

Title 3

REVENUE AND FINANCE

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Chapter 3.04

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3.04.010 Fiscal year established. The fiscal year of the city begins on the first day of July and ends on the last day of the following June. (Prior code §7.10.010)

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3.06.010 Interest on delinquent accounts.

A. Interest at the rate of ten and one-half percent, or the maximum rate allowable by Alaska Statutes, shall accrue on all delinquent accounts due and payable to the city if interest is not established by contract or another ordinance.

B. An account shall be delinquent twenty-five days after the rendering of a statement thereon, unless some other number of days is provided by contract or another ordinance. (Ord. 196-91 §1, 1991)

CITY OF WHITTIER, ALASKA
SALES TAX CODE
(May 20, 1997)

Chapter 3.08

CONSUMER SALES TAX

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ARTICLE I. GENERAL

3.08.010 Levy of Tax. There is levied and shall be collected and paid to the city a three percent consumer sales tax on all sales made, on all rentals made or performed, and on all services sold or performed within the city, any part of which sale, rent or service is made or performed after March 31 and before October 1 unless the sale, rental or service is expressly and clearly exempted or excepted under the provisions of this chapter, state or federal law.

3.08.015 Interpretation of Provisions. The scope of the tax levied under this chapter shall be broadly construed. Exemptions and

exclusions from the tax shall be narrowly construed and limited to the specific activities and transactions that expressly and clearly fall within the designations in this chapter of exempted or excluded activities or transactions.

3.08.020 Proceeds—Use. The net proceeds from the taxes collected by the city pursuant to this chapter shall be used for general purposes relating to services, health and welfare of the city, and in administration of the city government.

3.08.030 Payment by Buyer and Collection by Seller. The obligation for the payment of the sales tax is upon the buyer. The seller shall collect the tax at the time of the sale or rental, and, with respect to services, the tax shall be collected upon the earlier of the sale within the city of the service or the performance of the service within the city. Except as otherwise provided in this chapter the seller shall be jointly and severally liable with the buyer to the city for all taxes the seller is required to collect, whether or not collected by the seller. (Ord. 348-97 §2, 1997)

3.08.040 Seller—Liability to the city—Successor liability to the city.

A. All sales taxes collected or which should have been collected pursuant to this chapter are city monies for which the seller is liable and at all times accountable to the city. All such city monies shall be held by the seller in trust for the city in an account that is separate from other monies of the seller.

B. Any person acquiring an ownership interest in an ongoing business or the accounts receivable of a business, whether by purchase, assignment, foreclosure, conveyance in lieu of foreclosure, relinquishment or otherwise, shall be liable for the payment of taxes, penalties and interest accruing and unpaid to the city on account of the operation of the business by the former owner, owners or assigns. Each person acquiring any interest in a business or the accounts receivable of a business shall request a statement from the city of the actual and estimated amount of current and past due taxes, penalty and interest of the business. The person acquiring the business or accounts receivable shall withhold from the acquisition price and pay over to the city the current taxes due and the past due taxes, interest and penalty.

C. The liability of a purchaser or other person acquiring a business or the accounts receivable of a business for outstanding taxes, penalties and interest accrued and unpaid by the former owner shall be limited to an amount stated in writing by the city in response to a request from the purchaser for a statement of sales tax liability.

3.08.050 Administration enforcement authority—Request for ruling.

A. The sales tax administrator shall enforce the registration licensing, reporting and the tax collection and payment requirements imposed in this chapter, including the authority to implement and make interpretations of the provisions in this chapter.

B. Any person who may be obligated to pay or collect the tax under this chapter, or any city official, may apply to the sales tax administrator for a determination on the application of this chapter to an actual fact situation. The sales tax administrator, with such review and assistance as may be requested from the city attorney, shall provide a written interpretation of the applicability of this chapter to the fact situation described. The city shall be bound by a written determination issued under this subsection (B), but only with respect to the person to whom the interpretation is issued, and only for so long as such interpretation has not been revoked, withdrawn or modified and none of the code sections upon which the interpretation is based have been amended or repealed.

C. The sales tax administrator, after consulting with the city attorney, may issue rules and procedures for making more definite the methods by which interstate travel is apportioned for purpose of taxation under this chapter. (Ord. 348-97 §3, 1997)

ARTICLE II. APPLICABILITY

3.08.070 Applicability. The tax levied under this chapter applies but is not limited to the following sales, rentals and the sale or performance of services:

- A. Sale of any tangible personal property;
- B. Sale or provision of natural or artificial gas, electricity, ice, steam, water, or other utility service;

C. Transportation for hire of persons, by common, charter or other carrier, including ground, marine and air transportation; provided, passenger transportation in interstate or foreign commerce and certain passenger rail transportation shall be apportioned; (Ord. 348-97 §4, 1997)

D. Communication services, including transmission of voice, data, video and all other forms of information, whether local or long distance and whether by wire, fiber optic cable, radio waves or any other medium of transmission. This shall include all services and rental charges having any connection with the communication service, but not including deposits; long distance communications, whether interstate or intrastate, that originate or terminate in the city and are charged to a service address in the city are included without apportionment; (Ord. 348-97 §5, 1997)

E. Printing or printed matter of all types and kinds and of any character, including the service of printing or over printing;

F. The rental or licensing of real property or an interest in real property whether in the form of rooms, living quarters, offices, buildings, commercial, industrial, parking, storage, vacant or unimproved space of whatever name or nature;

G. The rental of any tangible personal property to another, including the rental of any equipment, vehicles, vessels, aircraft, tools and other tangible personal property;

H. The sale of maintenance agreements and extended warranties;

I. The sale of all food;

J. The sale of advertising of all kinds, types and character, contracted for or sold in the city, including any and all devices used for advertising purposes and the servicing of advertising devices;

K. The sale of plays in games of skill or chance, including punchboard, rippie and similar chances, slot machines, and bingo plays, and plays on pinball, video game and other amusement devices of any kind; free plays are taxable when used as if each had been paid for in cash by the player.

L. The sale of plays on juke boxes and the sale of any tangible personal property, services or rights through a coin operated or other vending or dispensing machine or device.

M. The sale of tickets for transportation originating or terminating in the city of Whittier or for tickets of admission to places of amusement, entertainment, athletic or recreational facilities, including the use of free or complimentary passes and tickets, admissions, dues or fees; such free or complimentary passes or tickets, dues or fees are declared to have a value equivalent to the sale price or value of said tickets, passes, admissions, fees or dues;

N. The sales of tangible personal property made for, and services performed for, the purpose of developing, improving or repairing real property, or for the manufacture, modification or repair of personal property even though such real or personal property is intended for resale, or even though the tangible personal property purchased or services performed were acquired by a person who uses the same in the performance of a contract;

O. The sale or performance of services of dry cleaners, laundries, garages, barber and beauty shops, cold storage and locker plants;

P. The sale or performance of services by professionals such as accountants, consultants, physical therapists, real estate and insurance sales persons, and attorneys, by artist and craft persons such as painters, and cabinetmakers, by skilled and apprentice trades people such as electricians, carpenters, plumbers and welders, and by other persons performing services of any nature for another for compensation. All other services performed or sold not specifically exempted or excluded under Sections 3.08.100- 120;

Q. The payment of commissions to brokers, agents, sales persons or others, whether or not the commission is earned on the sale of property, services or rights that are exempt from the tax levied under this chapter;

R. Sales where the order for goods is received or forwarded to a catalog, mail order or other seller outside the city by an agent, employee or other person within the city acting on behalf of or in association with the seller who is outside the city and the goods are delivered to the buyer in the city by any means. The person within the city who receives or forwards the order shall be the seller for purposes of this chapter and shall collect the sales tax due no later than upon delivery of the goods. However, if payment for the goods is made by the buyer directly or by credit card to the seller outside the city and such seller collects the tax due and timely remits the tax to the city, the person within the city who is the seller is relieved of their responsibilities under

this chapter to the extent that such responsibilities are met by the seller outside the city.

S. The sales, rentals and services set out in this section do not constitute an exclusive list of the transactions and activities subject to the tax levied under this chapter, but are illustrative only and shall not be interpreted in any manner to limit the scope or application of tax levied under this chapter.

3.08.080 Place of Sale, Rental or Service.

A. A taxable sale of tangible or intangible property occurs if any significant element of the making or performance of the sale agreement occurs within the city during the tax year, including, but not limited to, the offer to sell or buy and its receipt, the acceptance of the offer or the agreement to buy or sell, the delivery of any part of the property, and the payment or partial payment for the property.

B. A taxable rental occurs if any significant element of the making or performance of the rental agreement occurs within the city during the tax year, including, but not limited to, the completion of the execution of the rental agreement, the making of an oral rental agreement, the delivery of the fully executed rental agreement, the transfer or relinquishment of possession of the rented space or property to the lessee or renter, the possession or use of the rented space or property regardless of when the rental agreement was made or the use or possession of the space or property began and shall be taxable for the portion of the rental period that occurs during the tax year. (Ord. 348-97 §6, 1997)

C. A taxable sale or performance of a service occurs when any significant element of the sale or performance of the service occurs within the city during the tax year, including the offer and acceptance, the delivery to the purchaser or to the person who is to provide a service of a ticket, coupon or other instrument entitling a holder to a service, the commencement of the performance of a service, the completion of the performance of a service, and the performance of any part of a service. The sale within the city of a service is taxable without regard to where the service is or is to be performed. Except as provided in WMC 3.08.090, the entire value of an unsegregated service is taxable if any part of the service is performed within the city during the tax year. The performance of a service is not taxable if the tax under this chapter was paid on the sale of the service. If a service sold outside the city is to be performed in part or in whole inside the city, the person providing the service is the seller under this chapter and shall be liable for the collection and remittance of the tax. (Ord. 348-97 §7, 1997)

3.08.090 Apportionment for certain passenger transportation services.

A. Except to the extent as may be provided otherwise under a rule or procedure issued by the sales tax administrator, the cost or value of passenger transportation services provided within the city that are a part of interstate or foreign travel shall be apportioned based upon the total cost of the interstate or foreign travel, or equivalent price for a passenger traveling under a pass, multiplied by the ratio of the total time the passenger spent or could have spent aboard the vessels, vehicles or other conveyances providing the interstate or foreign travel while in Whittier to the total time actually spent in travel necessary to complete the interstate or foreign travel. The cost or value of such travel shall include all services provided to the passenger while underway in interstate or foreign travel and all shuttle services, food, lodging and other services that were necessary for the completion of the interstate or foreign travel. Local adventures, sight seeing or other tours, side trips and similar activities that are not a necessary part of traveling from one point to another point in the interstate or foreign travel route are not a part of interstate or foreign travel and are not taken into account for the purpose of determining the price or value of the interstate or foreign travel, the time spent in interstate or foreign travel or for apportionment under this subsection.

B. One half the cost or value of passenger transportation services provided by a private entity, and not subject to apportionment under subsection A, that are sold outside the city for transportation that originates or terminates in Whittier and terminates or originates within another organized Alaska municipality shall be apportioned to the City of Whittier for the purpose of taxation under this chapter.

C. The sale within the city of passenger or vehicle transportation services on a publicly owned railroad is a sale occurring entirely within the city and the entire price of the sale is taxable. Passenger and vehicle transportation services sold outside the city for transportation into or out of the city shall be apportioned based upon the

cost of such service between Portage and Whittier multiplied by the ratio of the length of the railroad track ordinarily traveled within the city to the length of the track between the ordinary points in travel between Portage and Whittier. Such ratio shall be as mutually agreed in writing between the city and the railroad or by actual measurement if such agreement cannot be reached.

D. Tours, travel, guiding, drop-off and pick-up, charters, and other commercial services involving the movement of individuals by any conveyance whether designated for the purpose of, by way of example only, sight seeing, whale, bird, glacier or animal watching, dinner, adventure, fishing, camping, or for any other purpose involving transportation of individuals which originate and ultimately terminate within the city without terminating in another organized municipality before the passenger returns to the city are not apportionable for any part of the time spent outside the city after the origination of the trip inside the city. The cost of a tour package that includes transportation into the city before the commencement of a tour that originates and terminates in the city and includes transportation out of the city following termination of the tour in the city shall be allocated so that the cost or value of the tour that originates and terminates within the city is taxed at its full cost or value. The preceding and following transportation into and out of the city may be apportioned, if qualified, under WMC 3.08.090(B). (Ord. 348-97 §8, 1997)

ARTICLE III. EXEMPTIONS/WAIVERS

3.08.100 Exemptions.

A. The following classes of sales, services and rentals are exempt from the tax levied under this chapter:

1. Casual and isolated sales or rentals by a seller who does not regularly engage in the business of selling such goods or services, or making rentals; but only if the sale of goods or services or the rental does not occur for more than ten days in a calendar year, and are not made through a dealer, broker, agent or consignee; the sale of fireworks is not a casual or isolated sale regardless of the duration, time, frequency or volume of such sales.
2. Hospital services and medical services performed by licensed medical doctors, dentists, osteopaths, optometrists, chiropractors, state licensed nurses, state licensed physician assistants, speech and hearing pathologists, state licensed psychologists, psychological associates, and licensed clinical social workers; physical therapists, when providing services prescribed by one of the foregoing, and retail sales of medicinal preparations, drugs or appliances for which a written prescription is required from one of the foregoing;
3. Subscriptions to newspapers and periodicals,
4. Dues or membership fees to nonprofit organization;
5. Sales of animal food, seed, plants and fertilizers to farmers using such commodities to produce goods for sale;
6. Sales of real property not including leases and rentals;
7. Sales, rents or services which the city is prohibited from taxing by the Constitution or laws of the United States or of the state of Alaska;
8. Services performed by morticians licensed under Alaska law;
9. Tuition and fees paid to nonprofit schools for educational services or paid to schools or student organizations within the schools for extracurricular activities or events;
10. Financial service transactions relating to the sale or exchange of currency or securities, transactions for conversion of negotiable instruments;
11. Interstate freight hauling services;
12. Premiums on insurance and bonds of guaranty and fidelity, but not including commissions on premiums;
13. Sale of foods purchased with coupons issued under the federal food stamp program;
14. Retail sales of food:
 - a. when served in cafeterias or lunchrooms of elementary, secondary, post-secondary schools which are operated primarily for students and staff, and are not operated for the public or for profit;
 - b. when served to clients and staff, and not to the public or for profit, as part of services provided by a nonprofit or government organization licensed by the state of Alaska for the care of humans; and

c. when delivered by a nonprofit organization to handicapped or senior citizens at their place of residence; or meals served on the premises of a nonprofit organization to senior citizens which receives funding from the state of Alaska or a political subdivision of the state; provided that the sale price of such meals does not exceed the cost of delivery or service of such meals;

15. A rental or other agreement for occupancy of ninety days or less for residential real property pending the closing of the sale of the property and a rental of residential property for (90) ninety days or more evidenced by a written lease agreement.

16. The portion of passenger transportation services and vehicle transportation services apportioned under WMC 3.08.090(A), (B) or (C) that are not apportioned to the city. (Ord. 348-97 §9 (part), 1997)

17. Passenger transportation service provided to a passenger by a passenger transportation business that has elected to be subject to WMC chapter 3.10 whose election has been accepted by the city. (Ord. 348-97 §9 (part), 1997)

18. The provision of passenger transportation services on a railroad when:

a. the passenger does not pay the railroad directly for the rail passenger transportation service,

b. the passenger is a part of a tour or transportation group that has been transported to Portage by a passenger transportation business that has elected and been accepted by the city to be subject to WMC chapter 3.10,

c. the rail fare for the passenger will be paid by the passenger transportation business directly to the railroad at Portage, and

d. the passenger transportation business displays to the railroad agent at Portage at the time of payment for the passenger's rail transportation an original certificate issued to the business under WMC 3.10.080.

The sale or provision of vehicle transportation by rail in connection with passenger transportation services that are exempt under this subsection 18 are not exempt from the sales tax levied under this chapter but may be subject to apportionment under other provisions of this chapter. (Ord. 348-97 §9 (part), 1997)

19. Condominium fees on residential properties. (Ord. 357-97, §2, 1997)

20. The performance of services covered by an exemption certificate for which a prepayment of estimated taxes has been made pursuant to WMC 3.08.122. (Ord. 371-98, §2, 1998)

21. The provision of tour and passenger transportation services provided within the City of Whittier during calendar year 1997, but which were sold prior to April 1, 1997. (Ord. 377-98, §2, 1998)

B. Sale, service and rentals to the following classes of buyers are exempt from the taxes levied under this chapter:

1. An organization that has obtained a 501(c) exemption ruling from the Internal Revenue Service, as long as proof of such exemption is provided to the city administration and an exemption certificate issued by the city is displayed to the seller at the time of sale;

2. A church that is organized as a nonprofit corporation under the laws of the State of Alaska, as long as proof of such incorporation is provided to the city administration and an exemption certificate issued by the city is displayed to the seller at the time of sale;

3. The United States, the State of Alaska, or any instrumentality or political subdivision of either.

C. Sales, rentals and services by the following classes of sellers are exempt from the provisions of this chapter:

1. An organization that has obtained a 501(c) exemption ruling from the Internal Revenue Service, as long as proof of such ruling is provided to the city administration prior to the sale, rental or service, but only when:

a. the sales are not liquor sales,
b. the sales are not sales of food sold through regularly conducted restaurant type operations; and
c. gaming sales are not made by third party vendors or other persons operating a gaming permit held by the 501(c) organization.

2. Groups sponsored by public or nonprofit schools.

3. Churches, except when such organization is engaged in business for profit or is competing with other persons engaged in the same or similar business;

D. Any portion of a single sale of goods or services in excess of (\$5,000.00) five thousand dollars, when such sale occurs to any individual or organization on a single date. (Ord. 377-98 §2, 1998)

3.08.110 Exemption for sales for resale. The following sales of tangible personal property are exempt under this chapter:

A. Sales to a wholesale or retail seller of property sold for the purpose of resale in the same form by the person purchasing the property for resale is exempt from the tax under this chapter if the property is held for resale within the city in a taxable transaction.

3.08.120 Exemption for intermediate services and rentals. The following sales of services and rentals are exempt under this chapter:

A. Where personal property is rented from a dealer in a taxable transaction and the renter is then directly reimbursed by a third party for the exact rental expense, without markup, then that reimbursement is not a rental or lease subject to the city sales tax;

B. Services rendered by an employee to his/her employer.

3.08.122 Prepayment of estimated Sales Tax.

A. A taxpayer who is a contractor and who will be obligated to pay the sales tax under this chapter on services performed by subcontractors may apply for a sales tax prepayment certificate under the conditions of this section if the contractor is the prime contractor on a contract with a government agency that is exempt from the payment of the sales tax under this chapter.

B. The application containing the information required under this section and such additional information as the City may require must be submitted to the City Manager and must be accompanied by a non refundable application fee equal to 0.01 percent of the prime contract amount, but not exceeding a fee of \$1,000.

C. Each application must contain: a copy of the executed contract with the governmental agency for which the contractor will be purchasing subcontractor services and either the material set out in subsection (C)(1) or the material set out in subsections (C)(2) through (6), or a combination of some materials from both.

1. Estimates based on industry standards, industry experience, and estimates of time, place, and value of subcontract work; provided if such estimates and information are submitted, the manager shall attempt to discuss the estimates and information with the contracting agency and its supervising engineer for the project or shall consult with a third party engineer, contractor or other person with experience in type of project involved.

2. A copy of executed subcontracts,

3. An affidavit or sworn statement that

a. the total of its subcontracts for services qualifying under subparagraph (4), including unexecuted subcontracts, will exceed a sum of \$2 million, and

b. the services to be performed by the subcontractors will be provided in Whittier over a period of at least 12 months.

4. An affidavit or sworn statement that the subcontracts are for services to be performed

a. in part within the City, and in part, outside the City, or

b. in part during a tax year and, in part, outside a tax year, or

c. both (4)(a) and (b).

Subcontracts to be performed entirely within the City during a tax year and subcontracts made or executed in Whittier are fully taxable and may not be included for purposes of this section.

5. A schedule of work for the prime contract,

6. A schedule of subcontractor work broken down to show

a. the subcontract or subcontractor, including all additional tiers of subcontracts and subcontractors,

b. the type or types of work to be performed under each subcontract

c. an estimate of the value and the volume or person-days involved for all work to be performed within the City,

d. of the work set out under subsection (6)(c), the amount to be performed during each tax year, broken down as under subsection (6)(c).

D. The manager may require additional information. The manager shall review the materials submitted and determine the estimated value of the subcontract work that would be subject to the

sales tax if such work were performed under a segregated contract. A segregated contract is a contract under which the value of the services performed within the City during a tax year may be accurately determined under the bona fide payment, pricing and performance terms of the contract that requires or allows segregation, measurement and pricing of services performed within the City during a tax year. The manager may investigate relevant matters and may consult with others in the process of determining the estimated value of the segregated subcontract work that would be subject to the sales tax. The estimate of value shall be conservative and shall include all work subcontracted by each subcontractor. Upon a determination of the estimated value, the manager may increase the estimate by such amount as the manager believes is appropriate taking into account the estimated time for performance of the prime contract and the subcontracts, the accuracy, reliability and certainty of estimates and other factors that may affect the accuracy of the estimated value. The result is the basis for computing the estimated sales tax liability. If the subcontract services to be provided to the contractor extend over more than two tax years, the manager shall allocate the total estimate among the tax years involved.

E. Upon a determination of the basis and allocation among tax years, the manager shall present the basis, its computation and its allocation among tax years to the taxpayer and to the City Council at the next council meeting held at least five days after the date the basis is mailed or transmitted by facsimile to the taxpayer. The manager's basis determination and allocation shall be used as the basis for the grant of a sales tax prepayment certificate unless the council, by four affirmative votes, disapproves the estimate, or by four affirmative votes approves an amended amount, at the meeting at which the basis is presented. If the council disapproves the estimate without approving a different amount, a sales tax prepayment certificate may not be issued. If the council approves an amount different from the manager's estimate, the amount approved by the council shall be the basis for the issuance of the sales tax prepayment certificate; the manager shall reallocate the amended basis amount among the tax years if the council does not do so in connection with its action to approve the amended amount.

F. The manager shall compute the estimated sales tax liability by multiplying the appropriate basis by the sales tax rate in effect for each tax year. The sales tax shall be allocated to the different tax years in same proportion as the basis is allocated when subcontractor work will occur over a period of two or more tax years. The manager shall notify the contractor in writing of the final basis and the estimated sales tax due for each tax year over which subcontractor work is to be performed. The contractor shall be issued a sales tax prepayment certificate upon payment of the full amount of estimated taxes due for the first tax year covered by the basis determination. The payment must be transmitted to the City within 20 business days of the date of the written notice from the manager.

G. A certificate shall be issued for each tax year for which payment is received. If the first payment made is for less than all of the tax years covered by the basis determination, the certificate shall be issued only for the tax years for which full payment is received. Payment for any tax year not covered by an issued certificate must be transmitted to the City on or before the 15th business day of January of the calendar year in which the tax year to be covered by the subsequent certificate occurs. Interest at the rate of 12 percent per annum shall be due on payments not transmitted as required under this section. A penalty of 20 percent of the amount due for the tax year is imposed and shall be paid if payment is not transmitted, with all interest due, before the first day of the tax year. A contractor whose timely payment for the first tax year includes full payment of the estimated tax liability for one or more subsequent tax years in the order of their occurrence may deduct 2 percent of the estimated liability for the second tax year, plus 4 percent of the estimated tax liability for the third tax year, and similarly, an additional 2 percent more for each additional tax year for which the estimated tax liability payment is made with the payment for the first tax year. A contractor whose timely payment for the first year includes the full payment for all subsequent tax years and who does not take any of the deductions authorized in the preceding sentence shall be exempt from the adjustment provisions of subsections (I) and (J).

H. During the tax year covered by a certificate issued under this section, the contractor to whom issued is exempt from the payment of the sales tax on services performed for the contractor under a subcontract for services described in subsection (C)(4) that are necessary for the performance of the contractor under the prime contract. Services performed by second and subsequent tier subcontractors are similarly exempt from the sales tax. Subcontractors performing services exempted

under this subsection are exempt from the filing requirements of this Code with respect to the exempt services, but are not exempt from the business license requirement of this Code.

I. If the sales tax rate, the length of the tax year or the location of the city limits change during the period of time for which the estimated sales tax was computed, the City Manager shall reexamine the materials submitted with the application and shall be provided with such additional information as may be requested from the contractor and any subcontractor. The manager shall make a new estimate of the value of services performed within the City if the tax year or the city limits were changed and shall recompute the estimated tax liability using the appropriate basis if the tax rate was changed. The redetermination of the basis and recomputation of the estimated tax liability shall be made for the period of time commencing with the change that requires the redetermination or recomputation by the manager. The manager shall compute the difference between the recomputed estimated tax liability for the period following the change and the estimated tax liability for the same period as if the change had not occurred. If only a change in tax rate during a tax year is involved, the manager shall allocate the basis for that tax year on a pro rata time basis and shall compute the prior and new estimated tax liability for the period affected by the change in rate. No referral to the council is required before implementation of the requirement for payment of the difference in estimated sales tax liability that results solely from a change in the tax rate. If the change involved a change in the tax year or city limits, the redetermination of the basis for the remaining tax periods shall be presented to the taxpayer and to the City Council in the same manner as the manager's determination of the original basis is required to be presented under subsection (E). The authority of the Council with respect to the redetermined bases and the effect of Council action shall be as provided in subsection (E).

J. Following the council meeting at which the predetermined bases were presented, the manager shall notify the contractor of the redetermined bases for the current and each remaining tax year and the difference in the recomputed estimated tax liability for the current and each remaining tax year. The current tax year is included if it is the tax year during which a change occurred. The contractor shall transmit to the City the difference in estimated tax liability for each tax year for which the contractor has prepaid the taxes. Such payment must be transmitted to the City within 20 business days of the date of the notice of the redetermined bases and recalculated estimated tax liability. All estimated tax liability payments for tax years that have not yet been made shall be increased by the amount of the estimated tax liability difference and shall be transmitted to the City subject to interest and penalty as required for the originally computed payment. If payment required under this subsection is not transmitted as required, a certificate issued for a tax year affected by a redetermination of the basis or a recomputation of the estimated tax liability is suspended and ineffective from the date payment must be transmitted until full payment of the amount due, including interest and penalty, is received.

K.

1. Upon receipt of the prepayment of estimated sales tax for one or more tax years, the City shall issue to the contractor a sales tax prepayment certificate for such tax years. The certificate shall state the name of the contractor to whom issued, a description of the project or work to which the certificate applies, the tax year or years during which it applies, a statement setting out the substance of the conditions of subsections (H) and (K)(2) of this section, whether the tax liability amount is subject to adjustment and such other information, statements or conditions as the manager determines to be appropriate for all certificates or for a particular certificates.

2. Upon the payment of the estimated tax due for the first tax year, without regard to interest or penalties that may be due, the contractor becomes absolutely liable for the prepayment of the estimated sales tax allocated to each other tax year covered by the basis determination. Acceptance or use of the certificate constitutes the irrevocable promise of the contractor, for itself and its successors in interest, to pay the prepaid tax amount as required under this section for each year for which payment has not been made.

L. Notwithstanding any other provision of this Section establishing consequences or rights arising out of a computation of estimated tax liability or any prepayment of estimated tax liability, the estimated tax liability of a contractor shall be adjusted under the conditions set out in this subsection. The adjustments under this subsection shall be made at any time the City determines that a single change order, amendment or other change in the contract results in an increase in the contract amount equal to more than 10 percent of the

original prime contract price or when the City determines the sum of all change orders, amendments and other changes to the contract totals more than 20 percent of the original prime contract. The price of the original prime contract is the price used to make the original determination of the estimated value of the work that would be subject to the City's sales tax. The increase in the value of the work subject to the sales tax shall be computed by multiplying the cost or value of the change orders involved by the percentage determined by dividing the original determination of the estimated value or cost of the work that would be subject to the sales tax by the original cost of the prime contract. The value or cost so determined shall be the basis for the computation of the additional sales tax liability. If appropriate, the value determined under this subsection, or the tax liability, may be apportioned amount the tax years remaining under the project. The increase in the tax liability apportioned to the current tax year, if any, and to any following tax year for which the estimated tax liability has previously been paid, shall be paid by the contractor and shall be transmitted to the City within 20 business days of the date of notice to the contractor of the additional tax liability. All other payments of additional liability determined under this Section shall be paid with, and as a part of, the estimated tax liability for the tax year involved. (Ord. 371-98, §3, 1998)

3.08.130 Waiver—Application for extension of time.

A. The sales tax administrator may grant extensions on any time limitation described in this chapter upon application filed on or before the date specified as the original time limitation, provided that:

1. Such an extension is a dire necessity for book-keeping reasons and would avert undue hardship upon such person or firm;
 2. Such person or firm is not delinquent in any payment of tax or filing of returns or otherwise in violation of this chapter;
 3. The extension is not for more than seven days.
- B. The council shall have no authority to grant any extension of time or waiver of any provision of this chapter or any regulations adopted pursuant to this chapter, but may amend the provisions of this chapter by ordinance.

3.08.140 Waiver—Uncollected taxes, penalties and interest.

A. The sales tax administrator may forgive the payment of sales taxes uncollected by a seller, plus interest and penalty thereon, and penalties for failure to file owing by a seller to the city upon a determination by the sales tax administrator that such uncollected sales taxes:

1. Have never been collected by a substantial portion of a clearly definable class of seller; or
2. Have never been collected on a substantial portion of a clearly defined class or type of transaction or service; or
3. Where an interpretation is affirmatively provided by the city to an inquiring seller, and the seller in reasonable reliance upon that interpretation fails to collect a sales tax, which collection is later determined to have been legally required under this chapter.

B. The sales tax administrator shall notify the council in writing of any such incidence of forgiveness which shall be final unless otherwise determined by the council within thirty days of such forgiveness.

ARTICLE IV. BUSINESS LICENSE

3.08.150 Business license required. All sellers shall file with the city an application for a business license on a form provided by the city, prior to commencing business, or the opening of an additional place of business. Each business shall be licensed under the advertised name of the business, and each separate place of business shall be licensed under its own separate account. The application shall include the name, position held and address of each person within the business with authority to draw on the funds of the seller and shall contain additional data as the sales tax administrator may require.

3.08.160 License issuance—Display required—Compliance agreement—Bond requirements.

A. Upon receipt of a properly executed application indicating that all returns required to have been filed pursuant to this chapter by the applicant as seller or agent of any seller have been filed, and that all sales taxes required to have been remitted to the city have

been paid, the sales tax administrator will issue a business license for the fee of twenty-five dollars. This license shall state the physical and mailing address of the place of business to which it is applicable, the applicable city and state of Alaska business license number and shall authorize the seller to collect the tax.

B. The certificate must be prominently displayed at the place of business named in the certificate. A seller who has no regular place of business shall attach such license to his/her stand, truck or other merchandising device.

C. Where the application or city records indicate that applicant is currently in violation of filing and remittance requirements of the city sales tax provisions, the sales tax administrator may deny the application for a business license until such time as applicant enters a binding agreement setting out a method by which full compliance will be attained.

D. Before issuing a business license to a business that was delinquent in the payment or filing of a return two or more times during the preceding calendar year, the sales tax administrator may require an applicant to post a cash or other bond with the city in an amount sufficient to insure the full and prompt collection and payment of sales taxes during the next four quarters. The bond is forfeited upon the failure to timely file one sales tax return or to timely make full payment of taxes collected; however, the forfeiture of the bond does not discharge the obligation of the seller to pay the taxes due to the city and the city reserves the right to collect any and all delinquent amounts, interest and penalties owed by the applicant.

E. Upon payment of the fee of ten dollars, the sales tax administrator will issue a duplicate business license to any seller whose license has been lost or destroyed.

3.08.170 Business license nonassignable—Surrender requirements—Successor seller. The business license is nonassignable and nontransferable and must be surrendered to the sales tax administrator by the seller to whom it was issued upon his ceasing to do business within the city. If there is a change in the form of organization such as from a single proprietorship to a partnership or a corporation, the admission or withdrawal of a general partner, or a change in seller's agent for service, the seller making such change shall surrender his old license to the sales tax administrator for cancellation. The successor seller shall file a new application for a business license. Upon receipt of such application, properly executed, as provided in this chapter, a new business license will be issued to such successor seller.

3.08.180 Business license index. The sales tax administrator or his/her designee shall maintain in a public place within the city administration building a current index alphabetized by name of business and name of owner, updated not less than monthly, of all current business licenses for public inspection. Applications for a business license are public records available for public inspection.

ARTICLE V. COMPUTATION

3.08.200 Addition of tax to sales price—Tax schedule.

A. The tax to be added to the sale price, charge or rental shall be three percent of the sales price, charge or rental rounded to the nearest cent by eliminating any fraction of less than one-half cent and by increasing any fraction of one-half cent or more to the next highest cent; provided, when the sale price is computed mechanically by a delivery device such as a full dispensing pump, the tax may be computed by the device and rounding not applied. Each seller shall be furnished the schedule of tax payable on each taxable amount from one cent to one hundred dollars. Any one sale of items separately priced shall be taxed upon the aggregate amount.

B. The sale price of goods, services, or rights sold through coin operated machines shall be computed as though the total amount deposited included the tax without rounding and the tax may be computed based on gross revenues rather than on individual sales.

3.08.210 Statement of tax.

A. The seller shall, whenever feasible, separately state the tax to the buyer on the receipt or invoice of each taxable transaction. When not feasible to state separately, the seller shall prominently display a sign or notice indicating the imposition of the tax or the inclusion of the tax in the price.

B. A seller shall not advertise, hold out or state to the public or to any buyer, directly or indirectly, that the tax payment or any part thereof imposed by this chapter will be assumed or absorbed by the

seller, or that it will not be added to the sales price or that it will be refunded or assumed, in whole or in part.

3.08.220 Installment sales—Tax collected when. When a sale is made on a credit or an installment basis, the sales tax shall be collected at the time of the sale.

ARTICLE VI. RETURNS/RECORDS/AUDIT

3.08.250 Returns—Filing required—Filing schedule.

A. Every seller shall file a sales tax return, on forms furnished by the city, according to the filing schedule established by the city for that seller for each period that falls between April 1 and October 1, whether or not any sale was made.

B. All sellers shall file sales tax returns on a quarterly basis, except as follows:

1. When the seller is delinquent with the city, returns shall be filed weekly, until all delinquencies are cured, and for not less than the next six months thereafter that fall within a tax year. (Ord. 348-97 §10, 1997)

2. A seller with a delinquent account, which includes a balance due of over twenty-five dollars or a missed filing, who fails to cure the delinquency within fifteen days of the date of a notice of delinquency sent by regular mail, shall file on a weekly basis. (Ord. 348-97 §10, 1997)

C. Where a new business license is issued because of a change in the form of the seller's organization, or a change in the seller's business name that does not substantially change the ownership interests, the seller shall continue to file on the same schedule as applied to the prior business until required or permitted to file on a different schedule by the city.

D. A seller on a weekly schedule may apply in writing at any time to the city for a change in the filing schedule. The city may consider the seller's sales tax return filing history in making a determination on the application, but no change may be approved unless the seller has substantially complied with this chapter for the previous six months that fall within the tax year.

3.08.260 Conducting business regularly for partial year.

A seller who conducts business within the city on a regular basis for part of a tax year only need not file a tax return under this chapter with respect to any scheduled reporting period during which the business is not conducted except the first scheduled reporting period during the tax year during which no sales were made following any reporting period during which sales were made. A taxpayer who anticipates not conducting business within the city during the tax year for one or more scheduled reporting periods shall so notify the sales tax administrator in writing, stating the date which the business intends to cease business within the city for the current year and the date on which the business intends to resume such business during the tax year or all penalties will apply.

3.08.270 Returns—Contents. Every seller required by this chapter to collect sales tax shall file with the city upon forms furnished by the city a return setting forth the following information with total sales rounded to the nearest dollar:

- A. Gross sales;
- B. The nontaxable portions separately stating the amount of sales revenue attributable to each class of exemption or exception;
- C. Computation of taxes to be remitted;
- D. Sworn statement of the owner or agent stating that all the information on the return is true and accurate;
- E. Such other relevant information as may be required by the sales tax administrator.

3.08.280 Returns and sales tax—Filing and payment required by due date.

A. Taxes collected or which should have been collected by a seller hereunder are due shall be paid to the city at the expiration of the reporting period established for that seller.

B. The completed return, together with remittance in full for the amount of tax due, must be transmitted to the city on or before the fifth business day following the last day of the quarter for sellers on a quarterly filing schedule. If the seller is required to file weekly, then the completed return, together with remittance in full for the amount of

tax due, must be transmitted to the city on or before the third business day following the last day of the week. (Ord. 348-97 §11, 1997)

C. A transmittal of taxes made by mail shall not be considered delinquent if the postmark applied by the post office on the envelope clearly indicates the date of mailing to be on or before the day the taxes are to be transmitted to the city. If no postmark is applied by the post office, or if the date in the post office-applied postmark is not readable, the taxes and filing will be treated as having been transmitted on the day actually received by the city. (Ord. 348-97 §11, 1997)

3.08.285 Application of Payment. Payments received by the city under this chapter from a seller shall be applied in the following order to amounts due the city by the seller under this chapter.

1. Audit fees due pursuant to WMC 3.08.340.
2. Penalties beginning with the oldest penalty.
3. Interest.
4. Taxes due beginning with the taxes due for the longest time.

3.08.290 Returns—Credit for costs of collection.

A. If a return is filed and tax payments are remitted by the filing deadline, a seller in full compliance with this chapter may retain three percent of the tax collected, to a maximum of one hundred dollars per month, to cover the costs of collecting the tax.

B. If the seller is not in full compliance with this chapter, or the seller files or pays under an extension of time granted by the sales tax administrator; the seller is not eligible for and may not retain the three percent credit.

C. Full compliance for the purposes of this section means that a seller does not have an account with a balance due, does not have a missing or incomplete return outstanding and is making a timely filing with full payment for the period for which the return is due.

3.08.300 Returns—Confidentiality requirement—Exceptions.

A. Returns which include remittance in full of all sales taxes due and which are timely and properly filed with the city for the purposes of complying with the terms of this chapter and all data obtained from such returns are confidential, and such returns and data obtained therefrom shall be kept from inspection by all private persons. Nothing contained in this section shall be construed to prohibit the audit and investigation by the city of any return filed under this chapter or of the books and records of any seller required to file any return under this chapter.

B. Nothing contained in this section shall be construed to prohibit the delivery to a person, or his duly authorized representative, of a copy of any return or report filed by him, nor to prohibit the publication of statistics so classified as to prevent the identification of particular buyers or sellers, nor to prohibit the furnishing of information on a reciprocal basis to other agencies or political subdivisions of the State or the United States concerned with the enforcement of tax laws.

C. Nothing contained in this section shall be construed to prohibit the disclosure through enforcement action proceedings or by public inspection or publication of the name, estimated balance due, and current status of payments, and filings of any seller or agent of any seller required to collect sales taxes or file returns under this chapter, who fails to file a return or who fails to remit in full all sales taxes due by the date required under WMC 3.08.290. Entry into any agreement whether pursuant to the provisions of this chapter or otherwise shall not act as any prohibition to disclosure of the records of that seller as otherwise provided in this chapter.

D. A prospective lessee or purchaser of any business or business interest may inquire as the obligation or tax status of any business upon presenting to the sales tax administrator a release of tax information request signed by the registered owner of the business.

E. Notwithstanding any other provision of this section, the city may disclose any information, data or records of a seller that are in the possession of the city in any civil or criminal action brought by the city in the enforcement of any provision of this title.

3.08.310 Final return—Required information. Fifteen days prior to the sale, lease, or other disposition, or change in ownership interest, other than a transfer of outstanding shares of stock, or upon incorporation of any business licensed pursuant to this chapter, the business seller shall file a notice with the city together with an informational return identifying the name and address of each person or

entity involved in the change, the nature of the change and the effective date of the change.

3.08.320 Records—Seller recordkeeping required—Loss of records.

A. Every seller engaged in activity subject to this chapter shall keep and preserve suitable records of all sales made and such other books or accounts as may be necessary to determine the amount of tax the seller is obligated to collect. Every seller shall preserve suitable records of sales for a period of six years from the date of the return reporting such sales, and shall preserve for a period of six years all invoices of goods and merchandise purchased for resale, and all such other books, invoices and records as may be necessary to accurately determine the amount of taxes which the seller was obliged to collect under this chapter.

B. A seller shall immediately notify the city of any fire, theft or other casualty which prevents compliance with this chapter. The casualty constitutes a defense to any penalty 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 liability for taxes required to be collected, interest and penalties under this chapter.

3.08.330 Audit—Investigation authority—Seller's consent to inspection of tax returns.

A. 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 seller, the sales tax administrator may hold investigations and hearings concerning any matters or memoranda of any seller, may require the attendance of any seller or buyer, or any officer or employee of a seller or buyer at the hearing, and may require production of all relevant business records.

B. A seller required to register for sales tax collection under this chapter consents to the inspection of the seller's federal income tax returns in order to facilitate the accomplishment of the provisions and objectives of this chapter.

3.08.340 Estimate of tax due—Audit. In the event that the city is unable to ascertain the amount of tax due from a seller because the seller has failed to keep accurate records, to allow inspection of records, has failed to file a return or has falsified records, then the city shall estimate the tax due based upon any information available to it. The estimate, including interest and penalties due to the date of the estimate, shall become final for the purpose of determining liability of the seller thirty calendar days from the date the city mails notice of the estimate to the seller unless the seller earlier files an accurate, auditable return indicating a lesser liability or unless a greater liability is shown upon audit. If the city audits a seller following the filing of an estimate under this section by the city, and the audit shows that more tax is due than was set out in the city's estimate, the seller shall be liable for an audit fee equal to the cost to the city of the audit, in addition to any other penalties or fees due under this chapter.

ARTICLE VII. ENFORCEMENT

3.08.350 Civil and criminal actions—Payment agreements—Joint bank accounts.

A. Nothing in this chapter shall be construed to prevent the city from filing and maintaining a civil action to recover any taxes, penalties, interest, and fees due from a seller. Failure to obtain a business license under this chapter or to collect taxes which otherwise should have been collected under this chapter shall not be a defense to an action by the city against such seller to recover all amounts due.

B. The sales tax administrator may enter into an agreement secured by a confession of judgment or a deed of trust on property with sufficient equity to cover the liability for delinquent sales taxes, interest, penalty and fees on such payment terms as the administration finds reasonable, provided that the terms shall require full payment of all obligations of the seller within a maximum period of twenty-four months from entry of such an agreement, unless a shorter term is required by other provisions of this code, in which case those provisions shall be followed. The sales tax administrator may not enter a repayment agreement with a seller who has been involved in a repayment agreement under this subsection within the prior five years, unless otherwise provided in this code.

C. All businesses or owners of businesses against which the city has an outstanding judgment may be required by the sales tax administrator to deposit sales tax monies collected, on a weekly basis, to a joint bank account upon which the city is signatory. Dual signature would be required for withdrawal from the account.

D. A person convicted of a violation of a provision of this chapter shall be subject to a fine of not more than \$500; provided, for a subsequent conviction for a violation of any provision of this chapter that occurs within 3 years of a prior conviction for a violation of any provision of this chapter, the person shall be subject to a fine of not more than \$1,000 and imprisonment for not more than 90 days. Each day upon which a violation continues is a separate violation. The failure or refusal of a person to comply with an order of the sales tax administrator specifically authorized by this chapter is a violation of a provision of this chapter.

3.08.360 Failure to obtain business license—Civil penalty—Other remedies.

A. A seller who fails to obtain a business license as required by this chapter, after notice in writing of the obligation to get a business license has been delivered personally or by regular mail to the seller, the seller's place of business, or the last known address of the seller is subject to a civil penalty not to exceed one thousand dollars, in addition to any taxes, penalties and interest owing pursuant to this chapter plus, costs and actual attorney fees incurred by the city in the collection of the civil penalty assessed against the seller.

B. The city may pursue any other civil or criminal remedies against a seller who fails to obtain a business license required by this chapter, including injunctive relief.

3.08.370 Failure to file returns or remit taxes—Civil penalties—Publication—Injunction.

A. Failure to file two or more returns in any one tax year after notice from the city to the seller's address last shown on its business license application, when intentional, constitutes a misdemeanor and is punishable by imprisonment for up to thirty days, and a fine not to exceed five hundred dollars, plus costs of prosecution, in addition to any civil penalty assessed. (Ord. 348-97 §12, 1997)

B. A seller who fails to file a return within the time required by this chapter, or who fails to remit all taxes required to be collected by him, or later found to be due, is subject to a penalty of five percent per month of the amount of taxes found or estimated to be due until paid, to a maximum of twenty-five percent. The filing of an incomplete return, or the failure to remit all taxes due, is the equivalent of filing no return. All taxes due but not paid within the time required by this chapter shall accrue interest at the rate of 15% per annum.

C. Any seller who fails to file a return required under this chapter within fifteen days of written notification by regular mail, regardless of whether any taxes were due for the reporting period for which the return was required, shall be subject to a penalty of one hundred dollars for each return not filed, in addition to any penalty for late filing. (Ord. 403-00 §2, 2000)

D. Sellers who have not filed returns for two consecutive reporting periods during a tax year who have not notified the sales tax administrator that they have temporarily or permanently ceased to do business in the city shall be assumed to have ceased conducting business and shall be removed from the roll of active businesses. A business removed from the active businesses roll may not thereafter conduct business within the city until reinstated to the roll. Reinstatement of a business removed from the active businesses roll pursuant to this section may occur only upon payment of a reinstatement fee of seventy-five dollars.

E. If the sales tax administrator has reason to believe that a seller who has been removed from the roll of active businesses pursuant to this section or as a result of written notice by the business to the sales tax administrator is in fact continuing to conduct business, the sales tax administrator may cause a proceeding to be filed in the superior court requesting the issuance of an injunction prohibiting that business from continuing to conduct business.

F. As soon as practicable after the expiration of fifteen days following the end of each calendar month during the tax year, the sales tax administrator shall publish in customary circulation in the appropriate area of the city, a list of every seller who:

1. Was conducting business in the city and was required to file a return during that month, but who has not filed the required return, unless seller has paid any balance due for that period in full;

2. Did not pay all balances due; or
3. Is delinquent in the payment of amounts owed entered under the provisions of this chapter.

3.08.380 Failure to keep adequate records.

- A. No person may falsify or misrepresent any fact or matter in any return, statement, application, or other document submitted to the city under this chapter;
- B. No person may falsify any records required to be kept by a seller under this chapter. No person may submit or provide falsified or misleading records or other documents to the city or its auditor.
- C. No seller may refuse to allow inspection at reasonable times of records required by this chapter to be kept by a seller.
- D. Misrepresentation of a fact or a matter occurs and documents are misleading when the representation or information is presented as complete with respect to the subject but additional, undisclosed, relevant facts or information known, or that should be known, to the seller would cause the person examining the representation or document to understand or interpret the representation, information or document in a manner less favorable to the seller.

3.08.390 Misuse of business license. No person may conduct business within the city under a business license issued to a different person.

3.08.400 Misuse of Exemption Certificate.

- A. No person may use an exemption certificate to avoid, or to assist another in avoiding, the payment of the tax levied under this chapter on a transaction to which the exemption does not apply.
- B. No person may use an exemption certificate to benefit a person who is not entitled to the tax exemption under the certificate.

3.08.410 Sales tax liens.

- A. The sales tax administrator may cause a sales tax lien to be filed and recorded against all real and personal property of a seller where the seller has:
 1. Failed to file sales tax returns for two consecutive filing periods as required by the chapter; or
 2. Failed to pay all taxes, penalties and interest due for more than two consecutive filing periods.
- B. Prior to filing a sales tax lien, the sales tax administrator shall cause an additional written notice of intent to file a lien to be mailed by certified mail to the last known address of the delinquent seller. Neither the failure to mail such notice, nor the failure of the seller to receive such notice invalidates a lien filed by the city.

ARTICLE VIII. DEFINITIONS

3.08.430 Definitions. For the purpose of this chapter when not clearly indicated by the context, the following words and phrases have the following meanings:

- A. "Buyer" means and includes each person who purchases, rents or leases tangible property, including space, and who acquires within the city services or the rights to services, or who receives services within the city for which the tax under this chapter has not previously been paid.
- B. "Coin-operated machine" means a slot machine, marble machine, jukebox, merchandise vending machine, laundry, dry cleaning and any other service-dispensing machine or amusement device of any kind which requires the insertion of a coin to make it operative.
- C. "Consideration" means the overall consideration, whether money, credit, right or other property expressed in the terms of money, paid or delivered by a buyer to a seller, all without any deduction on account of the cost of tangible property sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes, or any other expenses whatsoever paid or accrued, and without any deduction on account of losses.
- D. "Monthly" means the period beginning the first day of a calendar month and ending with the last day of a calendar month.
- E. "Nonprofit organization" means an association, corporation or other organization where no part of the net earnings of the organization inures to the benefit of any member, shareholder or other individual.
- F. "Person" means and includes individuals and every organization or entity recognized in law and every group of persons acting as a unit.

G. "Quarterly" and "quarter" mean each calendar quarter of three consecutive months beginning the first day of the first month of the quarter and ending with the last day of the third month of the quarter; the first calendar quarter begins on January 1 each year.

H. "Rentals," "Rent" and similar terms include leases, licenses, and other transactions involving the temporary transfer of possession or right to use property without the transfer of title.

- I. "Sale" or "retail sale" means and includes:
 1. Every sale, exchange or performance of services;
 2. Every rental or lease of personal property, whether tangible or intangible;
 3. Every sale of the use or play of a coin-operated machine;
 4. Installment, credit and conditional sales;
 5. Every sale of use or title in tangible personal property, regardless of quantity or price, whether sold by coin-operated machine or otherwise;
 6. Every rental or lease of real property;
 7. Gaming sales authorized by AS 5. 15.

J. "Sales price" means consideration paid by the buyer whether money, credit, rights or other property, expressed in terms of money equal to the fair market value of the consideration and including delivery or installation costs, taxes, or any other expenses whatsoever, measured by the gross sales price of the seller.

K. "Sales tax administrator" means the person designated by the city manager to administer and enforce the provisions of this chapter; provided, in the absence of such a designation, it shall be the city treasurer.

L. "Seller" means and includes persons who are vendors of property, persons furnishing services, the lessors of rental space or goods, and all persons making sales, including consignees and persons who conduct sales where items will be sold for a commission or fee.

- M. "Services" means all services of every manner and description which are performed or furnished for compensation, including but not limited to:
 1. Professional services;
 2. Services in which a product or sale or property may be involved, including personal property made to order;
 3. Utilities and utility services not constituting a sale of personal property, including sewer, water, solid waste collection or disposal, electrical, and telephone services and repair;
 4. Transportation services to or from Whittier;
 5. Services rendered for compensation by any person who furnishes any such services in the course of his/her trade, business or occupation, including all services rendered for commission, but does not include services performed by an employee for an employer;
 6. Any other services, including advertising, maintenance, repair, recreation, amusement and craftsman services other than services performed by an employee for an employer;
- N. "Tax year" means the period beginning April 1 and continuing through September 30 each year.
- O. "Time of sale" means the time at which the sale or rental agreement is reached between the buyer and the seller, without regard to the agreed time for delivery, performance, or payment.
- P. "Temporary lodging" means any lodging of 31 days or less.
- Q. "Weekly" means the week beginning on Sunday and ending with Saturday.
- R. "Wholesale sale" means the sale of goods or articles to another for resale in the same form purchased. (Ord. 348-97 §13, 1997)

PASSENGER TRANSPORTATION BUSINESS TAXSections:

- [3.10.010 Levy of tax](#)
- [3.10.020 Election](#)
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Section 3.10.010 Levy of tax. There is levied upon and there shall be paid a passenger transportation business tax by each passenger transportation business that qualifies and elects to be subject to the tax levied under this chapter. The tax levied under this chapter shall be applicable to each electing, accepted passenger transportation business for so long as the election is effective.

Section 3.10.020 Election.

A. A passenger transportation business may elect to be subject to this chapter by filing with the tax administrator of the city a completed application on a form provided by the city. Upon a determination that the applicant meets the requirements of subsection (B), the tax administrator shall issue to the applicant a notice of acceptance of election which shall contain the effective date for the election. The effective date for the election shall be the date of the notice of acceptance of the election or such earlier date as may be requested by the applicant and approved by the tax administrator.

B. Each applicant under this section shall submit a complete application, properly executed by a person authorized to bind the applicant under this chapter and shall include or be accompanied by the full name of the business and all other names under which the entity does business and:

1. the name of the person in charge, physical and mailing address, telephone number, and facsimile number for:
 - a. the office or agent for the business that is located within the city of Whittier,
 - b. the office or agent within Alaska that is responsible for the administration of the provision of transportation services into or out of the city of Whittier,
 - c. the headquarters, central or other office to which the office under subsection (b) reports.
2. a description of the type of passenger transportation services that are or will be provided into or out of Whittier, including the approximate passenger capacity of the conveyances that will be used, the estimated number of passengers that will be brought into Whittier and the estimated number of passengers that will be transported out of Whittier during the calendar year for each mode or different form of conveyance that will be used by the business, and a description of the relationship of the applicant to any other passenger transportation business with respect to passengers of the applicant that will be transported into or out of the city of Whittier by such other passenger transportation business.
3. all sales taxes collected by the applicant on the sale or performance of passenger transportation services sold or performed within the city of Whittier prior to the effective date of the election that have not been paid over to the city and an agreement to pay

to the city within 10 business days of the date of notification of the acceptance by the city of the election all other sales taxes collected prior to the receipt of the notification.

4. a certification or agreement that all passengers transported on and after the effective date of the election for whom transportation services are or were provided, but upon whose transportation services or purchase of service the Whittier sales tax was not collected will be reported for the purpose of computing the tax due under this chapter; (Repealed & reenacted by Ord. 350-97, §2, 1997)

5. a copy of the current Alaska business license issued to the business.

6. the name, title, physical and mailing addresses, telephone and facsimile numbers for the following persons:

- a. the chief executive officer,
- b. the chief financial officer,
- c. the controller, comptroller, or treasurer, if

other than the chief financial officer,

- d. the person or persons who will be primarily responsible for filing the return, verifying its accuracy and paying the tax under this chapter, and

e. each other person who is authorized to pay or to require others within the business to pay the tax under this chapter to the city.

Section 3.10.030 Results of election.

A. Upon the acceptance by the city of an election under this chapter, the election shall be effective from the date set out in the notice of acceptance issued under section 20 of this chapter. Passengers who are provided transportation services by an accepted business are exempt from the sales tax levied under WMC 3.08 on transportation services provided to the passenger by the accepted business and the accepted business is exempt from the collection and payment over to the city of the sales tax that would otherwise apply to transportation services provided by the accepted business to the passenger. The exemptions set out in this subsection do not apply to sales of passenger transportation services made or provided within the city prior to the effective date of the election or to sales or performance upon which the sales tax was collected whether collected before or after the effective date. (Ord. 350-97, §3, 1997)

B. Upon acceptance of the election by the city, the accepted business becomes a taxpayer under this chapter and shall continue to be a taxpayer under this chapter from year to year without re-application. The status as a taxpayer under this chapter shall continue with respect to an accepted business that is sold, merged, reorganized or changed in form or in name in any other way in which the business operations or goodwill of the taxpayer come into the possession, control or ownership of any person that is different from the accepted business.

C. A taxpayer may not withdraw an election accepted by the city or otherwise elect to have the sales tax under WMC 3.08 apply to the sale or performance of passenger transportation services provided or to be provided by the taxpayer except upon written approval by the tax administrator. Such approval may not be given unless the tax administrator, with the concurrence of the city manager, is satisfied that the taxpayer has paid to the city an amount equal to the sales tax that, but for the sales tax exemption under this chapter, would have been collected on sales made and services provided within the city that have not been accounted for in the tax levied under this chapter plus the tax that is due under this chapter as of the date of the approval for the taxpayer to withdraw its election. The tax administrator may require the payment of such additional amount as may be necessary to insure that the transportation of each passenger by the taxpayer either is or will be subject to the sales tax under WMC 3.08 or will or has been counted in the computation of the tax under this chapter. Prior to the approval by the tax administrator of the withdrawal of the taxpayer under this subsection, the taxpayer shall return all original certificates issued to the taxpayer under section 3.10.080 of this chapter.

Section 3.10.040 Update of information. Upon the sale of an accepted business, a change of the name of the business, a reorganization, a change in the form of the business or a change in the address of any office as last provided to the city, the taxpayer shall promptly provide, in writing, notice to the tax administrator of such changes. At such time as the tax administrator determines to be appropriate, the tax administrator may request from a taxpayer the information required on an application for election under section 020(B)(1), (2), (5) & (6).

Section 3.10.050 Tax payment.

A. The tax due under this chapter shall be paid by the taxpayer on a monthly basis for each month during the year. The tax is due on the last calendar day of the month during which the tax liability accrues and is payable on, and shall be delinquent if the full amount due is not transmitted to or received by the city by, the 10th business day of the month following the month for which the tax is due.

B. For each monthly tax period, the taxpayer shall file a completed and executed tax return on a form provided by the tax administrator. The complete return and the full amount of the tax due, with all tax, interest and penalties due for any prior monthly tax period must be received by the city by 5:00 p.m. on the 10th business day, or must be mailed and clearly postmarked by the U.S. Postal Service prior to midnight on the 10th business day, of the month following the month during which the tax liability accrues. If no date and time are affixed by the U.S. Postal Service, or if either the date or time affixed by the U.S. Postal Service is unclear, the date of actual receipt by the city shall be the date received. For the purpose of this section, Saturdays, Sundays and state holidays that are observed annually are not included in determining the 10th business day of the month.

C. A return that is incomplete, is not accompanied by required documents, or that has not been dated and signed is not filed under this section until the defect has been corrected or supplied or a complete and properly executed form has been provided to the city. Each return must include a copy of such backup documents or summaries as may be required from the taxpayer by a written notice from the tax administrator in addition to those noted on the return form provided by the city as being required as a part of the return. Such required documents may include documents such as passenger manifests, confirmed passenger counts or other documents of a similar or different nature that the tax administrator determines may be useful in determining or confirming the tax due. A return that is submitted without the required additional documents is incomplete and is not filed until the city has received such documents. The return must be accompanied by the payment of the entire tax due plus all unpaid taxes, interest and penalties from prior tax periods. A return that is not accompanied by such payment is incomplete and is not filed under this section until such payment is received by the city.

D. A return received by the city on or before 5:00 p.m. of the 10th business day of the month following the month for which the tax is due or which is mailed and postmarked prior to midnight of the 10th business day of such month and which is incomplete both when received and after the 10th business day of the month is not timely filed, and shall be subject to the penalties and interest as may be applicable under section 3.10.070 of this chapter until the return is complete and may be filed as a complete return

Section 3.10.060 Computation of tax.

A. The tax due for each monthly tax period under this chapter is the amount determined by multiplying the sum of the number of passengers transported into the city by the taxpayer plus the number of passengers transported outside the city, during the tax period, by the amount set out below for the year during which the tax period occurred:

1. for 1997, \$0.50;
2. for 1998, \$0.75;
3. for 1999, \$1.00;
4. for 2000, \$1.25;
5. for 2001 and following years, \$1.25.

B. Each time a passenger is transported into or out of the city shall be counted for purposes of computing the tax under this chapter. A passenger brought into the city by a taxpayer by bus, who is then transported by the taxpayer outside the city and back into the city by vessel and is then transported outside the city by bus has engaged in 4 events that are counted for purposes of the computation of the tax.

Section 3.10.070 Penalties and interest.

A. Interest shall accrue on all delinquent taxes at a rate of 15% per annum until paid, and shall accrue on a penalty only after a penalty or part thereof has been unpaid for 180 days following the date of written notice of the penalty due. (Ord. 350-97, §4, 1997)

B. A return that is untimely filed, including returns that are treated as not filed because they are incomplete, shall accrue a penalty of 5% of the total tax due for the tax period, whether or not the tax has been paid, for each month and part of a month during which such return remains not filed. The minimum penalty for a delinquent filing is \$100.00.

C. For any tax payment that is not received before the delinquency date or which is less than the amount owed, the taxpayer shall pay a penalty of 5% of the taxes due but not timely received to which there shall be added an amount equal to 5% of the delinquent amount for each month or part of a month during which any delinquency in the payment continues. The minimum penalty for a delinquent payment of any amount is \$100.00

D. A penalty of \$100.00 shall be paid by a taxpayer who fails to provide the information requested under section 3.10.040 within 30 days of the date of the written request from the city.

E. A taxpayer who fails to make records available within 15 days of the date of the written request for such records pursuant to section 3.10.140, or such later time as the city may specify or agree shall pay a penalty of \$300.00 plus an amount equal to the delinquent taxes found to be owing as a result of the examination or audit of such records. The penalty under this section is in addition to the penalty for delinquent taxes, the additional taxes found to be owing as a result of the examination or audit of the records and the interest on such delinquent taxes.

F. Upon receipt of any payment from a taxpayer for payment of any amount that may be due under this chapter, and notwithstanding any designation of the purpose or statement of intended application of such payment by the taxpayer, the city shall apply such amount first to the oldest penalties that are due until all penalties are paid; it shall then apply the balance to the oldest interest due, until all interest is paid; it shall then apply the balance to the oldest principal due until all taxes are paid.

G. The total penalty for delinquent filing of a return shall not exceed the greater of \$100.00 or 50% of the tax due for the month of delinquency. The total penalty for a delinquent payment shall not exceed the greater of \$100.00 or 50% of the delinquent amount.

Section 3.10.080 Certificates of election. Upon request of the taxpayer, and the payment of \$5.00 for each certificate, the city shall issue one or more sequentially numbered certificates to the taxpayer certifying that the taxpayer is subject to the passenger transportation business tax. Each certificate shall bear the original signature of the city clerk and the tax administrator or the manager, shall be embossed by the city clerk with the seal of the city, shall be given a sequential and unique number and shall contain a statement that a copy or other reproduction of the certificate is not valid for any purpose. A certificate issued under this section is the only document that may be used to verify the status of the taxpayer under WMC 3.08.100(A)(18)(d).

Section 3.10.090 Transfer of business, successor liability to the city.

A. Any person acquiring an ownership interest in an ongoing accepted business or the accounts receivable of an accepted business, whether by purchase, assignment, foreclosure, conveyance in lieu of foreclosure, relinquishment, or otherwise, shall be liable for the payment of taxes, penalties and interest accrued, accruing, and unpaid to the city on account of the operation of the business by the former owner, owners or assigns. Each person acquiring any interest in an accepted business or the accounts receivable of such a business shall request a statement from the city of the actual and estimated amount of current and past due passenger transportation business taxes, penalties and interest owed by the business as of the date of the request. The person acquiring the business or accounts receivable shall withhold from the acquisition price and pay over to the city the current taxes due and the past due taxes, interest and penalty.

B. The liability of a purchaser or other person acquiring an accepted business or the accounts receivable of an accepted business for outstanding taxes, penalties and interest accrued under this chapter and unpaid by the former owner through the date of the request from the purchaser shall be limited to an amount stated in writing by the city in response to a request from the purchaser for a statement of passenger transportation business tax liability.

Section 3.10.100 Enforcement authority, request for administrative rulings.

A. The tax administrator shall enforce the reporting and the tax, penalty and interest payment requirements imposed under this chapter.

B. Any person who may be obligated to pay the tax under this chapter, or any city official, may apply to the tax administrator for a determination on the application of this chapter to an actual fact

situation. The tax administrator, with such review and assistance as may be required from the city attorney, shall provide a written interpretation of the applicability of this chapter to the fact situation described. The city shall be bound by a written determination issued under this subsection (B), but only with respect to the person to whom the interpretation is issued, and only for so long as such interpretation has not been revoked, withdrawn or modified and none of the code sections upon which the interpretation is based have been amended or repealed. With the approval of the city attorney, the tax administrator may issue generally applicable rulings and interpretations which shall be effective until revoked, withdrawn or modified and none of the code sections upon which the ruling or interpretation is based have been amended or repealed.

Section 3.10.110 Returns, confidentiality requirement, exceptions.

A. Returns which include remittance in full of all taxes due and which are timely and properly filed with the city for the purposes of complying with the terms of this chapter and all data obtained from such returns are confidential, and such returns and data obtained therefrom shall be kept from inspection by all private persons. Nothing contained in this section shall be construed to prohibit the audit and investigation by the city of any return filed under this chapter or of the books and records of any taxpayer required to file any return under this chapter.

B. Nothing contained in this section shall be construed to prohibit the delivery to a person, or his duly authorized representative, of a copy of any return or report filed by him, nor to prohibit the publication of statistics so classified as to prevent the identification of particular buyers or taxpayers, nor to prohibit the furnishing of information on a reciprocal basis to other agencies or political subdivisions of the State or the United States concerned with the enforcement of tax laws.

C. Nothing contained in this section shall be construed to prohibit the disclosure through enforcement action proceedings or by public inspection or publication of the name, estimated balance due, and current status of payments, and filings of any who fails to file a return or who fails to remit in full all taxes due by the date required under this chapter. Entry into any agreement whether pursuant to the provisions of this chapter or otherwise shall not act as a prohibition to disclosure of the records of that taxpayer as otherwise provided in this chapter.

D. A prospective lessee or purchaser of an accepted business or interest in such business may inquire as to the obligation or tax status of such business and may receive such confidential information as may be authorized for release in a release of tax information request signed by the owner or chief executive officer of the accepted business.

E. Notwithstanding any other provision of this section, the city may disclose any information, data or records of a taxpayer that are in the possession of the city in any civil or criminal action brought by the city in the enforcement of any provision of this chapter.

Section 3.10.120 Final return, required information.

Fifteen days prior to the sale, lease, or other disposition, or change in ownership interest, other than a transfer or outstanding shares of stock, or upon incorporation of an accepted business, the accepted business seller shall file a notice with the city together with an informational return identifying the name and address of each person or entity involved in the change, the nature of the change, the effective date of the change, the unpaid tax liability under this chapter and an estimate of the additional liability that will accrue by the effective date of the change.

Section 3.10.130 Records, taxpayer recordkeeping required, loss of records.

A. Every taxpayer subject to this chapter shall keep and preserve suitable records of all passenger transportation services provided, purchased or sold and such other records, documents, books or accounts as may be necessary to determine the amount of tax the taxpayer is obligated to pay. Every taxpayer shall preserve suitable records of relevant activities and transactions for a period of six years from the date of the return for the tax period for which the tax return is filed and all such other books, invoices, manifests and other records as may be necessary to accurately determine the amount of taxes which the taxpayer was obliged to pay under this chapter.

B. A taxpayer shall immediately notify the city of any fire, theft or other casualty which prevents compliance with this chapter.

The casualty constitutes a defense to any penalty 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 taxpayer from liability for taxes and interest and for penalty otherwise due. Accidental loss of funds or records is not a defense against the liability for taxes required to be paid, interest and penalties under this chapter.

Section 3.10.140 Audit-investigation authority, taxpayers consent to inspection of tax returns.

A. For the purpose of ascertaining the correctness of a return the tax administrator may hold investigations and hearings concerning any matters or records of any taxpayer, may require the attendance of any taxpayer, or any officer or employee of a taxpayer at the hearing and may require production of all relevant business records.

B. A passenger transportation business that is accepted by the city under this chapter consents to the inspection of the taxpayer's business records, reports, audits and other records. Upon the written request of the tax administrator or the tax administrator's agent, a taxpayer shall provide all relevant, requested records for examination in Whittier or Anchorage, Alaska within fifteen calendar days or such longer time as may be specified in the written request or as may be agreed upon by the city and the taxpayer. The city may agree to the production of records at a place other than Whittier or Anchorage and may condition such agreement upon the taxpayer advancing or reimbursing all expenses, including additional personnel, auditor or investigator expenses, incurred or to be incurred because of the production at a different place.

Section 3.10.150 Estimate of tax due, audit. In the event that the city is unable to ascertain the amount of tax due from the taxpayer because the taxpayer has failed to keep accurate records, to allow inspection of records, has failed to file a return or has falsified records, then the city shall estimate the tax due based upon any information available to it. The estimate, including interest and penalties due to the date of the estimate, shall become final for the purpose of determining liability of the taxpayer thirty calendar days from the date the city mails notice of the estimate to the taxpayer unless the taxpayer earlier files an accurate, auditable return indicating a lesser liability or unless a greater liability is shown upon audit. If the city audits a taxpayer following the filing of an estimate under this section by the city, and the audit shows that more tax is due than was set out in the city's estimate, the taxpayer shall be liable for an audit fee equal to the cost to the city of the audit, in addition to any other penalties or fees due under this chapter.

Section 3.10.160 Civil and criminal actions, payment agreements.

A. Nothing in this chapter shall be construed to prevent the city from filing and maintaining a civil action to recover any taxes, penalties, interest, and fees due from a taxpayer.

B. The tax administrator may enter into an agreement secured by a confession of judgment or a deed of trust on property with sufficient equity to cover the liability for delinquent taxes, interest, penalty and fees on such payment terms as the tax administrator finds reasonable, provided that the terms shall require full payment of all obligations of the taxpayer within a maximum period of twenty-four months from entry of such an agreement, unless a shorter term is required by other provisions of this code, in which case those provisions shall be followed. The tax administrator may not enter a repayment agreement with a taxpayer who has been involved in a repayment agreement under this subsection or WMC 3.08.350(B) within the prior five years, unless otherwise provided in this code.

C. A person convicted of a violation of a provision of this chapter shall be subject to a fine of not more than \$500.00; provided, for a subsequent conviction for a violation of any provision of this chapter that occurs within 3 years of a prior conviction for a violation of any provision of this chapter, the person shall be subject to a fine of not more than \$1,000.00 and imprisonment for not more than 90 days. Each day upon which a violation continues is a separate violation. The failure or refusal of a person to comply with an order of the tax administrator specifically authorized by this chapter is a violation of a provision of this chapter.

Section 3.10.170 Failure to keep adequate records.

A. No person may falsify or misrepresent any fact or matter in any return, statement, application, or other document submitted to the city under this chapter.

B. No person may falsify any record required to be kept by a taxpayer under this chapter. No person may submit or provide falsified or misleading records or other documents to the city or its auditor.

C. A taxpayer may not refuse to allow inspection at reasonable times has been accepted by the city and not subsequently withdrawn under the withdrawal provisions of this chapter.

D. Misrepresentation of a fact or a matter occurs and documents are misleading when the representation or information is presented as complete with respect to the subject but additional, undisclosed, relevant facts or information known, or that should be known, to the taxpayer would cause the person examining the representation or document to understand or interpret the representation, information or document in a manner less favorable to the taxpayer.

Section 3.10.180 Tax liens.

A. The tax administrator may cause a tax lien to be filed and recorded against all real and personal property of a taxpayer where the taxpayer has:

1. Failed to file tax returns for two consecutive filing periods as required by the chapter; or
2. Failed to pay all taxes, penalties and interest due for more than two consecutive filing periods.

B. Prior to filing a tax lien, the tax administrator shall cause an additional written notice of intent to file a lien to be mailed by certified mail to the last known address of the delinquent taxpayer. Neither the failure to mail such notice, nor the failure of the taxpayer to receive such notice invalidates a lien filed by the city.

Section 3.10.300 Definitions. Unless the context clearly indicates that a different meaning is intended, the following words and phrases shall have the meanings set out in this section.

A. "Accepted business" or "accepted passenger transportation business" means a passenger transportation business that has elected to be subject to this chapter whose election has been accepted by the city and not subsequently withdrawn under the withdrawal provisions of the chapter; such a passenger transportation business is also referred to as the "taxpayer" under this chapter.

B. "Calendar year" means the year beginning January 1 and ending on December 31 of each year.

C. "City" or "city" means the City of Whittier in the geographic sense or the administration of the City of Whittier, as appropriate to the context.

D. "Conveyance" means any contrivance designed or used for the transportation of individuals from one point to another and includes aircraft, vessels, rail cars, rail flatbeds, high rail, motor vehicles, including automobiles, passenger vans, passenger busses, motorcycles, motorized scooters and bikes, other 2, 3, and 4 wheeled vehicles, motorized track-driven vehicles, sleds, trailers and other towed vehicles used for transportation of passengers and other vehicles used to transport passengers whether motor, human or animal-powered.

E. "Monthly" means the period beginning the first day of a calendar month and ending with the last day of a calendar month.

F. "Passenger" means an individual who is moved aboard a conveyance for consideration, whether by air, water or land, including rail transportation in connection with passenger motor vehicles transported by rail, whether the transportation is provided pursuant to a pass, coupon, cash, credit, ticket, voucher, or other instrument, agreement or understanding that entitles the individual to be provided passenger transportation services without regard to the cost to the individual of the instrument, agreement or understanding entitling the individual to transportation service. "Passenger" does not include the owner or operator of the conveyance, crew members, drivers, tour guides or others who are employed by the passenger transportation business who are on duty while being transported with passengers, nor a passenger whose right to the transportation service within Whittier was purchased prior to April 1, 1997 if the transportation service was provided during 1997. (Ord. 377-98, §3, 1998)

G. "Passenger transportation business" means any person who engages in any commercial activity that involves providing transportation services directly to passengers. A passenger whose rail fare into or out of Whittier is paid to the railroad by a person providing transportation, tour, adventure or other activities or rentals in connection with such activities is a passenger of the business of such person.

H. "Person" means and includes individuals and every organization or entity recognized in law and every group of persons acting as a unit.

I. "Tax administrator" means the person designated by the manager as the tax administrator for purposes of this chapter but shall be the city treasurer if no such designation is made.

J. "Taxpayer" means the passenger transportation business that has elected to be subject to this chapter and whose election

K. "Transportation service" means a service involving the movement of a passenger by a passenger transportation business from one point to another by means of a conveyance, ordinarily for compensation. It includes tours, adventures, shuttles, fishing charters, wildlife and nature viewing trips and other activities in which the movement of passengers is involved. It includes trips in human powered vessels conducted by a paid guide, without regard to the ownership of the vessels, but does not include trips involving vessels owned by a business and chartered or rented to others if no guide, crew, agent, or employee of the vessel owner is aboard the vessel to operate the vessel or to provide the charter party or renter with advice or assistance in operating or navigating the vessel and if no such person operates a separate vessel as a guide for one or more passengers in other vessels.

L. "Vessel" means all watercraft, including, but not limited to, boats, ships, vessels, canoes, kayaks, personal watercraft and barges, whether engine, motor, wind or human powered.

M. "Weekly" means the week beginning on Sunday and ending with Saturday.

Chapter 3.12

REAL AND PERSONAL PROPERTY TAXES

Sections:

[3.12.010 Definitions.](#)

[3.12.020 Exemptions.](#)

[3.12.030 Council—Authority.](#)

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[3.12.050 Real property subject to tax.](#)

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[3.12.070 Personal property tax on motor vehicles.](#)

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[3.12.110 Due date for taxes—Penalty and interest.](#)

[3.12.120 Enforcement of tax liens.](#)

[3.12.130 Violation—Penalty.](#)

3.12.010 Definitions. In this chapter unless the context otherwise requires:

A. "Assessor" means the city manager or his professional designee.

B. "City clerk" includes the term "clerk-treasurer" and any duly authorized deputy city clerk.

C. "Personal property" means any property not defined as real property under subsection D of this section.

D. "Real property" means not only the land itself, whether laid out in lots or otherwise, but also all buildings, structures, improvements, fixtures of whatsoever kind thereon, and all possessory rights and privileges belonging to or in anywise appertaining thereto, and the word "tract" includes all lands, pieces, or parcels of land which may be separately assessed together with fixtures and improvements thereon. Apartments, mobile homes, trailers, house trailers, trailer coaches and similar property used or intended to be used for residential, office or commercial purposes and attached to the land or connected to water, gas, electric or sewage facilities are classed as real property for tax purposes, unless such trailers, mobile homes, house trailers, trailer coaches and similar property are located in established mobile home courts, in which case they shall be classified as personal property.

E. "Situs" means the place where an item of personal property is located. (Ord. 316-94 §2, 1995; §06.01.010 of Ord. dated 4/17/84; prior code §8.10.010)

3.12.020 Exemptions. The following personal property is exempt from taxation:

A. The household property of a head of a family or household;

B. The property of an organization not organized for business or profit making purposes and used exclusively for community purposes, provided that income derived from rental of such property does not exceed the actual cost to the owner of the use by the renter; and

C. Business inventories. (Ord. 1 (part), 1985: prior code §8.10.040)

3.12.030 Council—Authority. The city council may assess, levy, and collect a general tax for city purposes not to exceed one-half of one percent of the assessed valuation of all real and personal property except as otherwise herein provided, and enforce collection by foreclosure, levy distress and sale. The levies shall be separately made and fixed, and the aggregate of them shall not exceed one-half of one percent of the assessed value of the property assessed. (Prior code §8.10.020(a))

3.12.040 Assessor—Duty. The assessor shall once every three years duly list and assess the taxable property of the city at its just and fair value. (Ord. 274-93 §2, 1993: §06.01.020 of Ord. dated 4/17/84: prior code §8.10.020(b))

3.12.050 Real property subject to tax.

A. All real property not expressly exempted by law shall be subject to annual taxation at its full and true value based upon the actual value of the property assessed.

B. When any real property, which for any reason is exempt from taxation, is leased, loaned or otherwise made available to and used by a private individual, association or corporation, such property shall be taxable to the extent of the lessee's or user's interest therein. Taxes shall be assessed to such lessees or users of real property and collected in the same manner as taxes assessed to owners of real property, except that such taxes shall be a lien only on the lessee's or user's interest in the property. When due, such taxes shall constitute a debt due from the lessee or user to the city and shall be recoverable by a personal action against the lessee or user. This remedy shall be in addition to the remedy of foreclosure. (Ord. 1 (part), 1985: §06.01.030 of Ord. dated 4/17/84: Ord. 12-6-83B (part), 1983: Ord. 79-5 (part), 1979: prior code §8.10.030)

3.12.060 Personal property subject to tax. Except as otherwise provided in this chapter, the following personal property which has a tax situs within the city is subject to taxation:

A. All vehicles propelled by other than human muscular power. This shall include, but is not limited to, automobiles, motorcycles, aircraft, boats and snowmobiles;

B. Mobile homes which are situated on temporary footings or temporary foundations;

C. All other personal property not exempted by Alaska State Statutes or Section 3.12.020 of this code and which is located within the city of Whittier on January 1st of any tax assessment year. The tax situs shall continue to be the city of Whittier even when the property is not within the city of Whittier on January 1st of any tax assessment year if the personal property has been, or is usually, normally or regularly kept or used within the city of Whittier. In making this determination personal property will be considered as usually, normally, or regularly kept or used within the city if it is present within the city for ninety days or more in the twelve months preceding the January 1st of any tax assessment year; or if the property in question has been or is kept or used within the city for any length of time preceding January 1st of any tax assessment year if such physical location of the property within the city was not intended to be casual or temporary. (Ord. 369-97, §2, 1997; Ord. 316-94 §3, 1995: Ord. 1 (part), 1985)

3.12.070 Personal property tax on motor vehicles.

A. The personal property tax with respect to all motor vehicles shall be calculated according to the age of the motor vehicle as set out in AS 28.10.431(b).

B. The above tax shall be collected by the Department of Public Safety, Division of Motor Vehicles, as provided in AS 28.10.431(a).

C. In the event that the Alaska Department of Public Safety, Division of Motor Vehicles, fails to collect the above tax on behalf of the city, the tax shall be due and owing as otherwise provided in Section 3.12.090 et seq. (Ord. 12-6-83A, 1983: prior code §8.10.045)

3.12.080 Boats and vessels.

A. There is assessed and levied annually a tax on boats at their full and true value.

B. It shall be presumed that a boat or vessel is situated in the city and subject to personal property tax, whether or not the boat or vessel is physically present on January 1st; if the owner of the boat or

vessel is a party to a permanent berthing agreement, or an annual transient berthing agreement, or a monthly transient berthing agreement totally ninety days or more in the previous calendar year, or a daily transient berthing agreement totally ninety days or more in the previous calendar year as of January 1st. (Ord. 414-01, §2, 2000; Ord. 369-97, §3, 1997; Ord. 100-88 §2, 1987: Ord. 4-26-84 (part), 1984: §06.01.040 of Ord. dated 4/17/84; Ord. 12-6-83B (part), 1983: Ord. 79-5 (part), 1979: prior code §8.10.050)

3.12.090 Personal property tax return.

A. Every person shall submit to the assessor a personal property return of any property owned by him or in which he has an interest, and the property held or controlled by him in a representative capacity, in the manner prescribed by this chapter, which return shall be based on property values existing as of the first day of January of the year in which the return is made. The person making the return in every case shall state an address to which all notices required to be given to him under this chapter may be mailed or delivered. The return shall show the nature, quantity, description, amount, and value of all personal property, the place where property is situated, and the return shall be in such form and include such additional information as the council or assessor may prescribe, and shall be signed and verified under oath by the person liable or his or its authorized agent or representative.

B. The return shall be filed before February 15th of each year. The assessor may, by notice in writing to the person by whom a return has been made, require from him a further return and a receipt of the notice; that person shall comply fully with its requirements within thirty days. If no return is filed as required by this section, or if the return is filed late, the taxpayer shall pay a penalty of five percent of any personal property tax for any filing with the assessor after February 1st but before June 1st of each year, and, after June 1st, the penalty shall be ten percent of any personal property tax levied, plus interest at the rate of eight percent a year from the date the taxes would ordinarily come due.

C. All statements on personal property tax returns made by any person required under this chapter to file such return shall be confidential, and said return may not be inspected by any person except officers authorized to administer the tax laws of the United States, or the state of Alaska, or this city, or a law enforcement officer, or in response to a proper subpoena from a court. Any employee who violates this restriction by communicating any information obtained under these provisions, except such information as required by law to be shown on the assessment rolls, or who allows any person not legally entitled thereto to inspect or have access to any return made under these provisions is guilty of a misdemeanor punishable under this chapter and shall be immediately discharged from his office of employment. (Ord. 316-94 §4, 1995: Ord. 4-26-84 (part), 1984: §06.01.050 of Ord. dated 4/17/84: Ord. 12-6-83B (part), 1983: Ord. 79-10 (part), 1979: Ord. 79-5 (part), 1979: prior code §8.10.060)

3.12.100 Assessment of real and personal property—Procedure. The procedure for assessing real and personal property for taxation shall be as provided in AS 29.45.010 et seq., and any amendments thereto. The procedure by which a taxpayer may object to the assessment of real or personal property is contained in AS 29.45.180 through 29.45.210 and any amendments thereto. The city council shall sit as the board of equalization. (Ord. 353-97, §2, (part), 1997: prior code §8.10.070)

3.12.110 Penalty and interest. The penalty for late payment shall be ten percent and shall be added to all delinquent taxes and interest at the rate of eight percent a year shall accrue upon all unpaid taxes, not including penalty, from the due date until paid in full. (Ord. 386-98 §2, 1998: §06.01.060 of Ord. dated 4/17/84: Ord. 12-6-83B (part), 1983: Ord. 79-10 (part), 1979: Ord. 79-5 (part), 1979: prior code § 8.10.080)

3.12.120 Enforcement of tax liens. The procedure for enforcing tax liens for real and personal property tax shall be as provided in AS 29.53.200 through 29.53.390 and any amendments thereto. (Prior code §8.10.090)

3.12.130 Violation—Penalty. Unless another penalty is expressly provided by law, every person convicted of a violation of any provision of this chapter shall be punishable by a fine of not more than five hundred dollars. (Ord. 102-88 §4, 1988: prior code §8.10.100)

Chapter 3.16

BUDGETS AND APPROPRIATIONS

Sections:

- [3.16.010 Budget submittal.](#)
- [3.16.020 Budget report.](#)
- [3.16.030 Budget—Council action.](#)
- [3.16.040 Supplemental appropriation—Council](#)

authority.

- [3.16.050 Appropriations—Lapse.](#)
- [3.16.060 Appropriations—Classification.](#)

3.16.010 Budget submittal. No later than May 1st, the manager shall submit to the council a proposed operating and capital budget for the next fiscal year. The budget shall be based on detailed estimates furnished by city agencies according to a classification as nearly uniform as possible. The budget shall present recommended appropriations, anticipated expenditures, and estimates of taxes and other revenues required to support the budget. (Prior code §7.10.020)

3.16.020 Budget report. The manager shall accompany the budget with a budget report. The report shall propose financial policies for the city during the next fiscal year, explaining any major changes from the previous year's appropriations and revenues. (Prior code §7.10.030)

3.16.030 Budget—Council action. The council may increase or decrease any item and may add or delete items in the proposed operating and capital budgets. The council shall approve the budget as amended and appropriate by ordinance the necessary funds at least fifteen days before the end of the preceding city fiscal year. (Prior code §7.10.040)

3.16.040 Supplemental appropriation—Council authority. The council by ordinance may make supplemental and emergency appropriations and may transfer appropriations. (Prior code §7.10.050)

3.16.050 Appropriations—Lapse. At the close of the fiscal year, unencumbered appropriations lapse into the fund from which appropriated; provided, that an appropriation for a capital improvement, or in connection with a federal or state grant, does not lapse until the purpose of the appropriation has been accomplished or abandoned. (Prior code §7.10.060)

3.16.060 Appropriations—Classification.

- A. All funds established by the city shall be as ordained by the council. The major categories of funds shall be:
 1. General fund;
 2. Small boat harbor fund;
 3. Small boat harbor trust fund;
 4. Escrow fund;
 5. Utility fund;
 6. Capital projects fund;
 7. Federal revenue sharing fund.
- B. The accounts of the city shall be organized to conform substantially to the standards promulgated by the National Committee on Governmental Accounting. All appropriations shall be made in accordance with the classifications prescribed by the manager. (Prior code § 7.10.070)

Chapter 3.20

FINANCIAL REPORTS AND AUDITS

Sections:

- 3.20.010 Monthly reports.**
- 3.20.020 Annual financial report.**
- 3.20.030 Annual reports.**
- 3.20.040 Reports to state.**

3.20.010 Monthly records. The manager shall make reports to the council on city finances and operations. The monthly

reports shall be rendered in condensed format and will include current and year-to-date financial information. (Prior code §7.30.010)

3.20.020 Annual financial report. The manager shall report to the council at the end of each fiscal year on the finances and administrative activities of the city. (Prior code §7.30.020)

3.20.030 Annual reports. At the end of each fiscal year, the manager shall prepare an annual report giving a summarized statement of all revenues and expenditures of the city, a summary of the proceedings of the council, and a summary of the operations of the administrative departments for the preceding twelve months. A copy of this report shall be furnished to any citizen who may apply therefor at the office of the clerk. (Prior code §7.30.030)

3.20.040 Reports to state. The manager shall file annually the following reports with the State Department of Community and Regional Affairs:

- A. A copy of the statement of annual income and expenditures;
- B. Tax assessment data as requested. (Prior code §7.30.040)

Chapter 3.24

DISBURSEMENTS

Sections:

- [3.24.010 Expenditures subject to appropriations](#)
- [3.24.020 Checks—Issuance.](#)
- [3.24.030 Checks—Signatories.](#)
- [3.24.040 Collections.](#)
- [3.24.050 Uncollectable accounts and checks.](#)
- [3.24.060 Refund of certain moneys erroneously paid.](#)
- [3.24.070 Service of process.](#)

3.24.010 Expenditures subject to appropriations.

- A. No payment shall be made or obligation incurred except in accordance with appropriations. Obligations otherwise incurred are void.
- B. No contract, agreement or other obligation involving the expenditure of money shall be entered into, nor shall any ordinance, resolution or order for expenditure of money be adopted by the council or authorized by any city officer unless the treasurer first certifies that the money required for the contract, obligation or expenditure has been appropriated to the fund from which it is to be drawn and not appropriated or encumbered for any other purpose. The sum so certified shall not thereafter be considered unencumbered until the city is discharged from the contract, agreement or obligation. All moneys actually in the treasury to the credit of the fund from which they are to be drawn and all moneys applicable to the payment of the obligation or appropriation involved that are anticipated to come into the treasury before the maturity of such contract, agreement or obligation from taxes, assessments, miscellaneous revenue or from sales of property, federal or state grants, and moneys to be derived from lawfully authorized bonds, for the purpose of such certificate shall be considered in the treasury to the credit of the appropriate fund and subject to such certification. (Prior code §7.20.010)

3.24.020 Checks—Issuance. All checks shall be issued by the treasurer and drawn on the city treasury, and each check shall set forth on its face a number corresponding to the number of the voucher so paid, the date of issue, the name of the party to whom payable, the department or account to be charged therewith, and the amount thereof, and shall be signed according to Section 3.24.030. The checks so issued shall be transferable by endorsement, and shall be receivable for money due to the city. In no instance shall a city check be drawn to cash. (Prior code §7.20.020)

3.24.030 Checks—Signatories.

- A. There shall be two classes of signatories for all city checks: the first class shall be elected officials and the second class shall be appointed officials. The signatories shall be the persons occupying the positions set out in subsection B of this section. One person from each of the two classes of signatories must sign all checks.

- B. The class of signatories shall be:
1. Elected officials; who shall be the mayor, the vice-mayor, and the other council members.
 2. Appointed officials; who shall be the city manager, the city clerk, and at least one other appointed official designated by position by the council by resolution. (Ord. 362-97, §2; 1997; Ord. 215-92 §1, 1991: Ord. 1-15-81)

3.24.040 Collections. The fiscal officer/treasurer shall bill and collect all real and personal property taxes, sales, special assessments and miscellaneous revenues of the city. Undesignated remittances may be credited to accounts at the discretion of the treasurer. (Prior code §7.20.030)

3.24.050 Uncollectible accounts and checks. The fiscal officer/treasurer may charge off or correct, from time to time, such unpaid and outstanding accounts receivable as may be found to have been uncollectible. This shall include unpaid and outstanding delinquent taxes for personal property or delinquent checks as may be found to have been uncollectible. He also may impose a fee not to exceed an amount established by the council resolution for checks remitted to the city in payment of any obligation which are returned by the bank for lack of sufficient funds. Council will set the fee. (Prior code §7.20.040)

3.24.060 Refund of certain moneys erroneously paid. The fiscal officer/treasurer may refund moneys erroneously paid to and not due to the city from the fund to which the payment had been credited. (Prior code §7.20.050)

3.24.070 Service of process.

A. Any garnishment, summons, notice of lien or attachment involving the salaries and wages of any officers or employees of the city shall be recognized by the city when served upon the clerk.

B. Attachments of credit due from the city to any person shall be recognized when service of process is made on the clerk. (Prior code §7.20.060)

Chapter 3.28

CLAIMS AGAINST THE CITY

Sections:

3.28.010 Failure to give notice or present claim deemed bar to action.

3.28.020 Immunity.

3.28.010 Failure to give notice or present claim deemed bar to action. Failure to give notice of injury or damage or present a claim within the time and within the manner provided shall bar any action upon said claim. (Prior code §1.10.040)

3.28.020 Immunity. This chapter shall not be deemed to waive any defense including immunity which the city may have from claims for damages arising out of negligence. (Prior code §1.10.050)

Chapter 3.32

PURCHASING AND CONTRACT PROCEDURES

Sections:

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ARTICLE I. GENERAL PROVISIONS

3.32.010 Purpose and interpretation.

A. The purposes of this chapter are:

1. To maximize fair and open competition and to discourage collusive bidding for city contracts, consistent with the efficient operation of the city government; and
 2. To maximize the purchasing value of city funds.
- B. This title shall be construed and applied to promote the purposes stated in this section. (Prior code §9.10.020)

3.32.020 Definitions. [As used in this chapter]:

- A. "Abandoned and derelict vessels" shall be as set out in AS 30.30.10 through 30.30.180.
- B. "Agency" means any department or office of the city.
- C. "Agency head" means the department head, director or other chief administrative officer of an agency.
- D. "Architectural-engineering services" mean those professional services within the scope of the practice of architecture, engineering or land surveying, as defined by the law of the state.
- E. "Construction" means the on-site erection, alteration, extension or repair of improvements to real property including painting or redecorating buildings, highways or other improvements, under contract for the city, but does not include:
1. Routing operation, repair or maintenance of existing buildings or improvements which are recurring services normally performed in connection with the ownership, occupancy or use of the building or improvement; or
 2. Building or installation of an improvement to real property by the owner of that property when such improvement is expressly required by this code or a tariff of a utility.
- F. "Contract," for purposes of application of the provisions of this chapter, includes all types of agreements to which the city is a party, regardless of what they may be called, for the procurement or disposal of supplies, services, professional services or construction, but does not include collective bargaining agreements, subdivision agreements, water or sewer main extension agreements or other similar agreements whereby the owner or a person acting under the direction of the owner of real property agrees to construct improvements of a public nature on property to be dedicated to the city.
- G. "Contract amendment" means any change in the terms of a contract accomplished by agreement of the parties, including change orders.
- H. "Grant" means the furnishing by the city of assistance, whether financial or otherwise, to implement a program authorized by

law. The furnishing by the city of anything of value in exchange for supplies, services, professional services or construction required to perform a function of the city is a contract and not a grant.

I. "Professional service" means those advisory, consulting, architectural, engineering, research or developmental services which involve the exercise of discretion and independent judgment together with an advanced, or specialized knowledge, expertise or training gained by formal studies or experience.

J. "Services" mean those services of a nonprofessional nature which are described within contract specifications and which are needed or desired by the city.

K. "Supplies" means any tangible personal property. (Prior code §9.10.010)

3.32.030 Purchasing officer—Powers and duties.

A. The manager shall act as purchasing officer or delegate that function to another city employee.

B. Except as this code provides otherwise, the purchasing officer shall have the following authorities and responsibilities:

1. To procure all supplies, services and construction required by the city;
2. To sell, trade or otherwise dispose of surplus supplies belonging to the city;
3. To maintain all records pertaining to the procurement of supplies, services and construction, and the disposal of supplies, by the city;
4. To join with other units of government in cooperative purchasing ventures where the best interests of the city would be served thereby;
5. To compile and maintain, to the extent practicable, a bidders' list for supplies, services, professional services and construction utilized by the city;
6. To compile and maintain a log of all contracts awarded for supplies, services, professional services or construction, together with any amendments thereto; and
7. Any other authorities and responsibilities which this chapter assigns the purchasing officer;
8. Prior to incurring a nonbudgeted expense in the amount of five thousand dollars or more, the city manager must have council approval. This does not apply to emergency purchases. (Ord. 305-94 §2, 1994; Ord. 173-91 §1, 1990; prior code §9.10.030)

3.32.040 Centralization of procurement authority.

Except as this code provides otherwise, all rights, powers and authority pertaining to the procurement of supplies, services and construction required by the city are vested in the purchasing officer. (Prior code §9.10.040)

3.32.050 Standard specifications.

A. Every using agency shall propose, insofar as practicable, standard specifications for the supplies, services, professional services and construction that it requires.

B. The purchasing officer shall adopt standard specifications for supplies, services and construction wherever practicable. The standard specifications adopted by the purchasing officer shall be based upon those proposed by using agencies, modified as necessary to maximize clarity, uniformity and open competition, while effectively serving the needs of the using agencies and the efficient operation of the city government. (Prior code §9.10.050)

ARTICLE II. GENERAL CONTRACTING PROCEDURES

3.32.060 Authority—Generally. The city may, pursuant to an award in accordance with Article III of this chapter, contract with any person to acquire any supplies, services, professional services or construction required by the city. (Prior code §9.20.010)

3.32.070 Contracts enforceable against city—When. No contract for supplies, services, professional services or construction, or any amendment thereto, may be enforced against the city unless the contract or amendment thereto has been set forth in a writing executed in accordance with this article. (Prior code §9.20.020)

3.32.080 Availability of funds required. No contract for supplies, services or construction may be executed unless the finance

officer has certified that funds are available for the city's performance under the contract. (Ord. 305-94 §3, 1994; prior code §9.20.030)

3.32.090 Execution. All city contracts for supplies, services, professional services and construction, and any amendments thereto, shall be signed by the manager. (Prior code §9.20.040)

3.32.100 Administration authority.

A. The using agency shall administer all contracts for supplies, services or professional service except as otherwise designated by the manager.

B. The manager, or his designee, shall administer all construction contracts. (Prior code §9.20.050)

3.32.110 Amendments—When permitted.

Contract amendments shall not be used to avoid procurement by the competitive procedures established under this title. Except for emergency or proprietary procurements authorized under Sections 3.32.130 and 3.32.140, contracts for supplies, services, professional services and construction may be amended by the manager only for the following reasons:

A. To change the quantity ordered or date of delivery under a contract for supplies, where necessary to meet unforeseen city requirements;

B. To change the quantity of services or professional services to be rendered or to change the scope of a project under a contract for services or professional services, where necessary to meet unforeseen city requirements;

C. To change the scope of a project or the scope of services or professional services under a construction contract to meet unforeseen city requirements or to change the specifications under a construction contract because unforeseen conditions render the original specifications impracticable;

D. To change the time for completing a project under a contract for services, professional services or construction;

E. To correct an error in contract specifications made by the city in good faith, or to resolve a good faith dispute between the city and a contractor as to a party's rights and obligations under the contract; or

F. To change administrative provisions of a contract without materially altering the contract terms governing the quantity or quality of supplies, services, professional services or construction furnished the city. (Prior code §9.20.060)

3.32.120 Amendments—Fund availability required. No contract amendment that will increase the contract price may be approved or executed unless the finance officer has certified that funds are available for the city's performance under the contract as amended. (Ord. 305-94 §4, 1994; prior code §9.20.070)

3.32.130 Multiyear contracts. The city may enter into contracts for a term extending beyond the current fiscal year provided that funds are available for the city's performance during the current fiscal year, and:

A. The city's payment and performance obligations for succeeding fiscal years are subject to the availability of funds lawfully appropriated therefor, with the city being subject to no damages, penalties of forfeitures if such funds are not appropriated; or

B. The contract is approved by ordinance. (Prior code §9.20.080)

ARTICLE III. METHODS OF SOURCE SELECTION

3.32.140 Competitive sealed bidding required—Exceptions. Unless otherwise authorized under this article or other provision of law, all city contracts for supplies, services and construction shall be awarded by competitive sealed bidding. (Prior code §9.30.010)

3.32.150 Bidding—Solicitation and acceptance.

A. The purchasing officer shall initiate competitive sealed bidding by issuing an invitation for bids. The invitation for bids shall state, or incorporate by reference, all specifications and contractual terms and conditions applicable to the procurement.

B. Public notice of the invitation for bids shall be posted in at least three public places in the city, including the city offices, at

least fourteen days before the last day on which bids will be accepted. The contents of the notice shall be sufficient to inform interested readers of the general nature of the supplies, services or construction being procured and the procedure for submitting a bid. The purchasing officer shall mail or otherwise deliver notices to a sufficient number of prospective bidders from a current bidders' mailing list maintained in the purchasing office to afford equitable opportunity for competition. The failure of any person to receive notice under this subsection shall not affect the validity of any award or contract.

C. The purchasing officer may provide for a pre-bid conference to be held at least seven days before the last day for submitting bids. At the pre-bid conference or at other times deemed appropriate by the purchasing officer, the terms of an invitation for bids may be modified or interpreted, but only by written addenda issued by the purchasing office. Addenda to bids shall be sent to each recipient of the original bid documents. Only a bid acknowledging receipt of all addenda may be considered responsive, unless the addendum, in the opinion of the purchasing officer, would have no material effect on the terms of the bid. If an addendum is issued less than five working days before the last day on which bids are to be accepted, the time for accepting bids shall be extended to at least five working days after the date on which the addendum was sent.

D. Sealed bids shall be designated as such on the outer envelope and shall be submitted by mail or in person at the place and no later than the time specified in the invitation for bids. Bids not submitted at the proper place or within the time specified shall not be opened or considered.

E. Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. Any bidder may review bids immediately after opening and prior to tabulation or summary. The purchasing officer shall tabulate the amount of each bid and shall record such other information as may be necessary or desirable for evaluation together with the name of each bidder. The tabulation shall be open to public inspection, and a copy of the tabulation shall be furnished to each bidder.

F. Bids shall be accepted unconditionally without alteration or correction. For purposes of determining the low bidder and the responsiveness of bids, no criteria except those set forth in the invitation for bids, including all specifications and addenda, may be used. (Prior code §9.30.020)

3.32.160 Award—Responsible bidder required. A contract award under this article shall be made only to a responsible bidder. The purchasing officer shall determine whether a bidder is responsible on the basis of the following criteria:

- A. The skill and experience demonstrated by the bidder in performing contracts of a similar nature;
- B. The bidder's record for honesty and integrity;
- C. The bidder's capacity to perform in terms of facilities, personnel and financing;
- D. The bidder's past performance under city contracts. If the bidder has failed in any material way to perform its obligations under any contract with the city, the bidder may be deemed a non-responsible bidder. (Prior code §9.30.030)

3.32.170 Award—Procedures.

A. Contract shall be awarded by written notice issued by the purchasing officer to the lowest responsive and responsible bidder, provided that a preference of five percent of the lowest responsive and responsible bid, but not exceeding five thousand dollars, may be allowed to any bidder whose principal place of business is in the city. If the council determines that it is in the best interest of the city to do so, the city may reject all bids.

B. If the lowest responsive and responsible bid exceeds the amount of funds certified to be available for the procurement, and if sufficient additional funds are not made available, the scope of the procurement may be reduced to bring its estimated cost within the amount of available funds. The purchasing officer shall issue a new invitation for bids for the reduced procurement, or, upon a finding that the efficient operation of the city government requires that the contract be awarded without delay, he may negotiate with the three lowest responsive and responsible bidders, and may award the reduced contract to the best negotiated proposal. (Prior code §9.30.040)

3.32.180 Waiver of irregularities. The council may waive irregularities in any and all bids, except that timeliness and manual signature requirements shall not be waived. (Prior code §9.30.050)

3.32.190 Competitive sealed proposals—Negotiated procurement.

A. If the purchasing officer determines that use of competitive sealed bidding is not practicable, the city may procure supplies, services or construction by competitive sealed proposals under this section.

B. The purchasing officer shall solicit competitive sealed proposals by issuing a request for proposals. The request for proposals shall state, or incorporate by reference all specifications and contractual terms and conditions to which a proposal must respond, and shall state the factors to be considered in evaluating proposals and the relative importance of those factors. Public notice of a request for proposals shall be given in accordance with Section 3.32.150B. One or more pre-proposal conferences may be held in accordance with Section 3.32.150C. A request for proposals may be modified or interpreted only in the manner provided in Section 3.32.150C.

C. Sealed proposals shall be designated as such on an outer envelope and shall be submitted by mail or in person at the place and no later than the time specified in the request for proposals. Proposals not submitted at the place or within the time so specified shall not be opened or considered.

D. Proposals shall be received at the time and place designated in the request for proposals, and shall be opened so as to avoid disclosing their contents to competing proponents during the process of negotiation. Proposals and tabulations thereof shall be open to public inspection only after the contract award.

E. In the manner provided in the request for proposals, the purchasing officer may negotiate with those responsible proponents whose proposals are determined by the purchasing officer to be reasonably responsive to the request for proposals. Negotiations shall be used to clarify and assure full understanding of the requirements of the request for proposals. The purchasing officer may permit proponents to revise their proposals after submission and prior to award to obtain best and final offers. Proponents deemed eligible for negotiations shall be treated equally regarding any opportunity to discuss and revise proposals. In conducting negotiations or requesting revisions, neither the purchasing officer nor any other city officer or employee shall disclose any information derived from proposals of competing proponents.

F. Awards shall be made by written notice to the responsible proponent whose final proposal is determined to be most advantageous to the city. No criteria other than those set forth in the request for proposals, as modified by any addenda thereto, may be used in proposal evaluation. If the council determines that it is in the best interest of the city to do so, the city may reject all proposals. (Prior code §9.30.060)

3.32.200 Open market procedure.

A. The purchasing officer may procure all supplies, services, professional services and construction having estimated value of not more than five thousand dollars on the open market without formal advertising or other formal bid procedures.

B. Whenever practicable, at least three informal bids or quotations shall be solicited for any procurement under this section. The solicitation may be either oral or written, and shall be in a form reasonably calculated to yield the lowest responsive bid by a responsible bidder.

C. Awards, where practicable, shall be made to the lowest responsive and responsible bidder. The purchasing officer shall keep a record of all open market bids received and awards made thereon. (Prior code §9.30.070)

3.32.210 Proprietary requirements. The city may award a contract for supplies, services, professional services or construction without competition where the purchasing officer determines in writing that the city's requirements reasonably limit the source for the supplies, services, professional services or construction to one person. (Prior code §9.30.080)

3.32.220 Emergency procurements. The city may award a contract for supplies, services, professional services or construction without competition, formal advertising or other formal procedure where the manager determines in writing that an emergency threatening the public health, safety or welfare requires that the contract be awarded without delay. A report on such contract shall be made to the council no

later than the second regular meeting following award of the contract. (Prior code §9.30.090)

3.32.230 Professional services procurement.

A. Except as authorized by Sections 3.32.200 through 3.32.220, professional services shall be procured in accordance with this section.

B. Persons interested in providing professional services for the city may submit statements of qualifications to the purchasing office.

C. To the extent practicable, notice of the need for professional services shall be given by the purchasing office. Such notice shall describe the services required and shall list the type of information and data required of each person submitting a proposal.

D. The agency head, or his designee, may conduct discussions with any person who has submitted a proposal to determine such person's qualifications for further consideration. Discussions shall not disclose any information derived from proposals submitted by other persons.

E. Award shall be made to the person determined by the agency head and the purchasing officer to be the best qualified and shall be for an amount of compensation determined to be fair and reasonable. If compensation cannot be agreed upon with the best qualified person, negotiations will be formally terminated with that person. If proposals were submitted by one or more other persons determined to be qualified, negotiations may be conducted with such other person or persons, in order of their respective qualification ranking, and the contract may be awarded to the person then ranked as best qualified if the amount of compensation is determined to be fair and reasonable. (Prior code §9.30.100)

3.32.240 Bonds.

A. The purchasing officer may require that persons submitting bids pursuant to this chapter accompany their bids with a bid bond in an amount and in a form acceptable to the purchasing officer. The bond shall be issued by a company qualified by law to do business as a surety in the state, or shall be in the form of a cash deposit. A condition of the bond shall be that if the bidder receives the award, he shall enter into a contract therefor with the city.

B. If a requirement for a performance and payment bond is included in the terms of the invitation to bid, the purchasing officer shall require that any person awarded the contract furnish such bond, issued by a company qualified by law to do business as a surety in the state. The bond shall be in an amount determined by the purchasing officer and in a form approved by the city attorney. Such bonds shall, at a minimum, guarantee the full and faithful performance of all contract obligations and the payment of all labor and materials to be used under the contract. (Prior code §9.30.110)

ARTICLE IV. DISPOSAL OF PERSONAL PROPERTY

3.32.250 Surplus city property.

A. At least annually, the manager shall identify all personal property owned by the city that is obsolete, no longer serviceable, or surplus to the city's needs.

B. Any item of property identified under subsection A of this section whose estimated value exceeds two thousand five hundred dollars shall be sold to the highest bidder for cash by a sealed bidding procedure or at public auction. Notice inviting bids, or of the time and place of the auction, and the manner of processing sealed bids, shall be as provided in Section 3.32.150.

C. Any item of property identified under subsection A of this section whose value does not exceed two thousand five hundred dollars shall be disposed of as directed by the manager. Unless the manager finds it impracticable to do so, such property shall be sold for its fair market value or sold or donated to a governmental, education, charitable or community organization.

D. The manager shall report to the council at least annually all disposals under this section of items of personal property whose value exceeds one hundred dollars.

(Prior code §9.40.010)

3.32.260 Abandoned, stolen or found property—

Generally. The following property in possession of the police department or the harbormaster, except for the impoundment and disposition of vessels which will be disposed of as provided in WMC

12.04.210, may be disposed of as provided in Sections 3.32.270 through 3.32.300:

A. Property abandoned and not claimed by the owner within sixty (60) days after the date on which the city obtained possession of the property;

B. Property deemed abandoned under other provisions of this code;

C. Property stolen and not claimed by the owner within sixty (60) days after the final disposition of the criminal case of the person who allegedly stole the property; and

D. Property found and delivered to the police department or harbormaster and not claimed by the owner within sixty (60) days after the police department or harbormaster obtained possession of the property. (Ord. 329-96 §2, 1996; Prior code §9.40.020)

3.32.270 Notice of possession. The chief of police or harbormaster shall notify the purchasing officer that he is in possession of disposable property. The purchasing officer shall publish in a newspaper of general circulation in the city once a week for four consecutive weeks a notice of possession of the stolen, abandoned or found property and post notice of possession in at least three public places in the city, including the city offices, for the same period. At approximately the same time as the first publication, the purchasing officer shall send copies of the notice by certified mail (return receipt requested) to the last known address, if any, of the owner, if known, and the last known address, if any, of the finder, if known. The notice shall include:

A. A general description of the property;

B. The date on which the police department or harbormaster obtained possession of the property;

C. The provision that the property is to be sold at public auction at the time, date and place stated in the notice, and the proceeds will be forfeited to the general fund of the city, if the owner or finder does not claim the property;

D. The provision that the property, if money, will be paid into the city treasury for deposit to the general fund, if the owner or finder does not claim the money;

E. The provision that the property must be claimed by the owner within thirty days after the last date of publication of the notice;

F. The provision that the finder will forfeit all of his right, title, interest and claim in and to found property or money unclaimed by the owner unless the finder files a written request with the chief of police or harbormaster for return to the finder of the unclaimed property or money, and that the request must be filed no later than thirty days after the last date of publication of the notice. (Prior code §9.40.030)

3.32.280 Disposition. If the property is unclaimed by the owner after the publication and mailing of the notice of possession and the expiration of the notice of possession and the expiration of the time periods specified by Section 3.32.290, the property shall be disposed of as follows:

A. Found property, including money, shall be returned to the finder if he has timely requested such return.

B. All property, other than money, not claimed or returned to the finder shall be sold by the purchasing officer at a public auction sale held pursuant to the notice given in Section 3.32.290. The proceeds of the sale, together with any unclaimed or unreturned money, shall be forfeited to the general fund of the city. (Prior code §9.40.040)

3.32.290 Auction sale. The purchasing officer shall sell the property to be disposed of to the highest bidder for cash at the public auction sale. The auction sale may be continued by the auctioneer to another time or times. The purchasing officer shall certify as to the disposal of property and shall execute the bill of sale to the property sold. Upon acceptance to the highest bid, the sale shall be final and not subject to redemption. Property unsold shall become the property of the city and may be disposed of by the city according to law. (Prior code §9.40.050)

3.32.300 Dangerous or perishable property— Immediate disposal. Property in the possession of the police department or harbormaster and determined by that officer to be perishable or to constitute an immediate danger to the public may be disposed of immediately in any manner without notice of sale. Proceeds

of any such disposition shall be forfeited to the general fund of the city. (Prior code §9.40.060)

Chapter 3.36

REAL PROPERTY ACQUISITION AND DISPOSAL*

Sections:

- [3.36.010 Acquisition of land and real property.](#)
- [3.36.020 Disposal of real property by city council or manager action.](#)
- [3.36.030 Land available for disposal.](#)
- [3.36.040 Types of land disposals](#)
- [3.36.050 Small lot leases.](#)
- [3.36.060 Competitive disposal required.](#)
- [3.36.080 Competitive solicitation.](#)
- [3.36.090 Application to acquire land.](#)
- [3.36.100 Competitive solicitation procedures.](#)
- [3.36.110 Evaluation of responses to solicitation.](#)
- [3.36.120 Final approval by the council—Advisory election](#)
- [3.36.130 Fair market value required—Exceptions thereto.](#)
- [3.36.140 City financed sales.](#)
- [3.36.150 Lease terms.](#)
- [3.36.160 Use permits and licenses.](#)
- [3.36.170 Definitions.](#)

* Prior code history: Sections 11.10.010—11.10.070, 11.20.010—11.20.050, and 11.30.010—11.30.120.

3.36.010 Acquisition of land and real property. The city may acquire and hold Land and Real Property. All acquisitions of Land or Real Property shall be by city council ordinance, unless such acquisition is pursuant to an application the City has filed with a state or federal agency, in which case the city manager is authorized to acquire such Land or Real Property without action by the city council; provided the city manager has first reported to the council that an application has been or will be, filed to acquire Land or Real Property from the state or federal agency and the council has not directed the manager to withdraw the application. (Repealed & reenacted by Ord. 381-98, §2 (part), 1998; Ord. 75-88 §1(part), 1987)

3.36.020 Disposal of real property by city council or manager action.

A. Except as otherwise provided in this or other chapters of the City code, all disposals of real property by the City with the exception of leases, shall be by city council ordinance. The ordinance shall specify the terms and conditions upon which the disposal will be performed. All disposals of Real Property by lease shall be by city council resolutions.

B. Condominium units previously sold or leased by the City to which title or possession has been reacquired by the City through a foreclosure of a deed of trust, a deed in lieu of foreclosure, or by other actions of the City following a default by the owner or lessee on a loan financing or lease may be disposed of by the manager under the provisions of this subsection (B). Upon reacquiring title or possession, the manager shall notify the Council by memorandum of the reacquisition by the city and shall set out a sale or lease of the property. Unless the memorandum to the council specifies differently, the following shall apply to sales under this subsection (B):

1. The minimum acceptable bid or price shall be the higher of:
 - a. Fair market value as determined by the manager.
 - b. The assessed value shown on the most recent tax roll prepared by the City assessor.
 - c. The amount bid by the City in a trustee's or other foreclosure sale, or
 - d. The total of the principal, interest, penalty and fees owing the City including collection, foreclosure and related costs, and condominium fees and assessments owing.

2. If sealed bids are solicited, notice of the sale shall be by posting of notice in at least two public places within the City and by publication at least once in a newspaper of general circulation within

the City at least 10 days prior to the date by which sealed bids must be submitted.

3. The City may offer the property for sale or lease through a real estate broker or may offer and show the property itself. If the City offers and shows the property itself, it shall post notice of the offering in at least two public places within the City and may consider any offer it receives before it has accepted another offer.

4. If the city finances the sale, the successful bidder must provide a down payment of not less than 20 percent of the price and must have a satisfactory credit rating as determined by the manager.

5. Each sealed bid and each offer to purchase must be accompanied by a cash bid guarantee or earnest money deposit equal to 5 percent of the bid or offering price, such payment to be forfeited to the City upon the failure of the successful bidder or offeror whose bid or offer has been accepted fails to complete the sale.

The manager shall include in the memorandum the basic terms of the lease if a lease of the property is proposed. For sales, the manager may include in the memorandum conditions and procedures different from those set out in this section and such additional conditions and procedures as the manager finds appropriate. The additional conditions may include requirements such as a cash only purchase, a requirement that the buyer use the condominium as their primary place of residence, a determination that the property will be listed with a realtor instead of offering through a sealed bid process, and other requirements. After the meeting at which the city council receives the memorandum, the manager may proceed with the disposal of the condominium unit in accordance with this section and the additional or different terms set out in the memorandum; provided, if the council directs that changes or additions to the requirements in the memorandum be made, the manager shall incorporate the changes or additions directed by the council. (Repealed & reenacted by Ord. 381-98, §2 (part), 1998; Ord. 105-88 §1, 1988; Ord. 75-88 §1(part), 1987)

3.36.030 Land available for disposal. All land to which the City holds title, or over which the City has control or management authority and which is not used or required for a municipal purpose, may be disposed of as provided by this chapter. (Repealed & reenacted by Ord. 381-98, §2 (part), 1998; Ord. 105-88 §2, 1988; Ord. 75-88 §1(part), 1987)

3.36.040 Types of land disposals. Land, except tidelands, may be sold, exchanged for other land, or leased or otherwise disposed of. Tidelands may not be sold or exchanged. All disposals shall be for a specific purpose which is consistent with land use plans approved by the appropriate commission and the Council. (Repealed & reenacted by Ord. 381-98, §2 (part), 1998)

3.36.050 Small lot leases. Leases of land which do not exceed one acre in size may be granted by the city manager, after review by the appropriate commission and, without complying with the remaining procedures set forth in this chapter and with approval, by resolution, by the city council. Before entering into any such lease the city manager must report to the council that a lease is being negotiated pursuant to this provision. The report will include the name of the person who will be the lessee, the anticipated term and rental rate for the lease, and a description of the Land to be leased. (Repealed & reenacted by Ord. 381-98, §2 (part), 1998)

3.36.060 Competitive disposal required. Except for Land which is leased pursuant to section 3.36.050 hereof, all land will be disposed either pursuant to a competitive bid or a competitive solicitation process as set forth herein. (Repealed & reenacted by Ord. 381-98, §2 (part), 1998)

3.36.080 Competitive solicitation. The city may elect to dispose of Land on its own initiative pursuant to a competitive solicitation process, or it may use such process when a person proposes to acquire land for a project and the City Manager determines that a competitive bid process is too inflexible or otherwise undesirable. (Repealed & reenacted by Ord. 381-98, §2 (part), 1998)

3.36.090 Application to acquire land. Any person who seeks to acquire Land shall submit an application to the City. The application shall identify:

- A. The person(s) making the application,
- B. The land the applicant seeks to acquire and whether the applicant seeks to lease or purchase the land,

C. The proposed use to which the applicant wants to put the land including a brief statement of the applicant's proposed project (because the proposer's project will be available for potential competitors to view, the description required need only be general in nature),

D. Whether the applicant prefers that the City dispose of the land pursuant to a competitive bid or a competitive solicitation process,

E. Any additional information the city manager deems appropriate and useful to determining whether a competitive solicitation or competitive bid process should be used and whether the land should be disposed of. The applicant shall pay a non-refundable application fee of \$300. (Repealed & reenacted by Ord. 381-98, §2 (part), 1998)

3.36.100 Competitive solicitation procedures. The City will initiate the competitive solicitation process by publishing in a daily newspaper of general circulation in Alaska, and if the city manager so determines, such other publications as appropriate, a notice that the City is seeking interested proposers to develop City land. If the competitive solicitation is being initiated pursuant to an application submitted pursuant to section 3.36.090, the notice will describe in general terms the project for which the application was submitted. The notice will also describe the amount and location of land the City is seeking to dispose of, and the general terms of the disposal such as sale or lease, and if by lease the likely lease term, the rental arrangement(s) the City desires and any other terms the manager deems appropriate. The notice will also state the amount each respondent is required to pay as a "proposer fee". The "proposer fee" will be set by the city manager, subject to council approval, for the purpose of raising sufficient revenue to cover the cost of evaluating the proposals and also to discourage proposers who are lacking in financial resources to develop a project of the type solicited in the notice. The notice may describe the requirements for submitting a proposal or it may inform potential proposers that additional information is available from the City. At a minimum, all proposers shall be required to submit information about their experience and ability to construct projects of the type which is the subject of the solicitation, information about the proposer's ownership and control, the proposer's timetable for starting and completing its project and detailed information about the proposer's financial ability to construct the project. (Repealed & reenacted by Ord. 381-98, §2 (part), 1998)

3.36.110 Evaluation of responses to solicitation.

A. For each competitive solicitation, the city manager will establish a procedure for evaluating and ranking responses. The evaluation procedure will include assessment of each proposal by a committee of at least three individuals appointed by the city manager, subject to council approval, (one of whom may be the manager) and who have experience or knowledge that is relevant to the development project.

B. Upon completion of the evaluation, the city manager will prepare a recommendation to the Council concerning the proposals received. The Council will consider the city manager's recommendation, and decide either to proceed or reject the proposed land disposal. If the Council decides to proceed with the land disposal, the city manager will seek to negotiate a final definitive agreement with the first ranked proposer first. If a satisfactory agreement cannot be reached with the first ranked proposer, the city manager will seek to negotiate a definitive disposal agreement with the second ranked proposer. This procedure will continue until an agreement is reached or the manager determined that no agreement is possible with any of the proposers. (Repealed & reenacted by Ord. 381-98, §2 (part), 1998)

3.36.120 Final approval by council—Advisory Election.

A. A disposal of land by competitive solicitation is neither valid nor enforceable, unless the conveyance, development agreement and other instruments are validly executed by the City and the person to whom the disposal is to be made and such executions occur after the adoption by the Council of a resolution approving the terms and conditions of the disposal reached in the negotiations with the manager pursuant to WMC 3.36.110(B); provided, if an advisory vote is required to be called pursuant to subsection (B) of this; section, neither the city nor the person to whom the disposal is to be made may execute a conveyance document, development agreement or other instrument, nor is any conveyance, agreement or other instrument effective or enforceable until the Council has adopted a second reaffirming or

approving resolution following the certification by the Council of the results of the advisory vote required under subsection (B) of this section.

B. If a disposal pursuant to a competitive solicitation involves a proposed development with a cost of \$5 million or more, then upon the adoption of the resolution approving the terms and conditions of the disposal pursuant to subsection (A) of this section, the Council shall place before the voters at the next regular election, or at a special election called by the Council for that purpose, a non-binding advisory question of whether the disposal approved by the Council pursuant to subsection (A) should be given final approval by the Council and implemented.

1. For the purpose of determining the cost of the development of the project, all phases of the project shall be included as if their construction was to commence upon execution of the conveyance and agreements. The cost computation shall include costs and burdens to be met by persons other than the person to whom the disposal is made including costs of public infrastructure. All non-monetary consideration of any nature given for any development of the project shall be valued and included in the cost estimate.

2. If the Council calls a special election, the city manager shall immediately prepare an estimate of the cost of conducting the special election, including the cost of preparing and submitting any Voting Rights Act pre-clearance applications to the United States. The manager shall provide the estimate in writing to the person to whom the disposal is to be made. The estimate shall include a request for immediate payment of the estimated amount. If the City has not received payment of the estimated amount within five business days of actual delivery, including facsimile delivery, or within eight business days of the mailing of the estimate and request for payment, the city clerk shall cancel the election. The manager may extend the time for receipt of payment by up to five additional business days upon a showing of good cause prior to the end of the business day upon which the payment was originally to be made. Payment is deemed to have been received if placed in the U.S. mail and legibly postmarked by the U.S. Postal Service on or prior to the date the payment is due.

3. The result of the non-binding advisory vote is not binding upon the Council. The Council may approve a disposal that is rejected by the voters in the advisory vote and may disapprove a disposal that is approved in the advisory vote. Following certification by the Council of the results of the vote on the advisory question, the Council may, at that same meeting or at any regular or duly called special meeting of the Council held within 30 days of the Council certification of the vote on the question, by resolution reaffirm its prior approval of the disposal or give its approval of the disposal upon the condition that specified changes are made to the terms or conditions of the disposal. If more confirming or approving resolution is adopted and the Council has not adopted a resolution disapproving or rejecting the disposal on or before the 30th day following Council certification of the results, the disposal is approved or disapproved in accordance with the results of the vote on the advisory question. The person to whom the disposal was to be made shall have no right to recover from the City any claims for fees or expenses paid or incurred, proposal preparation costs, lost profits, election costs, or any other cost or damage of any nature if the disposal is disapproved or rejected. (Repealed & reenacted by Ord. 382-98 §2, 1998; Ord. 381-98, §2 (part), 1998)

3.36.130 Fair market value required—Exceptions

thereto. All sales or exchanges shall be at fair market value as determined by an appraisal or other method acceptable to the Council. All leases or other disposals (except sales and exchanges) of land shall be at fair market value, unless the Council determines that the best interest of the City are served by a disposal for less than fair market value and it identifies in a resolution the reasons the disposal should be for less than fair market value. The City may also enter into a lease which provides for payment of rent based upon a percentage of gross revenue received by the lessee. (Repealed & reenacted by Ord. 381-98, §2 (part), 1998)

3.36.140 City financed sales. The City may agree to finance a portion of the sale of land; provided that all such sales shall require a minimum down payment of twenty percent (20%) of the purchase price and payment of the remaining balance must be made over a period no greater than ten years secured by a first deed of trust upon the property. The City may finance a sale of land only when the Council determines that it is in the public interest to do so and the purchaser demonstrates that it has made efforts to finance the purchase by other

means and has been unable to do so. (Repealed & reenacted by Ord. 381-98, §2, 1998)

3.36.150 Lease terms. All leases of land shall include at a minimum the following terms:

A. No lease may be assigned without the approval of the City.

B. No lease of land may be for an initial term of more than 35 years and a total term including renewals of 70 years. Subleases of land (that is, land where the City is a lessee) shall be for a term no greater than the term of the lease on which the City is the less.

C. A lease having a term of more than five years shall be subject to a rental adjustment at intervals of no more than five years unless the Council approves alternative rental adjustment periods.

D. Every lease of land shall provide that the City retains the right to designate or grant rights-of-way or utility easements across the leased premises without compensation, provided that the lessee shall be compensated for the taking or destruction of any improvements and provided further that the lessee at its option may terminate the lease or may demand a rental adjustment to reflect any reduction in value of the leased premises. (Repealed & reenacted by Ord. 381-98, §2 (part), 1998)

13.36.160 Use Permits and Licenses. The City may, by City Council resolutions, issue "use permits" or "licenses" for use of City Land, not to exceed one hundred eighty days. Such use permits or licenses may or may not be for consideration, but such permits or licenses may be terminated at will by the City. (Repealed & reenacted by Ord. 381-98, §2, 1998)

3.36.170 Definitions. When used in this chapter the following words shall mean:

A. "Acquisition" means any transfer of title to real property from an individual or an entity to the City. For purposes of this title, a foreclosure by the city of its interest in property is not an acquisition of property.

B. "Land" means all uplands and tidelands owned or controlled by the City of Whittier, including land the City leases from the Alaska Railroad Corporation or any other entity for management purposes, but does not include City owned land on which are located buildings, structures or other fixtures that are owned by the City. "Land" includes all less than fee simple interests in land which are owned or controlled by the City including leasehold interests, rights of ways and easements, but excludes licenses and permits, if they are for a duration of less 180 days.

C. "Tidelands" means all land located seaward of the mean high water line whether such land is subject to the ebb and flow of the tides or always submerged.

D. "Dispose" and "disposal" mean a sale, lease, exchange or other transfer of land.

E. "Real Property" means all land and other real property which is owned as controlled by the City which is excluded from the definition of "Land" herein, but does not include a revocable license or permit to use real property, nor shall it include the City's small boat harbor moorage or dry storage rental or lease agreements. (Repealed & reenacted by Ord. 381-98, §2 (part), 1998)