



KENAI PENINSULA BOROUGH

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MIKE NAVARRE
BOROUGH MAYOR

MEMORANDUM

TO: Blaine Gilman, Assembly President
Members, Kenai Peninsula Borough Assembly

THRU: Mike Navarre, Mayor *MN*
Craig C. Chapman, Finance Director *C Chapman*

FROM: Larry Persily, Assistant to Mayor *LP*

DATE: August 25, 2016

SUBJECT: Amendment to Ordinance 2016-31, An Ordinance Amending Sections of KPB Chapter 5.18 to Update and Clarify the Borough Sales Tax Code, including Changes to Several Provisions on Tax-Exempt Sellers and Taxable Sales and Services (Mayor)

Ordinance 2016-31, introduced August 9, 2016, proposes to amend several sections in the borough sales tax code. This memorandum sets forth two previously overlooked, but now recommended, amendments to Ordinance 2016-31: (1) the insertion of the acronyms for limited liability company (LLC) and limited liability partnership (LLP) in Section 1, and (2) the deletion of the reference to "physical presence" and KPB Sales Tax Policy 95-02 in Section 10.

The proposed change to Section 1 is clerical. The proposed change to Section 10 eliminates reference to KPB Sales Tax Policy 95-02. This reference to Policy 95-02 is the only case of a specific borough referenced in the tax code, and, as such, should be removed regardless of any other changes to the tax code. Policies are not code, do not go through the same public process as code, and should not be elevated to that status. Lastly, there is no need to define "physical presence" in code; hence, I recommend that reference to a definition be deleted.

The administration respectfully requests the assembly approve the following amendments to this ordinance:

- Amend Section 1 by inserting the **bold and underlined** language below:

5.18.130. General—Seller—Liability to the borough—Successor liability—Corporate officer liability.

D. [THE PRESIDENT AND ANY OFFICER, EMPLOYEE OR AGENT OF A CORPORATION HAVING] Any officers, employees, agents, members, managers, or partners of a corporation, limited liability company (LLC), limited liability partnership (LLP), partnership, or limited partnership that have control of, supervision of, or charged with the responsibility of filing sales tax returns or remitting sales taxes [IS] are personally liable for any unpaid [CORPORATE] business entity sales taxes, penalties, interest, fees and costs accruing and unpaid to the borough. Dissolution of, or sale of, or other change in the form of the corporation, LLC, LLP, partnership, or limited partnership does not discharge this liability. The signature of any officer, member, manager, or partner on returns or negotiable instruments submitted in payment of taxes is prima facie evidence of their responsibility for making returns and payments.

- Amend Section 10 by deleting the language in **bolded strikeout** below:

5.18.450(A). Tax jurisdiction—Office location of seller.

- 3. ~~"Physical presence" is as defined in KPB Sales Tax Policy 95-02, copies of which are available in the finance department.~~**

Thank you for your consideration of this memorandum.