpose of determining the amount of tax collected or which should have been collected by any person, the city manager or his designee may hold investigations and hearings concerning any matters covered by this chapter, and may examine any relevant books, papers, records, or memoranda of any such person, and may require the attendance of such person, or any officer or employee of such person. The city manager or his designee has the power to administer oaths and affirmations to such persons, and if any such person, being first duly sworn, refuses to answer any questions put to him by the manager or his designee, the manager may apply to the superior court for an order requiring the person to answer the questions. The city manager may issue subpoenas to compel attendance or to require production of relevant books, papers, records or memoranda. If any person refuses to obey any such subpoena, the city manager may apply to the superior court for an order requiring the person to comply therewith. The city manager is authorized to make arrangements with the Ketchikan Gateway Borough, authorizing the borough to conduct the investigations and hearings provided herein, including the exercise of all the powers created in this chapter.

(c) In the event the revenue collector is unable to ascertain the tax due to be remitted by a seller by reason of the failure of the seller to keep accurate books, allow inspection, failure to file a return, or falsification of records, the revenue collector may make an estimate of the tax due based upon all of the information available. Notice of the estimate of taxes due shall be furnished by certified mail to the seller and shall become final for the purposes of determining liability of the seller to the city in 30 days unless the seller earlier files an accurate return, supported by satisfactory records, indicating a lesser liability. (Ord. 870 § 2, 1977)

3.04.080 Penalty and interest on delinquent taxes.

(a) In the event a seller fails or neglects to file a return when due, or fails to remit taxes collected, or which should have been collected, in a timely manner as required by this chapter, then such return and tax is delinquent and the revenue collector shall add thereto penalties as follows:

If payment made:	Additional Penalty (Percentage of Tax)
(1) Within seven working days after delinquency date	1 percent

If payment made:	Additional Penalty (Percentage of Tax)
(2) More than seven working days up to and including 30 days after delinquency date	15 percent
(3) More than 30 days up to and including 60 days after delinquency date	20 percent
(4) More than 60 days after delinquency date	25 percent

(b) Interest shall accrue on the unpaid tax, not including penalty, from the date of delinquency to the date of payment at the rate of one percent per month. All remedies available to the revenue collector to collect taxes, penalties and interest, plus collection costs, shall commence on the date of delinquency. Payments received after the date of delinquency shall be applied first to payment of any collection costs, next on interest, next on penalty, and next on the tax. In the event of partial payment, penalties shall continue to accrue on the unpaid portion of the tax as provided for in subsection (a) of this section. Interest at the rate of one percent per month shall also accrue on any unpaid amount of tax until paid in full. (Ord. 1599 § 1, 2008; Ord. 1369 § 2, 1997; Ord. 1181 § 1, 1990; Ord. 1084 § 1, 1986; Ord. 1069 § 1, 1986; Ord. 984 § 6, 1982; Ord. 892 § 3, 1978)

3.04.085 Sales tax liens.

(a) The sales tax, interest, and penalties imposed by this chapter, and the administrative costs under subsection (f) of this section, shall constitute a lien in favor of the city upon all of the real and personal property of every person making taxable sales subject to this chapter.

(b) The lien imposed by this section arises and attaches at such time as payment becomes delinquent under KMC 3.04.080 and continues until the entire amount is satisfied.

(c) If delinquent sales taxes, including interest and penalties, are not paid within 10 days from the mailing of notice and demand for payment thereof, a notice of lien may be recorded in the office of the district recorder. Upon recordation, 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.

(d) An action to foreclose a lien created by this section shall be commenced and pursued in the manner provided for the foreclosure of liens in AS 09.45.170 through 09.45.220.

(e) The remedy provided in this section is not exclusive and shall be in addition to all other remedies available to the revenue collector to collect the sales taxes, penalties and interest due

under this chapter.

(f) Fees for the administrative costs of filing on notices of liens, and releasing of liens shall be:

(1) Filing of notices of lien: \$25.00 plus recorder's office filing fee.

(2) Release of liens: \$25.00 plus recorder's office filing fee.

(g) If administrative costs for the filing of notices of liens and releasing of liens are imposed and have been collected by the Ketchikan Gateway Borough on delinquent sales taxes, including penalties and interest, no additional administrative costs shall be collected under subsection (f) of this section. (Ord. 1143 § 1, 1988; Ord. 1084 § 2, 1986)

3.04.090 Sale of business – Final return – Liability of purchaser.

(a) If any seller sells, assigns, transfers, conveys, leases, forfeits or abandons the business to another person, the seller shall make a final sales tax return within 15 days after the date of selling, assigning, transferring, conveying, leasing, forfeiting or abandoning the business showing that all tax obligations imposed by this chapter have been paid. The purchaser, successor, transferee, lessee, assignee, creditor or secured party shall withhold a sufficient portion of the purchase money to pay the amount of such sales taxes, penalties and interest as may be due and unpaid to the city or the Ketchikan Gateway Borough, or both. If the purchaser, assignee, transferee, lessee, successor, creditor or secured party fails to withhold from the purchase money, or fails to otherwise provide for or make the payment of the taxes, interest and penalties owed by the business as provided in this chapter, the purchaser, assignee, transferee, lessee, successor, creditor or secured party shall be personally liable for the payment of the taxes, penalties and interest accruing and unpaid to the city or the Ketchikan Gateway Borough or both on account of the operation of the business by any former owner, owners, operators or assigns.

(b) Not later than 10 days before the sale, lease, assignment, transfer, or other disposition of the business is completed, the seller shall file with the Ketchikan Gateway Borough an informational notice identifying the name and address of each person or entity involved in the transaction, the nature of the transaction, and the effective date of the transaction. (Ord. 1769 § 2, 2014; Ord. 984 § 7, 1982; Ord. 870 § 2, 1977)

3.04.100 Exemptions.

The following sales and services are exempt from the sales tax:

(a) Retail sales and remuneration for services amounting to less than \$125.00 in any calendar quarter; however, any sales taxes collected shall be remitted;

(b) Casual and isolated sales not made in the regular course of business;

(c) Sales of insurance and bonds of guaranty and fidelity;

(d) The agreed value of new or used articles taken in trade as credit or part payment on the sale of new articles shall be deducted from the value of the article being purchased in determining the tax;

- (e) Gross receipts derived from sales, services, rentals and transactions which the municipalities are prohibited from taxing under the Constitution and laws of the United States or the state;
- (f) Gross receipts derived from sales initiated by orders received by telephone, Internet or mail from a communication initiated outside the Ketchikan Gateway Borough where delivery is made outside the borough by mail or commercial common carrier; provided, however, that the seller must maintain records regarding the name and address of the person placing the order; and where applicable the email address or telephone number ordered from; and such additional information as the finance director may require. For purposes of this section the term "Ketchikan Gateway Borough" includes vessels moored or otherwise located within the boundaries of the Ketchikan Gateway Borough;
- (g) Gross receipts derived from sales of healthcare and funeral services as follows:
- (1) Sale of cemetery plots, caskets, funeral and burial related items, funeral charges and services by a funeral home;
 - (2) Professional services and supplies by a person licensed or qualified or certified by the state as a doctor of medicine and surgery, a doctor of osteopathy and surgery, a chiropractor, a dentist, a naturopath, an optometrist, an acupuncturist, an occupational therapist, a physical therapist, a certified nurse's aide, or a registered or practical nurse; provided, that the sale is within the scope of the state license or certificate;
 - (3) Controlled substances supplied and services performed pursuant to a prescription from a person listed in subsection (g)(2) of this section;
 - (4) Counseling services by a psychologist or psychological associate, a clinical social worker, and alcohol and drug counselor, or a marital and family therapist, licensed or certified by the state; provided, that the services are within the scope of the license or certificate;
 - (5) Assisted living services provided in accordance with an assisted living plan and in an assisted living home licensed as such by the state;
 - (6) Sales of hospital services, or from sales of oxygen used for medical purposes, blood or blood plasma, artificial devices designed or altered for the use of a particular disabled person, artificial limbs, eyes and organs, hearing aids, crutches, and wheelchairs;
 - (7) Provided, however, services rendered by barbers, cosmeticians and masseurs are not exempt;
- (h) (1) Gross receipts from sales, services and rentals to any nonprofit organization or nonprofit institution if such organization or institution is organized exclusively for religious, educational, or charitable purposes, and if such organization or institution has obtained a certificate of exemption as provided for in subsection (h)(2) of this section and displays that certificate of exemption as provided for in subsection (h)(3) of this section;

(2) Any organization or institution described in subsection (h)(1) of this section may apply to the Ketchikan Gateway Borough revenue collector for a certificate of exemption. Such application shall be made on forms to be furnished by said revenue collector, and each applicant shall be required to furnish such information as said revenue collector may reasonably require. If the revenue collector determines that the applicant is entitled to an exemption provided for in this section, the revenue collector shall issue or cause to be issued a certificate of exemption which shall be effective as of its date of issue. The revenue collector shall endeavor to issue or deny the exemption within 30 days after the date an application is filed;

(3) A buyer seeking to make a purchase entitled to a sales tax exemption under subsection (h)(1) of this section shall display a valid certificate of exemption to the seller at the time of purchase. If the buyer does not so display the required valid certificate of exemption the sale is taxable, and the seller shall collect the sales tax due on the sale;

(i) Gross receipts derived from sales, services and rentals to the United States government, the state and its political subdivision, and municipalities, or agencies funded by these governments;

(j) Retail sales of food in school and college cafeterias and lunchrooms which are operated primarily for teachers or students and which are not operated for profit;

(k) Retail sales in dining rooms or cafeterias of food furnished by nonprofit organizations under programs wholly or partially supported by government funds;

(l) Gross receipts or proceeds derived from the transportation of students to and from grade or high schools in motor or other vehicles;

(m) All services provided by the city, and the Ketchikan Gateway Borough, except services for which rental or other fees are charged under the authority of Chapter 14.40 KMC (harbor fees), and KMC 13.08.100 and 13.08.110 (port dockage and wharfage charges);

(n) Dues or fees to nonprofit clubs, labor unions, or fraternal organizations;

(o) Gross receipts derived from veterinary services;

(p) Gross receipts or proceeds derived from sales made directly to consumers or users of newspapers;

(q) (1) That portion of the selling price of a single unit sale in excess of \$1,000;

(2) That part of the periodic rental price exceeding \$1,000 of rentals of all types of property. The periodic rental price is the amount owed on a monthly or more frequent period; rentals exceeding a payment period of one month are computed for sales tax purposes as though payment were to be made on a monthly basis. Key payments, placement fees or any other similar charges in connection with a lease shall be prorated over the lease term and shall be treated as rent for sales tax purposes;

(r) Gross receipts derived from sales of educational services by a nonprofit institution in providing a program of learning on a formal study basis in an institution of learning which has an organized curriculum consisting of specific subjects and skills as outlined in the state of Alaska course of study as officially adopted by the state Department of Education for elementary, junior high or senior high schools, for children ages five through 18;

(s) Gross receipts derived from sales of day care services for children;

(t) (1) Gross receipts derived from sales where the purchase is made with food coupons, food stamps or other type of certificate issued under 7 U.S.C. 2011 – 2025 (Food Stamp Act); and

(2) Food instruments, food vouchers, or other type of certificate issued under 42 U.S.C. 1786 (Special Supplemental Food Program for Women, Infants, and Children);

(u) A special sales tax exemption may be granted to an organization or institution that qualifies under subsection (h) of this section to exempt such organization from the obligation to collect sales taxes on sales of tangible personal property sold by such organization as part of a project to raise funds for a particular charitable project upon filing an application for a charitable project sales tax exemption permit not less than 15 days prior to the date for commencement of the exemption on a form required by the Ketchikan Gateway Borough revenue collector, and compliance with each of the following requirements:

(1) The organization or institution must be the holder of a current and valid tax exempt certificate issued under subsection (h) of this section; and

(2) The fundraising project must be to raise funds to be used and expended solely and exclusively for a qualified charitable project as set forth and specified in the application; and

(3) All proceeds and revenues received from the sales from the project, less only the actual cost of the items sold, including shipping, must be used solely and exclusively for the specific charitable purpose that is identified and approved in the application and permit as issued; and

(4) Separate accounting records as required by the revenue collector shall be kept as to all the sales; and

(5) A tax return on such form as is required by the Ketchikan Gateway Borough revenue collector shall be filed not later than 30 days after the date specified in the application for conclusion of the fundraising project, or quarterly as required in KMC 3.04.060, whichever is less, or as otherwise specified in the permit, which tax return shall specify (A) the total amount of gross receipts received; (B) the amount actually paid to the charitable organization to be funded as specified in the application and permit; (C) such further and additional information, data, and verification as is deemed appropriate by the Ketchikan Gateway Borough revenue collector; and

(6) In the event a tax return is not filed as herein provided, or if all of the funds are not paid in the manner and to the specific charity as required by the permit, the permittee shall be liable and responsible for payment of the entire amount of sales tax that would have been collected and remitted had the sales not been conducted as sales tax exempt, plus interest and penalties thereon as provided in KMC 3.04.080 from the date the sales tax amount would have become due as provided in KMC 3.04.060; and

(7) No applicant may be granted a permit under this section to exempt more than 120 calendar days, or more than \$25,000 in gross sales, in any calendar year;

(v) That part of the sales price paid by the buyer for travel and adventure services purchased outside the city which is not remitted, directly or indirectly, to the person providing or performing the service and which is a selling cost or commission or similar charge;

(w) That part of the gross receipts from the legal sale of pull tabs which exceeds the ideal net from such sales. By ideal net is meant the total amount that would be received if every individual pull tab in a series were sold at its face value, less the total predetermined prizes available to be paid out in the series;

(x) Sales of goods which are transported into the city on a cruise ship, which do not leave the cruise ship, and where the entire transaction, both payment and delivery, takes place on board a cruise ship. For purposes of this exemption a "cruise ship" means: a commercial passenger vessel that carries passengers for hire except that "cruise ship" does not include a vessel:

(1) Authorized to carry fewer than 20 passengers;

(2) That does not provide overnight transportation for at least 20 passengers for hire; or

(3) Is operated by the United States, state of Alaska, or a foreign government;

(y) Airfare or the air charter sales price paid for transportation of persons or on a federal airway but excluding the portions of a sale of flightseeing or round trip air/water/shore excursion travel or adventure services which are not charges for transportation of persons on a federal airway;

(z) Gross receipts from the sales of lawful bingo games conducted by groups which hold a valid permit for authorized games of chance and skill issued by the state of Alaska;

(aa) Sales, services, and rentals made by a seller which is either: (1) a group sponsored by public or nonprofit schools; or (2) an entity organized and administered solely by an organization that has a current 501(c)(3), 501(c)(4), 501(c)(6), and 501(c)(10) exemption ruling from the Internal Revenue Service and an exemption certificate issued by the Ketchikan Gateway Borough; provided, however, this exemption does not apply to sales if any of the following are present:

(1) The income from the sale is subject to federal income taxation;

(2) The sale is a sale of an alcoholic beverage, except that sales pursuant to State of Alaska Alcoholic Beverage Control Board special events permit shall be exempt from sales taxation for sales made by a seller at no more than five special events in a 12-month period;

(3) The sale of food from a food establishment operated by the seller sold through regularly conducted restaurant type operations; or

(4) The sale is a rental of property which is not exempt from taxation as real or personal property under AS 29.45.030 and Section 4.45.070(a) of the Ketchikan Gateway Borough Code of Ordinances. (Ord. 1724 § 1, 2013; Ord. 1679 § 1, 2011; Ord. 1562 § 7, 2006; Ord. 1232 § 1, 1992; Ord. 1230 § 7, 1992; Ord. 1163 § 1, 1989; Ord. 1148 §§ 1, 2, 1989; Ord. 1139 § 1, 1988; Ord. 1110 § 1, 1987; Ord. 1105 § 1, 1987; Ord. 1096 § 2 – 5, 1986; Ord. 1091 § 1, 1986; Ord. 1063 § 3, 1985; Ord. 986 § 1, 1982; Ord. 921 § 1, 1979; Ord. 907 § 2, 1979; Ord. 892 § 5, 1978; Ord. 870 § 2, 1977)

3.04.110 Sales tax exemption for the elderly.

(a) Anyone 65 years of age or older who is a resident of the state of Alaska and who has been a bona fide resident of the Ketchikan Gateway Borough for not less than 180 consecutive days immediately preceding the application therefor may apply for and be issued by the borough manager or designee a senior citizens sales tax exemption card, which card entitles the person to be exempted from the operation of the city's consumers sales taxes on purchases of all types of property, rentals and services not for use in any trade or business; provided, however, that the 180-consecutive-day period provided for in this section may be reduced to 30 days if:

(1) The applicant has previously held a senior citizen exemption card in the Ketchikan Gateway Borough;

(2) The person has not been absent from the Ketchikan Gateway Borough for more than 24 months; and

(3) The person establishes to the satisfaction of the borough finance director or his designee that either:

(A) The absence was for medical treatment of the person or an immediate family member; or

(B) The absence was due to circumstances beyond their control.

No seller within the city shall charge or collect the sales tax on exempted purchases from any person who displays such a valid sales tax exempt card. All sellers within the city shall keep records of such exempt sales and submit quarterly totals of such sales to the revenue collector, together with any other information required by law. In the event the person ceases to be a bona fide resident of the Ketchikan Gateway Borough, entitlement to the sales tax exemption shall terminate, and the card shall be void as to that sales tax exemption.

For the purposes of this section “resident of the state of Alaska” means a person who is physically present in the state with the intent to remain in the state indefinitely and to make a home in the state. A person demonstrates the intent required under this section by maintaining a principal place of abode in the state for at least 180 consecutive days immediately preceding the date of the application for the senior citizen sales tax exemption card. In addition, an applicant for a sales tax exemption card must meet the requirements of one of the following two subsections:

- (1) The individual shall be eligible for a permanent fund dividend under AS 43.23.005 for that same year or for the immediately preceding year; or
- (2) If the individual has not applied or does not apply for one or both of the permanent fund dividends, the individual would have been eligible for one of the permanent fund dividends identified in subsection (1) of this subsection had the individual applied.

A “resident of the Ketchikan Gateway Borough” is a person who has established a residence in the borough and has the intent to remain in the borough indefinitely and make his or her home in the borough. A person demonstrates the intent required under this subsection by maintaining a principal place of abode in the borough for at least 180 consecutive days immediately preceding the date of application for the senior citizen sales tax exemption card.

(b) No person who has duly applied for and received such sales tax exemption card may use it to obtain such tax exemption when the rents, retail purchases, and services, and any or all of them, otherwise subject to the sales taxes, are used or consumed by any person or persons other than the person duly holding such sales tax exemption card, or his or her spouse.

(c) No person who has not duly applied for and received such sales tax exemption card may use it to obtain such tax exemption; provided, however, that in the case that the person who is otherwise authorized to receive such sales tax exemption card is an invalid or otherwise physically unable to use said card, the borough clerk may issue a special card authorizing another person to use the special card for the benefit of the said invalid person or the person who is otherwise physically unable to use said card.

(d) Any person who violates the provisions of this section is guilty of an infraction and, upon conviction thereof, shall be fined in an amount not to exceed \$500.00, and such sales tax exemption card shall be surrendered to the court, which, in turn, shall return said card to the borough clerk for cancellation and destruction. Lawful use of the card is a condition precedent to its validity, and any unlawful use thereof shall render the card void from its inception. By applying for any such card, the applicant agrees to be bound by such conditions.

(e) Anyone 65 years of age or older will not be exempt from sales tax on local games of chance and skill. (Ord. 1662 § 2, 2010; Ord. 1562 § 9, 2006; Ord. 1105 §§ 2, 3, 1987; Ord. 1096 §§ 6, 7, 1986; Ord. 870 § 2, 1977)

3.04.120 Unlawful to misrepresent exemptions.

Any buyer or consumer who falsely states or in any way misrepresents the use to which merchandise or material is to be put for the purpose of securing tax exemption under the terms

of this chapter is guilty of an unlawful act and upon conviction thereof is subject to the penalties provided in KMC 3.04.080. (Ord. 870 § 2, 1977)

3.04.130 Use of proceeds of sales tax.

(a) The proceeds (including penalty and interest) collected under this chapter which are derived from a one and one-half percent sales tax levy shall be used to defray part of the cost of capital improvements, such as street construction and maintenance, the installation of curbs, gutters, sidewalks, street lighting, sewer, parking facilities, capital improvements and to defray part of the operational costs of city government.

(b) The proceeds (including penalty and interest) collected under this chapter which are derived from a one percent sales tax levy shall be expended for the special purposes and in accordance with the priority listed in subsections (b)(1) and (2) of this section, and those proceeds shall be deposited in an account entitled "sales tax hospital and other public works funds":

(1) The acquisition of site and construction of a hospital facility and the remodeling and improvement thereof, together with site improvements, equipment, architectural and engineering services, and related facilities, or to pay the principal and interest on general obligation bonds issued and sold for the purpose; and to provide operating capital and for defraying the deficit, if any, in the event the city directly operates the new hospital facility or in the event the city is forced to operate an existing hospital in the interim required to build a new hospital facility;

(2) The balance of the proceeds in the "sales tax hospital and other public works funds" account which are not required for the purpose set forth in subsection (b)(1) of this section may be expended: to construct, improve, extend, better, repair, reconstruct, or acquire street improvements, and other public works or facilities of a permanent character as determined by the council; to partially pay the general operational costs of city government; or to pay the principal and interest on general obligation bonds issued for public works: provided, that all such bonds as may be issued shall mature on or before the latest maturity date of any of the bonds issued for the purpose set forth in subsection (b)(1) of this section.

(c) The proceeds (including penalty and interest) collected under this chapter which are derived from a one percent sales tax levy shall be expended for the purpose of providing public safety services.

(d) The proceeds (including penalty and interest) collected under this chapter which are derived from a one-half percent sales tax levy shall be expended for the purpose of providing general government services.

(e) The proceeds collected under this chapter (including penalty and interest) which are derived from the five percent marijuana sales tax levy shall be deposited in an account entitled "marijuana sales tax fund" and shall be expended for the purpose of assisting and addressing the needs of the homeless population in the city of Ketchikan. The balance of the proceeds in

the “marijuana sales tax fund” which are not required for this purpose shall be used for other humanitarian purposes as determined by the city council. (Ord. 1876 § 1, 2018; Ord. 1769 § 3, 2014; Ord. 1748 § 3, 2014; Ord. 1216 § 1, 1991; Ord. 1207 §§ 1, 2, 1991; Ord. 1122 § 2, 1987; Ord. 1095 §§ 3, 4, 1986; Ord. 894 §§ 1, 2, 3, 1978; Ord. 870 § 2, 1977)

3.04.140 Regulations repealed and canceled.

Repealed by Ord. 1769. (Ord. 870 § 2, 1977)

3.04.150 Regulations authorized.

The city manager is authorized to prescribe by departmental regulations the forms to be used and the methods and procedures to be followed by the revenue collector in collecting the taxes. This authorization does not authorize regulations of substance which impose any requirements upon buyers or sellers. (Ord. 870 § 2, 1977)

3.04.170 Arrangements with borough.

The existing arrangements between the city and the Ketchikan Gateway Borough relating to the enforcement of the city sales tax laws and to the collection of revenues imposed by the laws are ratified and approved, notwithstanding any provisions to the contrary in this chapter, and notwithstanding any duties or functions imposed upon city officials in this chapter. The city manager is authorized to enter into agreements with the borough from time to time modifying the arrangements. (Ord. 870 § 2, 1977)

3.04.180 Protest of tax.

(a) A buyer who protests the payment of the tax levied under this chapter shall pay the tax and shall provide the seller and the revenue collector’s director of administrative services with a written statement of protest within five working days of the sale. The written statement shall identify 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.

(b) If the seller protests his liability for a final assessment under KMC 3.04.070(c) or if the seller has any other cause of action, grievance or protest concerning the legality, collection or payment of the sales tax, he shall pay the tax under written protest setting forth the basis for the protest. No action for a refund may be maintained nor may a defense to nonpayment be maintained in a civil action unless the amount in dispute has been paid by the seller under written protest filed at or before the time of payment. (Ord. 1369 § 4, 1997)

3.04.190 Forgiveness of uncollected taxes, penalties and interest.

(a) The city manager, with the consent of the council, 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 city manager that such uncollected sales taxes have never been collected by a substantial portion of a clearly definable class of sellers or which have never been collected on a substantial portion of a clearly defined class or type of transaction or service.

(b) The city manager may, upon recommendation of the city attorney, authorize forgiveness of uncollected sales taxes, interest and penalty thereon and penalties for failure to file, as part of

the compromise and settlement of a disputed claim in an action for collection of such funds.

(c) Except as provided in subsections (a) and (b) of this section, the city may not forgive or waive any amount of uncollected sales tax, interest or penalty. (Ord. 1369 § 5, 1997)

3.04.200 Appeals.

(a) A seller aggrieved by the action of the revenue collector in fixing the amount of the tax or in imposing a penalty or interest shall appeal to the revenue collector's manager within 41 calendar days from the date taxes are due and payable under this chapter. A seller who has a cause of action, grievance or protest concerning the legality, collection or payment of the sales tax shall appeal in this manner and within the same 41 days. All right to an appeal shall be deemed waived if not timely requested as set forth in this subsection.

(b) Contested taxes, penalties and interest that remain unpaid shall continue to accrue penalty and interest as provided by this title until paid. Contested taxes, penalties and interest that are paid and are found to be overpaid shall be refunded with interest at the rate of eight percent from the date of payment.

(c) All appeals shall be filed in writing with the revenue collector's manager and shall contain all of the following information:

- (1) Name, address, and telephone number of the aggrieved seller;
- (2) A specific and detailed statement of the amount of tax, interest or penalty contests, the basis and grounds upon which the appeal is made, and all pertinent records, documents, or other evidence substantiating the grounds as stated;
- (3) A statement of the relief sought; and
- (4) A statement as to whether a hearing is requested.

(d) 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 any appeal are limited to:

- (1) The identity of the seller is in error;
- (2) 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 a hearing);
- (3) The seller disputes the denial of exemption(s) for certain sales; or
- (4) Taxes have been levied and forgiven in accordance with KMC 3.04.190.

(e) A request for appeal is filed on the date it is personally delivered or, if delivered to the revenue collector's manager by United States mail, the date of the United States Postal Service postmark stamped on the properly addressed cover in which the request is mailed. If the due date falls on a Saturday, Sunday, or a holiday, the due date is the next business day. A current mailing address must be provided to the revenue collector's manager with the request for

appeal, and any change in mailing address after the request for appeal is filed must be reported to the revenue collector's manager.

(f) Upon such filing of a written appeal, the revenue collector's manager shall immediately send a copy thereof to the city manager or administrator. The city may provide written information that may be considered in deciding the appeal.

(g) Unless the appellant waives a hearing, the revenue collector's manager or person designated by the revenue collector's manager shall hold a hearing pursuant to Chapter 2.115 of the Ketchikan Gateway Borough Code of Ordinances to determine whether a correction is warranted. The revenue collector's manager or designee shall decide the appeal based upon the pertinent records provided by the parties involved or discovered by any investigation ordered by the revenue collector's manager and, if a hearing is requested, any evidence presented at the hearing. If a hearing is requested, the appellant need not appear at the hearing. If the appellant fails to appear, the revenue collector's manager or designee may make a determination based upon the evidence received and any written materials submitted by the appellant. The determination need not make formal findings of fact or conclusions of law, but the written determination shall state the reasons for the decision and indicate the evidence relied upon. Such determination shall be issued no later than 10 business days after the date of hearing if a hearing is held or 10 days after the appeal is filed if the hearing is waived. Such determination shall be final.

(h) Taxes, penalties, and interest declared to be due in the final determination shall be subject to normal collection action of the borough. The amount due must be paid or if the decision of the revenue collector's manager is appealed, a bond to secure payment must be filed with the court in accordance with Alaska Rules of Court, Rules of Appellate Procedure.

(i) Within 30 days after receipt of the final determination, a seller aggrieved by the decision may appeal to the superior court in the first judicial district. The seller shall be given access to the revenue collector's file in the matter for preparation of the appeal. If after the appeal is heard it appears the tax was correct, the court shall confirm the tax. If incorrect, the court shall determine the amount of the tax and if the seller aggrieved is entitled to recover the tax or part of it, the court shall order the repayment. The city shall then pay the amount due within 14 days after receipt of a certified copy of the judgment, unless the city requests a stay pending its own appeal. (Ord. 1369 § 6, 1997)

3.04.210 Clerical errors or omission – Refund of sales tax – Penalty and interest.

(a) The revenue collector's director of administrative services may correct manifest clerical errors or omissions at any time they are found and verified.

(b) If, in payment of taxes legally imposed, a remittance by a seller through error exceeds the amount due, and the revenue collector, on audit of the account in question, is satisfied that this is the case, the city shall refund the excess to the seller with interest at eight percent from the date of payment. A claim for refund filed one year or more after the due date of the tax is forever barred. A copy of the refund audit and entitlement shall be given to the city manager or administrator. (Ord. 1369 § 7, 1997)

3.04.220 Residence construction tax exemption.

(a) Upon proper application, and in accordance with the terms of this section, materials used in construction of an owner-occupied single-family dwelling or eligible portion of an owner-occupied duplex may be purchased on a tax exempt basis. Where the new construction is a remodel that creates additional living space material used in the creation of additional square footage of living space may be eligible if square footage was increased by more than 10 percent of the size of the structure prior to the remodel. Remodels must occur on an existing owner-occupied single-family dwelling or eligible portion of an owner-occupied duplex. Materials used on portions of a remodel that do not increase living space by at least 10 percent are not eligible for the exemption.

(1) The dwelling must be an owner-occupied permanent place of residence. Construction must have begun and a zoning permit issued after July 1, 1996.

(2) Purchases for which a sales tax exemption is sought must be made after the effective date of the zoning permit.

(3) If the dwelling is a duplex, it may only qualify to the extent of those portions of tax attributable to improvements in the owner-occupied permanent principal place of residence portion of the duplex.

(4) The applicant must present the zoning permit and designs to the borough finance director.

(5) If the borough finance director determines that the project qualified, the borough finance director shall issue an owner-occupied construction exemption card. Such card shall be limited to the duration of the zoning permit to which it applies.

(6) The exemption card is valid for purchases of building materials used in the construction of the owner-occupied dwelling. This shall include lumber, building materials, electrical and plumbing supplies, rental of tools and equipment, furnace and other heating apparatus and permanent carpeting. Not included are tools, machinery, labor and services purchased to use in the construction of the dwelling, nor shall it include spare material not used.

(7) The holder of the exemption card must reside in the dwelling.

(8) The applicant must retain all receipts and other records regarding purchases for at least three years and must make such records available to the borough for audit upon request of the borough.

(9) The exemption card shall be surrendered to the borough finance director upon expiration.

(b) An exemption card issued under this section can only be used for purchases for the items on the list provided with the application.

(c) No seller of building supplies within the city shall charge or collect the sales tax on exempted purchases from any person who displays such valid sales tax exemption card. All sellers within the city shall keep records of such exempt sales and submit quarterly totals of all such sales to the borough finance department, together with any other information required by law.

(d) Any person who violates any provision of this section is guilty of an infraction and, upon conviction thereof, shall be fined an amount not to exceed \$500.00, and such sales tax exemption card shall be surrendered to the court, which, in turn, shall return the card to the borough for cancellation and destruction. Lawful use of the card is a condition precedent to its validity, and any unlawful use thereof shall render the card void from the date of its inception. By applying for any such card, the applicant thereby agrees to be bound by such conditions. (Ord. 1569 § 2, 2007; Ord. 1562 § 9, 2006; Ord. 1430, 2000; Ord. 1371 § 1, 1997)

¹For Charter provisions relating to the Council's power to raise revenue, make appropriations and regulate all fiscal affairs of the city, see Charter § 2-4(3). As to budgets, taxation and fiscal affairs generally, see Charter § 5-1 – 5-21.

Chapter 9.54

OFF-PREMISES COMMERCIAL SOLICITATION RESTRICTIONS

Sections:

9.54.010 Legislative findings.

9.54.020 Definitions.

9.54.030 Commercial solicitation restriction district.

9.54.040 Limitations on off-premises solicitation activity.

9.54.050 Specific prohibitions and appropriate conduct.

9.54.060 Legal accountability.

9.54.070 Fine schedule.

9.54.080 Other remedies.

Exhibit A Commercial Solicitation Restriction District

9.54.010 Legislative findings.

The city council finds that:

(a) Adopting limitations on off-premises commercial solicitations in the commercial solicitation restriction district (CSRD) will aid the safety and unobstructed passage of pedestrians.

(b) There has been a proliferation of off-premises commercial solicitations in the CSRD resulting in complaints from tourists and other pedestrians about the persistent and aggressive

actions of persons approaching and trying to converse with them in order to enter into a commercial transaction.

(c) Since the demise of the timber industry in Southeast Alaska the community of Ketchikan has worked very hard to rebuild its economy and made significant investments in the infrastructure required to make Ketchikan an attractive tourist destination and port of call. In 2006, the city issued \$38.5 million in revenue bonds to finance a major renovation of its port infrastructure. The annual debt service for these bonds averages about \$2.58 million. The final maturity is December 1, 2035. In July 2006, the city of Ketchikan entered into a 30-year agreement to lease a cruise ship berthing facility from Ketchikan Dock Company. The lease agreement requires a minimum lease payment of \$1.8 million annually.

(d) Tourism is an essential component of the city's economy and its tax base. Hundreds of thousands of cruise ship passengers visit the city each year and many of those visitors as well as others are concentrated within the CSRD. Its friendly small town and historic nature plays an important role in its being an attractive tourism destination and place to live, all of which is threatened by off-premises commercial solicitation in the CSRD.

(e) This chapter is directed to the regulation, the time, place, and manner of certain limited forms of commercial speech and is not intended to regulate any form of speech other than speech designed to do no more than propose a commercial transaction.

(f) The purpose and intent of this chapter is to protect local residents and visitors with unreasonable interference or disturbance of their peace or obstruction of their free travel from the conduct of off-premises solicitors.

(g) This chapter is also designed to preserve and protect the economic viability of the city, the safety of the public and the attractiveness of the city as a tourist and shopping destination. (Ord. 1814 § 1, 2016)

9.54.020 Definitions.

For purposes of this chapter the following words and phrases shall have the meanings respectively assigned to them:

"Business" shall mean any commercial activity in which any goods, services, tours, or edibles are sold or offered for sale or for rent within the corporate limits of the city.

"Commercial solicitation restriction district" or "CSRD" shall mean that area designated in KMC 9.54.030.

"Enclosed structure" shall mean a structure having a roof and supported by a column or walls.

"Enclosed structure" does not include any sidewalks under a roofed area.

"Goods" shall mean any tangible item, including edibles.

"Off-premises solicitation" or "OPS" shall mean person-to-person efforts solely intended to interest pedestrians in or solicit the participation of pedestrians in commercial transactions for

private profit with a business, except when made entirely from within an enclosed structure or when made entirely on private property to a person also on private property.

“OPS employer” shall mean any business or other person who directly hires or otherwise contracts with an OPS solicitor to conduct OPS activities on its behalf.

“OPS solicitor” shall mean any person engaged in off-premises solicitation.

“Product” shall mean the products, tours, goods, edibles or services sold or offered for sale or rent.

“Sidewalk” shall mean that portion of a street between the curb lines, or the lateral lines of a roadway, and the adjacent property lines, intended for use of pedestrians.

“Street” shall mean all that area dedicated to public use for public street purposes and shall include, but not be limited to, public roadways and alleys. (Ord. 1814 § 1, 2016)

9.54.030 Commercial solicitation restriction district.

The commercial solicitation restriction district encompasses properties in these areas: the 1000 Block of Kennedy Street; Schoenbar Court; the 400 – 1000 Blocks of Water Street; Hopkins Alley; 0 – 300 Blocks of Main Street, Front Street and Bawden Street; Dock Street; Mission Street; Mill Street; Creek Street; the 0 – 500 Blocks of Stedman Street; Thomas Street and the Spruce Mill Way and the Port of Ketchikan Water Front Promenade as more particularly shown on Exhibit A at the end of this chapter. (Ord. 1814 § 1, 2016)

9.54.040 Limitations on off-premises solicitation activity.

(a) No person shall engage in off-premises soliciting within the CSRD, except when the solicitation is made from entirely within an enclosed structure except as set forth in subsections (b) through (e) of this section, for the purpose of selling or offering for sale any goods or services of any kind for private profit.

(b) Under a permit issued for a special event, festival or street fair in accordance with KMC 9.56.040.

(c) Under a dock vendor lease issued pursuant and subject to the provisions of KMC 13.09.025.

(d) Under a permit for sale of fresh seafood issued pursuant and subject to KMC 13.09.030. (Ord. 1842 § 1, 2017; Ord. 1814 § 1, 2016)

9.54.050 Specific prohibitions and appropriate conduct.

(a) In addition to the provisions of any other applicable term of this chapter, it shall be considered unlawful and a violation of this chapter for an OPS solicitor to:

- (1) Throw, place or deposit solid waste, litter, paper, documents or handbills on any street or sidewalk.
- (2) Intentionally inflict emotional distress by verbal or physical harassment or coercion on any person.

- (3) Misrepresent in any way the price, quality or nature of the product being promoted.
- (4) Misrepresent the source or sponsor of any information offered or provided.
- (5) OPS solicitors shall conduct themselves in accordance with the following standards:
 - (A) No OPS solicitor shall touch a person without consent during a solicitation.
 - (B) No OPS solicitor shall solicit an occupant of a vehicle in a public street whether the vehicle is moving, stopped, or parked.

(b) It shall be considered unlawful and a violation of this chapter for an OPS solicitor, or anyone engaging in or attempting to engage in a commercial transaction for private profit that is related solely and exclusively to the seller's economic interest, to interfere with or obstruct the free travel or passage of any pedestrian on any public street or sidewalk or obstruct any person's free movement or access to or from any public street or sidewalk for the primary purpose of selling or offering for sale any goods or services of any kind for private profit. (Ord. 1814 § 1, 2016)

9.54.060 Legal accountability.

In addition to the OPS solicitor, the responsible OPS employer shall be strictly and vicariously liable for any violations of this chapter by that OPS employer's OPS solicitor. (Ord. 1814 § 1, 2016)

9.54.070 Fine schedule.

(a) Pursuant to KMC 1.02.110 the following fine schedule is established for the violation of any provision of this chapter:

First violation	\$200.00
Second violation within 12 months	\$300.00
Third and subsequent violation within 12 months	\$500.00

(b) When the OPS solicitor is employed by the same OPS employer at the time of the violations involved, subsequent violations by that OPS solicitor shall constitute subsequent violations by the OPS employer. Violations by different OPS solicitors employed by the same OPS employer shall be aggregate and constitute subsequent offenses by the OPS employer.

As examples:

- (1) In the instance of a first violation the OPS solicitor and the OPS employer would each be subject to a \$200.00 fine so that the total penalties would be \$400.00;
- (2) In the instance of a second violation within 12 months the OPS solicitor and OPS employer would each be subject to a \$300.00 fine so that the total penalties would be \$600.00; penalties for the third and subsequent violations within a 12-month period would be imposed in the same manner;

(3) Where OPS solicitor A and OPS solicitor B are employed by the same OPS employer and OPS solicitor A commits a first violation and then OPS solicitor B commits a first violation within 12 months the OPS employer would be subject to a \$200.00 fine in respect to OPS solicitor A's violation and a \$300.00 fine in respect to OPS solicitor B's violation; penalties for subsequent violations within 12 months would be imposed in a similar manner. (Ord. 1842 § 2, 2017; Ord. 1814 § 1, 2016)

9.54.080 Other remedies.

In addition to the fines set forth in KMC 9.54.070 the city shall have all other remedies available to it in law or equity for violations of the chapter, including, but not limited to, injunctive relief. (Ord. 1814 § 1, 2016)

Exhibit A Commercial Solicitation Restriction District



EXHIBIT A -
Commercial Solicitation Restriction District