

# Kenai Peninsula Borough Community & Fiscal Projects

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## MEMORANDUM

**TO:** Kelly Cooper, Assembly President  
Members, Kenai Peninsula Borough Assembly

**THRU:** Charlie Pierce, Mayor CP

**FROM:** Brenda Ahlberg, Community & Fiscal Projects Manager Bl  
Brandi Harbaugh, Finance Director Bk  
Colette Thompson, Borough Attorney Ct

**DATE:** June 16, 2020

**RE:** Amendments to Ordinance 2019-19-39, Approving and Appropriating Funding from the State of Alaska in the Amount of \$37,458,449.47 for a Federal Pass-Through Award Under the U.S. Department of the Treasury, Coronavirus Relief Fund (Mayor)

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Following are two sets of amendments requested for this ordinance which include the amendment previously submitted in the packet and a new set of amendment. These are combined into one memo to avoid confusion in numbering the sections if the amendments are approved.

The first amendment authorizes the mayor to waive sovereign immunity which is required by the State of Alaska's Coronavirus Relief Grant Agreement. The second one relates to the business and nonprofit grant awards. It authorizes the mayor to temporarily waive a code prohibition against awarding contracts to entities that are out of compliance with the borough sales tax code as a result of the pandemic.

The second set of amendments would authorize the administration to partially waive a provision of the code. The funds to be appropriated in this ordinance are to respond to the public health emergency resulting from the coronavirus pandemic. While developing plans for the allowed expenditures of these funds it was determined that a section of the code, KPB 5.28.140, could prohibit awarding grants to Coronavirus Relief Fund applicants that are out of compliance with the borough tax codes as a result of the pandemic. Waiving a code provision must be done by ordinance.

This amendment would authorize the administration to waive that provision if a business or nonprofit applying for a grant funded with these funds is current in its

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sales tax payments through the filing period ending December 31, 2019. The applicant must also be current in its sales tax registration, all filings and all other sales tax requirements as of the date of the grant application. Returns and payments for December 31, 2019 were due February 1, 2020. Using this deadline treats monthly, quarterly and annual sales tax filers equally for grant eligibility purposes and is consistent with the time COVID19 began impacting the borough.

*(Please note additions are in bold and underlined and deletions are in bold and stricken out.)*

- Amend the title as follows:

**AN ORDINANCE ACCEPTING AND APPROPRIATING FUNDING FROM THE STATE OF ALASKA IN THE AMOUNT OF \$37,458,449.47 FOR A FEDERAL PASS-THROUGH AWARD UNDER THE U.S. DEPARTMENT OF THE TREASURY, CORONAVIRUS RELIEF FUND AND AUTHORIZING A PARTIAL TEMPORARY WAIVER OF THE PROHIBITION AGAINST CONTRACTING WITH A CORONAVIRUS RELIEF FUND APPLICANT IF THE APPLICANT IS IN VIOLATION OF CERTAIN SALES TAXATION REQUIREMENTS**

- Insert a new final whereas clause as follows:

**WHEREAS, it would be consistent with the purposes of these grant funds to authorize the administration to temporarily waive the prohibition against awarding a contract to Coronavirus Relief Fund applicants (“Applicants”) found to be in violation of certain borough sales tax payment requirements solely for purposes of awarding a grant to an otherwise qualified Applicant under the program to be established using the funds appropriated in this ordinance;**

- Insert the following new Sections 4 and 5, and renumber the existing sections 4 and 5 to Sections 6 and 7:

**SECTION 4. The Kenai Peninsula Borough agrees that upon award of the CRF grant funds from the State of Alaska described above in this ordinance, it shall waive its sovereign immunity with respect to State enforcement of the Coronavirus Relief Fund Grant Agreement to the extent required by Article 37 of the Department of Commerce, Community, and Economic Development Division of Community and Regional Affairs.**

**SECTION 5. That the mayor is authorized to waive the prohibition in KPB 5.28.140 against contracting with an entity if it is in violation of any borough**

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**sales taxation ordinance, solely for purposes of issuing a grant under the borough Coronavirus Relief Fund Program subject to the following provisions:**

**To qualify for this waiver an otherwise qualified Applicant must be current in its sales tax payments through the filing period ending December 31, 2019 and otherwise current in its sales tax registration, all filings and all other sales tax requirements as of the date of the grant application. Additionally, an Applicant currently in bankruptcy or subject to a Borough lien for unpaid sales taxes is not eligible for this waiver. This waiver shall sunset on September 30, 2020 with the sales tax payments and returns due November 1, 2020. This applies to all Applicants, including businesses and nonprofit organizations.**

- Amend the new Section 7 as follows:
- **SECTION [5]Z.** This ordinance shall become effective **retroactively on March 1, 2020 immediately upon its enactment.**

Your consideration of these amendment is appreciated.