

# Kenai Peninsula Borough

## Office of the Borough Mayor

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### MEMORANDUM

**TO:** Wayne Ogle, Assembly President  
Members, Kenai Peninsula Borough Assembly

**THRU:** Brandi Harbaugh, Finance Director *BH*

**FROM:** Charlie Pierce, Mayor *CP*

**DATE:** December 21, 2018

**RE:** Ordinance 2018-19-21, Appropriating \$10,000 from the General Fund for Contribution to the Alaska Municipal League to Support a Working Group Charged with Establishing a Centralized Sales Tax Administrator for Remote Sellers (Mayor)

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In *South Dakota v. Wayfair*, the United States Supreme Court overturned a previous ruling that established the physical presence rule requiring a business to have an in-state physical presence before a state could require it to collect sales taxes. A tax on a seller with no physical presence in the borough will be sustained so long as the tax:

- (1) Applies to an activity with substantial nexus to the borough;
- (2) is fairly apportioned;
- (3) does not discriminate against or unduly burden interstate commerce; and
- (4) is fairly related to the services the borough provides.

However, it is not as simple as just amending the borough's sales tax code to capture online sales by remote sellers who do not have a physical presence in the borough. To avoid unduly burdening or discriminating against interstate commerce, the case has been interpreted to require a single, centralized online or remote seller's sales tax administrator for each state. The administrator would be the sole tax collection, audit, and enforcement authority statewide.

While the borough could wait and see if the State of Alaska will act to create a single, centralized sales tax administrator, significant revenue is lost with every day of delay. Recognizing the amount of sales tax revenue at stake for Alaska municipalities, the Alaska Municipal League (AML) is taking the lead to create an

independent, centralized online or remote seller sales tax administration that is not state run. The AML is putting together a working group to complete necessary steps toward achieving this end goal. The AML envisions issuing a final request for proposals product where third-party administrators bid to act as the sole contracted agency that will provide the software, mapping, and other systems necessary to implement and administer online sales tax collection for all participating municipalities in the state. To assist in doing this it is considering hiring a contractor familiar with the efforts of other states to help establish a workable program.

The AML has requested contributions from the municipalities. Contributing to these initial efforts will ensure that the borough is a participant in the working group process. With the borough participating we will have a voice in the initial set up, exemptions, definitions, collections, remittance and other parts of the process. The AML does not anticipate any further contributions will be necessary for this working group. However, we do anticipate additional costs once the third-party administrator is selected and the process is functioning. It is estimated that the borough will gain an additional \$1,500,000 in sales tax revenue annually through the collection of remote sellers' sales tax.

Your support of this ordinance would be appreciated.

<b>FINANCE DEPARTMENT</b>	
<b>ACCOUNT / FUNDS VERIFIED</b>	
Acct. No.	<u>100.27910</u>
Amount:	<u>\$ 10,000.00</u>
By: <u>BA</u>	Date: <u>12/20/18</u>