

**Title 6**

**REVENUE AND FINANCE**

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<b>Chapter 6.01</b>	<b>Distribution of State Shared Resources</b>
<b>Chapter 6.02</b>	<b>Distribution of Borough Shared Revenues</b>
<b>Chapter 6.24</b>	<b>Purchasing</b>
<b>Chapter 6.40</b>	<b>Sales and Use Tax</b>
<b>Chapter 6.30</b>	<b>Investment Policy</b>
<b>Chapter 6.50</b>	<b>Imposition of an Annual Permit Fee on Lodge Operators and Professional Guides</b>
<b>Chapter 6.60</b>	<b>City Sales Tax Authorization</b>
<b>Chapter 6.71</b>	<b>School Endowment Fund</b>
<b>Chapter 6.72</b>	<b>Capital Projects Fund</b>
<b>Chapter 6.73</b>	<b>Borough Permanent Fund</b>
<b>Chapter 6.74</b>	<b>Preschool Education Fund</b>
<b>Chapter 6.75</b>	<b>Career and Technical Education Fund</b>
<b>Chapter 6.80</b>	<b>Borough Lands and Resources</b>
<b>Chapter 6.90</b>	<b>Hotel-Motel Room Tax</b>
<b>Chapter 6.91</b>	<b>Severance Tax</b>

## **Chapter 6.01 DISTRIBUTION OF STATE SHARED REVENUES**

### **Sections:**

- 6.01.010                   Determination of Available Funds
- 6.01.020                   Distribution of Available Funds

### **6.01.010       Determination of Available Funds**

Each year the Assembly shall determine the amounts available for distribution to eligible unincorporated communities out of state revenue sharing and municipal assistance funds applied for and received by the Borough from the state. Such amounts shall be included in the annual budget adopted by the assembly and no further appropriations therefore shall be necessary. Eligible unincorporated communities include Native village governments or community associations representing unincorporated communities within the Borough.

### **6.01.020       Distribution of Available Funds.**

- A.       Available state revenue sharing funds for road maintenance and for maintenance, repair, equipment and supplies for health facilities, shall be distributed to eligible unincorporated communities pursuant to the procedures set forth in Borough Ordinances 90-04 (Road Services) and 90-05 (Health Services).
- B.       All other state revenue sharing and municipal assistance funds available for distribution shall be transferred by the borough clerk to each eligible unincorporated community when received by the borough. Each eligible unincorporated community shall be responsible for administering such funds; however, each eligible community shall report to the borough on January 15th and June 30th all expenditures made from such funds during the past six months on forms provided by the borough, and shall provide such further documentation regarding expenditures as the borough manager may require.

## **Chapter 6.02 DISTRIBUTION OF BOROUGH SHARED REVENUES**

### **Sections:**

6.02.010	Determination of Available Funds
6.02.020	Distribution of Available Funds
6.02.090	Definitions
6.02.010	Determination of Available Funds

### **6.02.010 Determination of Available Funds**

Each year, as a part of its annual budget process, the Assembly shall determine what amounts, if any, of Borough revenue shall, in addition to any State Revenue Sharing or Municipal Assistance funds received by the Borough from the State of Alaska, be made available for distribution to Borough communities as Borough Shared Revenue. Such amounts shall then be included in the adopted annual budget, to be distributed to eligible incorporated and unincorporated communities as provided in this chapter, and no further appropriations therefore shall be necessary.

### **6.02.020 Distribution of Available Funds**

- A. Funds appropriated pursuant to Section 6.02.010 shall be distributed as follows:
1. Twenty-five percent (25%) of the funds appropriated pursuant to Section 6.02.010 shall be divided by the number of eligible communities and be distributed in equal amounts to each eligible community.
  2. Seventy-five percent (75%) of the funds appropriated pursuant to Section 6.02.010 shall be distributed to each eligible community on the basis of population as determined by the latest U.S. Census, or by such other information as the Borough Assembly may determine accurately reflects the actual year-round population of each community.
  3. Distribution of funds shall be authorized by resolution and made only after the Assembly determines that sufficient actual Borough revenues have been received to meet all budgeted expenditure requirements.  
*(Subsection 6.02.020(A)) amended by Ordinance 93-08 on 9/21/93*
- B. Funds distributed to eligible communities may be used for any public purpose as defined in this chapter. However, each community receiving such funds shall be required to enter into a written agreement to comply with the requirements of this chapter and report to the Borough by June 30th, on forms provided by the Borough, all expenditures made from those funds during the past twelve months, together with such additional information or documentation regarding its expenditures as the Borough Manager may request.

### **6.02.090 Definitions**

"Eligible Community" means any incorporated or unincorporated community within the Lake and Peninsula Borough that complies with all of the requirements of this chapter, including all contractual and reporting requirements.

"Public Purpose" means a purpose that serves the convenience, safety or welfare of the entire community and not the welfare of a specific individual or class of persons, the essential requisite being that the service or use so provided shall affect the inhabitants as a community and not merely as individuals.

*(Established by Ordinance 92-22, 10/19/92)*

## Chapter 6.24 PURCHASING

### Sections:

6.24.010	Purchasing agent.
6.24.020	Purchasing agent--Scope of authority.
6.24.030	Purchasing agent--Other powers and duties.
6.24.040	Inspection and testing.
6.24.050	Authority of manager.
6.24.060	Public improvement contracts.
6.24.070	When prior approval by the assembly is required.
6.24.080	Requisitions and estimates.
6.24.090	Contracts over fifty thousand dollars.
6.24.100	Bids--Notice inviting.

### **6.24.010. Purchasing agent.**

- A. There shall be a purchasing agent of the borough to make all purchases of supplies, materials, equipment, and contractual services for the offices, departments, and agencies of the borough government.
- B. The manager or his designee shall be the borough purchasing agent.

### **6.24.020 Purchasing agent--Scope of authority.**

- A. The purchasing agent shall have the power and it shall be his duty to purchase or contract for supplies and contractual services needed by any agency of the borough and sell surplus personal property under such rules and regulations as shall be prescribed by the mayor and approved by the assembly.
- B. The purchasing agent shall have the authority to join with other units of governments in cooperative purchasing ventures when the best interests of the borough would be served thereby, and same is in accordance with borough and state law.

### **6.24.30 Purchasing agent--Other powers and duties.**

The purchasing agent shall:

- A. Act to procure for the borough the highest quality in supplies and contractual services at least expense to the borough;
- B. Recommend the establishment and amendment when necessary of all rules and regulations relating to purchasing;
- C. Keep informed of current developments in the field of purchasing, prices, market conditions and new products, and secure for the borough the benefits of research done in the field of purchasing by other governmental jurisdictions, national technical societies, trade associations having national recognition, and by private businesses and organizations;

- D. Prescribe and maintain such forms as he shall find reasonably necessary; and
- E. Act so as to procure for the borough all state and federal tax exemptions to which it is entitled.

**6.24.040 Inspection and testing.**

- A. The purchasing agent shall inspect, as far as possible, and supervise the inspection of all deliveries of supplies or contractual services to determine their conformance with the specifications set forth in the order or contract.

**6.24.050 Authority of manager.**

- A. The borough manager may authorize any department, office or agency of the borough to purchase directly certain specified supplies, materials, equipment, or contractual services under conditions not less restrictive than those prescribed under this chapter, whenever the purchase price is dollars or less.
- B. The manager may transfer supplies, materials and equipment to or between agencies, offices and departments.

**6.24.060 Public improvement contracts.**

Contracts for public improvements shall be by competitive sealed bid and be awarded to the lowest qualified bidder.

**6.24.070 When prior approval by the assembly is required.**

Every contract for, or purchase of, supplies, materials, equipment, or contractual services for more than ten thousand dollars (\$10,000) shall require the prior approval of the assembly; and under no circumstances may such contract or purchase be made without first obtaining the approval of the assembly. *(Amended by Ordinance 93-01, 5/18/93, Amended by Ordinance 14-13, October 21, 2014)*

**6.24.080 Requisitions and estimates.**

- A. All agencies of the borough which use supplies shall, either by or with the authorization of the department head under which the using agency operates, file with the purchasing agent requisitions or estimates of their requirements in supplies and contractual services in such matter, at such times, and for such future periods as the purchasing agent shall prescribe.
- B. A using agency shall not be prevented from filing in the same manner with the purchasing agent at any time a requisition or estimate for any supplies and contractual services, the need for which was not foreseen when the detailed estimates were filed.

- C. The purchasing agent shall examine each requisition or estimate and shall have the authority to recommend revisions as to quantity, quality, or estimated cost.

**6.24.090 Contracts over fifty thousand dollars.**

Unless otherwise prohibited or exempted by borough ordinance, all contracts and purchases for an amount estimated to exceed fifty thousand dollars shall be by competitive sealed bid. *(Amended by Ordinance 11-09, 9/20/2011; Amended by Ordinance 93-01, 5/18/93)*

**6.24.100 Bids--Notice inviting.**

The manager shall provide adequate notice for request for bids or proposals to assure competitiveness among bidders.

**6.24.110 Professional Service Agreements.** *(Enacted by Ordinance 11-09, 9/20/2011)*

- A. "Professional Service Agreements" are defined for the purposes of this section as contracts for services by independent contractors for services that are subject to regulation by the State of Alaska. Examples include, but are not limited to, lobbying, engineering, legal and auditing services.
- B. The Assembly, in its discretion, may enter into professional service agreements with or without a competitive process. Where the Assembly elects to enter into a professional service agreement without a competitive process, it shall make specific findings as to the reasons for not using an invitation for bids or request for proposals as a part of the ordinance approving the professional service agreement.
- C. Professional service agreements may have a term of up to three (3) years.
- D. The Assembly may renew a professional service agreement without a competitive process if the Assembly determines by resolution making specific findings that renewal is in the best interests of the Borough. No renewal may be for a term of more than three years.
- E. Professional service agreements entered into under this section are not subject to the limits at §6.24.090.
- F. Every professional service agreement entered into under this section shall provide that the professional service agreement may be terminated by the Borough for convenience at any time, without cause and without penalty. In the event the Borough exercises its rights under this subsection, payment shall be limited to services performed through the date of termination.

**6.24.120. Other Service Agreements.**

- A. "Service Agreements" are defined for the purposes of this section as contracts for services by independent contractors for services other than those described in §6.24.110.

- B. The Assembly, in its discretion, may enter into a Services Agreement without a competitive process if the Assembly determines by specific, written findings, incorporated in the ordinance authorizing the Service Agreement, establishing that:
  - 1. The benefits provided by a specific third party outweigh the benefits of a competitive process; and
  - 2. Adequate safeguards are in place to protect the best interests of the Borough.
- C. Service Agreements may have a term of up to three (3) years.
- D. The Assembly may renew a Service Agreement without a competitive process only if the requirements of this section are satisfied.
- E. Service Agreements entered into under this section are not subject to the limits at §6.24.090.
- F. Every Service Agreement entered into under this section shall provide that the Service Agreement may be terminated by the Borough for convenience at any time, without cause and without penalty. In the event the Borough exercises its rights under this subsection, payment shall be limited to services performed through the date of termination.

*(Section 6.24.120 Added by Ordinance 11-14, 10/18/2011)*

## **Chapter 6.30 Investment Policy**

### **Sections:**

6.30.010	Policy
6.30.020	Scope
6.30.030	Prudence
6.30.040	Objective
6.30.050	Delegation of Authority
6.30.060	Ethics and Conflicts of Interest
6.30.070	Authorized Financial Dealers and Institutions
6.30.080	Authorized and Suitable Investments
6.30.090	Collateralization
6.30.100	Safekeeping and Custody
6.30.110	Diversification
6.30.120	Maximum Maturities
6.30.130	Internal Control
6.30.140	Performance Standards
6.30.150	Reporting
6.30.160	Investment Policy Adoption

### **6.30.010 Policy.**

It is the policy of the Lake and Peninsula Borough (herein after “Borough”) to invest public funds in a manner which will preserve capital, provide a market rate of investment return, meet the daily cash flow demands of the Borough and conform to the Alaska State Statutes and the Lake and Peninsula Borough Code of Ordinances governing the investment of public funds.

### **6.30.020 Scope.**

This investment policy applies to all financial assets of the Borough (unless specifically exempted by the Borough Assembly). These funds are accounted for in the Lake and Peninsula Borough’s General Purpose Financial Statements and includes the following funds:

1. General Fund;
2. Special Revenue Funds;
3. Debt Service Funds;
4. Capital Project Funds;
5. Enterprise Funds; and
6. Trust and Agency Funds.

### **6.30.030 Prudence.**

The management and investment of assets by the Borough shall be made with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person would use in the conduct of an enterprise of a like character and with like aims.

- A. The standard of prudence to be used by investment officials shall be the “prudent person” standard and shall be applied in the context of managing an overall portfolio. Investment officials acting in accordance with written procedures and the investment policy, and exercising due diligence, shall be relieved of personal responsibility for an individual security’s credit risk or market price changes, provided deviations from expectations are reported in a timely fashion and appropriate action is taken to control adverse developments.

**6.30.040 Objective.**

The primary objective, in priority order, of the Borough investment activities shall be:

- A. **Preservation of Capital:** Preservation of Capital is the foremost objective of the investment program. Investments of the Borough shall be undertaken in a manner that seeks to ensure the preservation of capital in the overall portfolio. To attain this objective, diversification is required to reduce overall portfolio risk while attaining market rates of return. This will be accomplished through prudent management and adoption of investment policies and restrictions.
- B. **Liquidity:** The Borough investment portfolio will remain sufficiently liquid to enable the Borough to meet all operating requirements which might be reasonably anticipated.
- C. **Return on Investment:** The Borough’s investment portfolio shall be designed with the objective of attaining a market rate of return throughout budgetary and economic cycles, and is subject to the Borough’s primary objectives of preservation of capital and liquidity.

**6.30.050 Delegation of Authority.**

Authority to manage the Borough’s investment program is derived from the Borough Charter, Borough Ordinance 99-02, Title 6 of the Lake and Peninsula Borough Code of Ordinances, and Alaska State Statutes.

- A. Borough Manager. Overall management responsibility for the investment program is hereby delegated to the Borough Manager (or his/her designee), who shall establish written procedures for the operations of the investment program consistent with this investment policy. No person may engage in an investment transaction except as provided under the terms of this policy and the procedures established by the Borough Manager (or his/her designee).
- B. Procedures. Procedures set forth by the Borough Manager (or his/her designee) shall include, but are not limited to: (1) the duties of custodian banks responsible for the custody of the Borough investment account cash and securities; (2) the duties of internal and external investment managers responsible for the investment of Borough funds, to include performance benchmarks, interface with custodian banks, and the reporting of assets and transactions, and: (3) wire transfer procedures and instructions which provide for authorized signatories.

- C. Appointment of Custodian Banks and Investment Managers: The Borough Manager (or his/her designee) is authorized to appoint custodian banks and external investment managers subject to notification of the Borough Assembly and normal Borough procedures for the approval of contracts, and section 6.30.070 of this policy. Investment managers may be retained to invest Borough funds in lieu of Borough staff. The investment manager, except for an authorized bank shall be registered as a Financial Advisor with the U.S. Securities and Exchange Commission, must hold professional liability insurance of at least \$1,000,000 and must have experience in the management or municipal operating or reserve funds.
- D. Finance Officer. While investment policy is reserved to the Borough Manager (or his/her designee), operation of the investment program is delegated to the Finance Officer. The Finance Officer shall execute the investment policies and shall be responsible for the coordination of custodial and investment functions. The Finance Officer shall maintain records pertaining to all investment transactions and asset holdings.

**6.30.060 Ethics and Conflicts of Interest.**

Officials and employees involved in the investment process shall refrain from personal business activity that could conflict with proper execution of the investment program, or which could impair the ability to make impartial decisions. Employees and investment officials shall disclose to the Borough Manager (or his/her designee) any material financial interests in financial institutions that conduct business with the Borough. Employees and officials shall subordinate their personal investment transactions to those of the Borough, particularly with regard to the time of purchases and sales.

**6.30.070 Authorized Financial Dealers and Institutions.**

The Finance Officer will maintain a list of financial institutions authorized to provide investment securities. A current audited financial statement is required to be on file for each institution with which the Borough invests as well as any other additional information deemed necessary by the Borough to insure the protection of its assets.

**6.30.080 Authorized and Suitable Investments.**

The Borough is empowered to invest in, **and is restricted to**, the following types of securities:

- A. Obligations of, or obligations insured by or guaranteed by, the United States or agencies or instrumentalities of the United States:
- B. Certificates of Deposit and term deposits of United States domestic banks that are members of the Federal Deposit Insurance Corporation, those over \$250,000 must be secured by eligible collateral as defined in Section 9.0; *Amended by Ordinance 09-01 4/21/09*
- C. Repurchase and reverse repurchase agreements secured by obligations of the Treasury of the United States and obligations of an agency or

instrumentality of the United States. A Master Repurchase Agreement must be signed with the bank or dealer, before repurchase agreements are entered into;

- D. The Alaska Municipal League Investment Pool, Inc. made in accordance with the terms of that Pool's "Common Investment Agreement"; and in accordance with AS 37.23.013 – 37.23.900;
- E. Commercial paper and other short-term taxable instruments that, at the time of investment, maintain the highest rating by at least two nationally recognized rating services;
- F. Obligations of a corporation domiciled in the United States or obligations of a municipality if the obligations are rated AA or higher by at least one nationally recognized rating service at the time of the investment;
- G. Money market funds in which the securities of the funds consist of obligations listed in this section and otherwise meet the requirements of this investment policy.
- H. *Repealed by Ordinance 09-01 4/21/09*

Investments shall not be purchased through the use of leveraged funds.

#### **6.30.090 Collateralization.**

Collateralization will be required on two types of investments: bank deposits and certificates of deposit over \$250,000; and repurchase (and reverse) agreements. In order to anticipate market changes and provide a level of security for all funds, the collateralization level will be (102%) of market value or principal and accrued interest.

Collateral will always be held by an independent third party with whom the Borough has a current custodial agreement.

The right of collateral substitution is granted.

*Amended by Ordinance 09-01 4/21/09*

#### **6.30.100 Safekeeping and Custody.**

All security transactions, including collateral for repurchase agreements, entered into by the Borough shall be conducted on a delivery-versus payment basis. Securities will be held by a third party custodian designated by the Borough Manager (or his/her designee) and evidenced by safekeeping receipts and statements.

#### **6.30.110 Diversification.**

It is the policy of the Borough to diversify Borough investments and to ensure the safety and liquidity of the investments. The following is an example of sound investment practices: *(Amended by Ordinance 09-01, April 21, 2009)*

- A. At least 50% of the investment portfolio shall be invested in Government securities at the time of purchase.

- B. Investments in term repurchase agreements shall not exceed 50% of the investment portfolio at the time of purchase.
- C. Not more than 20% of the portfolio will be invested in Commercial Paper at the time of purchase and not more than 2.5% of the portfolio may be invested in the Commercial Paper of any one issuer. In addition, Commercial Paper will not be purchased unless the spread in interest rates above similar term government securities is at least 25 basis points (.25%) at the time of purchase.
- D. Not more than 10% of the portfolio will be invested in Corporate Debt at the time of purchase and not more than 2.5% of the portfolio may be invested in the Corporate Debt of any one user. In addition, Corporate Debt will not be purchased unless the spread in interest rates above similar term Government securities is at least 20 basis points (.20%) at the time of purchase.
- E. *Repealed by Ordinance 09-01 4/21/09*

**6.30.120 Maximum Maturities.**

To the extent possible, the Borough will attempt to match its investments with anticipated cash flow requirements

**6.30.130 Internal Control.**

The Borough Manager (or his/her designee) shall develop and maintain adequate internal controls, which should be reviewed annually by the Borough's external auditor.

**6.30.140 Performance Standards.**

The investment portfolio will be designed, and maintained, to obtain a market average rate of return during budgetary and economic cycles, taking into account the Borough's investment risk constraints and cash flow needs.

- A. Market Yield (Benchmark): The Borough's investment strategy generally is passive. Given this strategy, the basis used by the Finance Officer to determine whether market yields are being achieved shall be the Lehman 1-3 year government index.

**6.30.150 Reporting.**

A report shall be prepared by the Finance Officer, and presented to the Borough Assembly, on at least a quarterly basis. The report shall summarize the types of investments in the portfolio, cost and market value of the investments, and investment activity in the portfolio. Investments shall also be reported in the Borough's General Purpose Financial Statements in accordance with Generally Accepted Accounting Principles (GAAP) and Governmental Accounting Standards Board (GASB) requirements.

**6.30.160 Investment Policy Adoption.**

The Borough's Investment Policy shall be adopted by Borough Ordinance. The policy shall be reviewed each February by the Borough Manager (or his/her designee). Any modifications deemed necessary during the review must be adopted by Borough Ordinance.

(Established by Ordinance 99-02 5/18/99)

## Chapter 6.40 SALES AND USE TAX

### Sections:

6.40.010	Definitions
6.40.020	Imposition; rate
6.40.030	Exemptions - enumerated
6.40.040	Application for exemption
6.40.050	Tax - computation
6.40.060	Statement of tax
6.40.070	Obligation to pay tax
6.40.080	Determination of Taxability/Liability for errors
6.40.090	Tax funds held in trust
6.40.100	Location and sales made and of services provided
6.40.110	Registration of sellers and buyers as tax collectors – Certification of registration
6.40.120	Rulings and regulations
6.40.130	Payment and remittance - Application of payments - Deduction
6.40.140	Penalties and interest
6.40.150	Forced filing
6.40.160	Records - Investigation and audits
6.40.170	Liens
6.40.180	Accelerated returns
6.40.190	Termination, sale or transfer of retail business
6.40.200	Personal liability of corporate officers
6.40.210	Protest of tax by taxpayer
6.40.220	Protest of tax by collector
6.40.230	Refund of excess payment
6.40.240	Disposition of tax information
6.40.250	Time extensions
6.40.260	Use tax levied
6.40.270	Authority to contract collection
6.40.280	Enforcement
6.40.290	Violation - Criminal enforcement

### **6.40.10 Definitions.** *(Chapter 6.40 established by Ordinance 90-10, 8/14/90)*

For purposes of this chapter, certain words and phrases are defined as follows:

- A. "Borough" means Lake and Peninsula Borough.
- B. "Buyer" means the first person who becomes directly or indirectly obligated to a seller for payment for personal property or services or becomes obligated to another for rent, lease or similar payments for possession or use of property.
- C. "Collector" means the person involved in a sale that is required to collect the tax levied under this chapter. In the case of the sale of raw fish, it is the buyer; in all other cases it is the seller.
- D. "Commercial Products of Borough Waters" means any raw finfish or bottomfish, shellfish, mollusks or other invertebrates and all other commercial products of the sea harvested in Borough waters, whether

fresh, estuarine or salt, for sale, profit or commercial use. (*Amended by Ordinance 10-03, 3/12/10*)

- E. "Person" means an individual, partnership, cooperative, association, joint venture, corporation, estate trust, business, receiver, or any entity, group or combination acting as a unit.
- F. "Processed" or "processing" means cooking, canning, smoking, butchering, freezing, salting, dehydrating and other activities that modify the condition of the fish in preparation of the fish for sale, but does not include decapitating, gutting, gilling, sliming, or icing by the person harvesting the fish if done for the purpose of maintaining the quality of the fish until it can be sold.
- G. "Raw fish" means fin fish and shellfish and includes, but is not limited to: crabs, shrimp, scallops, clams, oysters, sea cucumbers, salmon, and herring that have not been processed. *Amended by Ordinance 04-04, 6/01/04*
- H. "Sale means any sale, lease, rental, transfer or assignment of any right, title or interest in any property, and the sale or provision of any service, for valuable consideration. "Sale" is an event that occurs when a person within the borough becomes directly or indirectly obligated for the payment for the sale of property, sale or performance of services or the lease, rental or use of property, including admissions to a place or event, and, if the sale is of raw fish, without regard to whether delivery by the seller occurred directly or indirectly nor whether delivery of the fish occurred inside or outside the Borough if the fish are purchased for delivery or are delivered to a location inside the Borough at the time of sale. A sale of raw fish occurs within the Borough if the fish ticket issued by the buyer to the seller for the sale of raw fish is issued within the Borough. A sale also includes the performance of services within the borough without regard to the place of sale of such services, and includes an event that occurs when a person within the Borough becomes directly or indirectly obligated to sell or convey property within the Borough, or to perform services within the Borough or to lease or rent to or permit the use of property within the Borough by another, including admissions to a place or event. *Amended by Ordinance 05-03, 10/18/05*
- I. "Sale price" means the total consideration, whether money, credit, rights or other property, paid, delivered or given by the buyer, expressed in terms of money and, in the case of a sale involving an exchange of property, service or other rights, the fair market value of the property, service or other rights exchanged, including delivery or installation costs, taxes, or any other expenses whatsoever, measured by the gross cost of the seller. It is without deduction for the cost of tangible property sold, the cost of property used, provided or consumed, the cost of labor, interest, delivery or taxes, or any other expenses whatsoever paid or accrued and without deduction on account of trade-ins, setoffs or losses. In the case of raw fish, sale price includes any indirect consideration such as fuel or supplies furnished directly or indirectly by the buyer or offsets to the cash value for gear furnished, and includes post purchase or post season adjustments or bonuses.

- J. "Sales Tax Administrator" or "Administrator" means the manager or the person designated by the manager as the sales tax administrator or the agent of the administrator.
- K. "Seller" means a person making a sale and includes every person who sells or vends property, every person renting property to another and every person who sells or performs services for a valuable consideration.
- L. "Services" does not include labor performed by an employee for an employer.
- M. "Taxpayer" means the person involved in a sale that is first required to pay the tax levied under this chapter. In the case of the sale of raw fish it is the seller; in all other cases it is the buyer.
- N. "Value of property" is the consideration, whether money, credit, rights, or other property, expressed in terms of money paid or given or contracted to be paid or given by the buyer or person who uses the property to the seller for the property, the use of which is taxable under Section 260 of this chapter. In the case of property used that is acquired under conditions wherein the purchase price does not represent the true value of the property, the value of the property used shall be determined as nearly as possible according the selling price at the place of use of the property of like quality or character.

**6.40.020 Imposition; rate.**

There is levied and shall be collected a tax of two percent on all sales within the Lake and Peninsula Borough. *(Amended by Ordinance 04-04, 6/01/04 and again by Ordinance 09-08; 11/14/09)*

**6.40.30 Exemptions - enumerated.**

The following sales are exempt from the tax levied under this chapter:

- A. Sales to and by the United States Government, the State of Alaska and its political subdivisions.
- B. Sales to religious and charitable organizations in the conduct of their regular religious and charitable functions and activities upon presentation of an exemption certificate issued by the Borough. Regular religious and charitable functions and activities are those functions and activities of the religious or charitable organization that are exempt from income taxation under section 501 of the federal Internal Revenue Code.
- C. Sales that may not be taxed under the constitution or laws of the State of Alaska or the United States.
- D. Sales of property. *(Amended by Ordinance 09-08; 11/14/09)*
- E. Lease, rental or use of property not otherwise taxable as a service.

- F. The sale or performance of a service.
- G. Casual and isolated sales not made in the regular course of business.
- H. The resale of raw fish in essentially the same form as when purchased if the tax under this chapter paid on the prior purchase was at fair market value for the fish under the circumstances of the prior purchase.

**6.40.35 Exemptions - limited.**

The following sales are exempt from the tax levied under this chapter, but only in the specific circumstances described:

- A. Sales of Commercial Products of Borough Waters, but only if those Products are in essentially the same form as when purchased, provided that a severance tax under Chapter 91 was paid on those Products at the Gross Production Value for those Products. This exemption does not apply to any subsequent resale of those same Commercial Products of Borough Waters.
- B. Sales of Commercial Products caught or harvested outside of Borough Waters shall be subject to the tax levied under this chapter.

*(Section added by Ordinance 09-08; 11/14/09)*

**6.40.040 Application for exemption.**

- A. No exemption certificate may be granted except under written application for the exemption on a form provided by the Borough.
- B. The Borough may at any time require proof, in the form it considers necessary, of the grounds for the exemption and the amount of the exemption claimed under this section. The claimant shall have the burden of establishing his or her qualifications for an exemption, and the exemption laws and cases shall be strictly construed in favor of taxation.

**6.40.050 Tax - computation.**

The tax due under this chapter shall be computed by multiplying the sale price by two percent *Amended by Ordinance 10-03, 3/12/2010.*

**6.40.060 Statement of tax.**

A person required to collect a tax under this chapter shall provide the taxpayer with a statement of the amount of tax owing on any taxable transaction and shall retain a copy of such statement for a period of not less than five (5) years following the due date of the

payment to the Borough.

**6.40.070 Obligation to pay tax.**

- A. The obligation of the tax is upon the buyer, except that in the case of the sale of raw fish the tax is upon the seller. Except for the sale of raw fish, the seller shall collect the tax on all sales at the time of the sale. With respect to the sale of raw fish, the buyer shall segregate from funds of the buyer an amount equal to the tax due on the sale. Funds required to be segregated under this section are taxes collected or required to be collected under this chapter. With respect to the tax on services performed within the Borough, but not sold within the Borough, the sales tax shall be paid when payment for the services is made.
- B. Collection is enforceable by the seller or, in the case of raw fish, by the buyer, as a certified tax collector of the Borough, provided, however, that this shall not limit the liability of the person liable for the tax.

**6.40.080 Determination of taxability - Liability for errors.**

The collector shall determine whether a sale is taxable under this chapter. If the collector fails to collect the tax due on a sale because of an incorrect determination of taxability by the collector or for any other reason, the collector becomes liable to the Borough for the tax in the same manner as if the tax had been collected.

**6.40.090 Tax funds held in trust.**

All tax monies collected or segregated or required to be collected or segregated by the collector are funds of the Borough and shall be held in trust by the collector in a fund or account separate from all other funds and accounts of the collector until paid over to the Borough. Interest earned on such funds while held by the collector may be retained by the collector as compensation for segregating and protecting the funds of the Borough.

**6.40.100 Location of sales made and services provided.**

- A. A sale of property or a sale of services occurs within the Borough when either party to the sale is within the Borough when the sale is either negotiated or occurs. With respect to the sale of property, the sale occurs within the Borough when the property that is the subject of the sale is within the Borough when the sale is negotiated or occurs, regardless of the location of the parties. For purposes of a party that is not an individual, the location of the party is determined by the location of the individual who acts on behalf of the party when negotiating, closing, or executing the sale.
- B. When the use tax arises on raw fish under Section 6.40.240 (C) because the raw fish caught or harvested within the Borough is transported by a person who intends to sell the fish to a buyer outside of the Borough, the buyer is deemed to be located within the Borough for purposes of the sale, and is required to collect the tax in the same manner as a buyer under Section 6.40.070. Such buyers are required to register with the Borough under Section 6.40.110 and are subject to

the filing procedures and requirements set forth in this chapter.

**6.40.110 Registration of sellers and buyers as tax collectors - Certification of registration.**

- A. All sellers, except sellers of raw fish, and all buyers of raw fish shall file with the Borough an application for a certificate of registration on a form prescribed by the Borough not more than ten (10) days after the date of commencing business within the Borough, or the opening of an additional place of business, provided no registration is required if the business conducted does not require the person to collect a tax under this chapter. The application must contain or be accompanied by:
1. The name and mailing address of the applicant;
  2. the location at which the applicant will conduct its business and where transactions subject to the tax under this chapter will occur; if the applicant's business is to be conducted from one or more vessels, the name of the vessels and the general location or areas in which each vessel will operate;
  3. If the applicant is a buyer of raw fish,
    - a. the applicant's Alaska Fisheries Business License number;
    - b. a copy of the applicant's most recent Alaska Fisheries Business License Tax filing;
    - c. a copy of the most recent statement provided the state of the amount of fisheries products the person expects to produce during he applicant's license year;
  4. the applicant's Alaska Business License number;
  5. a statement of the extent of property owned by the applicant in the Borough against which the tax liability of the applicant may be collected and other information with respect to description, location and value of the property which the Borough prescribes.
  6. The Application shall be accompanied by a check payable to the Borough in the amount of \$25.00 as an annual application Processing Fee. The application fee is non-refundable. The application fee shall be applied to annual taxes. *Ordinance 09-09 10/14/09*
- B. Upon receipt of a properly executed application, the sales tax administrator will issue a certificate of registration setting out the name of the registrant, its physical and its mailing addresses, and the place the registrant will be operating from a vessel. The certificate shall authorize the registrant to collect and enforce the collection of the tax required to be collected under this chapter. The certificate must be prominently displayed at the location set out in the certificate or upon the vessel named in the certificate. A separate certificate shall be issued for each vessel or location of an applicant.
- C. A certificate of registration is non-assignable and non-transferable and must be surrendered to the sales tax administrator by the registrant to whom it is

issued upon the registrant's ceasing to do business at the location or on the vessel named therein. If the business is continued at the same location, but there is a change in its form or organization such as a change of a single proprietorship to a partnership or corporation, or the admission or withdrawal of a partner, or other change, the registrant shall surrender the old certificate to the sales tax administrator with an application for a new certificate. If the business of a registrant is sold, leased or in any other manner transferred to another person, the registrant shall surrender the certificate to the sales tax administrator and the new owner, lessee or other successor to the business shall immediately apply for a new certificate.

- D. If there is a change in location of a registrant's place of business, the registrant shall surrender the certificate for the old location to the sales tax administrator along with a statement of the new address. Upon receipt of the old certificate and the new address, the sales tax administrator shall issue a new certificate of registration showing the new location.
- E. Before issuing a certificate of registration, the applicant may be required to post a bond, furnish a statement of net worth, or furnish such additional security as may be required by the sales tax administrator to insure full and prompt payment of taxes required to be collected under this chapter. *(Amended by Ordinance 94-05, 5/17/94) (Regulations adopted by Resolution 99-08 5/18/99)*
- F. A person applying for a certificate of registration under this section thereby gives consent to an inspection by the Borough of the applicant's Alaska Fisheries Business Tax returns and other information or records filed by the registrant with the State of Alaska for the purpose of enforcement and administration of the provisions of this chapter.

#### **6.40.120 Rulings and regulations.**

- A. The manager may promulgate and amend regulations and may prescribe the use of forms appropriate to the implementation of this chapter. Regulations promulgated by the manager are effective on the date they are promulgated unless a different date is indicated in the regulations; provided, all regulations are subject to repeal or revision by the Assembly at any time. Prior to promulgation, proposed regulations shall be submitted to the borough attorney for review and comment. Upon promulgating a regulation or any amendment to an existing regulation, the manager shall submit the regulation or amendment to the Assembly at its next regular meeting.
- B. If any person who is or may be required to pay or collect a tax under this chapter questions the application of this chapter to a transaction or other situation in which that person is involved or may become involved, the person may apply to the sales tax administrator for a ruling on the question. The sales tax administrator may rule on the question and may seek the advice of the borough attorney on the question. Before a ruling of the sales tax administrator is effective or binding on the borough, it must be signed by the manager. Rulings having general applicability shall be considered by the manager for promulgation as a regulation.

**6.40.130 Payment and remittance - Application of payments - Deduction.**

- A. Taxes required to be collected under this chapter during a calendar year are due and payable to the Borough within 30 days of the last day of the calendar quarter. Every collector shall file with the borough on forms furnished by the Borough a return containing the following information:
1. Gross sales by the collector during the calendar quarter;
  2. Nontaxable sales during the calendar quarter;
  3. Taxable sales during the calendar quarter;
  4. Taxes collected on taxable purchases;
  5. Interest, penalties, deductions and such other information as may be required on the form.

*(Amended by Ordinance 92-16, 3/17/92)*

- B. The return shall be signed and its completeness and accuracy sworn to by the collector under penalty of perjury.
- C. All sales are presumed to be taxable. An exemption claimed for any sale must be proved or adequately explained by the collector with the submission of the return.
- D. The completed return, together with the remittance of the tax required to be collected during the calendar quarter, must be received by the Borough at the address designated on the return form within 30 days of the last day of every calendar quarter.

*(Amended by Ordinance 92-16, 3/17/92)*

- E. Any collector who was required to collect a tax during a calendar quarter shall file a return for the next following calendar quarter even though no tax may be due during the following quarter. A return filed for a quarter in which no tax was required to be collected must show why no tax was collected or is due. If the business is sold or transferred to another, whether voluntarily or involuntarily, the person filing the return shall provide on the form the name of the person to whom the business was sold or transferred. A person who files a return for a calendar quarter in which no taxes were required to be collected is not required to file additional returns until the person is again required to collect a tax under this chapter.
- F. If a complete return accompanied by the entire tax due and all interest and penalties is received by the Borough within the time allowed, the buyer may deduct and retain two percent (2%) of the tax due as compensation for its costs of administration of the tax; provided, the amount deducted and retained may not exceed \$200.
- G. Amounts received with the return shall be applied in the following order:
1. Penalties due, beginning with the oldest penalty;
  2. Interest due, beginning with the interest due on the oldest quarter; and
  3. taxes due, beginning with the taxes due from the oldest quarter.

**6.40.140 Penalties and interest.**

- A. A person who fails to file a return as required under this chapter or who fails to remit all the taxes due the Borough by that person shall pay a penalty of five percent (5%) of the taxes due with a minimum penalty of \$100 if no return is filed. The penalty is imposed for each month or part of a month during which the delinquency of failure to file exists up to a maximum of twenty-five percent (25%); provided, the total penalty for a single calendar quarter shall not exceed three thousand dollars (\$3000). The filing of an incomplete return shall be treated as the filing of no return.
- B. Interest at the rate of twelve percent (12%) per annum shall be paid on all amounts due the Borough that are not received by the Borough as required under this chapter except interest does not accrue on penalties.
- C. A person who fails to apply for a certificate of registration as required by this chapter shall pay a penalty of two hundred dollars (\$200). Such penalty must be paid before the license is issued if the original license was issued before the determination that a penalty was due. A person who fails to apply for a certificate of registration, who engages in taxable transactions after being informed in writing that a certificate of registration is required, shall pay a penalty of four hundred dollars (\$400) before the license is issued or before a renewal or amended license is issued if the original license was issued before the determination that a penalty was due.
- D. A person required to collect a tax under this chapter who fails to provide a written statement setting out the amount of the tax due on the transaction shall pay a penalty to the Borough equal to the amount of the tax due on the sale.
- E. A failure of or refusal of a person required to collect a tax under this chapter to produce records or allow inspection at such reasonable times as requested or demanded by the sales tax administrator shall pay to the Borough a penalty equal to three times any deficiency found or estimated to have occurred by the sales tax administrator; provided, the minimum penalty payment is three thousand dollars (\$3000).
- F. A person required to maintain records under the provisions of this chapter shall immediately notify the Borough of any fire, theft or other casualty that would prevent the person from complying with the provisions of this chapter. Such casualty is a defense to a civil penalty levied under subsection E. of this section, but does not excuse the person from the liability for payment to the Borough of taxes required to be collected. Accidental or unexplained loss of funds or records does not excuse a person from the performance of any of the requirements under this chapter.

**6.40.150 Forced filing.**

- A. If a collector under this chapter fails to file a complete and accurate return or to pay over all the taxes due as required by this chapter, the sales tax administrator may make an estimate of the taxes due based upon any information available. The administrator shall file a return for such collector and shall provide a copy of the return to the collector with a request that the collector file a correct return along with payment of the taxes due. The

administrator may require the collector filing the return to provide sufficient information to support the corrected return. If the collector has not filed a correct return satisfactory to the administrator, along with the taxes due, within thirty (30) days of the date of mailing of the forced filing, the amount of any deficiency remaining unpaid on the forced filing is presumed correct and is delinquent from the date originally due; provided, if upon a subsequent audit or inspection of the records of the collector, it is determined that a greater amount was due, the collector shall be liable for payment of such additional amount. A forced filing may be made if the Borough is unable to ascertain the tax due to be remitted by a collector by reason of the failure of the collector to keep accurate records or to allow inspections of the collector's records, or of the collector's falsification of records.

- B. A collector who disagrees with the determination of the administrator shown on the force filed return and refuses to file a corrected return may, within thirty (30) days of the date of mailing of the forced filing, appeal the ruling of the administrator as set out in section 210. A collector who files a corrected return under this section, but who is notified in writing by the administrator that taxes are due in excess of those admitted by the collector may appeal the ruling of the administrator as set out in section 210 but only if appealed within ten (10) days of the date of mailing of the notice from the administrator. Notice of the appeal must be received by the administrator within the time provided herein and be accompanied by payment under protest of the taxes, interest and penalty claimed by the administrator to be due.

**6.40.160 Records - Investigation and audits.**

- A. Every person required to collect the tax imposed under this chapter shall maintain, keep and preserve such records, books and accounts of all sales made by the person as may be necessary to determine the amount of tax the person is obligated to collect and pay over to the Borough. Such records, books and accounts shall be preserved for a period of five (5) years following the date all taxes involved in the accounting period were required to be paid to the Borough.
- B. For the purpose of ascertaining the correctness of a return or the amount of taxes owed when a return has not been filed, the sales tax administrator may conduct investigations, hearings and audits and to that end may examine any relevant books, papers, memoranda, records or other writings of any seller or buyer and may require the attendance and sworn testimony of any seller or buyer or any officer or employee of the seller or buyer at a hearing. Upon written demand by the sales tax administrator, a buyer or seller shall make available to the sales tax administrator in the office of the sales tax administrator such books, papers, memoranda, records and other written material as may be set out in the demand unless the sales tax administrator and the person upon whom the demand is made agree to presentation of such materials at a different place.

**6.40.170 Liens.**

- A. The tax, interest, penalties and other costs due and owing under this chapter shall constitute a lien in favor of the Borough upon the property and other assets of the collectors and taxpayers liable for the payment of the tax, interest,

penalties and other costs.

- B. The lien imposed by this section arises and attaches at the time the collector purchases fish from the selling fishermen and continues until the entire amount due has been paid.  
*(Amended by Ordinance 94-05, 5/17/94)*
- C. If delinquent sales taxes, including interest and penalties, are not paid within ten (10) days from the mailing of notice and demand for payment thereof, a notice of lien may be recorded in the appropriate district recorder's office, and upon recordation, a lien arising under this section has priority over any other liens except those for special assessments or those granted priority by state or federal law.
- D. An action to foreclose the lien created by this section shall be commenced and pursued in the manner provided for the foreclosure of liens in AS 09.45.170 - 09.45.220.
- E. The remedy provided in this section is not exclusive and shall be in addition to all other remedies available to collect the taxes, penalties, interests and costs due under this chapter.
- F. The failure to record a lien does not constitute a waiver or abrogation of any priorities, rights or interests of the Borough at law and in equity.
- G. Fees for the administrative costs of filing notices of liens and releasing of liens shall be:
  - 1. Filing of notices of lien: twenty-five dollars (\$25), plus recorder's office filing fee.
  - 2. Release of liens: twenty-five dollars (\$25), plus recorder's office filing fee.
- H. Upon full satisfaction of payment of all taxes, interest, penalties and costs due and owing to the Borough, the administrator shall file a certificate discharging the lien.

**6.40.180 Accelerated returns.**

A person who is required to file a return and pay taxes to the Borough who fails for more than thirty (30) days to file a return or pay the taxes due or who has, within a twelve (12) month period, filed or paid taxes late on two or more occasions may be required by the sales tax administrator to file and pay on a monthly basis; provided, the sales tax administrator shall provide to the person a hearing after reasonable notice of sales tax administrator's intention to require more frequent filing and payment. The person required to file and pay on a monthly basis who fails to file and pay the full amount due within ten (10) days of the date required to such filing and payment or such a person who files late two or more times during a four month period may be required by the sales tax administrator to file on a weekly or more frequent basis after written notice of intent and a hearing as provided in this section.

**6.40.190 Termination, sale or transfer of retail business.**

- A. A collector whose interest or substantial part thereof in a business registered or required to be registered under this chapter is sold, leased, assigned, or otherwise transferred either voluntarily or involuntarily to another person shall make a final sales tax return within twenty (20) days after the date of such transfer. The purchaser or other person acquiring the business shall withhold a portion of the purchase or lease money sufficient to pay any sales tax, interest and penalties which may be due, unless the seller displays a receipt from the sales tax administrator showing that all tax obligations imposed by this chapter, to the date of the sale, transfer or assignment have been paid in full. Before any such sale or transfer is completed, the buyer and seller shall send to the sales tax administrator, by registered first-class mail, postage prepaid, a copy of the notice referred to in A.S. 45.05.522, which statute is hereby made a part hereof, and said notice shall be so sent regardless of whether such notice would have otherwise have been required to have been made and sent under the other provisions of AS 45.05.510, et seq., Uniform Commercial Code--Bulk Transfers. Following receipt of said notice the Lake and Peninsula Borough shall have ninety (90) days in which to perform a final sales tax audit and assess sales tax liability against either the seller or purchaser of the business. Any purchaser, lessee, transferee, assignee or other successor-in-interest of a business who fails to provide the sales tax administrator with the notice required by this subsection shall be liable jointly and severally with the collector for such taxes, penalties and interest owed by the collector to the Borough.
- B. A person who terminates his business without the benefit of a purchaser, lessee, successor or assign, shall make a final tax return and settlement of tax obligations within fifteen (15) days after such termination.
- C. Any person who has filed a sales tax return shall be presumed to be making sales in succeeding quarters unless he or she files a subsequent return declaring the termination or transfer of the business.

**6.40.200 Personal liability of corporate officers.**

- A. At the time that a corporate business becomes delinquent in paying the collected taxes, or fails to collect taxes and remit them to the Borough as required by this Chapter, any officer or other person having control or supervision of sales tax funds collected and held in trust or who is charged with the responsibility for the filing of returns or the payment of sales tax funds collected, segregated and held in trust, shall be personally liable for any unpaid taxes and interest and penalties due from the corporation. For the purposes of this section, any sales taxes that have been paid to the Borough but not collected shall be deductible from the sales taxes collected or required to be collected but not paid. *(Amended by Ordinance 94-05, 5/17/94)*
- B. The officer or other person shall be liable only for taxes collected or required to be collected or which became due and payable to the Borough during the period he or she had the control, supervision, responsibility, or duty to act for the corporation described in subsection A. of this section, plus interest and penalties on those taxes.
- C. This section does not relieve the corporation of its liability for payment of the tax due under this chapter or otherwise impair other tax collection remedies afforded by law.

- D. Collection authority and procedures prescribed in this chapter apply to collections under this section.

**6.40.210 Protest of tax by taxpayer.**

- A. If a taxpayer believes that a transaction is exempt or otherwise not subject to the tax imposed under this chapter, but the collector has determined the transaction to be subject to the tax, the taxpayer shall pay the tax to the collector under protest. A tax is paid under protest by stating to the collector that the tax is paid under protest and requesting the collector mark any sales slips, receipts, vouchers and other evidence of the sale to indicate that the tax is paid under protest. The taxpayer shall file with the collector and with the sales tax administrator a statement of protest on a form provided to the collector by the Borough. Failure to file a complete statement of protest with both the collector and the sales tax administrator within thirty (30) days of the date of the sale or to pay the tax constitutes a waiver of the protest and of any other right of the taxpayer to challenge the tax in any other forum. The taxpayer shall clearly set out on the form the terms and conditions of the sale, the amount of the sale, the quantity of fish, other property, or services involved, the location of the sale or other transaction or the place of the performance of the rental or services, and all other information necessary to determine whether the tax does or does not apply. The form shall include the names and mailing addresses of both the taxpayer and the collector and any other party involved in the transaction and must be signed by the taxpayer.
- B. Upon receipt of a written protest, the collector shall forward the protest to the sales tax administrator along with any additional statements the collector believes may assist the sales tax administrator in determining the protest. Unless the collector records on the taxpayer's statement of protest facts different from those recorded by the taxpayer on the statement, forwarding the statement to the Borough by the collector constitutes a confirmation by the collector of the facts set out on the statement to the extent the collector has knowledge of such facts. The written protest must be forwarded to the sales tax administrator as promptly as possible, and in any case not later than thirty (30) days after delivery of the protest to the collector.
- C. The sales tax administrator shall issue a written ruling on each protest within thirty (30) days of receipt of the protest from the collector or on such later date as may be required to insure full consideration of the issues raised in the protest. The burden of proof is on the taxpayer. The sales tax administrator may seek the advice of the borough attorney on any protest. The ruling will be in writing and must set forth the reason for the grant or denial of the protest. The ruling will be sent to the collector and the taxpayer at the addresses given on the protest.
- D. If a protest is granted, the sales tax administrator shall determine whether the tax protested has been received by the Borough from the collector. If the tax has been received, the sales tax administrator shall refund directly to the taxpayer the amount of the tax to be refunded. If the tax has not been received by the Borough, the collector shall be instructed to refund to the taxpayer the appropriate amount if the collector has actually collected the tax from the taxpayer. If the challenged tax was upon the sale of raw fish, and the collector

has not yet paid for the fish, the collector shall make such adjustment as necessary to the accounts of the taxpayer to reflect the correct amount of the tax due. The collector and the taxpayer may make other arrangements for crediting to the taxpayer the amount of the refund if the collector and the taxpayer reach a mutual agreement as to such alternate procedure.

- E. In the event a protest is denied, the taxpayer may, within thirty (30) days of the date of mailing of the notice of denial, appeal the denial to the manager if the manager is not acting as the sales tax administrator. The manager shall receive such additional information, whether written or oral, as the protesting taxpayer may desire to present. The manager may also receive such additional testimony as the sales tax administrator may present. The manager shall render a decision in writing and give notice of the decision to both the taxpayer and the collector. The decision of the manager, whether acting as the manager or as the sales tax administrator, is final and is subject to judicial review on appeal of the superior court under the applicable appellate court rules.
- F. Failure to file an appeal or protest as authorized under this section within the time permitted constitutes a waiver of the appeal or protest and of any other right of the taxpayer to challenge the tax, interest, penalty or other charge directly or collaterally in any other forum.

#### **6.40.220 Protest of tax by collector.**

- A. If a collector believes that a transaction is exempt or otherwise not subject to the tax imposed under this chapter or believes that a penalty, interest or other charge is not owing but has been informed by the Borough that such transaction is subject to the tax imposed under this chapter or such penalty, interest or charge is owing, the collector may protest the tax by paying the tax owed to the Borough on or before the date due and filing with the Borough at the time of payment a statement of protest setting out all relevant facts and clearly explaining why the transaction taxed or the penalty, interest or charge made is exempt, not otherwise subject to the tax levied under this chapter or not owing. The payment and statement of protest must be received by the Borough not later than the thirtieth (30) day following the date the tax was required to be collected from the taxpayer; or, if no tax was collected, the later of the occurrence of the challenged transaction or the date of the notice from the Borough that the transaction is taxable; or, if the protest is of a disallowance, charge levied, or similar action by the Borough, the date of the notice to the collector of the Borough determination. Failure to file a statement of protest and to pay the amount claimed by the Borough as owing within the time permitted under this subsection or other section of this chapter constitutes a waiver of the right to protest to the Manager or to appeal or otherwise challenge the tax, charge or determination in any judicial or other proceeding.
- B. The sales tax administrator shall issue a written ruling on each collector protest within thirty (30) days of receipt of the protest or on such later date as may be required to insure full consideration of the issues raised in the protest. The collector has the burden of proof. The sales tax administrator may permit or require the collector to provide additional information relevant to the protest. The sales tax administrator may seek the advice of the borough attorney on any protest. The ruling on the protest must set forth the reason for the grant or denial of the protest. The ruling will be sent to the collector at the address given

on the protest.

- C. If a protest is granted, the sales tax administrator shall refund to the collector the penalty, interest or charge levied or the tax collected and paid over to the Borough that was on an exempt transaction or otherwise not subject to the tax levied or the interest, penalty or charge under this chapter. The collector shall immediately refund to each taxpayer from whom the tax was collected the amount of the tax improperly collected; provided, if the collector has failed to directly or indirectly collect the tax but has paid the tax to the Borough from its own account, the collector may retain the tax refund.
- D. In the event a protest is denied, the collector may, within thirty (30) days of the date of the notice of denial, appeal the denial to the manager if the manager was not acting as the sales tax administrator on the protest. The manager shall receive such additional information whether written or oral, as the collector may desire to present. The manager may also receive such additional testimony and material as the sales tax administrator may present. The manager shall render a decision in writing and give notice of the decision of the collector. The decision of the manager, whether acting as the manager or as the sales tax administrator, is final and is subject to judicial review by an appeal to the superior court under applicable appellate court rules.
- E. Failure to file an appeal or protest as authorized under this section within the time permitted constitutes a waiver of the appeal or protest and any other rights of the collector to challenge the tax, interest, penalty, or other charge directly or collaterally.

**6.40.230 Refund of excess payment.**

- A. A taxpayer or collector who, through a clerical or similar error, pays a tax under this chapter that exceeds the amount actually due may receive a refund of the excess payment upon meeting the conditions set out in this section 230.
- B. A taxpayer who has made an excess sales tax payment as set out in subsection A. shall be given a refund of the excess by the collector if the taxpayer
  - 1. notifies the collector of the excess payment;
  - 2. Proves to the collector that an excess payment was made; and
  - 3. Provides such notification and proof to the collector prior to the date the collector pays over to the Borough the taxes collected during the reporting period in which the claimed excess payment was made.
- C. A taxpayer who has made an excess sales tax payment as set out in subsection A. who has been denied a refund by the collector, or who did not meet the requirements of subsection B.3. or who has made an excess use tax payment may file with the sales tax administrator for a refund of the excess payment. The taxpayer must file the request for the refund and satisfactory proof of entitlement with the administrator not later than the last business day of the calendar quarter following the quarter during which the claimed excess payment was made. The manager may establish a reasonable fee for processing refund requests under this subsection.
- D. A collector who has made an excess tax payment as set out in subsection A.

shall be given a refund of the excess if the administrator receives written notices from the collector of the amount claimed as an excess payment. The administrator must receive the notice and satisfactory proof of the excess payment, in the form required by the administrator, not later than the last day upon which the collector may file a tax return under this chapter for the quarter following the quarter for which the claimed excess payment was made.

- E. Upon approval of a refund to a collector, the borough may pay the refund to the collector or authorize the collector to take the refund as a credit against future quarterly tax payments; provided, the amount taken as a credit in any one quarter may not exceed thirty percent (30%) of the taxes otherwise due from the collector for the quarter. No interest may be paid on the excess payment.
- F. A claim for a refund of an excess payment to which this section 230 applies is forever barred if notice and proof of the excess payment are not given within the time required.

#### **6.40.240 Disposition of tax information.**

Information in the possession of the Borough which was obtained by the Borough from a collector or taxpayer in the administration or enforcement of the provisions of this chapter and which discloses the particulars of the business or affairs of a collector or taxpayer or other person that is not otherwise public information is not a matter of public record. The information shall be kept confidential except when its production is required in an official borough, state or United States investigation, law enforcement action, or court proceeding. These restrictions do not prohibit the publication of tax lists showing the names of taxpayers or delinquent taxes. Information otherwise protected by this section may be furnished on a reciprocal basis to other agencies of the state or the United States concerned with the enforcement of tax laws.

#### **6.40.250 Time extensions.**

For good cause shown, the sales tax administrator may grant an extension of the time required for the performance of any act under this chapter. The extension shall be subject to such terms and conditions as the administrator finds appropriate. An application for an extension must be filed in writing before the date required for performance.

#### **6.40.260 Use tax levied.**

- A. There is levied and shall be collected a use tax equal to the sales tax set out in Section 6.40.020 on the processing, storage, consumption, transportation, or other use of property within the Borough if such property has not been the subject of a transaction otherwise taxable under this chapter had the acquisition by the user been a purchase within the Borough. The tax shall be levied and collected in an amount equal to the rate of levy times the value of the property used.
- B. A credit shall be allowed against the tax imposed by this section in an amount that the present user, the user's agent, bailer or donor has paid a sales or use tax with respect to such property in any other state or political subdivision prior

to the use of the property in the Borough. The person who processes, stores, consumes, transports, or otherwise uses property subject to taxation under this section is liable for the payment of the tax to the Borough and shall file a return, obtain a certificate of registration, and remit the taxes due in the same manner and subject to the same requirements for reporting, payment, interest, penalties, inspection of records, enforcement, administration and other applicable provisions of this chapter as are set out for the taxation of sales.

- C. Under this section, the act of transporting property within the Borough shall only be considered a taxable use when the property being transported is raw fish caught or harvested within the Borough by a person who intends to sell the fish to a buyer, irrespective of whether the buyer is located within the Borough, and irrespective of whether the person transporting such raw fish has an agreement or obligation to sell the raw fish to any particular buyer at the time the transporting of the fish within the Borough occurs.  
*(Amended by Ordinance 99-04 June 11, 1999)*

**6.40.270 Authority to contract collection.**

The manager may, with the consent of the Assembly, contract with a city or a private person to collect the taxes imposed by this chapter.

**6.40.280 Enforcement.**

- A. If sales tax is not paid when due, the Borough may enforce the payment of the tax, interest and any penalties by any method available in law, including but not limited to the lien and sale of property of the collector or taxpayer and a personal action against the delinquent collector or taxpayer.
- B. For the violation of any provision of this chapter the Borough may bring an action for civil penalties and for any violation or threatened violation an action for injunctive relief. An action for injunctive relief may be brought notwithstanding the availability of any other remedy. Upon an application for injunctive relief and a finding of violation or threatened violation of a provision of this chapter, the superior court shall grant the injunction.
- C. Each day that a violation continues is a separate violation.
- D. For the violation of any provision of this chapter the Borough may bring a criminal action without regard to whether any civil remedy is available or has been sought or obtained.

**6.40.290 Violation - Criminal enforcement.**

- A. Violation of any of the requirements of this chapter is a misdemeanor. For convictions of a violation of a provision of this chapter, a fine of not to exceed five hundred dollars (\$500) may be imposed; except, for a subsequent violation of any provisions of this chapter, whether similar to or different from the prior conviction, the maximum penalty that may be imposed is a fine of one thousand dollars (\$1000) or imprisonment for not to exceed thirty (30) days, or both, if the subsequent conviction is for a violation that occurred after, but within three years of the conviction for the prior violation.

- B. Each day upon which a violation of this chapter continues is a separate offense.
- C. The Borough may recover taxes, interest, civil penalties and other amounts due in a civil action independent of or in addition to any criminal action filed.

## Chapter 6.50 ANNUAL PERMIT FEE FOR PROFESSIONAL GUIDES

### Sections:

6.50.010	Permit Required
6.50.020	Procedure for Obtaining Permit--Fee Established
6.50.030	Estimated Fees / Forced Filing
6.50.040	Confidentiality
6.50.050	Record Keeping Required
6.50.060	Appeals
6.50.070	Borough's Duty to Issue Permit
6.50.080	Civil Penalties and Enforcement
6.50.090	Permit not Transferable
6.50.100	No Exclusive Right or Privilege
6.50.110	Compliance with Other Laws Required
6.50.120	Disposition of Permit Fees Collected
6.50.130	Severability
6.50.140	Definitions

### Section 6.50.010 Permit Required.

Professional guides must procure a permit from the borough and pay the fees provided for in Section 6.50.020 of this chapter for each year they conduct business within the borough. The permit shall be valid for a period of one year commencing on January 1st and expiring on December 31st of the year for which the permit is procured. A permit is required:

1. Hunting guides registered in guide use areas and/or game management units within borough boundaries.
2. Guiding businesses registered with any National Park or Preserve within borough boundaries.
3. Lodge Operators who provide professional guide services as defined herein in addition to lodging services or as part of a tour package shall be required to procure a professional guide permit.
4. Air taxi operators and air taxi operators who provide guiding services in addition to air taxi service within the borough.

*(Amended by Ordinance 15-03; 5/11/15)*

### Section 6.50.020 Procedure for Obtaining Permit

- A. In order to obtain a permit as required by this chapter, the professional guide must accurately and completely fill out an application form, available through the Borough, and submit within 30 days of guiding activity in the borough. The application shall be accompanied by a check payable to the Borough, and submit within 30 days of guiding activity in the borough. The application shall be accompanied by a check payable to the Borough for twenty five dollars (\$25.00) annual Application Processing Fee. The application fee is non-refundable. The \$25.00 application fee shall be applied to annual guide fee remittance. *(Amended by Ordinance 09-09; 11/14/09 & Ordinance 15-03; 5/11/15)*
- B. The Borough Tax Administrator may require that the applicant submit copies of all activity reports provided to the National Park Service, US Fish and Wildlife Service, or other Federal land management agencies, copies of fish and game harvest reports submitted to the Alaska Department of Fish and Game, copies of any occupational or business licenses required by the Alaska Department of

Fish and Game, Department of Commerce, or other State or Federal Agency, and copies of any leases or land use permits obtained from the Department of Natural Resources or other State or Federal Agency or affected private landowner in cases where the Tax Administrator has reason to believe that the professional guide has not complied with the requirements of this Chapter.

C. The following permit fees are established:

1. Professional Guides who provide guiding services only and do not provide any overnight accommodations. \$3.00 per visitor-day, to a maximum of \$750.00 per year. Professional Guides who provide guide services for lodges that are registered to pay the Hotel-Motel Room Tax under Chapter 6.90 shall pay \$1.00 per visitor day, to a maximum of \$750.00. *(Amended by Ordinance 09-09; 11/14/09)*

2. Professional Guides who provide guiding services and primitive overnight accommodations.

(a) Primitive overnight accommodations include:

1. Cabins without indoor plumbing, running water, or restroom facilities. They also include established, permanent, or semi-permanent camps that have wall tents, framed huts, or other semi-permanent shelter. Camps qualify as "established" or permanent if they contain improvements such as cooking facilities, storage facilities for equipment, food, or fuel, and improvements to provide for solid waste disposal, human waste disposal, and drinking water. These overnight accommodations must be for the exclusive use of the guide's clients and used as part of the guiding package or tour.
2. Lodge or cabin accommodations with indoor plumbing, running water, and/or restroom facilities that are for the exclusive use of the guide operator's clients and is used as part of the guiding package price.

(b) If these facilities are available for rent by the general public or if they do not qualify as primitive as defined herein, they are subject to the Borough's Hotel - Motel Room Tax (Chapter 6.90 of the Municipal Code).

(c) \$3.00 per visitor-day, but not to exceed \$750.00 per year, and

(d) \$250.00 per year for each established camp, cabin site, cabin, or lodge providing primitive overnight accommodations as defined herein. *(Amended by Ordinance 09-09; 11/14/09; Ordinance 15-03; 5/11/2015)*

3. Professional guides who carry tents, sleeping bags, stoves, and other camping gear with them and camp in the field and carry this equipment out again; taking all such equipment with them when they leave, are subject to the guiding fee established above but are exempt from the overnight accommodation fees established above. *(Amended by Ordinance 09-09; 11/14/09)*

4. The permit fee for visitor-days shall, at the option of the permittee, be based upon either (1) the actual number of visitor days that occurred during the previous calendar year, or (2) the estimated number of visitor days for the year for which the current permit is obtained. In

the event that the actual number of visitor-days is less than the number of visitor- days for which a permit fee is paid, the professional guide may apply for and receive a refund of \$3.00 for each visitor-day that is in excess of the actual visitor-days for that calendar year or, alternatively, receive an equivalent credit toward his or her permit fee for the following year. In the event that the actual number of visitor-days exceeds the number of visitor-days for which a permit fee is paid, the Professional Guide shall pay an additional \$3.00 per visitor day as a condition precedent to receiving a Professional Guide Permit for the succeeding year. *(Amended by Ordinance 09-09; 11/14/09)*

5. A professional guide who fails to obtain a permit and submit the proper fees by December 31st of a year in which he/she conducted business in the borough is prohibited from conducting business in the borough in any succeeding years until he/she has come into compliance with the requirements of this Chapter. The Borough reserves the right to exercise any and all of the remedies contained in Sections 6.50.020 (B), 6.50.030, 6.50.070 and any other applicable sections of this Chapter and State law in order to enforce the provisions herein. *(Amended by Ordinance 09-09; 11/14/09)*

#### **6.50.030 Estimated Fees / Forced Filing**

If the Borough is unable to ascertain the amount of fees due from a professional guide for any given year because the guide has failed to apply for a permit, file the required application form, provide required supplemental information, filed a false, inaccurate or incomplete application, failed to keep accurate books and records as required, or has falsified records, the Borough may make an estimate of the amount of permit fees due based upon any evidence in its possession.

The Borough shall mail by certified mail or deliver to the guide written notice of the amount of the estimate. This amount shall be presumed to correctly state the amount of permit fees due unless the guide files an accurate return with supporting documentation and transmits the amount due to the Borough not later than thirty days after the date on which the Borough mails or delivers the notice. A notice is sufficient under this section if it is either actually delivered to the guide, or if it is mailed by certified mail return receipt requested, at the guide's most current address as contained in the Borough's permit records.

#### **6.50.040 Confidentiality.**

- A. Except as provided below, all permit applications and supporting documentation filed with the Borough for the purpose of complying with the requirements of this ordinance and all associated data obtained from professional guides are confidential and shall be kept from inspection of all persons except officers, agents, and employees of the Borough. Provided however, that such applications and data obtained therefrom may be discussed by the Assembly in public session if the guide affected consents or makes a request for such discussion in writing.
- B. Information in the possession of the Borough which was obtained by the Borough from a professional guide in the administration or enforcement of the provisions of this chapter which discloses the particulars of the business or affairs of the owner that is not otherwise public information is not a matter of public record. The information shall be kept confidential except when its production is required in an official Borough, State, or Federal investigation, law enforcement

action, or court proceeding. These restrictions do not prohibit the publication of tax lists showing the names of taxpayers or delinquent taxes. Information otherwise protected by this chapter may be furnished on a reciprocal basis to other agencies of the State or Federal government concerned with the enforcement of tax laws or land use regulations.

- C. In the course of a criminal or civil action to enforce any provision of this ordinance, the Borough may allege, prove, publish, and produce for any purpose any documents and/or information previously filed with the Borough. The Borough may deliver to a professional guide or his/her authorized representative a copy of any return filed by him or on his behalf. The Borough may also publish statistics concerning the information contained in returns if the publication is done in such a manner that the information contained in a particular return cannot be identified.

**6.50.050 Record Keeping Required.**

- A. Every professional guide shall keep and preserve for a period of three years all records of business activities within the Lake and Peninsula Borough. Professional guides shall permit the Borough or its agent to examine, inspect, and copy said records, books, and accounts at any reasonable time. If the Borough initiates an enforcement proceeding against the professional guide under this Chapter, the professional guide must keep and preserve all records, even if that may exceed three (3) years, until said enforcement proceeding(s) are completed.
- B. For the purpose of ascertaining the correctness of any return, or determining the amount of permit fees due, the Borough Manager or his/her agents may hold audits, investigations, and hearings concerning any matters covered by this ordinance, and may examine any relevant books, papers, records, accounts, or memoranda of any such professional guide, and may require the attendance of any person through the issuance of a subpoena which shall be enforced under the Alaska Rules of Civil Procedure in the same manner as subpoenas issued by an officer or agency of the State.

**6.50.060 Appeals.**

- A. If a professional guide believes that he/she is exempt or otherwise not subject to the fees and requirements imposed by this chapter or believes that a penalty, interest, or other charge is not owing, but has been informed by the Borough that he/she is subject to the provisions of this ordinance or such penalty, interest, or charge is owing, the guide may protest the charge by paying the amount owed to the Borough on or before the due date and filing with the Borough at the time of payment a statement of protest setting out all relevant facts and clearly explaining why the guide is exempt or not subject to the provisions of this chapter. The payment and statement must be received not later than the 30th day following the date upon which a forced filing or other notice of violation or delinquency was mailed or delivered. Failure to file a statement of protest and to pay the amount claimed by the Borough as owing within the time permitted within this subsection or other section of this chapter constitutes a waiver of the right to protest administratively.
- B. The tax administrator shall issue a written ruling on each collector protest within thirty (30) days of receipt of the protest or on such later date as may be

required to insure full consideration of the issues raised in the protest. The guide has the burden of proof. The tax administrator may permit or require the guide to provide additional information relevant to the protest. The tax administrator may seek the advice of the Borough attorney on any protest. The ruling on the protest must set forth the specific reasons for the grant or denial of the protest. The ruling will be sent to the guide at the address given on the protest documents.

- C. If a protest is granted, the tax administrator shall refund to the guide the penalty, interest, or charge levied or the fee collected and paid to the Borough that was exempt or otherwise not subject to the provisions of this chapter.
- D. In the event a protest is denied, the guide may, within thirty (30) days of the date of denial, appeal the denial to the Borough Manager if the Manager was not acting as the tax administrator on the protest. The Manager shall receive such additional information whether written or oral as the guide may desire to present. The Manager may also receive such additional testimony and material as the tax administrator may present. The Manager shall render a decision in writing and give notice of the decision to the guide within a reasonable amount of time. The decision of the Manager, whether acting as the tax administrator or Manager, is final and is subject to judicial review by an appeal to the superior court under applicable appellate court rules.
- E. Failure to file an appeal or protest as authorized under this section within the time permitted constitutes a waiver of the appeal or protest and any other rights of the guide to challenge the fees, penalties, interest, or other charge directly or collaterally.

#### **6.50.070 Civil Penalties and Enforcement**

A person who fails to obtain a permit required by this chapter, or fails to pay the required fees, shall, in addition to the fees provided for in Section 6.50.020, be assessed a penalty equal to five percent (5%) of the permit fee for each thirty day period or fraction thereof during which the fee remains unpaid. However, the penalty provided for by this section shall not, for any given year, exceed twenty five percent (25%) of the permit fee owed. All delinquent fees and any penalties shall bear interest at the lawful rate from the date they become due. The Borough may also levy a charge to cover its administrative costs associated with collection actions including, but not limited to, actual and reasonable lawyer's fees.

To enforce payment of the required fees and any penalties, interest, and administrative costs of collection, the Borough may institute a civil action against the violator in the appropriate court for the State of Alaska and seek an injunction prohibiting the violator from operating without a permit until all required fees and other charges have been paid. The Borough reserves the right to exercise any and all additional lawful remedies available to it against violators of this chapter, including, but not limited to, the imposition of tax lien against the property and other assets of the guide or corporate officers of the company responsible for payment of the fees.

#### **Section 6.50.080 Borough's Duty to Issue Permit.**

Upon receipt of an accurate and complete permit application and payment of the required fees, the Clerk or Finance Officer shall issue the applicant a permit listing the type of permit, the person's name and address, and the dates for which the permit is

issued.

**Section 6.50.090 Permit Not Transferable.**

A permit issued pursuant to this chapter may not be assigned or otherwise transferred to any other person, business, or corporation.

**Section 6.50.100 No Exclusive Right or Privilege.**

A permit issued pursuant to this chapter confers no exclusive right or privilege upon the permittee.

**Section 6.50.110 Compliance With Other Laws Required.**

Procuring a permit pursuant to this chapter does not relieve the permittee from complying with any other applicable laws or regulations.

**Section 6.50.120 Disposition of Permit Fees Collected.**

All permit fees collected by the Borough pursuant to this chapter shall be deposited in the general fund and appropriated by the Borough Assembly.

**Section 6.50.130 Severability.**

If a court of competent jurisdiction determines that any provision of this ordinance or any application thereof to any person or circumstance is invalid, the remainder of this ordinance and its application to other persons or circumstances shall not be affected thereby.

**Section 6.50.140 Definitions.**

For the purposes of this Chapter, the following definitions apply:

1. "Person" means natural persons and includes partnerships, corporations, associations, and other business or non-profit organizations.
2. "Professional Guide" means a person who contracts to guide, lead, direct, or accompany others on hunting, fishing, sightseeing, rafting, camping, hiking or other recreational trips within the Borough. Exemptions include, 1) Lodge operators who do not engage in guiding as defined herein, 2) lodge employees who provide guide services to lodge customers pursuant to their employment by the lodge provided that the lodge itself has a valid guiding permit, 3) professional guide employees who do not directly contract with members of the public to provide guiding services, and 4) air taxi operators unless such operators provide one or more of the services listed above in addition to providing air transportation.

3. "Lodge Operator" means a person who, for compensation, operates a lodge, hotel, bed and breakfast, house or cabin within the Borough providing overnight accommodations primarily to the general public, including, but not limited to, hunters, sport fishers, hikers, rafters, sightseers, other recreational visitors, business travelers, and seasonal construction workers. It does not include persons who operate company-owned facilities used primarily to house seasonal workers employed by the company in commercial fishing or fish processing activities.
4. "Tax Administrator" means the Borough Manager or the person designated by the Manager as Tax Administrator, or the authorized agent of the Administrator.
5. "Visitor-day" means one calendar day (24 hrs.), or portion thereof, for each person who visits the Borough and participates in guided activities as described herein including guides and any other individuals associated with such visits for any part of one day ( 24 hrs. from midnight to midnight). For example, one guide, one assistant guide, and four clients visiting the Borough on September 1st at 8AM, spending 3 nights, and leaving on September 4th, equals 24 visitor days. (6 people x 4 days = 24 visitor-days).

*(Original Ordinance 92-14 3/17/92, Repealed and replaced by Ordinance 97-05, 11/18/97)*

## **Chapter 6.60 CITY SALES TAX AUTHORIZATION**

### **Sections:**

6.60.10 City Sales Tax Authorization

### **Section 6.60.010 City Sales Tax Authorization**

Pursuant to the requirements imposed upon cities by Alaska Statutes Subsection 29.45.700(a), incorporated cities within the Lake and Peninsula Borough may levy and collect sales and use taxes up to, but not exceeding, 3% of the sale of goods and services on all sources except (1) food coupons, food stamps, or other type of certificates issued under 7 U.S.C. 2011-2025 (Food Stamp Act); or (2) food instruments, food vouchers, or other type of certificate issued under 42 U.S.C. 1786 (Special Supplemental Food Program for Women, Infants, and Children), subject to the following conditions:

1. Any sales or use tax or change in the rate thereof imposed under authority of this ordinance, before becoming effective, must be ratified by a majority of the qualified voters voting on the question of whether such a sales or use tax shall be imposed and;
2. The collection and enforcement of any sales or use tax imposed under authority of this ordinance shall be the sole responsibility of the city imposing the tax.

*(Established by Ordinance 92-15, 5/19/92)*

## **Chapter 6.71 SCHOOL ENDOWMENT FUND**

### **Sections:**

6.71.010	School Endowment Fund Established
6.71.020	School Endowment Fund Advisory Board Established
6.71.030	Duties of the Board
6.71.040	Fund Utilization
6.71.050	Powers and Duties of the Borough Manager

### **6.71.010 School Endowment Fund Established**

- A. There is established as a separate endowment trust fund the Lake and Peninsula Borough School Endowment Fund, hereinafter called "the fund".
- B. The principal of the fund shall consist of:
1. The balance of the School Endowment Fund on July 1, 1992, originally created as a special revenue fund by Ordinance No. 92-10 on December 17, 1991.
  2. Transfers or direct appropriations from other Borough funds made by the Borough Assembly in the course of adopting the Borough's annual budget or amendments thereto.
  3. Contributions or appropriations from the Lake and Peninsula School District and other governmental entities.
  4. Gifts, bequests and contributions of cash or other assets from individuals or private organizations.
- C. Notwithstanding the provisions of A and B of this section, the Borough Assembly may appropriate the assets of this fund for principal and interest payments on school related general obligation bonds to prevent an impending default.  
*(Amended by Ordinance 94-07 on August 16, 1994)*

### **6.71.020 School Endowment Fund Advisory Board Established**

- A. The School Endowment Fund Advisory Board is established and shall be composed of the following members:
1. The Mayor of the Lake and Peninsula Borough
  2. The President of the Lake and Peninsula School Board
  3. A member of the Lake and Peninsula Borough Assembly appointed by the Borough Assembly
  4. A member of the Lake and Peninsula School Board appointed by the School Board
  5. A member of the public at large appointed by the Lake and Peninsula Borough Assembly with the concurrence of the Lake and Peninsula School Board
- B. Each member shall serve on the School Endowment Fund Advisory Board until the end of their term of office. In the case of the member appointed from the public at large, their term shall be three years and renew in November of each year. *(Amended by Ordinance 15-09, May 11, 2015)*

- C. The board shall elect a member to chair the board.
- D. The Borough Manager shall serve as staff to the board.
- E. The members of the board shall serve without compensation, but shall be entitled to receive per diem and travel expenses in accordance with Lake and Peninsula Borough policies for its staff and elected and appointed officials.

**6.71.030 Duties of the Board**

- A. The board created in Section 6.71.020 shall act as an advisory board to the Borough Assembly, and shall have the following duties:
  - 1. Hold regular meetings and special meetings as considered necessary; the board may hold meetings by teleconference.
  - 2. Recommend specific alternatives for utilization of income from the School Endowment Fund that will support or enhance the education of students in the Borough's public schools by funding educational programs and projects administered in those schools by the Lake and Peninsula Borough School District.

**6.71.040 Fund Utilization**

- A. The fund is available for use under three conditions:
  - 1. The principal of the fund and any investment earnings realized by the fund shall be retained perpetually until such time as the fund reaches a sufficient level that its annual investment earnings will satisfy the Borough's annual statutory contribution requirement to the School District. Once that level is reached, that portion of the investment earnings and accumulated principal not needed to fully fund the statutory contribution requirement may be appropriated by the Borough Assembly in accordance with the purposes set forth in item "B" of this Section.
  - 2. The Borough Assembly may appropriate the assets of this fund for principal and interest payments on school related general obligation bonds to prevent an impending default.
  - 3. Should the Lake and Peninsula School District estimated budget expenditures exceed revenues, only the current year's interest on the fund may be utilized to make up all or part of the school district budget deficit if approved by concurrent resolutions from both Lake and Peninsula Borough Assembly and Lake and Peninsula School Board. *(Amended by Ordinance 15-09, May 15, 2015)*
- B. Funds may be used for the following purposes only:
  - 1. To satisfy or help satisfy the Borough's annual local contribution to the School District as required by AS 14.17.025.
  - 2. To support or enhance education within the Borough in accordance with the recommendations of the School Endowment Fund Advisory Board and/or as authorized by concurrent resolutions passed by the Lake and Peninsula Borough Assembly and the Lake and Peninsula School Board. *(Amended by Ordinance 94-07 3/16/97, Ordinance 15-09, May 15, 2015)*

### **6.71.50 Powers and Duties of the Borough Manager**

The Borough Manager is the treasurer of the fund and has the following power and duty to:

1. Act as the official custodian of the cash and investments belonging to the fund by securing adequate and safe custodial facilities.
2. Receive all items of cash and investments belonging to the fund.
3. Collect the principal and income from investments owned or acquired by the fund and deposit the amounts in separate principal and income accounts for the fund.
4. Invest and re-invest the assets of the fund in accordance with such general investment policies as are or may be authorized by the Borough Assembly.
5. Maintain accounting records of the fund in accordance with investment accounting principles and with distinction between the principal and income accounts of the fund.
6. Engage an independent audit firm of certified public accountants to annually audit the financial condition of the fund's investments and investment transactions.
7. Enter into and enforce contracts or agreements considered necessary for the investment purposes of the fund.

## Chapter 6.72 CAPITAL PROJECTS FUND

### Sections:

- 6.72.010 Capital Projects Fund Established
- 6.72.020 Distribution and Expenditure Criteria

### **6.72.10. Capital Projects Fund Established** (*Ordinance 92-24, 12/15/92*)

There is established a capital projects fund to be known as the Lake and Peninsula Borough Capital Projects Fund, hereinafter called "the fund", to account for assets held by the Lake and Peninsula Borough for the purpose of assisting communities within the Borough in the design, construction, renovation, or acquisition of major capital projects and facilities to serve the needs of the communities and residents of the Lake and Peninsula Borough. The assets of the fund shall include and consist of:

1. The balance of the Lake and Peninsula Borough Capital Projects Fund on July 1, 1992, originally created as a capital projects fund by Ordinance No. 92-12, on December 17, 1991.
2. Transfers or direct appropriations from other Borough funds made by the Borough Assembly in the course of adopting the Borough's annual budget or amendments thereto.
3. Contributions or appropriations from the Lake and Peninsula Borough School District and other governmental entities.
4. Gifts, bequests, and contributions of cash or other assets from individuals or private organizations.

### **6.72.020 Distribution and Expenditure Criteria**

Distributions or expenditures of the assets of the Capital Projects Fund shall be made in a non-discriminatory manner for the public purpose of benefiting the communities and residents of the Lake and Peninsula Borough in accordance with established criteria, which shall be adopted and amended by resolution of the Borough Assembly. Criteria set forth by resolution shall include guidelines, conditions, qualifications, and restrictions relating to the distribution, expenditure or other use of fund assets, which may include direct appropriations, grants, loans, or any combination thereof, for the benefit of communities and residents of the Lake and Peninsula Borough. No distribution or expenditure of fund assets shall be made without prior formal approval of the Borough Assembly.

## Chapter 6.73 BOROUGH PERMANENT FUND

### Sections:

- 6.73.010 Borough Permanent Fund Established
- 6.73.020 Findings
- 6.73.030 Board of Trustees
- 6.73.040 Investment Responsibilities of the Board
- 6.73.050 Annual Budgeted Fund Transfers
- 6.73.060 Disposition of Fund Income
- 6.73.070 Disposition of Fund Principal

### **6.73.10 Borough Permanent Fund Established** (*Ordinance 92-25, 2/16/93*)

There is established an expendable trust fund to be known as the Lake and Peninsula Borough Permanent Fund, hereinafter called "the fund", to account for assets held in reserve by the Lake and Peninsula Borough for the purpose of preserving a portion of the Borough's revenues to be used for the benefit of Lake and Peninsula Borough residents and for the future financial needs of the Borough in accordance with the policies and requirements set forth in this chapter. The assets of the fund shall include and consist of:

1. The balance of the Lake and Peninsula Borough Reserve Fund on July 1, 1992, originally created as a special revenue fund by Ordinance No. 92-11 on December 17, 1991.
2. Transfers or direct appropriations from other Borough funds made by the Borough Assembly in the course of adopting each annual Borough budget or amendments thereto.
3. Contributions or appropriations from the Lake and Peninsula Borough School District and other governmental entities.
4. Gifts, bequests, and contributions of cash or other assets from individuals or private organizations.

### **6.73.20 Findings**

The Borough Assembly finds with respect to the need for and purpose of a Borough Permanent Fund that:

1. It is the goal of the Borough Assembly that an amount equal to not less than twenty percent (20%) of the total annual revenues from the Borough's sales and use tax on raw fish should be set aside and preserved for the benefit of the residents of the Borough and as a reserve for the future financial needs of the Borough;
2. Assets deposited into the fund from budgeted Borough appropriations and other legal sources should be continued annually until the fund balance reaches at least \$20 million;

3. The assets of the fund should be invested so as to preserve the safety of the principal while maximizing the earnings on those assets;
4. A sufficient portion of the interest earnings of the fund to make it inflation proof should be re-deposited annually into the fund and become part of the fund balance;
5. Interest earnings in excess of amounts needed to make the fund inflation proof should either be re-deposited into the fund or appropriated through the annual budget process for the benefit of Borough residents;
6. Expenditures made from appropriated interest earnings should be used to finance programs that directly benefit individual Borough residents;
7. Those assets that come to comprise the principal amount of the fund should be appropriated and expended or otherwise reduced only if approved by at least a two-thirds majority of the qualified voters of the Borough who vote in any general or special election in which the ballot contains a proposition to so appropriate and expend or otherwise reduce the principal amount of the fund unless those assets are determined by the Assembly to be needed for the payment of principal and interest on general obligation bonds to prevent an impending default. *(Amended by Ordinance 94-02, 3/15/94)*

#### **6.73.030 Board of Trustees**

The Borough Assembly shall sit as the Board of Trustees for the fund, and shall direct the management and investment of the fund in accordance with this chapter.

#### **6.73.040 Investment Responsibilities of the Board**

The prudent-man rule shall be applied by the board in the management and investment of fund assets. The prudent-man rule as applied to investments of fund assets means that, in making investments, the board shall exercise the judgment and care under the circumstances then prevailing that a person of ordinary prudence, discretion, and intelligence could be expected to exercise in the management of large investments entrusted to him, considering the probable safety as well as probable income of the investments.

#### **6.73.050 Annual Budgeted Fund Transfers**

Each year until the balance of the fund equals or exceeds \$20 million, the Borough Manager shall propose in the budget submitted to the Assembly a transfer from the anticipated Borough General Fund revenues equal to not less than twenty percent (20%) of the total anticipated revenues from that year's sales and use tax on raw fish. If the actual amount of revenue collected from the sales and use tax on raw fish falls below the total amount anticipated in the budget, the amount to be deposited in the fund shall be reduced to the extent necessary to ensure that amounts appropriated from the sales and use tax on raw fish for other funds and operating needs of the Borough will be sufficient to meet such appropriation levels. Notwithstanding the provisions of this section 6.73.050. the Borough Manager shall not propose the transfer

of raw fish sales and use tax revenues from the Borough General Fund to the fund if those revenues are needed for the payment of principal and interest on general obligations bonds to prevent an impending default. *(Amended by Ordinance 94-02, 3/15/94)*

#### **6.73.060 Disposition of Fund Income**

- A. Fund income shall be computed annually as of the last day of the fiscal year in accordance with generally accepted accounting principles, excluding any unrealized gains or losses. An amount of the fund income sufficient to inflation-proof the fund shall be re-deposited into the fund and become part of the fund balance. The amount to be re-deposited into the fund for inflation-proofing shall be based upon the Anchorage Consumer Price Index, all Urban Consumers, for the immediately preceding year.
- B. Fund income not needed to inflation-proof the fund shall be transferred to an earnings reserve account within the fund and become available to be appropriated for eligible expenditures by the Borough Assembly through the Borough's annual budget process for the immediately succeeding fiscal year. Income from the investment of the earnings reserve account shall be treated as an addition to that account. Any earnings reserve account balance that is not appropriated through the annual budget or amendments thereto shall, without further action by the Borough assembly, lapse into and be added to the principal balance of the fund.
- C. Distributions or expenditures of the income from the fund shall be made in a non-discriminatory manner for the public purpose of financing programs that directly benefit individual residents of the Lake and Peninsula Borough in accordance with established criteria, which criteria shall be adopted and amended by resolution of the borough Assembly. Criteria set forth by resolution shall include guidelines, conditions, qualifications, and restrictions relating to the distribution, expenditure or other use of fund income, which may include direct appropriations, grants, loans, or any combination thereof, for the direct benefit of individual residents of the Lake and Peninsula Borough. No distribution or expenditure of fund income shall be made except as authorized in the annual Borough budget or amendments thereto.

#### **6.73.070 Disposition of Fund Principal**

Those assets that become part of the principal balance of the fund shall be held in trust for the purpose of producing income to be used for the direct benefit of individual residents of the Lake and Peninsula Borough except to the extent that the expenditure or distribution of the fund principal or some designated portion thereof may be approved for some other clearly specified Borough use or purpose by a two-thirds majority of the qualified voters of the Borough who vote in any general or special election in which the ballot contains a proposition to so appropriate and expend or otherwise reduce the principal amount of the fund. Notwithstanding the provisions of the subsection 6.73.070, the borough Assembly may appropriate the assets of the fund for the payment of principal and interest on general obligation bonds to prevent an impending default. *(Amended by Ordinance 94-02, 3/15/94)*

## **Chapter 6.74 Preschool Education Fund**

### **Sections:**

- 6.74.010 Preschool Education Fund Established
- 6.74.020 Fund Utilization

### **6.74.010 Preschool Education Fund Established.**

There is established a fund to be known as the Lake and Peninsula Borough Preschool Education Fund, hereinafter called “the fund”, to account for assets held by the Lake and Peninsula Borough for the purpose of assisting the Lake and Peninsula School District in providing for the education of students enrolled in the preschool program administered by Lake and Peninsula School District. The assets of the fund shall include and consist of:

- A. Transfers or direct appropriations from Lake and Peninsula Borough on July 1, 2015 of \$100,000
- B. Transfers or direct appropriations from Lake and Peninsula School District on July 1, 2015 of \$100,000
- C. Transfers or direct appropriations from other Borough funds made by the Borough Assembly in the course of adopting the Borough’s annual budget or amendments thereto.
- D. Contributions or appropriations from the Lake and Peninsula Borough School District and other governmental entities.
- E. Gifts, bequests, and contributions of cash or other assets from individuals or private organizations

### **6.74.020 Fund Utilization.**

Distributions or expenditures of the assets of the Preschool Education Fund shall be made in a non-discriminatory manner for the public purpose of benefiting the education of Lake and Peninsula School District students under the age of 5 years old. Funds may only be used to support or enhance education as advised by the Lake and Peninsula School Board and authorized by the adopting of the Borough’s annual budget or amendments thereto.

*(Section Established by Ordinance 15-21 8/18/15)*

## **Chapter 6.75 Career and Technical Education Fund**

### **Sections:**

- 6.75.010      Preschool Education Fund Established
- 6.75.020      Fund Utilization

### **6.75.010      Career and Technical Education Fund Established.**

There is established a fund to be known as the Lake and Peninsula Borough Career and Technical Education Fund, hereinafter called “the fund”, to account for assets held by the Lake and Peninsula Borough for the purpose of assisting the Lake and Peninsula School District in providing for the education of students enrolled in the preschool program administered by Lake and Peninsula School District. The assets of the fund shall include and consist of:

- A. Transfers or direct appropriations from Lake and Peninsula Borough on July 1, 2015 of \$54,000
- B. Transfers or direct appropriations from other Borough funds made by the Borough Assembly in the course of adopting the Borough’s annual budget or amendments thereto.
- C. Contributions or appropriations from the Lake and Peninsula Borough School District and other governmental entities.
- D. Gifts, bequests, and contributions of cash or other assets from individuals or private organizations

### **6.75.020      Fund Utilization.**

Distributions or expenditures of the assets of the Career and Technical Education Fund shall be made in a non-discriminatory manner for the public purpose of benefiting the vocational and technical education of Lake and Peninsula School District students. Funds may only be used to support or enhance education as advised by the Lake and Peninsula School Board and authorized by the adopting of the Borough’s annual budget or amendments thereto.

*(Section Established by Ordinance 15-22 8/18/15)*

## **Chapter 6.80 BOROUGH LANDS AND RESOURCES**

### **Article I. In General**

Sections:

- 6.80.010 Policy / Purpose
- 6.80.020 Land Management Division - Established
- 6.80.030 Applicability of Chapter
- 6.80.040 Definitions

### **Article II. Acquisition of Land and Resources**

Sections:

- 6.80.050 Acquisition of Land and Resources-General Policy
- 6.80.060 Acquisition of Lands and Resources - Resolution Contents

### **Article III. Borough Land Bank(s) Established**

Sections:

- 6.80.070 Land Bank - Established - Purpose
- 6.80.080 Land Bank - Deposit
- 6.80.090 Land Bank Withdrawal - Procedure

### **Article IV. Disposal of Borough Lands and Resources**

Sections:

- 6.80.100 Classification and Reclassification of Borough Lands
- 6.80.110 Disposition of Borough Land
- 6.80.120 Methods of Disposition
- 6.80.130 Notice of Disposition
- 6.80.140 Terms of Land Sale
- 6.80.150 Conveyance of the Land
- 6.80.160 Lease - Types
- 6.80.170 Lease - Terms and Conditions
- 6.80.180 Granting Rights-of-Way and Easements
- 6.80.190 Forest and Timber Resources
- 6.80.200 Temporary Use of Borough Land
- 6.80.210 Casual Use of Borough Land
- 6.80.220 Sand, Gravel, and Materials - Negotiated Sale - Small Quantities
- 6.80.230 Sand, Gravel, and Materials - Commercial Quantities
- 6.80.240 Trespass on Borough Land

### **Article V. General Conditions**

Sections:

- 6.80.250 Exceptions to Chapter - Procedure - Assembly Authority
- 6.80.260 General Conditions

## **Article I. In General**

### **6.80.010 Policy / Purpose**

- A. It is the policy of the Lake and Peninsula Borough to manage all Borough owned lands and resources and any interests in lands and resources it may acquire to provide for:
1. The efficient acquisition, management, classification, and disposal of Borough lands;
  2. The promotion of orderly, appropriate and sustainable economic and community development that is compatible with existing uses, economic activities, and Borough land use values;
  3. The protection and orderly management of the Borough's natural resources;
  4. The preservation and conservation of Borough lands and resources for wildlife habitat, scenic values, recreation, subsistence, historic preservation, a healthy and sustainable economy, and other values;
  5. The retention of Borough lands essential for health, safety, and education needs;
  6. The orderly disposal or retention of lands and resources or interests in lands and resources in a manner which is fair to all and consistent with the wishes of Borough residents.
  7. Management of possible risks created by conveyance of property by the Borough including, without limitation, the risk of liability for environmental claims. *Added by Ordinance 10-02, March 12, 2010*
- B. The purpose of this chapter is to provide procedures for the acquisition, management, classification, and disposal of Borough lands and resources. This chapter may not be deviated from except by a declaration of emergency by the Mayor or Governor, by ordinance, or as provided for in Section 6.80.250 of this Chapter.

### **6.80.020. Land Management Division - Established**

The Manager is authorized to establish the division of land management subject to funding by the Assembly. The land management division shall manage Borough land in accordance with this chapter, the Borough comprehensive plan, the Borough coastal management plan, the Borough subdivision ordinance and any other applicable plans, ordinances or regulations promulgated pursuant to Chapter 1.20.120 of the Borough code. The division of land management shall be administered by the land management officer under the supervision of the Manager. The land management division shall be the managing authority for all Borough land unless the Manager has designated another Borough department as the managing authority for a specific parcel of land. In the event that a vacancy occurs in the land management officer position or if the Assembly does not fund this position for budgetary reasons, all duties described herein fall to the Manager, his/her designee or to Borough staff assigned these duties by the Borough Manager.

### **6.80.030 Applicability of Chapter**

This chapter shall apply to all acquisitions of land and resources by the Borough;

whether that be an ownership interest or otherwise, and all dispositions of Borough land and resources including disposal of ownership interest, leasehold interest, permit, or other interests.

#### **6.80.040 Definitions**

- A. For the purposes of this chapter, unless the context otherwise requires, any word or term not interpreted or defined by this section shall be used with a meaning of common or standard utilization.
- B. The following words and phrases shall have the meanings respectively ascribed to them by this section:
  - 1. "Borough land" means land or an interest in land to which the Borough holds legal/ equitable title or delegated management authority.
  - 2. "Casual use" means a use of Borough land that is nonexclusive and involves only minimal disturbance to the land. Nonexclusive examples of a casual use are hiking, cross country skiing, snow machining, dog mushing, hunting and fishing, subsistence activities, and the use of all terrain vehicles on existing trails or under conditions that will not cause damage to the land or vegetation. However, consistent use for established hunting camps, mining camps, or other more intensive uses do not constitute a casual use. Permits or leases are required for these activities.
  - 3. "Commercial" means a land classification for lands that are suitable for development or the location of service oriented facilities such as stores, offices, medical clinics, restaurants, lodges, guiding operations, service stations, hotels, and other commercial or business activities. Commercial lands must be able to support on-site water and sewer systems or be capable of receiving water and/or sewer service. In general, with the exception of remote lodges, lands classified commercial should be near public utilities and in close proximity to established Borough communities.
  - 4. "Conservation" means a land classification for lands that have important habitat values, flora and fauna, ecological systems, and/or biological processes that must be maintained in order to conserve the natural resources which support the economy of the Borough and lifestyle of its residents. Limited development and use is permitted on conservation lands provided that the impacts, including cumulative and secondary impacts, of such activities do not adversely affect the values and resources the Borough wishes to maintain.
  - 5. "Conservation easement" refers to a land classification for lands that have similar values and characteristics to lands classified "conservation" or "preservation". These lands require an increased and more permanent level of protection because of their high habitat values and because the potential for overuse and/or conflicts between user groups is great. Lands classified conservation easements have been placed in the conservation easement land bank. The Borough will make them available to public and private groups who wish to purchase conservation easements on them for the purpose of insuring that they will be permanently protected. So long as conservation easements exist for these lands, they will be managed according to the conditions and stipulations contained in the easement documents.
  - 6. "Date of sale" means the calendar year for which the sale is scheduled to take place, not the date of closing.
  - 7. "Dedication" means the deliberate grant of land by the owner to the public

for any general and public use, with the owner reserving no other rights than those compatible with the full exercise and enjoyment of the public uses to which the property has been devoted. The Borough must formally accept all dedications.

8. "Easement" means an interest held by one party in land or another whereby the first party is accorded partial use of such land for a specific purpose. An easement restricts but does not extinguish the rights of the fee owner to the use and enjoyment of his land.
9. "Emergency" means an unforeseen circumstance which demands immediate action.
10. "Environmental Claims" means all claims and threatened claims against the Borough, or its officers and agents, which assert that the Borough is or may be liable for remediation, damages or other costs arising out of the presence of Hazardous Substance on current or former Borough property, by reason of the Borough being or having been an owner, former owner, lessor or permitting authority with regard to that Borough land. *Added by Ordinance 10-02, March 12, 2010*
11. "Fair market value" means the estimated price that land would bring in an open market and under the then prevailing market conditions in a sale between a willing seller and a willing buyer both conversant with the property and with prevailing general price levels.
12. "Fair market rental value" means the estimated rental price that land would rent for in an open market and under the then prevailing market conditions in a lease between a willing lessor and a willing lessee both conversant with the property and with the prevailing general rent levels.
13. "Final decision" or "selected approved" means lands acquired under the Borough's general municipal land grant entitlement and have been approved by receipt of a final decision from the state, but patent has not yet been issued to the Borough. Management authority for these lands has been passed from the state to the Borough.
14. "General grant land entitlement" means a grant of land pursuant to A.S. 29.65 and also may be referred to as "municipal entitlement land".
15. "Geophysical hazard" includes, but is not limited to, a natural hazard such as an earthquake, slumping, flooding, erosion, volcanic eruption, or avalanche.
16. "Government" means a land classification for lands that may be needed or required for use by a federal, state, or local governmental entity. Such uses may include existing and future school sites, sites for service area facilities, or any governmental use determined to be beneficial to the public.
17. "Hazardous Substance" means substances which under federal or Alaska law are regulated or controlled and, if misused or mishandled, could make the Borough liable as a potentially responsible person for all or part of the cost of remediating the misuse or mishandling of those substances. The term includes anything that is a hazardous substance under Alaska law. *Added by Ordinance 10-02, March 12, 2010*
18. "Heavy Industrial" means a land classification for lands suitable for processing chemicals or manufacturing or processing raw materials, fish processing plants, distilleries, or other uses that may discharge water, create hydrocarbons, excessive noise, odors, danger of explosions, or waste material, making them incompatible with most other land uses. In general, heavy industrial lands should not be located in or immediately adjacent to residential developments. The parcels should be of sizes reasonably appropriate to accommodate the activities and should include sufficient buffer zones for the activity associated with this class of use. Appropriate access shall be available or feasible without going through residential areas.

The lands shall be in a location that is reasonably convenient to conduct the activity.

19. "Institutional" means a classification for lands which may be of value for the location of churches, private schools, clubs, associations, nonprofit organizations, cemeteries etc.
20. "Light industrial" means a classification for lands suitable for industrial uses that generally do not have offensive characteristics (pollution, noise, dust etc.) and can be conducted primarily inside closed buildings. Such uses may include warehousing and light manufacturing.
21. "License" means permission to do something which without the license would not be allowable. A license does not grant any interest in the land.
22. "Manager" means the Borough Manager or his/her designee.
23. "Long Term Lease" means a Borough land lease for a period of more than five years.
24. "Materials" means common varieties of sand, gravel, rock, pumice, clay, sod, etc.
25. "Person" means any person, firm, corporation, or partnership.
26. "Preservation" means a land classification for lands which should be maintained in their natural state for the purposes of providing for the protection of important natural features, natural resources, archaeological sites, easements or buffers, green belts, watersheds, wetlands, or aesthetic values.
27. "Public purpose" or "public use" means a present or future purpose or use of land that will promote the health, safety, general welfare, security, prosperity and happiness of the residents of the Borough as a community at large.
28. "Public utility" means an agency that is licensed, authorized, and regulated to provide utility services for public use.
29. "Public utility easement" means a portion of land reserved for the purpose of providing utility services by an agency or public utility.
30. "Publish" means appearing in a newspaper of general circulation distributed in the Borough.
31. "Qualified appraiser" means a real estate appraiser or firm that employs an appraiser that is in good standing and is certified by the State of Alaska and by the Alaska Association of Assessing Officers.
32. "Recreational" means a land classification for lands located in areas where recreational uses exist, the potential for recreational uses is high and/or recreation is considered to be one of the highest and best uses of the land. This may include both indoor and outdoor uses such as gun ranges, camping areas, snow machining, dog mushing, skiing, boating, fishing, etc. This classification may also apply to lands which provide access to these activities. Site conditions for any authorized use must be appropriate and suited for such uses. If recreational lands are offered for sale or lease, then restrictions may be imposed for appropriate uses given existing conditions and surrounding uses. The transactions must also address public use and access.
33. "Residential" means a land classification for lands that are suitable for single family or multifamily housing development of a permanent nature. Lands classified residential should either be located adjacent to existing communities, be necessary for future community development, or be identified as a necessary and practical site for a new community. Residential parcels must be able to support on-site water and sewer systems or be capable of receiving water and/or sewer service. They should have legal and feasible physical access, suitable terrain, and be compatible with surrounding uses.
34. "Resource" means sand, gravel, timber, peat, soil, rock, water, or other

- natural material having an economic value.
35. "Resource development" means a land use classification for lands which contain resources of sufficient volume and quality and located in an area so that on-going development or production of those resources would yield an overall net economic return. Lands so classified may be sold or leased subject to appropriate restrictions concerning operations or future reclamation. Lands so classified may be retained by the Borough and resources on those lands may be sold or permitted for use.
  36. "Resource management" means a land use classification for lands that have resources which may be extracted as an interim use in a manner which will not create a negative impact on the most appropriate use(s) or existing uses of the land. This classification is not exclusive and may overlap with other classification. It requires the Borough to manage for multiple uses.
  37. "Settlement" refers to a land use classification for lands that are suitable for temporary, seasonal, or recreational cabins.
  38. "Short term lease" means a Borough land lease for a period not to exceed twenty-five (25) years. *Amended by Ordinance 10-02, March 12, 2010*
  39. "Subdivision" means the division of a parcel of land into two or more lots or other division for the purpose of sale or development. This includes resubdivision and relates to the process of subdividing. It does not include cadastral plats, cadastral control plats, open-to-entry plats, or remote parcel plats created by or on behalf of the state unless these plats include easements or other public dedications.
  40. "Temporary use" means a use of Borough land or resources that is either exclusive or nonexclusive, but not subject to an authorized lease, easement, license, permit or commercial sale of Borough land or resources. Examples of a temporary use are access agreements for construction or other purposes, one day only events, staging areas, etc.
  41. "Trespass" means the unauthorized use or possession of Borough land.
  42. "Unintentional trespass" means the inadvertent location of a structure on Borough land.
  43. "Utility/Transportation" means lands which may be of value for airports, port and harbor facilities, power lines, pipelines, utility services, rights-of-way, easements and related activities but does not include general and production facilities for oil, gas, and electricity.
  44. "Waste handling" means a land classification for lands with suitable characteristics and location for the express purpose of providing facilities to handle solid waste, recyclable materials, transfer stations, junked or wrecked vehicles, demolition refuse, septic and sewage waste, and industrial waste.
  45. "Unapproved selection" or "unapproved lands" means those lands selected under the Borough's general land grant entitlement for which approval has not been obtained from the state.

## **Article II. Acquisition of Land and Resources**

### **6.80.050 Acquisition of Land and Resources - General Policy**

- A. The Borough may acquire lands and resources inside or outside its boundaries by any lawful means.
- B. Lands or interest in lands and resources may be acquired without Assembly

approval by the following methods:

1. Tax foreclosure;
  2. Judgments entered by a court of competent jurisdiction as a result of legal action in which the Borough is a party;
  3. Dedications pursuant to the platting authority of the Borough planning commission.
- C. The acquisition of lands or interest in lands or resources subject to Assembly approval by resolution includes:
1. Negotiated purchase, which shall be subject to both approval of the purchase and appropriation of funds;
  2. Negotiated lease, which shall be subject to both approval of the terms and conditions of the lease and appropriation of funds each budget year;
  3. Negotiated exchange or trade of Borough lands or interest in lands or resources for other lands or interests in lands or resources;
  4. Grant, gift, or dedication not involving the platting authority of the Borough planning commission;
  5. Exercises of the powers of eminent domain and declaration of taking;
  6. Municipal entitlement in accordance with Alaska law;
  7. Compromise or settlement of claims;
  8. Public purpose and expansion in accordance with AS 38.05.810 et. seq.;
  9. All other lawful methods of acquiring lands or interests in lands and resources.
- D. Any offer to acquire land for the Borough shall be in writing and shall be signed by the Borough Manager.

#### **8.60.060 Acquisition of Lands and Resources - Resolution Contents**

- A. Assembly approval of the acquisition of lands or interests in lands or resources shall be by resolution upon receipt of a planning commission recommendation.
- B. A resolution placing the question of the acquisition of lands or interest in lands or resources before the Assembly shall set forth:
1. The purpose of the acquisition;
  2. The proposed land classification;
  3. A description of the lands or interests in lands or resources concerned;
  4. The terms, conditions, valuation, or other relevant considerations for the proposed acquisition.
- C. Subsection B (4) of this section may be waived when the acquisition is in compromise or settlement of claims, and the Borough attorney asserts that the public disclosure of those facts would not be in the best interest of the Borough. Upon such assertion, any Assembly member may call for an executive session for the sole purpose of receiving a report by the Borough attorney or Manager regarding the facts or reasons upon which the assertion was made.

### **Article III. Borough Land Bank(s) Established**

#### **6.80.070 Land Banks - Established - Purpose**

- A. There is hereby established a land bank for the purpose of holding appropriately classified lands or interests in lands or resources which have been requested or recommended for sale or lease. Said lands shall be held in the land bank until authorized for disposition pursuant to Section 6.80.090.
- B. There is hereby established a conservation easement land bank. The conservation easement land bank is created for the purpose of holding lands that have been identified as needing a higher and more permanent level of protection and/or management. Lands placed in the conservation easement land bank will generally be lands that need protection from possible overuse, development or habitat destruction, have extremely high habitat or scenic values and/or have the potential for conflict between user groups. Lands placed in the conservation easement land bank will be made available to corporations, organizations, and individuals who wish to purchase conservation easements on them to insure their long term protection.

#### **6.80.080 Land Banks - Deposit.**

- A. Only appropriately classified lands or interests in lands or resources shall be deposited in the land banks.
- B. The Borough Manager is authorized to deposit appropriately classified lands into the land bank on an on-going basis.
- C. Any person may also submit a request for appropriately classified lands to be deposited in the land bank. Said request shall be submitted on a form provided by the Borough. A filing of a request for deposit does not give or imply any right or preference to the land.
- D. If the application is incomplete as determined by the Manager, it will be returned to the applicant. In the event an application is returned to the applicant, the review process begins on the date of resubmittal.
- E. The Manager shall maintain a list of lands held on deposit pending disposition.
- F. Deposit in the land bank does not necessarily imply that a parcel will be authorized for disposal.

#### **6.80.090 Land Bank Withdrawal - Procedure**

- A. The Assembly may by resolution establish a schedule for land disposals and bank withdrawals along with any rules, regulations, and criteria necessary to govern disposals.
- B. The list maintained pursuant to Section 6.80.080 (E) shall be reviewed by the planning commission once per year or upon request by the Assembly. The list shall contain a parcel number, legal description, general location, classification, and fair market value or fair market rental value. After review, the planning commission shall forward any recommendations it may have to the Assembly.

- C. By ordinance, the Assembly may authorize the withdrawal of land from the land bank(s). The ordinance shall set the date, time, place, and method of disposal as prescribed under this chapter.

#### **Article IV. Disposal of Borough Lands and Resources**

##### **6.80.100 Classification and Reclassification of Borough Lands.**

- A. The classification of Borough owned property is required for the purposes of review, plan implementation, and management. The classification system designates the most appropriate and highest and best uses for Borough lands and thereby guides Borough management decisions and implementation actions to provide for identified uses.
- B. All lands or interests in land or resources owned by the Borough shall be classified or reclassified in a manner consistent with the purposes and policies of this chapter.
- C. Only those lands for which the Borough has received a state patent or has received a final decision for future title conveyance from the state under the municipal entitlement act, or has otherwise received clear title may be classified or reclassified.
- D. Lands meeting the above requirements shall be classified on an on-going basis. Classification or reclassification may be initiated by the Assembly, the Manager, or the planning commission and accomplished pursuant to subsections 6.80.100 (H), (I), and (M).
- E. Classification or reclassification shall be based on a need identified in the Borough Comprehensive Plan, the Coastal Management Plan, or upon recommendation from the planning commission, Manager, local community governing body, the public, or a state or federal agency.
- F. An individual may request classification or reclassification of land by submission of a petition on a form provided by the Borough. Said form shall be completed in full and shall clearly state, but not be limited to, the proposed classification and the justification for the classification. An individual shall be limited to one request for classification or reclassification per calendar year.
- G. Individual petitions for classification or reclassification may be grouped together in a batch and acted upon a minimum of two times within each calendar year. The procedures outlined in subsections H. and I. of this section shall apply.
- H. Notice of the proposed classification shall be published once a week for two consecutive weeks in a newspaper of general circulation in the local area in which the classification is proposed. It shall also be posted in prominent public places in affected communities such as the post office or general store and sent to the appropriate local governing bodies. The notice shall contain the description of the property to be classified, the general location, proposed classification, where written comments may be submitted, and the date, time, and location of the planning commission public hearing. Notice shall also be sent to applicable local, state, and federal agencies and other interested groups or adjacent landowners. The public comment period shall not be less than thirty

(30) calendar days from the date of the first publication of the notice.

- I. The planning commission shall hold a public hearing as specified in subsection (H) of this section on the classification or reclassification and make recommendations to the Assembly. Recommendations shall be based on findings of fact which may include: the location of the lands, surrounding uses and ownership, existing and future access, property characteristics including topography, soils, availability of utilities, any known encumbrances or permits, physical examination where necessary and feasible, review of state land use plans, the Borough coastal management plan, or any other applicable plans, and comments from the affected communities. The classification or reclassification shall be compatible with any land use plan adopted by the Borough or another plan approved by the Assembly.
- J. The planning commission may delegate its public hearing authority to a city council or village council in an unincorporated village for any proposed classification action located within 30 miles of the community. The local governing body holding the hearing shall transmit to the commission a written report and advisory recommendations based upon the hearing within 30 days of the hearing. The commission may hold another hearing if it is deemed necessary or desirable.
- K. The Manager shall be responsible for the official map depicting all current Borough land classifications.
- L. All Borough lands shall be classified as one or more of the following:
  - 1. Conservation
  - 2. Conservation Easement
  - 3. Commercial
  - 4. Government
  - 5. Heavy industrial
  - 6. Institutional
  - 7. Light industrial
  - 8. Preservation
  - 9. Recreation
  - 10. Residential
  - 11. Resource Development
  - 12. Resource Management
  - 13. Settlement
  - 14. Utility/Transportation
  - 15. Waste Handling

The classifications are specifically defined in section 6.80.040 of this chapter.

- M. Adoption of any proposed classification under this chapter shall be by Assembly resolution. Due consideration shall be given to the planning commission's recommendations on proposed classifications.
- N. Borough lands may be given multiple classifications if the classifications are compatible with each other given the characteristics and uses of the land and surrounding area and if these classifications are consistent with land use plans adopted by the Borough.

#### **6.80.110 Disposition of Borough Land.**

- A. Except as otherwise provided by this title, no land or interest in land may be sold or leased or otherwise disposed of unless the land has been classified in accordance with the provisions of this chapter. Lands shall not be sold unless the Borough has clear title to the land. Exceptions may be made if appropriate protections against adverse claims approved by the Borough attorney are in place. Except as provided by this title, all lands shall be sold or leased at fair market value or fair market rental. *Amended by Ordinance 10-02, March 12, 2010*
- B. The Assembly may by resolution establish a fee schedule for processing applications or petitions to purchase, lease, permit, classify, or perform other actions regarding Borough lands or resources authorized by this title.

#### **6.80.120 Methods of Disposition**

- A. Tax foreclosure sale. The sale and management of tax foreclosed property shall be in accordance with the requirements of AS 29.45 and applicable Borough ordinances.
- B. Auction Sale or Lease. The Assembly may by ordinance authorize the sale or lease of Borough land by public auction. The ordinance shall specify the minimum acceptable bid which shall be fair market value or fair market rental value. Sale or lease of the land shall be to the highest responsible bidder who performs all the terms of the disposal. The Borough Manager is authorized to promulgate rules and regulations for conducting an auction. *Amended by Ordinance 10-02, March 12, 2010*
- C. Exchange Sale. The Assembly may by ordinance authorize the exchange of land but only if the ordinance authorizing the exchange sale contains a finding that the exchange sale is in the best interest of the Borough and a statement of the facts upon which the finding is based.
- D. Cooperative Sale or Lease. The Assembly may by ordinance authorize the Manager to sell or lease Borough land in cooperation with a person or a public agency. This cooperation may include, but is not limited to, the sale or lease of Borough land subject to a preliminary subdivision plat, the sale or lease to a private developer of Borough land subject to a development contract, or a sale or lease in cooperation with a public or government agency. A cooperative sale or lease shall be conducted according to the bidding requirements of subsection (F) of this section and/or the ordinance enabling this transaction unless the sale or lease is in cooperation with a public or governmental agency. Land to be sold or leased in cooperation with a public or governmental agency may be excluded from classification, deposit into the land bank, and notice of disposition if the land to be sold or leased is a portion of a larger parcel, and the most appropriate use and the highest and best use of the larger parcel is not changed and the land to be sold or leased is not more than one acre.
- E. Combination Sale or Lease. The Assembly may by ordinance authorize the sale or lease of Borough land by the use of any combination of the methods authorized by this chapter.
- F. Sealed Bid Sale or Lease. The Assembly may by ordinance authorize the sale or lease of Borough land by sealed bid. The invitation for sealed bids shall provide a minimum bid which may not be less than fair market value. *Amended by Ordinance 10-02, March 12, 2010*

- G. Lottery Sale or Lease. The Assembly may by ordinance authorize the Manager to conduct the sale or lease of lands by lottery provided that the land is sold at fair market value or fair market rental value.
- H. Over-the-Counter Sale or Lease. The Assembly may by ordinance authorize the sale or lease of Borough land over-the-counter on a first come basis, provided that the land is sold for fair market value or fair market rental
- I. Negotiated Sale or Lease. The Assembly may by ordinance authorize the negotiated sale or lease of Borough land in accordance with subsection 8.60.140 (D). Land to be sold or leased to resolve a land use conflict or unintentional trespass may be excluded from classification, deposit into the land bank, and notice of disposition if the land to be sold or leased is a portion of a larger parcel, and the most appropriate use and highest and best use of the larger parcel is not changed, and the land to be leased or sold is not more than one acre.
- J. Conveyance to Municipality. The Assembly by ordinance may authorize the sale or lease of Borough land to a municipality within the geographic limits of the Borough, where the property conveyed will be used for a municipal purpose. Any such sale may be for nominal consideration.

### **6.80.130 Notice of Disposition**

Notice of disposition shall be published at least two times for consecutive weeks in a newspaper of general circulation in the affected area in the thirty day period immediately preceding the date of sale. The notice shall also be posted in public places such as post offices and sent to local governing bodies, affected local, state, and federal agencies, adjacent landowners, and other interested parties. The notice shall contain a brief description of the land, the general location of the land, and the terms of the sale as fixed by the Assembly by ordinance.

### **6.80.140 Determination of Value of Land Sold or Leased.**

When land is sold pursuant to Section 6.80.120 B, G or H or leased according to Section 6.80.160, the fair market value or fair rental market value shall be determined as provided for in this section. *Amended by Ordinance 10-02, March 12, 2010*

- A. Fair Market value or fair rental value shall be determined by a qualified appraiser unless the value is so low that a commercial appraisal is not cost efficient or is impractical as determined by the Manager or the Assembly. *Amended by Ordinance 10-02, March 12, 2010*
- B. Where the Manager or the Assembly has determined that a commercial appraisal is not cost efficient or is impractical, the Assembly may determine the fair market value or fair rental value as a part of an ordinance authorizing the conveyance of the property. The ordinance shall address both the reasons why a commercial appraisal is not cost efficient or is impractical, and the basis for determination by the Assembly of fair market value or fair rental value. *Amended by Ordinance 10-02, March 12, 2010*
- C. Where the Assembly has authorized the Manager to convey property, the ordinance authorizing the Manager to make such sales or releases shall include a determination of the price or prices at which such conveyances may be made. The Assembly shall determine those price or prices not less often than annually. The determination shall include the reasons why a commercial appraisal is not cost efficient or is impractical, and the basis for determination by the Assembly of fair market value or fair

rental value. *Amended by Ordinance 10-02, March 12, 2010*

#### **6.80.150 Conveyance of the Land**

- A. The Manager shall execute conveyance documents authorized by ordinance and said documents shall be recorded in the appropriate recording district.
- B. The purchaser shall be responsible for acquiring title insurance.
- C. The purchaser or lessee shall be responsible for all fees which may include recording fees, closing fees, escrow setup fees, annual escrow fees, collection fees, surveying and platting fees, or other associated fees unless otherwise authorized.
- D. All lands or interests in lands shall be conveyed by an instrument containing restrictions that restrict the use of land to that classification and prohibit the use of the land for any other purpose. Conveyances to a municipality under 6.80.120(J) shall contain restrictions limiting use of the land conveyed to municipal purposes. *Amended by Ordinance 10-02, March 12, 2010*
- E. Restrictions may be modified by:
  - 1. Submittal of a petition to the Borough requesting modification and stating the justification for the request.
  - 2. Within 60 calendar days from the date of receipt of the petition, notice of the petition shall be published two times on consecutive weeks in a newspaper of general circulation in the local area in which the property is located. The notice shall also be posted in the post office of the impacted communities and sent to the appropriate local governments. The notice shall contain at a minimum, a description of the property, the general location, proposed restriction modification, where and how comments can be submitted, the last date for which comments can be submitted, and the date, time, and location of the planning commission meeting/hearing. The planning commission may delegate responsibility for the public hearing to a local city government or village council as provided for in subsection 6.80.100 (J). Notice shall also be sent to applicable federal, state or public agencies, adjacent landowners or leaseholders of record, and other interested parties or groups. The public comment period shall not be less than 30 calendar days from the date of the first publication of the notice.
  - 3. The planning commission shall consider the petition and recommend an appropriate action to the Assembly.
  - 4. The Assembly may by ordinance authorize the repeal of any restriction and cause the appropriate document to be filed in the appropriate recording district based upon findings of fact which may include; the location of the lands, surrounding uses and ownership, existing and future access, property characteristics including topography, soils, and availability of utilities, any known encumbrances or permits, physical examination where necessary or feasible, comments from local affected governing bodies, and review of any land use plan adopted by the Borough.

#### **6.80.160. Lease - Types**

- A. All leases unless specifically exempted by the Assembly, shall have an initial term of five (5) years, whereupon at the conclusion of that initial period, the lessee may apply to the Assembly for a renewal of the lease for a longer term. *Amended by Ordinance 15-03, May 11, 2015*

- B. Short term lease. The Manager is authorized to lease Borough land for a period not to exceed twenty-five (25) years according to the terms fixed by ordinance and based upon the land classification. The Manager shall not lease approved, unpatented, general grant entitlement land without fully disclosing the unpatented status of the land to the lessee. There may be commercial and non-commercial short term leases on Borough land. *Amended by Ordinance 10-02, March 12, 2010*
1. An application to lease must be submitted with a development plan which shall disclose the use, nature of improvements, an estimate of value of the improvements, and a development and construction time table.
  2. The annual lease rate for a short term lease may be established as the fair market rental value. Short term leases for more than five (5) years shall provide for adjustment of annual rent at each five (5) year anniversary of the lease, adjusting the rent to then-current fair rental values. *Amended by Ordinance 10-02, March 12, 2010*
  3. Leased lands shall be utilized for purposes within the scope of the application, the terms and conditions of the lease, the applicable land classification, and any land use or other applicable plans adopted by the Borough. Utilization or development for other than the allowed uses shall constitute a violation of the lease and the lease will become subject to cancellation.
  4. Failure on the part of the lessee to substantially complete his/her development of the land or to take actions which are not consistent with the proposed use and terms and conditions of the lease within two years of the anniversary date of said lease shall constitute grounds for cancellation of the lease.
  5. Short term leases may not be assigned or subleased. A short term lease may be used as collateral for a loan only with the prior written consent of the borough, which consent may not be unreasonably withheld. *Amended by Ordinance 10-02, March 12, 2010*
- C. Long term lease. The Manager may lease Borough land for a period exceeding twenty-five years according to the terms fixed by ordinance and based upon the land classification. The Manager shall not lease approved, unpatented general grant entitlement land without fully disclosing the unpatented status of the land to the lessee. *Amended by Ordinance 10-02, March 12, 2010*
1. An application to lease must be submitted with a development plan which shall disclose the use, nature of improvements, an estimate of the value of improvements, and a development and construction time table.
  2. Long-term leases shall be granted in five-year renewable terms. The annual lease rate for the first five years of a commercial lease shall be established as the fair market rental value
  3. The lease rate shall be adjusted on the anniversary date of the lease every five years after the initial five year term. The adjusted lease rate of a commercial lease shall be based on fair market rental value.
  4. Lease lands shall be utilized for purposes within the scope of the application, the terms and conditions of the lease, and in conformity with the lessee's development plan, applicable classification, and any land use other applicable plans adopted by the Assembly. Utilization or development for other than the allowed uses shall constitute a violation of the lease and the lease will be subject to cancellation.
  5. Failure on the part of the lessee to substantially complete his development plan of the land or to not be consistent with the proposed use and terms and conditions of the lease within two years of the

- anniversary date of said lease shall constitute grounds for cancellation.
6. For the purpose of interim financing or refinancing of the improvements to be placed upon the leased premises, and for no other purpose, a lessee may, upon written approval of the Borough, encumber by mortgage, deed of trust, assignment or other appropriate instrument, the lessee's interest in the leased premises and in and to the lease, provided said encumbrance pertains only to the leasehold interest.
  7. Upon written approval of the Borough, a long term lease may be assigned or subleased subject to the same terms and conditions of the existing lease. A long term lease may be used as collateral for a loan only with the prior, written consent of the borough, which consent may not be unreasonably withheld. *Amended by Ordinance 10-02, March 12, 2010*

**6.80.170. Lease - Terms and Conditions**

- A. The following general terms and conditions shall be applicable to all leases:
  1. Application to lease must be submitted on a form Titled "Application for Commercial/Personal Lease of Land Use Permit" provided by the borough and approved by resolution.
  2. The manager shall not lease or authorize any other use or disposition of borough land to a person who is delinquent in the payment of any tax, debt or obligation owed to the borough.
  3. The filing of an application for lease does not give or imply any right to lease or use of the land under application.
  4. A significant risk of environmental impact is presumed to be present in any use proposed for any land to be disposed of by lease, in the absence of a determination by the borough assembly to the contrary. The lease shall contain an environmental indemnity from the proposed lessee, and shall set performance requirements as a condition of the disposition directed to mitigation of that risk and may require the posting of a performance guarantee or bond, in an amount set in the lease to assure that the measures required are carried out. The amount may be adjusted by the borough at every five (5) year anniversary of the lease to reflect updates and changes in the associated use. In the event that the lessee or buyer fails to meet the performance requirements in a timely fashion, on reasonable notice as determined by the borough, the borough may call on the guarantee or bond to cover actual costs incurred by the borough in implementing sanitation requirements, a land restoration plan or other the mitigating measures as well as revoking the grant. The Assembly or Manager may waive the requirement of a bond only upon making express, specific findings demonstrating that the intended use carries no practical risk of environmental liability during or after the lease term. *Amended by Ordinance 10-02, March 12, 2010*
  5. All leases of Borough land shall contain a covenant by which the lessee promises to indemnify, hold harmless and defend the Borough, its officers and employees from any Environmental Claims arising out of Hazardous Substances used, stored or allowed to be placed upon the leased property. The bond required under subparagraph (4) of this section shall specifically assure compliance with this subparagraph. *Added by Ordinance 10-02, March 12, 2010*
  6. When the borough disposes of land by sale or lease that leaves a residual, potential liability for the borough, the borough may require that the purchaser or lessee obtain a liability insurance policy approved by the borough in an amount sufficient to cover the risk, as determined by the borough and may require that the borough be named as an additional insured. The amount may be adjusted by the borough at every

five (5) year anniversary of the lease to reflect updates and changes in the associated use. *Amended by Ordinance 10-02, March 12, 2010*

- B. The manager shall have ninety (90) calendar days in which to review the proposed development plan. This review may include review by the borough attorney or any other consultation which may be necessary to determine the adequacy of the plan. The manager, in his discretion, may refer a proposed development plan to the Assembly for a decision by the Assembly. *Amended by Ordinance 10-02, March 12, 2010*
- C. The manager may require additional information if it is determined that the plan does not address all of the potential impacts of the proposed land use. The prospective lessee shall bear the responsibility of obtaining professional assistance if it is deemed necessary by the manager that additional technical information is necessary.
- D. After the required additional information is provided, the manager shall have 60 calendar days to review the amended development plan.
- E. After written notification by the manager that the development plan and other lease documents are acceptable, the lessee shall have 30 calendar days in which to sign the appropriate documents to execute the lease. If at the end of the 30 calendar days the lessee has not completed and signed the documents, the authorized lease shall become null and void.
- F. Rents will be prorated from the first day of the rental term to the last day of the year. Each successive year of the lease term, the yearly amount will be due and payable on the 1<sup>st</sup> of January. The final year rent will be prorated from January first to the termination date of the lease. *(Amended by Ordinance 15-03; 05/11/2015)*
- G. The borough may lease land by reference to the geodetic-survey system or by reference to an existing survey, landmarks and by metes and bounds, subject to later correction by survey. The grantee of land sold or leased long term shall be required to submit a survey within a time designated by the borough at the time of the disposition.
- H. The Borough shall pass by resolution an Application and Land Use/Lease Fee Schedule.
- I. *(Chapter 6.80.170 Repealed and re-enacted by Ordinance 06-03, 5/18/06)*

#### **6.80.180 Granting Rights-of-Way and Easements**

The grant of an easement or right-of-way shall be treated as a sale and a disposition for a limited term shall be treated as a lease provided that the value of the grant of an easement or right-of-way need not be at fair market value if the disposition is determined to be in the best interests of the Borough. The Borough may reserve public rights-of-way in any grant of an interest in land.

#### **6.80.190 Forest and Timber Resources**

Lands to be utilized for forest and timber resources shall first be classified as "Resource Extraction" and shall be subject to the provisions of the state Forest Practices Act.

#### **6.80.200 Temporary Use of Borough Land**

- A. A person who wishes to use Borough land for a temporary use shall apply for a nonrenewable permit on a form provided by the Borough. The Manager may not issue a permit to a person who is delinquent in tax payments or is otherwise in default on debts to the Borough.
- B. A temporary use permit is nontransferable and is valid for a period no greater than one year from the date of issue. Temporary use permits may be extended or renewed by the land management officer if ratified by the Assembly.
- C. At the time the permit is issued, the applicant shall pay the Borough any permit fee that may be required.
- D. If the Manager determines a temporary use may cause damage to the Borough land, he/she may require the applicant to post a bond in advance with the Borough to insure that the applicant takes reasonably adequate steps to restore the land to its prior condition at the time the permit was executed. The bond amount shall be not less than One Thousand Dollars (\$1,000). The bond shall not be released until the user has complied with all conditions of the permit upon termination or cancellation of the permit. All bonds shall be approved by the Borough attorney.
- E. The Borough land may be inspected at any time to insure compliance with conditions of the permit. The Manager may, for cause and without notice to the permittee, immediately revoke a temporary use permit. The permittee whose temporary use permit has been revoked shall, within the time specified in the permit and if no time is specified within 30 days of the revocation of the permit, remove from the Borough land all improvements or chattels remaining on the land pursuant to the temporary use. Any improvements or chattels remaining on the land after 30 days of revocation become the property of the Borough and may be disposed of as surplus property in accordance with the Borough Code or by other authorized means at the expense of the permittee.
- F. The Manager may reissue a permit if the permittee has complied with the provisions of this section and the terms of the prior permit.
- G. A temporary use permit does not create an interest in the title to the land.
- H. Land Use Permits may be utilized by the Borough Land Manager for land conveyed to the Borough under the municipal entitlement land conveyances until said land is classified by the Borough.

**6.80.210 Casual Use of Borough Land.**

- A. A casual use does not create an interest in the title to Borough land.
- B. The casual use of Borough land does not require a permit.
- C. The Manager may close any and all Borough land to casual use by issuing a written order that contains a finding that an emergency exists and a statement of the facts on which the finding is based. The Manager shall publish notice of the location of Borough land that is closed to casual use.

**6.80.220 Sand, Gravel, and Materials - Negotiated Sale - Small Quantities.**

- A. Prior to selling material from established material sites or other sites classified as resource extraction, a management plan will be developed to provide for its use, reclamation and eventual closure.
- B. The Manager is authorized to sell material from established material sites or other sites classified as resource extraction at the current market value. Each contract shall permit removal of a stated amount of material not to exceed 300 cubic yards per applicant per year from the date of execution of the contract.
- C. Application shall be submitted on the form provided by the Borough.
- D. The applicant may not be delinquent in taxes or other debts to the Borough.
- E. The applicant may be required to file a mining plan. The plan may consist of cross-section survey of uplands, methodology for site clearings, stripping and stockpiling of overburden, site restoration, provisions for drainage ditching, development of access, and other information as may be required.
- F. Material sale contracts shall not be extended in time nor in quantity. Any application shall be treated as a new application
- G. Full payment shall be made at the time the sale contract is executed.
- H. Liability insurance or additional requirements may be required by the Manager if deemed necessary in the best interest of the Borough.

**6.80.230 Sand, Gravel, and Materials - Commercial Quantities.**

- A. The Manager is authorized to negotiate at the current market value the sale of material from lands classified as resource extraction.
- B. Application shall be submitted on the form provided by the Borough.
- C. A contract shall not be issued if the applicant is delinquent in taxes or other debts to the Borough.
- D. A successful buyer may be required to file a mining plan as required. The plan may consist of cross-section survey of uplands, methodology of site clearings, stripping and stockpiling of overburden, site restoration, provisions for drainage ditching and access development and other information as may be required. The plan shall demonstrate compliance with applicable federal, state and Borough requirements. *Amended by Ordinance 10-02, March 12, 2010*
- E. A payment schedule shall be set and made part of the contract.
- F. Liability insurance or additional requirements may be required if deemed necessary in the best interests of the Borough.

**6.80.240 Trespass on Borough Land.**

- A. A person shall not trespass on Borough land. If the Manager has knowledge of a trespasser, he/she shall take steps to remove the trespasser. Unless provided otherwise, the trespasser shall restore the Borough land to the same condition it was in at the time just before the trespass began. The trespasser shall pay all

costs incurred by the Borough as a result of the trespass.

- B. The Manager is authorized to negotiate the terms of a license to an unintentional trespasser because of an extreme hardship that will be suffered by the trespasser. The license is subject to approval by Assembly resolution.
- C. Under the provisions for negotiated sale or lease contained in this title, a trespass may be resolved through transfer of interest of the smallest practical area to the trespasser with all or a portion of the survey and related costs being paid by the trespasser.

#### **Article V. General Conditions**

##### **6.80.250. Exceptions to Chapter - Procedure - Assembly Authority**

- A. The Assembly may, with five (5) affirmative votes, authorize exceptions to any of the requirements set forth in this chapter. The applicant requesting any such exception shall present the Assembly with substantial evidence, justifying the requested exception, stating fully the grounds for the exception, and the facts relied upon. The Assembly shall find the following facts before granting any such exceptions:
  - 1. That special circumstances or conditions exist;
  - 2. That the exception is necessary for the preservation and enjoyment of a substantial property right and is the most practical manner of complying with the intent of this chapter;
  - 3. That the granting of the exception will not be detrimental to the public welfare or injurious to other property in the area.

##### **6.80.260 General Conditions**

- A. **Applicability.** Except as specifically provided to the contrary in this chapter or unless clearly inapplicable, each of the following terms and conditions shall apply to every sale or lease of land or interest in land by the borough. These terms and conditions, as well as any others established by the borough shall be included in every agreement of sale, lease, or other document disposing of an interest in land. Specific terms may be modified by the borough to suit particular circumstances.
- B. **Site Restoration.** Whenever the borough retains an interest, a remainder or right of reversion in the land, the borough may require that the grantee post a bond, retained by the borough until all requirements relating to the restoration of the land are met. The amount of the bond will be fixed by the borough to suit the activities authorized on the land. A site restoration bond may be combined with an environmental liability bond in the discretion of the manager. *Amended by Ordinance 10-02, March 12, 2010*
- C. **Other Conditions.** Insurance requirements or other conditions of use may be imposed at the discretion of the borough when the borough's interests or the general public's interests are affected. *Added by Ordinance 10-02, March 12, 2010*
- D. **Entry or Re-entry.** In the event that the purchase agreement or lease is

terminated, canceled or forfeited, or in the event that the demised lands, or any part thereof, should be abandoned by the purchaser, the borough or its agents, servants or representatives, may immediately or any time thereafter, enter or re-enter and resume control of said lands or such part thereof, and remove all persons and property there from either by summary proceedings or by a suitable action or proceeding at law or equity without being liable for any damages therefore. Entry or re-entry by the borough shall not be deemed an acceptance of surrender of the contract.

- E. Fire Protection. The purchaser, lessee, or permittee shall take all reasonable precautions to prevent, and take all reasonable actions to suppress, destructive and uncontrolled grass, brush, and forest fires on the land under agreement, and comply with all laws, regulations and rules promulgated and enforced by the protection agency responsible for forest protection within the area wherein the demised premises are located.
- F. Modification. A purchase, lease or permit agreement may not be modified orally or in any manner other than by agreement in writing signed by all parties or their respective successors in interest.
- G. Notice. Any notice or demand, which under the terms of an agreement or under any statute must be given or made by the parties thereto, shall be in writing, and be given or made by registered or certified mail, addressed to the other party at the address shown on the contract. However, either party may designate in writing such other address to which such notice of demand shall thereafter be so given, made or mailed. A notice given hereunder shall be deemed received when deposited in a U.S. general or branch post office by the addressor, and in like manner a notice from the borough to a vendee shall be deemed received by the vendee when such notice arrives at the general or branch post office from which final delivery to said purchaser, lessee, or permittee would normally be accomplished.
- H. Notice of Default. Notice of the default will be in writing as provided in subsection (I) of this section. A copy of the notice will be forwarded to all lien holders or others who have properly recorded their interest in the purchase, lease, or permit agreement with the borough.
- I. Removal or Reversion of Improvements upon Cancellation of Purchase Agreement, Lease or Land Use Permit.
  - 1. Improvements owned by a purchaser, lessee, or permittee on borough lands shall, within thirty calendar days after the termination of the agreement, be removed by him; provided, such removal will not cause injury or damage to the land; and further provided, the manager when applicable may extend the time for removing such improvements in cases where hardship is proven. The retiring purchaser, lessee, or permittee may, with the consent of the manager when applicable, dispose of his improvements to the succeeding purchaser, lessee or permittee.
  - 2. If any improvements and/or chattels having an appraised value in excess of ten thousand dollars, as determined by a qualified appraiser, are not removed within the time allowed, such improvements or chattels shall, upon due notice to the purchaser, lessee, or permittee under the terminated or cancelled contract, be sold at public sale under the direction of the manager and in accordance with applicable provisions of the Borough Code. The proceeds of the sale shall inure to the former

purchaser, lessee, or permittee who placed such improvements and/or chattels on the lands, or his successors in interest, after paying to the borough all monies due and owing and expenses incurred in making such a sale. In case there are no other bidders at any such sale, the manager is authorized to bid, in the name of the borough, on such improvements and/or chattels. The bid money shall be taken from the fund to which said lands belong, and the fund shall receive all monies or other value subsequently derived from the sale or leasing of such improvements and/or chattels. The borough shall acquire all the rights, both legal and equitable, that any other purchaser could acquire by reason of the purchase.

3. If any improvements and/or chattels having an appraised value of ten thousand dollars or less, as determined by the manager, are not removed within the time allowed, such improvements and/or chattels shall revert and absolute title shall vest in the borough.
  4. The borough may require that any improvements or material placed on the land by the purchaser or lessee be removed by the purchaser or lessee; and if the improvements are not removed, the borough may provide for the removal at the expense of purchaser or lessee.
- J. Rental for Improvements or Chattels Not Removed. Any improvements and /or chattels belonging to the purchaser, lessee, or permittee placed on the land during his tenure with or without his permission and remaining upon the grounds after the termination of the contract shall entitle the borough to charge a reasonable rent therefore.
- K. Resale. In the event that a purchase or lease agreement should be terminated, canceled, forfeited or abandoned, the borough may offer said lands for sale, lease, or other appropriate disposal pursuant to the provisions of this chapter or other applicable regulations. If said land is not immediately disposed of then said land shall return to the land bank.
- L. Responsibility of Location. It shall be the responsibility of the purchaser, lessee, or permittee to properly locate himself and his improvements on the purchased, leased, or permitted lands.
- M. Rights of Mortgage or Lienholder. In the event of cancellation or forfeiture of a lease or sale arrangement for cause, the holder of a properly recorded mortgage, conditional assignment, or collateral assignment will have the option for thirty (30) days following written notice to acquire the lease or sale agreement for the unexpired term thereof, subject to the same terms and conditions as in the original instrument, including cure of any defaults. *Amended by Ordinance 10-02, March 12, 2010*
- N. Rights-of-Way. All trails or roads in existence at the time the land is sold may be considered to be an easement for public use. Nothing herein contained shall prevent the manager when applicable from specifically reserving such additional easements and rights-of-way across borough lands as deemed reasonable and necessary prior to the sale thereof.
- O. Sale of Documents. All sales of borough lands shall be on approved borough forms suitable for recording and may consist of a warranty deed, deed of trust, agreement to purchase, promissory note, quitclaim deed, and any other transactional documents that may be appropriate as determined by the borough attorney.

- P. Sanitation. The purchaser, lessee, or permittee shall comply with all regulations or ordinances which a proper public authority in its discretion shall promulgate for the promotion of sanitation. The premises under purchase, lease agreement, or permit shall be kept in a clean and sanitary condition and every effort shall be made to prevent any pollution to the waters and lands.
1. Wastewater Disposal: Wastewater disposal, from kitchen gray water, privies, or outhouses, must satisfy the requirements of DEC. Sewage (black and gray water) design plan approval must be obtained from DEC prior to construction. On-site privies must be located at least 100 feet from any body of surface water. Upon terminating any use, lime shall be applied to the wastes in the privy pit prior to back filling. For additional information, contact the local DEC district office.
  2. Solid Waste: All garbage and foreign debris brought onto and placed on the site shall be removed and disposed of at an off site Alaska Department of Conservation (ADEC) approved site. The on-site burial of garbage and debris is prohibited. Prior to removal, all garbage and debris will be stored so it does not attract wildlife. Sites will be kept clean of garbage.
- Q. Fuel and Hazardous Substance Storage: Fuel storage containers, including flow test holding tanks and hazardous substances, with a total combined capacity larger than 55 gallons shall not be placed within 100 feet from any body of surface water. Containers, which exceed a total combined capacity of 110 gallons, must be stored within an impermeable diked area or portable impermeable containment structure capable of containing 110 percent capacity of the largest independent container. All containers must be clearly marked with the contents and the lessee's name. Drip pans and materials, such as absorbent pads, must be on hand to contain and clean up spills from any transfer or handling of fuel. All fuel storage containers and associated materials must be removed by the end of the use. *Amended by Ordinance 10-02, March 12, 2010*
1. Spill Notification: Any person shall immediately notify the Lake and Peninsula Borough (phone 907-246-3421) (or the appropriate land manager) and DEC by phone of any unauthorized discharges of oil to water, any discharge of hazardous substances (other than oil), and any discharge of oil, greater than 55 gallons solely to land and outside an impermeable revetment. If a discharge of oil is greater than 10 gallons but less than 55 gallons, it must be reported within 48 hours by phone or fax. If a discharge is less than 10 gallons, it may be reported in writing on a monthly basis. If an unauthorized discharge greater than 55 gallons is made to a secondary containment, it must be reported within 48 hours by phone or fax. Any discharge of oil or hazardous substances to water must be reported immediately to DEC.
  2. Hazardous Substances: The use and/or storage of hazardous substances by any person must be done in accordance with existing federal, state and local laws, regulations and ordinances. Debris (such as soil) contaminated with used motor oil, solvents, or other chemicals may be classified as a hazardous substance and must be removed and disposed of in accordance with existing federal, state and local laws, regulations and ordinances. The use or storage of hazardous substances except as specifically authorized in a lease or permit will be material default in the performance of the lease or permit. *Amended by Ordinance 10-02, March 12, 2010*

- R. Fire Prevention, Protection and Liability. The purchaser, lessee, or permittee shall take all reasonable precautions to prevent and suppress forest, brush and grass fires, and shall assume full liability for any damage to borough land resulting from negligent use of fire. The Lake and Peninsula Borough is not liable for damage to the purchaser, lessee, or permittee's personal property and is not responsible for forest fire protection of the purchaser, lessee, or permittee's activity. Uncontrolled fires shall be reported immediately. *Amended by Ordinance 10-02, March 12, 2010*
- S. Operation of Vehicles. Vehicles shall be operated without disturbing the vegetative mat and underlying substrate. Any operator within the borough must obtain a permit from the DNR, Division of Mining, Land and Water (when on State land) for any off road vehicular travel with the exception of generally authorized vehicles.
- T. Roads and Trails. Existing roads and trails shall be used whenever possible. Trail widths shall be kept to the minimum necessary. Trail surfaces may be cleared of timber, stumps, and snags. Due care shall be used to avoid excessive scarring or removal of ground vegetative cover. All roads and trails shall be kept clean of all garbage and foreign debris.
- U. Alaska Historic Preservation Act: The Alaska Historic Preservation Act (AS 41.35.200) prohibits the appropriation, excavation, removal, injury, or destruction of any state owned historic, prehistoric (paleontological) or archaeological site without a permit from the commissioner. Should any sites be discovered during the course of field operations, activities that may damage will cease and the Office of History and Archaeology in the Division of Parks and Recreation (907) 269-8715/8720 and the appropriate coastal district shall be notified immediately.
- V. Explosives Prohibited: The manager may prohibit the use of explosives within one-fourth mile of certain designated fishery waters when the borough determines that use of explosives may result in unnecessary harm to land or streams having special scenic, historic, archaeological, scientific, biological, recreational, fisheries or other specific resource values. *Amended by Ordinance 10-02, March 12, 2010*
- W. Survey Monuments and Markers: All survey monuments, witness corners, reference monuments, mining claim posts, and bearing trees, shall be protected against destruction, obliteration, or damage. The intentional destruction of any survey monument or marker is a misdemeanor under the Code of Ordinances and may also be a crime under State and Federal law. Report any accidentally damaged or obliterated marker and assure that it is reestablished in accordance with acceptable survey practices of the Borough, the State or the federal government.
- X. Excavation: Holes, pits and excavation shall be filled, plugged or repaired to the satisfaction of the land use manager. Holes, pits and excavation necessary to verify discovery on prospecting sites, mining claims, and mining lease hold locations may be left open but shall be maintained as required by the borough land use manager.
- Y. Mineral Exploratory Activities: No person may engage in mineral exploratory activities on land the surface of which has been granted, licensed, or leased by the State of Alaska, or on land for which the state has received the reserved

interest of the United states until good-faith attempts have been made to agree with the surface owner, license, or lessee on settlement for damages which may be caused by such activities. If agreement cannot be reached, or the lease, oil and gas exploration license, or surface owner cannot be found within a reasonable time operations may be commenced on the land only with specific approval of the manager, and after making adequate provisions for full payment of any damages which the owner may suffer.

- Z. Entry on all Lands: Entry on all lands under mineral lease, oil and gas exploration license, lease, or claim, by other than the holder of the lease, oil and gas exploration license, lease, or claim, or the holder's authorized representative, shall be made in a manner that will prevent unnecessary or unreasonable interference with the rights of a surface owner, lessee, licensee, lessee, or claimant.
- AA. Vegetation Disturbance Prohibited: The disturbance of vegetation within 300 feet of waters located in specially designated streams that the manager has determined may result in unnecessary harm to land having special scenic, historic, archaeological, scientific, biological, recreational, or other specific resource values is prohibited. Violation of this provision is a misdemeanor under the Borough Code.
- BB. Restoration of Vegetative Mat: A person causing the damage shall immediately restore areas where soil has been disturbed, or the vegetative mat has been damaged or destroyed. Restoration shall be accomplished in accordance with guidance provide by the Borough land use manager.
- CC. Shore Land Public Access Easement. As established by AS 38.05, borough lands sold or leased may be subject to a minimum 50 foot public access easement landward from the ordinary high water mark or mean high water mark.
- DD. Subleasing. No lessee may sublease lands or any part thereof without written permission of the manager when applicable. A sublease shall be in writing and subject to the terms and conditions of the original lease.
- EE. Violation. Violation of any provision of this chapter or of the terms of the agreement of sale, lease, or permit may expose the purchaser, lessee, or permittee to appropriate legal action including forfeiture of purchase interest, termination, or cancellation of his interest in accordance with state law.
- FF. Written Waiver. The receipt of payment by the borough, regardless of knowledge of any breach of the purchase agreement by the purchaser, lessee, or permittee, or of any default on the part of the purchaser, lessee, or permittee in observance or performance of any of the conditions or covenants of the agreement, shall not be deemed to be a waiver of any provision of the agreement. Failure of the borough to enforce any covenant or provision therein contained shall not discharge or invalidate such covenants or provision or affect the right of the borough to enforce the same in the event of any subsequent breach or default. The receipt by the borough of any payment or any other sum of money after notice of termination or after the termination of the agreement for any reason, shall not reinstate, continue or extend the agreement, nor shall it destroy or in any manner impair the efficacy of any such notice of termination unless the sole reason for the notice was nonpayment of money due and payment fully satisfies the breach. (*Chapter 6.80.260 Repealed and re-enacted by Ordinance 06-03, 5/16/06*)

*(Chapter 6.80 Added by Ordinance 96-03, 8/20/96; Chapter 6.80 Repealed and re-enacted by Ordinance 06-01, 3/21/06, Chapter 6.80 amended by Ordinance 10-02, March 12, 2010)*

## **Chapter 6.90 HOTEL MOTEL ROOM TAX**

### **Article I. In General**

6.90.010 Definitions

### **Article II Imposition of Tax - Procedures - Regulations**

6.90.020 Imposition of Tax

6.90.030 Collection of Tax

6.90.040 Registration Required

6.90.050 Title to Taxes / Taxes Held in Trust

6.90.060 Duty to File Tax Return and Transmit Taxes to Borough

6.90.070 Estimated Taxes / Forced Filing

6.90.080 Confidentiality

6.90.090 Record Keeping Required

6.90.100 Special Provisions for Pre-Existing Contracts

### **Article III. Penalties - Enforcement - Appeals**

6.90.110 Penalties and Interest

6.90.120 Civil Action Authorized

6.90.130 Tax Lien

6.90.140 Prohibition of Making Rentals without Registering

6.90.150 Sale of Business

6.90.160 Appeals

6.90.170 Severability

## **Article I. In General**

### **6.90.010 Definitions**

- A. For the purposes of this chapter, unless the context otherwise requires, any word or term not interpreted or defined by this section shall be used with a meaning of common or standard utilization.
- B. The following words and phrases shall have the meanings ascribed to them by this section:
1. "Administrative costs of collection" means the actual amount of attorney's fees, litigation costs, costs of appeal, and other expenses incurred by the Borough in collecting any taxes, interest, and/or penalties due under this ordinance or in otherwise enforcing any provisions of this ordinance.
  2. "Guest" means an individual, corporation, partnership, association, or other entity which pay monetary or other consideration for the right to occupy an overnight accommodation. The guest is the taxpayer.
  3. "Guest-night" means one guest who rents or occupies an overnight accommodation for one night. In other words, one guest who rents an overnight accommodation for three nights equals three guest-nights; four guests who rent an overnight accommodation for one night equals four guest nights; six guests

who occupy an overnight accommodation for ten nights equals sixty (60) guest nights; and so on. *(Amended by Ordinance 97-06, 11/18/97)*

4. "Merchant" means an individual, corporation, partnership, association, cooperative, joint venture, estate trust, business receivership, or any combination thereof, or any other entity which operates an overnight accommodation and any person who performs, or is under a duty to perform, any of the following actions on behalf of an operator:
  - a. Exercise custody and control of taxes collected under this ordinance; or
  - b. Pay such taxes to the Borough; or
  - c. File a tax return with the Borough; or
  - d. Keep records required by this ordinance.

An owner of an overnight accommodation who contracts with a third party to operate the overnight accommodation for the benefit of the owner is also a merchant. However, an owner of an overnight accommodation who leases his facility to a third party for it's (the third party) benefit is not a merchant.

5. "Overnight accommodation" means a structure, portion of a structure, room, or area which is occupied or available for occupancy for compensation for dwelling, lodging, or sleeping purposes and includes any hotel, motel, inn, bed and breakfast, lodge, cabin, campground, or similar facility. *(Amended by Ordinance 97-06, 11/18/97)*
6. "Rent" means the consideration received by a merchant for the right to occupy an overnight accommodation valued in money, whether received in money or otherwise, including all receipts, cash, credits, property or other services of any kind or nature, and any amount for which credit is allowed by a merchant to a guest. "Rent" does not include the cost of food or entertainment, nor does it include the cost of banquet, conference, or other similar facilities not occupied for dwelling, lodging, or sleeping purposes.
7. "Rental" means the act of purchasing the right to occupy an overnight accommodation. A rental is complete and tax is due thereon when:
  1. A guest has registered or "checked in" with a merchant and paid rent in cash, by credit card, or otherwise, regardless of whether the rent is paid in advance, at the time of registration, or at a later date; or
  2. A guest who has paid rent in advance fails to register or "check in" with a merchant at the appointed time, and the merchant retains all or any part of the prepaid rent. Tax is due on the amount of prepaid rent retained by the merchant; or
  3. A tour operator pays rent on behalf of a guest whether or not the guest has registered or "checked in", and regardless of whether the rent is paid in advance, at the time of registration, or at a later date. Rent paid by a tour operator on behalf of a guest shall be deemed paid by the guest: or
  4. A tour operator who has purchased the right to occupy an overnight accommodation for use by a guest who is a member of the tour operated by the tour operator, pays rent even though the overnight accommodation is not in fact occupied by such a guest. Rent paid by the tour operator in such circumstances shall be deemed paid by a guest.

Tax may be due under 1, 2, 3, and/or 4 for rental of the same overnight accommodation to more than one guest for the same period of time.

The act of making a reservation to occupy an overnight accommodation in the future is not a completed rental for which tax is due.

8. "Rent Package Plan" means the consideration charged for food, drinks, rent, guided tours, guided hunting or fishing, air taxis, and other services provided by the merchant either directly or indirectly where a single rate is made and charged for the combination of all services.
9. "Tour Operator" means an individual, corporation, partnership, association, or other entity which purchases the right to occupy one or more overnight accommodations for the purposes of re-selling the right to occupy the overnight accommodation to one or more guests who will participate in a vacation travel package or other similar tour operated by the tour operator. When paying rent as provided under subparagraphs 3 and 4 above, a tour operator is a guest.
10. "Transient" means a guest who occupies or has the right to occupy an overnight accommodation for fewer than thirty (30) consecutive days. A guest who purchases the right to occupy an overnight accommodation for use by employees of the guest on a rotating basis is not a transient, if the total period of occupancy of all employees of the guest exceeds thirty (30) consecutive days, even though the occupancy of any particular employee may be less than thirty (30) consecutive days.

## **Article II. Imposition of Tax - Procedures - Regulations**

### **6.90.020 Imposition of Tax**

- A. There is levied on the rental of overnight accommodations to transients within the Borough a tax on the rent for each overnight accommodation. The amount of the tax shall be six percent (6%) of the rent received by the merchant for the rental of the overnight accommodation. The guest shall pay the tax.
- B. When a guest pays for overnight accommodation as part of a rent or tour package:
  1. The amount applicable and apportioned to room rent for determination of the Hotel-Motel Room Tax shall be the same charge made for rent when rent is not part of a package plan or in other words, the established or published rate a room would rent for absent a package plan. (*Amended by Ordinance 10-03, 3/12/10*)
  2. The minimum amount of tax paid shall not be less than six dollars (\$6.00) per person, per night (room rental rate equivalent at 6% x \$100.00 = \$6.00). The tax remitted shall be either 6% of the amount apportioned to room rent, 6% of the established or published room rental rate if that rate is used as part of the package price, or the minimum rate described herein; whichever is greater. (*Added by Ordinance 97-06, 11/18/97*) (*Amended by Ordinance 09-09; 11/14/09*)
  3. The minimum amount of tax paid for campgrounds shall be one dollar (\$1.00) per person, per night. (*Amended by Ordinance 10-03, 3/12/10*)

- C. Exemptions. No tax shall be imposed:
1. When a person rents a private single family dwelling unit, vacation cabin, or like facility from any owner who rents the structure or facility incidental to his own use thereof and on a casual and isolated basis not done in the regular course of business.
  2. When overnight accommodation is provided as part of employment in the Borough including, but not limited to, bunkhouses operated by fish processors for their employees.

#### **6.90.030 Collection of Tax**

- A. Every merchant making a rental subject to taxation under this ordinance shall collect the tax imposed by this ordinance from the guest not later than the time at which the rental is complete. Taxes not collected when due are delinquent.
- B. Every merchant shall state the amount of tax due under this ordinance separately from all rent and other charges on any invoice or receipt given to a guest.
- C. A merchant shall not advertise or hold out or state to the public or to any guest, directly or indirectly, that the tax or any part thereof imposed by this ordinance will be assumed or absorbed by the merchant, or that it will not be added to the rent, or that it will be refunded. A merchant shall not assume, absorb or fail to add the tax or any part thereof to the rent, or refund the tax or fail to separately state the tax to the guest.

#### **6.90.040 Registration Required**

- A. Every merchant shall file with the Borough an application for a certificate of registration on a form provided by the Borough not later than ten days after the date of commencing operation of an overnight accommodation or opening an additional place of business as an overnight accommodation. The application shall include at a minimum, the name and mailing address of the applicant, the location or locations at which the applicant will conduct business, the location at which transactions subject to this tax will occur, a statement certifying the owner of record of the overnight accommodation facility to be registered, a statement signed by the owner of the overnight accommodation acknowledging that he/she understands that the facility at which the taxes are generated is subject to tax lien in the event of tax delinquency, and other information with respect to description, location, and value of property owned by the merchant within borough boundaries which the manager may require in the best interest of the Borough. The completed application shall be accompanied by a check payable to the Borough for a twenty five dollar (\$25.00) annual Application Processing Fee and the merchant's Accommodation Rate Schedule for the Application Year. After initial registration with the Borough, merchants shall submit a renewal form supplied by the Borough, the operator's rate schedule, and the \$25.00 registration fee. The application fee is non-refundable. The \$25.00 application fee shall be applied to the Hotel/Motel tax remittances. *(Amended by Ordinance 09-09, November 14, 2009; Ordinance 15-03, May 11, 2015)*
- B. Upon receipt of a properly executed application, the Borough shall issue a certificate of registration stating the address of the overnight accommodation to which it is applicable and authorizing such merchant to collect the tax. The

certificate must be prominently displayed at the regular place of business named therein. *(Amended by Ordinance 09-09; November 14, 2009)*

#### **6.90.050 Title to Taxes / Taxes Held in Trust**

Upon collection by a merchant of taxes imposed by this ordinance, title to and ownership of the collected taxes shall vest in the Borough. Pending transmittal to the Borough, every merchant shall hold the tax funds in trust for the use and benefit of the Borough. Every merchant shall segregate and identify the tax funds on its books and records as being held in trust for the Borough.

#### **6.90.060 Duty to File Tax Return and Transmit Taxes to the Borough**

- A. Every merchant making a rental of an overnight accommodation in the Borough in any month shall make out a return for that month and file the return with the Borough on or before the fifteenth (15th) day of the following month. A return not timely filed is delinquent. The return shall be made out upon forms furnished by the Borough and shall contain the following information:
1. The amount of all rents received from rentals of overnight accommodations completed during the preceding month.
  2. The amount of tax due thereon under this ordinance.
  3. The amount of tax actually collected thereon.
  4. Such other information and documentation as may be required by the Borough Manager.

A merchant who makes no taxable rentals in a given month shall, if the merchant made a taxable rental in the preceding month, nonetheless file a return with the Borough establishing that no taxable rentals were made.

Businesses which are only open seasonally may inform the borough of the months of operation as part of their annual registration, and will be sent tax forms for those months only. *(Replaced by Ordinance 97-06, 11/18/97; Amended by Ordinance 15-03, 05/11/2015)*

- B. On or before the due date of the return for each month, every merchant shall transmit the taxes due on rentals completed during that month to the Borough. Regardless of whether a return has been filed, taxes due for a given month which are not transmitted to the Borough on or before the due date of the return for that month are delinquent.
- C. As compensation for collecting the tax, a merchant may deduct and retain each month two percent (2%) of the amount of taxes due to be transmitted to the Borough for that month if the merchant has: *(Amended by Ordinance 10-03; 3/12/2010)*
1. Timely transmitted all returns and taxes due under this ordinance during the previous month in which there was taxable activity provided that the

merchant does not have any prior tax debts or late returns outstanding or pending. Merchants collecting the tax for the first time may retain this compensation for the first month provided that they are properly registered under this code. *(Amended by Ordinance 10-03; 3/12/2010)*

2. Complied with all other provisions of this code during the previous month for which taxable activity occurred. *(Amended by Ordinance 10-03; 3/12/2010)*

The amount deducted and retained by the merchant under this subsection shall not exceed three hundred dollars (\$300.00) for any month. *(Amended by Ordinance 10-03; 3/12/2010)*

- D. For the purposes of this section, taxes and returns are timely transmitted and/or filed only when the taxes and/or returns are actually received in the offices of the Borough, or placed in the US Mail properly addressed to the Borough, with proper postage affixed and postmarked, on or before the date on which the taxes are due to be transmitted and/or the return is due to be filed.

#### **6.90.070 Estimated Taxes / Forced Filing**

If the Borough is unable to ascertain the amount of tax due from a merchant in any month because the merchant has failed to file a return as required, or has filed a false, inaccurate, or incomplete return, or because the merchant has failed to keep accurate books and records as required, or has falsified records, the Borough may make an estimate of the amount of tax due based upon any evidence in its possession.

The Borough shall mail or deliver to the merchant written notice of the amount of the estimate, and this amount shall be presumed to correctly state the amount of tax due from the merchant to the Borough unless the merchant files an accurate return and transmits the taxes due as shown thereon to the Borough, not later than thirty days after the date on which the Borough mails or delivers the notice. A notice is sufficient under this section if it is either actually delivered to the merchant, or if it is mailed to the merchant by certified mail, return receipt requested, at the merchant's most current address as contained in the Borough's tax records.

#### **6.90.080 Confidentiality**

- A. Except as provided below, all returns filed with the Borough for the purpose of complying with the terms of this ordinance and all data obtained from such returns are confidential and shall be kept from inspection of all persons except officers, agents, and employees of the Borough. Provided however, that such returns and/or information obtained therefrom may be discussed by the Assembly in public session, if the merchant affected consents in writing.

- B. Information in the possession of the Borough which was obtained by the Borough from a merchant in the administration or enforcement of the provisions of this chapter which discloses the particulars of the business or affairs of the merchant or other person that is not otherwise public information is not a matter of public record. The information shall be kept confidential except when its production is required in an official borough, state, or federal investigation, law enforcement action, or court proceeding. These restrictions do not prohibit the publication of tax lists showing the names of taxpayers or delinquent taxes. Information otherwise protected by this section may be furnished on a reciprocal

basis to other agencies of the state or federal government concerned with the enforcement of tax laws.

- C. In the course of a criminal or civil action to enforce any provision of this ordinance, the Borough may allege, prove, publish, and produce for any purpose any return and/or information previously filed with the Borough. The Borough may deliver to a merchant or his/her authorized representative a copy of any return filed by him or on his behalf. The Borough may also publish statistics concerning the information contained in returns, if the publication is done in such a manner that the information contained in a particular return cannot be identified.

#### **6.90.090 Record Keeping Required**

- A. Every merchant shall keep and preserve for a period of three years records of all rentals completed, the amount of rent received, the amount of taxes collected, and such other books or accounts as may be necessary to determine the amount of tax for which the merchant is liable hereunder. Each merchant shall permit the Borough or its agent to examine, inspect, and copy said records, books, and accounts at any reasonable time.
- B. For the purpose of ascertaining the correctness of any return, or determining the amount of tax collected or which should have been collected by any merchant, the Borough manager or his/her agents may hold audits, investigations, and hearings concerning any matters covered by this ordinance, and may examine any relevant books, papers, records, accounts, or memoranda of any such merchant, and may require the attendance of any person through the issuance of a subpoena which shall be enforced under the Alaska Rules of Civil Procedure in the same manner as subpoenas issued by an officer or agency of the state.

#### **6.90.100 Special Provisions for Pre-Existing Contracts**

- A. This section (6.90.100) applies only to taxes levied on rentals occurring during calendar year 1998 under a contract between a merchant and tour operator which was fully executed on or before October 1, 1996. If such a contract covers more than one year, this section applies only to rentals occurring under said contract during 1998, and not to rentals occurring in subsequent years. This section only applies if a merchant has registered in the manner prescribed in this section.
- B. Upon request by a merchant, the manager may permit the merchant to register to transmit to the Borough, in the manner prescribed in the section, taxes levied on rentals occurring under pre-existing contracts to which this section applies. Such registration shall be separate and in addition to the registration otherwise required by this ordinance. The merchant shall apply for registration under this section on a form provided by the Borough. The application shall contain the following information:
  - 1. The name and address of the parties to the pre-existing contract and the dates on which each party signed the contract.
  - 2. The number of motel rooms, campground spaces, or other overnight accommodations covered by the contract during 1998.

3. The number of days for which each overnight accommodation is rented under the terms of the contract for 1998.
4. The dollar amount of the daily rent to be received by the merchant under the contract during 1998 for each such overnight accommodation.
5. Proof satisfactory to the manager that the information contained in items 1-4 is accurate including, but not limited to, a copy of the contract.
6. Any other information required by the manager.

In addition, the manager is authorized to impose as conditions of registration, such other requirements as he/she deems necessary to protect the legal interests of the Borough. The provisions of Section 6.90.080 shall apply to the information required by this subsection.

- C. Section 6.90.030 (C) shall not apply to taxes levied on rentals occurring under pre-existing contracts to which this section applies.
- D. Every merchant registered under this section shall file a monthly tax return in the manner provided for in Section 6.90.060. The tax return shall include both taxes levied on rentals occurring under pre-existing contracts, and all other taxes. In addition to the information required by Section 6.90.060, the tax return shall also contain the following:
  1. The amount of all rents received from rentals completed during the month which occurred under pre-existing contracts.
  2. The amount of tax due on those rentals.

Notwithstanding any other contrary provision of this ordinance, every merchant registered under this section shall transmit to the Borough the taxes levied on rentals occurring under a pre-existing contract to which this section applies, not later than December 31, 1998. If taxes are not timely transmitted to the Borough by that date, in the manner required by this ordinance, they are delinquent.
- E. The provisions of Section 6.90.060 (C) shall not apply to taxes levied on rentals occurring under pre-existing contracts to which this section applies. The amount of said taxes shall not be included when calculating the credit due to a merchant under 6.90.060 (C).
- F. Except as otherwise provided in this section, all other provisions of this ordinance, including but not limited to, those sections which impose liability for penalties, interest, and the Borough's administrative costs of collection, as well as those sections authorizing the Borough to enforce this ordinance, apply to merchants registered under this section and to the taxes levied on rentals occurring under pre-existing contracts to which this section applies.

### **Article III. - Penalties - Enforcement - Appeals**

#### **6.90.110 Penalties and Interest**

- A. A merchant who fails timely to file a return as required by this ordinance shall pay to the Borough a penalty of five percent (5%) the tax shown or which should have been shown on the return for each thirty day period or fraction thereof during which the tax remains unpaid. However, the penalty provided for in this Section shall not, for any given year, exceed twenty five percent (25%) of the

taxes due. In addition, the merchant shall pay the Borough's administrative costs of collection incurred in enforcing the requirement to file a return. Penalties and administrative costs of collection are due immediately upon accrual and are delinquent thereafter. *(Replaced by Ordinance 97-06, 11/18/97)*

- B. A merchant who fails to transmit the tax required by this ordinance in a timely manner shall pay a penalty of five percent of the taxes owed for each month or portion thereof during which the taxes are delinquent, but the penalty shall not exceed twenty five percent of the amount of the delinquent taxes or one thousand dollars, whichever is less. This penalty shall be paid in addition to the penalty provided in subsection (A) for failure to file a return. In addition, the merchant shall pay the Borough's administrative costs of collection and interest at the rate of fifteen percent per year on all delinquent taxes, not including penalties and administrative costs of collection, from the due date until paid in full. Penalties, interest, and administrative costs of collection are due immediately upon accrual and are delinquent thereafter.
- C. The Borough shall apply payments received on a delinquency first to the payment of penalties, then to the payment of administrative costs of collection, then to the payment of interest, and then to the payment of delinquent taxes.
- D. The Borough Tax Administrator is authorized to exercise his or her discretion regarding the enforcement of this section during the first year this tax is in effect. (January 1, 1998-January 1, 1999). Decisions shall be based upon individual circumstances and the facts in each case. This section is enacted in recognition of the fact that it will take at least one year for all merchants to become thoroughly familiar with this tax ordinance. *(Amended by Ordinance 97-06, 11/18/97)*

#### **6.90.120 Civil Action Authorized**

- A. The Borough may institute a civil action against a guest to collect taxes due but not paid, the Borough's administrative costs of collection, and the civil penalty provided below. The Borough may institute a civil action against a merchant to recover taxes which the merchant failed to collect, or which the merchant collected and failed to transmit to the Borough, together with the penalties, interest, and administrative costs of collection. In any such action, a tax return or estimated tax under section 6.90.070 shall constitute prima facie evidence of the amount of tax which was, or should have been collected.
- B. The Borough may institute a civil action against a merchant who fails to file a return in a timely manner to recover the penalties and administrative costs of collection.
- C. The Borough may institute a civil action against any person who violates a provision of this ordinance. In addition to injunctive relief and compensatory relief, the Borough may recover its administrative costs of collection and a civil penalty not to exceed one thousand dollars (\$1,000.00) for each violation. Each act of violation and every day upon which said violation shall occur shall constitute a separate offense. The Borough may bring an action to enjoin a violation or to recover a civil penalty notwithstanding the availability of any other remedy. Nothing in this section precludes the Borough from taking any

other lawful actions to recover delinquent taxes, penalties, interest, and administrative costs.

### **6.90.130 Tax Lien**

- A. The tax, penalties, interest, administrative costs of collection, and other costs due and owing under this chapter shall constitute a lien in favor of the Borough upon the property and other assets of the merchant and taxpayers liable for the payment of the tax, penalties, interests, and other costs.
- B. The lien imposed by this section arises and attaches at the time payment of the tax to the merchant is made and continues until the entire amount due has been paid to the Borough.
- C. If delinquent taxes, including interest and penalties, are not paid within ten (10) days from the mailing of notice and demand for payment thereof, a notice of lien may be recorded in the appropriate district recorder's office, and upon recording, a lien arising under this section has priority over any other liens except those for special assessments or those granted priority by state or federal law.
- D. Any corporate officer or other person having control or supervision of tax funds collected and held in trust or who is charged with the responsibility for the filing of returns or the payment of the tax funds collected, segregated, and held in trust, shall be personally liable for any unpaid taxes, interest and penalties due from the corporation or business at the moment the taxes become delinquent. The officer or other person shall be liable only for taxes collected or required to be collected or which became due and payable to the Borough during the period he or she had the control, supervision, responsibility, or duty to act for the corporation or business. Personal liability shall include interest, penalties, and the administrative costs of collection.

This section does not relieve the corporation of its liability for payment of the tax due under this chapter or otherwise impair other tax collection remedies afforded by law. Collection authority and procedures prescribed in this chapter apply to collections under this section.

- E. An action to foreclose the lien created by this section shall be commenced and pursued in the manner provided for the foreclosure of liens in AS 09.45.170-09.45.220.
- F. The remedy provided in this section is not exclusive and shall be in addition to all other remedies available to collect the taxes, penalties, interests, and cost due under this chapter.
- G. The failure to record a lien does not constitute a waiver or abrogation of any priorities, rights, or interests of the Borough at law and in equity.
- H. Fees for the administrative costs of filing notices of liens and releasing of liens shall be:
  - 1. Filing of notices of lien: twenty five dollars (\$25), plus recorder's office filing fee.
  - 2. Release of liens: twenty five dollars (\$25), plus recorder's office fee.

#### **6.90.140 Prohibition of Making Rentals without Registering.**

- A. A merchant who is required to register shall not engage in the rental of overnight accommodations within the Borough if the merchant has not previously registered in the manner required by section 6.90.040.
- B. The Borough may institute a civil action to enjoin a merchant from engaging in the rental of overnight accommodations in the Borough until the merchant has registered. The Borough may also recover from the merchant any civil penalty imposed and the Borough administrative costs of collection incurred in enforcing this section.
- C. A person who fails to apply for a certificate of registration as required by this chapter shall pay a penalty of two hundred dollars (\$200). Such penalty must be paid before the license is issued. A person who fails to apply for a certificate of registration, who engages in taxable transactions after being informed in writing that a certificate of registration is required, shall pay a penalty of four hundred dollars (\$400) before the license is issued or before a renewal or amended license is issued.

#### **6.90.150 Sale of Business**

If any merchant sells his overnight accommodations business to another person or entity, the merchant shall file a final tax return within fifteen days after the closing date of the sale. The purchaser shall withhold a sufficient portion of the purchase money to pay the taxes due on the final return, and any other taxes, penalties, interest, and administrative costs of collection which may be due or past due from the merchant, and shall pay this amount to the Borough on or before the due date of the final return. If the purchaser of an overnight accommodation business fails to withhold and pay these amounts as provided above, the purchaser shall be personally liable to the Borough for the payment of these amounts as if the purchaser had been a merchant at the time the amounts initially became due. The Borough may collect these amounts in the manner provided in this ordinance for the collection of taxes, penalties, interest, and administrative costs of collection.

#### **6.90.160 Appeals**

- A. If a tax collector (merchant) believes that a transaction is exempt or otherwise not subject to the tax imposed under this chapter or believes that a penalty, interest, or other charge is not owing, but has been informed by the Borough that such transaction is subject to the tax imposed under this chapter or such penalty, interest, or charge is owing, the collector may protest the tax by paying the tax owed to the Borough on or before the due date and filing with the Borough at the time of payment a statement of protest setting out all relevant facts and clearly explaining why the transaction taxed or the penalty, interest, or charge made is exempt, not otherwise subject to the tax levied by this chapter or not owing. The payment and statement of protest must be received not later than the forty fifth (45th) day following the date the tax was required to be collected from the taxpayer; or, if no tax was collected, the later of the

occurrence of the challenged transaction or the date of the notice from the Borough that the transaction is taxable; or, if the protest is of a disallowance, charge levied, or similar action by the Borough, the date of the notice to the collector of the Borough determination. Failure to file a statement of protest and to pay the amount claimed by the Borough as owing within the time permitted under this subsection or other section of this chapter constitutes a waiver of the right to protest to the Manager or to appeal or otherwise challenge the tax, charge, or determination in any judicial or other proceeding.

- B. The tax administrator shall issue a written ruling on each collector protest within thirty (30) days of receipt of the protest or on such later date as may be required to insure full consideration of the issues raised in the protest. The collector has the burden of proof. The sales tax administrator may permit or require the collector to provide additional information relevant to the protest. The sales tax administrator may seek the advice of the Borough attorney on any protest. The ruling on the protest must set forth the reason for the grant or denial of the protest. The ruling will be sent to the collector at the address given on the protest documents.
- C. If a protest is granted, the tax administrator shall refund to the collector the penalty, interest, or charge levied or the tax collected and paid over to the Borough that was on an exempt transaction or otherwise not subject to the tax levied or the interest, penalty or charge under this chapter. The collector shall immediately refund to each taxpayer from whom the tax was collected the amount of the tax improperly collected; provided, if the collector has failed to directly or indirectly collect the tax but has paid the tax to the Borough from its own account, the collector may retain the tax refund.
- D. In the event a protest is denied, the collector may, within thirty (30) days of the date of the notice of denial, appeal the denial to the Manager if the Manager was not acting as the tax administrator on the protest. The Manager shall receive such additional information whether written or oral, as the collector may desire to present. The Manager may also receive such additional testimony and material as the tax administrator may present. The Manager shall render a decision in writing and give notice of the decision to the collector. The decision of the Manager, whether acting as the Manager or the tax administrator, is final and is subject to judicial review by an appeal to the superior court under applicable appellate court rules.
- E. Failure to file an appeal or protest as authorized under this section within the time permitted constitutes a waiver of the appeal or protest and any other rights of the collector to challenge the tax, interest, penalty, or other charge directly or collaterally.

#### **6.90.170 Severability**

If a court of competent jurisdiction determines that any provision of this ordinance or any application thereof to any person or circumstance is invalid, the remainder of this ordinance and its application to other persons or circumstances shall not be affected thereby.

*(Chapter 6.90 Added 8/20/96 by Ordinance 96-04)*

## Chapter 6.91 SEVERANCE TAX

### Sections:

6.91.010	Definitions
6.91.020	Resources Subject to Tax
6.91.025	Tax Rates for Resources Subject to Tax
6.91.030	Exemption
6.91.040	Collection and Administration
6.91.045	Special Provisions for Pre-existing Contracts
6.91.050	Enforcement and Penalties
6.91.060	Severance Tax Return Verification
6.91.070	Confidentiality
6.91.080	Liability for and Collection of Severance Tax
6.91.090	Penalties and Interest

### 6.91.010 Definitions. (For the purposes of this Chapter.)

- A. **“Gross Production Value”** means the value per unit at the point of severance multiplied by the number of recovered units of the natural resources sold during the calendar quarter.
- B. **“Severer or Harvester”** means a person, company, corporation, or other entity engaged in the business of severing or harvesting natural resources. This includes offshore processors of fish products who process, deliver, catch, or receive fish products within the boundaries of the Lake and Peninsula Borough if those activities are not already subject to the Borough’s Sales and Use Tax. It also includes fish harvesters who harvest fish within the boundaries of the Borough and transport the fish themselves to locations outside the Borough for sale and/or processing provided that these harvesters are not already subject to the Borough Sales and Use Tax.
- C. **“Calendar Quarter”** means any one (1) of the following three (3) month periods beginning on January 1: January 1-March 30, April 1-June 30, July 1-September 30, October 1-December 30.
- D. **“Recovered Units”** means all units mined, felled, extracted, or removed whether produced directly or contractually during the period of production.
- E. **“Point of Severance”** means for the purposes of preparing the tax is defined as:
1. prepared for transport at the mine site in the case of resources defined in subsection 6.91.020 (A) of this chapter,
  2. The yard scale in the case of resources defined in subsection 6.91.020 (B) of this chapter,
  3. The scale at the pit or quarry in the case of resources defined in subsection 6.91.020 (C) of this chapter,
  4. The point at which fish were harvested within the Borough in the case of resources defined in subsection 6.91.020 (D) of this chapter.
- F. **“Commercial Products of Borough Waters”** means any raw finfish or bottomfish, shellfish, mollusks or other invertebrates and all other commercial products of the sea harvested in Borough Waters, whether fresh, estuarine or salt, for sale, profit or commercial use. *(Added by Ordinance 09-08; November 14, 2009)*

#### **6.91.20. Resources subject to tax.**

There is levied in the Borough, on any severer or harvester of certain natural resources, an excise tax, denominated as a severance tax. The tax rate shall be the applicable rate as set forth in subsection 6.91.025.

- A. Mining, extracting, harvesting, removing, or producing for sale, profit, or commercial use any copper, gold, silver, zinc, titanium, molybdenum, or other metallic mineral product, and compound, or combination of mineral products,
- B. Felling, removing, or producing for sale, profit, or commercial use, timber or any product of the forest,
- C. Gravel mining, quarrying, or producing for sale, profit, or commercial use, any sand, gravel, rock, or coal, and
- D. Harvesting and processing Commercial Products of Borough (*Amended by Ordinance 09-08; 11/14/09*).

#### **6.91.25 Tax rates for resources subject to tax**

The tax levied by this section shall be at the following rates:

- A. For metal ores and coal extracted from the ground, 1.5 percent times the gross production value per ton;
- B. For timber extracted one quarter of one percent of the sales price times the total number of board feet;
- C. For gravel extracted 10 (ten) cents per cubic yard;
- D. For Commercial Products of Borough Waters, 2% of purchase price; (*Amended by Ordinance 09-08, 11/14/09*)
- E. For resources not included herein; as may be considered and approved by the Borough Assembly.

#### **6.91.030 Exemptions**

- A. If the annual gross production value of a natural resource severed within the Borough does not equal or exceed the amount of \$5000.00, the severer or harvester shall be exempt from taxation under this chapter. This exemption does not apply to subsection 6.91.020 (D) of this chapter.
- B. (*Repealed by Ordinance 09-08; 11/14/09*)
- C. Local governments are exempted from payment of this tax for resources that the local government owns before severance which are to be used after severance exclusively in public works projects undertaken by that local government within the local government's jurisdiction or as a local match for public works projects undertaken by that local government within the local government's jurisdiction.

#### **6.91.040 Collection and Administration**

- A. Every severer or harvester of resources subject to taxation under this chapter, shall register with the Borough prior to beginning a severance or harvesting activity. Registration shall take place on forms provided by the Borough.

- B. Except regarding resources described in 6.91.020 (D), every severer or harvester shall submit to the Borough a severance tax return, under oath, at the time the tax is paid, containing the following information:
  - 1. A description of the property from which the resource was severed or harvested by legal description or Borough assigned account number.
  - 2. The gross amount of recovered units severed or harvested during the calendar quarter.
  - 3. The gross sales value of all recovered units severed or harvested during the calendar quarter.
- C. With regards to resources described in 6.91.020 (D), every severer or harvester shall submit to the processor or purchaser of such resource a Lake and Peninsula Borough severance tax return, under oath, containing the following information:
  - 1. A description of the waters from which the resource was severed or harvested by longitude and latitude or such description of location as may be approved by the Borough
  - 2. The gross amount of recovered units severed or harvested during the calendar quarter.
  - 3. The gross sales value of all recovered units severed or harvested during the calendar quarter.

After receipt of the Lake and Peninsula Borough severance tax return, the receiving processor shall withhold the applicable percentage of the gross production value of the resource, remitting 95% to the Borough along with the Lake and Peninsula Borough severance tax return completed by the severer or harvester as the applicable Lake and Peninsula Borough severance tax on that resource, retaining 5% as a tax collection fee, up to, but not to exceed \$300.00. It is the responsibility of the severer or harvester in every instance to insure that the Lake and Peninsula Borough severance tax is paid.
- D. The return or tax statement along with all taxes due the Borough for the calendar quarter must be received by the Borough on or before the last business day of the month following the end of the calendar quarter for which the return or statement is required.
- E. This tax constitutes a lien chargeable against the property owned by the severer. The lien may be foreclosed by the Borough in the same manner as any other lien against real or personal property.

**6.91.045 Special Provisions for Pre-existing Contracts**

- A. This section (6.91.045) applies only to the application of the Borough severance tax on the severance or harvesting of applicable natural resources during the calendar year 2003 under a contract which was fully executed on or before October 1, 2002. If such a contract covers more than one year, this section applies only to the severance or harvesting occurring under said contract for 2003, and not to severance or harvesting occurring in subsequent years. This section only applies if a severer or harvester has registered in the manner prescribed in this section. In order to be eligible under this section, the severer or harvester must register prior to January 1, 2003.
- B. This section provides for an exemption from the provisions of Ordinance 02-03 which imposed a severance tax on the severance and harvesting of certain natural resources.
- C. Upon request by a severer or harvester, the Borough Manager may permit the severer or harvester to register to transmit to the Borough, in the manner

prescribed in this section, taxes levied on the severance or harvesting of applicable natural resources under pre-existing contracts to which this section applies. Such registration shall be separate and in addition to the registration otherwise required by this Chapter. The severer or harvester shall apply for registration under this section on a form provided by the Borough. The application shall contain the following information:

1. The name and address of the parties to the pre-existing contract and the dates on which each party signed the contract.
  2. The terms of the contract including quantity or the natural resources covered and the price per unit to be paid
  3. The duration of the contract and any special conditions and incentives in the contract.
  4. Proof satisfactory to the Manager that the information contained in items 1-3 is accurate, including, but not limited to, a copy of the contract.
  5. Any other information required by the Manager.
- D. Every severer or harvester registered under this section shall file a tax return as required by 6.91.040. The tax return shall include both taxes levied on extraction of applicable natural resources occurring under pre-existing contracts, and all other taxes. In addition to the information required by 6.91.040, the tax return shall also contain the following:
1. The amounts and values of all applicable natural resources extracted under pre-existing contracts.
  2. A statement of the amount of tax which would have been due on such severance or harvesting.
- E. Except as otherwise provided in this section, all other provisions of this ordinance, including, but not limited to, those sections which impose liability for penalties, interest, and the Borough's administrative costs of collection, as well as those sections authorizing the Borough to enforce this ordinance, apply to severer or harvesters registered under this section.

#### **6.91.050 Enforcement and Penalties**

- A. The superior court, upon request of the Borough, shall issue an injunction requiring compliance with the provisions of this chapter. In the alternative, the Borough may determine the severance tax on parties who have not filed a return in an amount based on historical data or the best information available.
- B. A person who fails, refuses, or neglects to file a severance tax return in compliance with this chapter shall, in addition to any other penalties provided by law, be liable for a penalty of ten (10) percent of the tax.

#### **6.91.060 Severance Tax Return Verification**

Except for those harvesters who have filed under and fully complied with subsection 6.91.40 (E) of this chapter and have paid all taxes when due, the Borough Manager or his/her designee may:

- A. Require a person engaged in natural resource extraction, production, or transportation, any agent or employee of this person, or the purchaser or natural resources taxed under this chapter to furnish any additional information reasonably necessary to compute the amount of the tax or to determine if a tax is due,

- B. Examine the books, records, and files of any such person,
- C. Conduct hearings and compel the attendance of witnesses and the production of books, records, and papers of any person, and
- D. Make an investigation or hold any inquiry reasonably necessary to a disclosure of facts as to:
  - 1. The amount of extraction or production of a natural resource of an extractor, producer, or seller,
  - 2. The purchaser of the natural resource, and
  - 3. Transportation of the resource.

**6.91.070 Confidentiality**

Information and materials in the possession of the Borough which disclose the particulars of the business or affairs of then payer of taxes under this chapter will be kept confidential by the Borough except in connection with an official investigation by the Borough or other agency enforcing the laws of the Borough or the State. The Borough may publish statistics in a manner which prevents identification of particular returns and may publish tax lists showing the names, taxes, penalties, and interest with respect to taxpayers who are delinquent to assist in the collection of taxes.

**6.91.080 Liability for and Collection of Severance tax**

The severer or harvester, or in the case of subsection 6.91.020 (D) of this chapter, the purchaser or processor of the resources assessed under this chapter is liable for the amount of taxes, interest, and penalties due. The tax, together with penalties and interest, may be collected in a personal action brought in the name of the Borough.

**6.91.090 Penalties and Interest**

All taxes due under this chapter but not timely paid as required are subject to a penalty of 5% of the tax due. Interest shall accrue on the tax due including penalties and interest at the rate of 12% per year from the date such taxes are due. Partial payments shall be applied first to accrued penalties, then to interest, and then to principal. A payment is timely paid when mailed to the Borough postage prepaid bearing a postmark date no later than the due date.

*(Chapter added by Ordinance 02-03, 8/27/02)*