

Introduced by: Mayor
Date: 02/19/19
Hearing: 04/02/19
Action: Enacted
Vote: 9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH
ORDINANCE 2019-06**

**AN ORDINANCE CLARIFYING THE EXEMPTION OF SALES OF NONPREPARED
FOOD ITEMS APPLIES TO CERTAIN NONPREPARED FOOD SELLERS IN
ADDITION TO CURRENTLY ELIGIBLE VENDORS AND CONVENIENCE STORES,
ALPHABETIZING THE DEFINITIONS IN THE SALES TAX CODE AND
CLARIFYING THE DEFINITION OF TIME OF SALE**

WHEREAS, in Ordinance 2016-45, effective January 1, 2017, the borough code was amended to provide that sales of nonprepared food by convenience stores would qualify for the sales tax exemption for sales of nonprepared food items; and

WHEREAS, an unintended result of that amendment removed the seasonal exemption for nonprepared food items purchased from small and specialty food sellers whose sales are primarily nonprepared food but who are not authorized to participate in the federal food stamp program; and

WHEREAS, this ordinance would amend the code to clarify that sales of nonprepared foods by such sellers would qualify for the nonprepared food tax exemption; and

WHEREAS, the definition of “time of sale” needs to be amended to clarify that a down payment is an initial payment; and

WHEREAS, the definitions section of the sales tax code has grown over the years and should be amended to put defined terms in alphabetical order for easier location of defined terms;

NOW, THEREFORE, BE IT ORDAINED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:

SECTION 1. That KP.B 5.18.200(A)(15)(d) is hereby amended, as follows:

5.18.200. Exemptions/waivers—Exemptions.

A. The following classes of retail sales, services and rentals are exempt:

...

15. Retail sales of food are exempt in the following circumstances:

...

- d. Exemptions/waivers - Sales of nonprepared food items by sellers authorized to participate in the federal food stamp program, [AND] by convenience stores, and by sellers whose sales of nonprepared food constitute the majority of the store's sales to include, but not be limited to, seasonal businesses and businesses that sell at market events. Sales tax is prohibited on sales of nonprepared food items sold by sellers authorized to participate in the federal food stamp program [AND], by convenience stores, and by nonprepared food sellers whose sales constitute the majority of the seller's sales from September 1 until May 31 of each year. These food items exempted from sales tax include those which have been previously granted exemption in KPB 5.18.200(14) for food purchased with coupons issued under the federal food stamp program. ["CONVENIENCE STORE" MEANS A SMALL RETAIL BUSINESS THAT STOCKS A RANGE OF EVERYDAY ITEMS SUCH AS GROCERIES, SNACK FOODS, CONFECTIONERY, TOILETRIES, SOFT DRINKS, TOBACCO PRODUCTS, MAGAZINES AND NEWSPAPERS, WITH THOSE ITEMS PROVIDING THE MAJORITY OF THE STORE'S SALES.]

SECTION 2. That KPB 5.18.900 is repealed and reenacted as follows:

5.18.900. Definitions.

When not clearly otherwise indicated by the context, the following words and phrases, as used in this chapter, have the following meanings:

"Buyer" includes persons who are purchasers of personal property, rental space, or services.

"Common carrier" means an individual or a company, which is in the regular business of transporting freight for hire. This is distinguished from a private carrier which transports its own goods and equipment, and makes deliveries of goods sold to its customers.

"Convenience store" means a small retail business that stocks a range of everyday items such as groceries, snack foods, confectionery, toiletries, soft drinks, tobacco products, magazines and newspapers, with those items providing the majority of the store's sales.

"Long-term vehicle lease" means a lease of a motor vehicle, as defined below, for a period of 24 months or longer. As used herein a "motor vehicle" is a motor

vehicle, as defined in AS 28.40.100(12), that is either required to be registered under AS 28.10.011, or is exempted from registration under AS 28.10.011(6) and (11). However, "motor vehicle" does not include either an "off-highway vehicle" as defined in 13 AAC 40.010(30) or a "snowmobile" as defined in 13 AAC 40.010(49).

"Mayor" or "borough mayor" means the mayor of the Kenai Peninsula Borough or his designee.

"Newspaper" means a publication of general circulation bearing a title, issued regularly at stated intervals at a minimum of at least two weeks, and formed of printed paper sheets without substantial binding. It must be of general interest, containing information of current events. The word does not include publications devoted solely to a specialized field. It shall include school newspapers, regardless of the frequency of the publication, where such newspapers are distributed regularly to a paid subscription list.

"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.

Occasional or intermittent in nature, under KPB 5.18.200(A)(20) means the sales of goods do not occur for more than 14 days in a calendar year.

"Office location" means the place in the borough where the seller does business, as determined by the borough.

"Periodical" means any bound publication other than a newspaper that appears at stated intervals, each issue of which contains news or information of general interest to the public, or to some particular organization or group of persons. Each issue must bear a relationship to prior or subsequent issues with respect to continuity of literary character or similarity of subject matter, and sufficiently similar in style and format to make it evident that it is one of a series

"Person" includes individuals and every person recognized in law and every group of persons who act as a unit.

"Quarter" means trimonthly period established by the finance director.

"Recreational sales" means sales where the seller provides recreational services and rentals, except automobile rentals, to the buyer, either separately or in a combination, at an aggregate price, including, but not limited to guiding, charters, sightseeing tours, outfitting or equipment rentals, instructional classes or lessons, and beauty or spa services.

"Sale" or "retail sale" includes:

1. Every sale or exchange of services;
Every rental or lease of personal property;
3. Every sale of the use or play of a vending 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 vending machine or otherwise;
6. Every rental or lease of real property other than a rental or other agreement for occupancy of residential real property pending the closing of a transaction which does not exceed 90 days in length for a buyer of that property.
7. Gaming sales authorized by AS 5.15.

“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.

"Seller" includes persons who are vendors of property, persons furnishing services, the lessors of rental space or goods, and all persons making sales, including 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. Notwithstanding any other provisions of this chapter, "seller" includes all persons engaging in sales of fireworks regardless of the length of time, duration, or volume of such sales in any calendar year.

"Services" includes all services of every manner and description, which are performed or furnished for compensation, including but not limited to:

1. Professional services;
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 but not limited to sewer, water, solid waste collection or disposal, electrical, telephone services and repair, natural gas, cable or satellite television, and Internet services;
4. The sale of transportation services;
5. Services rendered for compensation by any person who furnishes any such services in the course of his trade, business, or occupation, including all services rendered for commission;
6. Any other services, including advertising, maintenance, recreation, amusement, and craftsman services;

"Temporary lodging" is defined as a service to provide any lodging of less than one month.

"Time of sale" for installment sales is the time at which the initial payment or down payment is made.

"Unit" means a room or single unit that is customarily advertised and rented at a flat rate regardless of the number of occupants.

“Vending machines” means any good or service-dispensing machine or amusement device of any kind.

SECTION 3. That this ordinance shall become effective September 1, 2019.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 2ND DAY OF APRIL, 2019.

Wayne H. Ogle, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes: Bagley, Blakeley, Carpenter, Cooper, Dunne, Fischer, Hibbert, Smalley, Ogle

No: None

Absent: None